

Understanding Child Disability Issues in Juvenile Cases

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Why Are We Teaching This Course?

It is required for all JPs to have a class on child disability issues every year ending in a 5 or 0.

- Section 22.1105(a), Government Code

To help courts understand the relevant issues and implement best practices for handling cases involving children with disabilities.

- A lot of this can translate to cases involving adults with disabilities as well!

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Agenda

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 Common Disabilities & Their Characteristics

 Specific Info for EDO's, Truancy, and Juvenile Criminal Cases

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A First Responder's Guide to Providing Services to Special Needs Citizens

By: Bryon R. Betsinger, Battalion Chief (Ret.) and Officer Brian Herritt (Ret.), C.P.P.

Blue 360 Media

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Diagnostic and Statistical Manual of Mental
Disorders, Fifth Edition (DSM-5)

American Psychiatric Association

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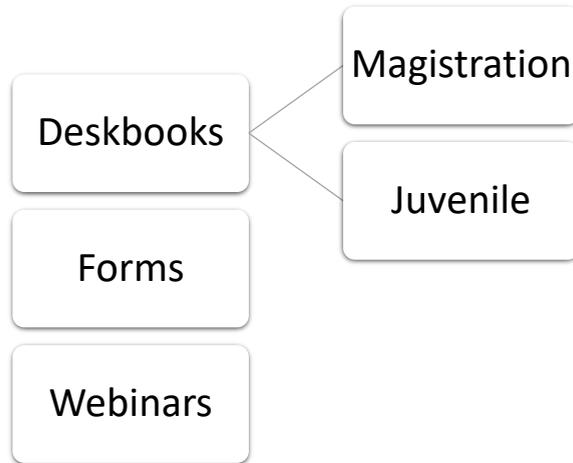
Texas Mental Health and Intellectual and Developmental
Disabilities Law Bench Book

Judicial Commission on Mental Health

<http://texasjcmh.gov/publications/bench-book-and-cards/>

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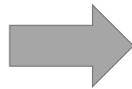
<https://www.tjctc.org/>



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USEFUL LINKS



SEE SEPARATE HANDOUT

Task: Choose at least 4 links from the handout to explore.

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Know the resources in your county or know who you could ask/where you could look to find out!

Could be general resources for children.
(Which could also potentially refer to specialized resources).

Could be resources specifically for people/children with disabilities, including mental health issues and addiction.



For example, here are a few resources in Kerr County:

- BCFS Health and Human Services – Kerrville
- Mental Health & Developmental Disabilities Center Hill Country
- Any Baby Can (provides comprehensive resource guides for San Antonio, New Braunfels, and Kerrville)

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Introduction

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Definition of Disability

28 CFR §§ 35.108 (Americans with Disabilities Act Regulations)

A physical or mental impairment that substantially limits one or more of the major life activities of a person.

“Physical or mental impairment” includes:

- a **physical, psychiatric, intellectual, developmental, sensory, or other mental** disability.

Major life activities include:

- Caring for oneself, performing manual tasks
- Seeing, hearing, eating, sleeping, speaking, breathing
- Walking, standing, sitting, reaching, lifting, bending
- Learning, reading, concentrating, thinking, writing
- Communicating, interacting with others, working
- The operation of a major bodily function

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IDEIA & ADA

Individuals with Disabilities Education Improvement Act (IDEIA)

- Federal law reauthorized in 2004.
- Was Individuals with Disabilities Education Act (IDEA) before reauthorization.
- Funding and requirements/procedures for special education in public schools.
- Public schools must provide necessary accommodations to supply a “free appropriate public education” to students with disabilities.
- An Individualized Education Plan (IEP) must be created for students covered by IDEIA. This provides the plan that must be followed for a particular student.

Americans with Disabilities Act (ADA)

- Federal law passed in 1990.
- Prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

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People with Disabilities & the Court

The purpose of the IDEA & the ADA is to allow people with disabilities to have the same rights and opportunities as everyone else.



People with disabilities also need to be afforded the same rights and opportunities as everyone else when it comes to the justice system.



To ensure justice and fairness, special considerations and accommodations may need to be made.

