

Judicial Commission on Mental Health

Overview of Fitness to Proceed and
other Challenges

Judge Cyndi Wheless

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Overlap/Crossover Youth

Prevalence

Child Welfare Population

- 10-29% of youth ≥ 8 years old in CW are subsequently arrested

Juvenile Justice Referrals

- Overall Cases: 67% with some type of CW history (King County)
- Diversion Cases
 - 1% (4 Arizona Counties)
 - 34% (King County)

Juvenile Justice Adjudicated Cases

- Overall: 35% (New Mexico)
- Probation Supervision: 7% (4 Arizona Counties)
- Probation Placement: 42% (4 Arizona Counties)

Anatomy of a Case

- Child alleged to have engaged in delinquent conduct – Class B Misdemeanor up to Capital Murder
 - 1) Child 13 yoa alleged to have committed offense of Aggravated Sexual Assault of a Child (alleged victim 7 yoa.)
 - 2) Facts are egregious with full penetration mouth and anus and over the clothes contact after a CAC interview
 - 3) Police interview the juvenile respondent about the facts of the alleged offense

Secure Detention

- MAYSI administered for acute and other behavioral and mental health assessment
- If suicidal, MH Managed Counsel (Alyse Ferguson) may assign a GAL and an attorney

Anatomy of a Case

- While the juvenile is in JDC, court appointed lawyer and GAL begin to suspect IDD
- Court orders psychological evaluation – wherein child FSIQ 72
- School records showed a FSIQ 63
 - Reports of anger management problems at school and at home “trying to stab his mother, with scissors” caused Glen Oaks hospitalization

Anatomy

- State files Original Petition charging 6 Counts of Aggravated Sexual Assault of a Child First Degree Felony
- Defense files Chapter 55 Unfitness to Proceed As a Result of Mental Illness or IDD

Fitness to Proceed
Texas Family Code Section
Chapter 55

Chapter 55.11 MH

- Sec. 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION. (a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:
 - (1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and
 - (2) make its own observation of the child.
- (b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section [51.20](#). The information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code. If ordered by the court, the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings.
- (c) After considering all relevant information, including information obtained from an examination under Section [51.20](#), the court shall:
 - (1) if the court determines that evidence exists to support a finding that the child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12; or
 - (2) if the court determines that evidence does not exist to support a finding that the child has a mental illness or that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings.
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Chapter 55.31 Unfitness to Proceed

- (a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or an intellectual disability lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.
- (b) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is unfit to proceed as a result of mental illness or an intellectual disability. In making its determination, the court may:
 - (1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and
 - (2) make its own observation of the child.
- (c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20 . The information obtained from the examination must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or an intellectual disability.
- (d) After considering all relevant information, including information obtained from an examination under Section 51.20 , the court shall:
 - (1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32 ; or
 - (2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

Anatomy

- Court must decide if there is **Probable Cause** to believe that the child charged by Petition with delinquent conduct is **Unfit to Proceed** the Court shall stay the proceeding and order an examination under 51.20
- This resulted in a 2nd Psychological Evaluation of Unfitness to Proceed As a Result of Mental Illness or IDD

Anatomy

- Findings on Capacity to Understand Charges/Consequences/Disclose Pertinent Facts to Aid in Defense/Legal Strategy/Testify
- Dr. recommends that the child is not competent to stand trial at this time and will require Restoration.

Anatomy

- After Court finds child Unfit to Proceed, the Court orders child placed at Mexia State Supported Living Center for a full evaluation and restoration
 - Mexia was not available for several weeks from the initial finding of the Court to placement
 - FSIQ 54
 - Mexia found the child Unfit to Proceed because of Intellectual Developmental Disability

Anatomy

- Child returns to either detention or home after his 90 day placement at Mexia
- Court holds hearing (after Christmas) to determine whether to accept the Texas Health and Human Services finding of Unfitness and proceed to trial when restored to Fitness or to place the child for services without the need to restore to competency or fitness

Anatomy

- This case was easy compared with the case of the child who is still in my JDC who killed nine puppies by slashing their throats
 - Later informed that he had previously killed two cats because he was mad at their owner (a friend)
 - Already engaged in Lifepath services in our county before he came to detention.

We are becoming Trauma Informed

- TBRI Training is upcoming in our Juvenile Probation Department
- GEMS Girls Court for prevention, identification and elimination of child sex trafficking
 - CSE-IT assessment for runaways within the first 24 hours of detention