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People with Disabilities & the Court

A court should:

- Recognize that a child with a disability does not have control over behaviors or issues caused by that disability.
- Take the child's disability into consideration and make decisions that result in reasonable and effective outcomes. This may impact:
 - Contents of orders upon conviction
 - Conditions of deferred disposition
 - Contents of truancy remedial orders
 - Deadlines
 - How you react to situations that occur in the courtroom.
- Treat the child respectfully and compassionately; and use "people-first language"

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People-First Language

- Language used to speak appropriately and respectfully; emphasizes the person first, not the disability.
- From the Judicial Commission on Mental Health Bench Book:

People-First Language	Language to Avoid
Person with a disability	The handicapped, the disabled
Person without a disability	Normal person, healthy person
Person with an intellectual, cognitive, developmental disability	Retarded, slow, simple, moronic, defective or retarded, afflicted, special person
Person with an emotional or behavioral disability, person with a mental health or a psychiatric disability	Insane, crazy, psycho, maniac, nuts

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Common Disabilities & Their Characteristics

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- We will not cover every disability – just some of the common ones that you may be likely to see
 - And we will not list every characteristic that may be possible either.
- Not every person with a disability presents with all of the characteristics – may only have a few.
- Often, a person may have more than one disability.
- You won't always immediately know if someone has a disability.
 - *Good rule of thumb:* Ask the defendant or their parent/guardian or attorney if there are any special needs or disabilities the court should be aware of.

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Sensory Processing Disorder

- **Hearing:**
 - Sensitivity to noise
 - Lack of hearing
- **Sight:**
 - Sensitivity to bright or rotating lights and colors
 - Color blindness or low vision
- **Smell:**
 - Heightened sense
 - Unable to smell
- **Taste:**
 - Heightened sense
 - Unable to taste
- **Touch:**
 - Sensitivity to any contact and heightened sense of pain
 - Inability to feel pain
- **Movement:**
 - Balance and body control issues affect ability to maintain equilibrium

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Autism Spectrum Disorder

- Lack of eye contact
- Lack of or inappropriate communication
- Interpreting things literally (missing inferred/IMPLIED info)
- Missing social cues
- Inappropriate social actions
- Repetitive actions
- Stimming
- Sensory Issues
- Lack of understanding danger
- Difficulty regulating emotions
- Meltdowns
- Elopement (unsupervised departure)

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Attention Deficit Hyperactivity Disorder (ADHD)

- Inability to focus/concentrate
- Short attention span
- Easily distracted
- Careless mistakes
- Lack of organizational skills
- Frenetic movement
- Inability to sit still
- Appearance of not listening
- Incessant chatter
- Compulsion to interrupt with unrelated comments
- Lack of impulse control
- Lack of patience
- Difficulty managing emotions
- Sensory Issues

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Intellectual & Developmental Disabilities

Potential Causes: Down Syndrome, Fragile X Syndrome, Fetal Alcohol Syndrome, Cerebral Palsy, alcohol/drug use or illness during pregnancy, brain damage, lead exposure

- IQ below 70
- Difficulty with decision-making, problem-solving, and reasoning
- Behavioral problems
- Social problems
- Inappropriate comments that can appear threatening (without an awareness of their potential impact)
- Sensory Issues

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Tic Disorders

- Motor tics (involuntary movements)
- Vocal tics (involuntary sounds or words)
- Can be simple or complex and are usually repetitive.
- Can be recognizable gestures and/or words and appear intentional despite being involuntary
- Well known example: Tourette Syndrome

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Learning Disabilities

- **Dyslexia:** Reading
- **Dyscalculia:** Numbers and math
- **Dysgraphia:** Writing
- **Auditory Processing Disorder:** Interpreting sounds
- **Language Processing Disorder:** Understanding language and expressing thoughts
- **Speech Disorder:** Speaking
- **Non-Verbal Learning Disabilities:** Motor skills and interpreting nonverbal cues
- **Visual Perceptual/Visual Motor Deficit:** Understanding information a person sees or ability to draw/copy

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Post-Traumatic Stress Disorder (PTSD)

Occurs after a person experiences or witnesses a traumatic or frightening event.

- Flashbacks
- Nightmares
- Loss of interest in life
- Emotional numbness
- Loss of memory related to traumatic events
- Avoidance
- Negative thoughts
- Hyperarousal (edginess, hyperactivity, difficulty concentrating, emotional outbursts, easily startled)

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Depression

- Angry outbursts, irritability, or frustration over small matters
- Acting withdrawn and appearing to “not care”
- Lack of energy
- Difficulty concentrating, thinking, making decisions, & remembering things
- Difficulty meeting requirements and deadlines
- Feelings of worthlessness, fixating on past failures
- Suicidal thoughts or attempts

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Anxiety

- Excessive worry, nervousness, restlessness, or tenseness
- Difficulty concentrating
- Avoidance of situations that cause or increase anxiety
- Potential intense fear of social and performance situations (such as having to stand up and speak in a courtroom)
- Tendency to be hard on themselves
- Depression

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Bipolar Disorder

- Severe mood swings
- Hyperactivity
- Impulsivity
- Aggressive behavior
- Recklessness (including drug or alcohol abuse)
- Socially inappropriate behavior
- Grandiose and inflated view of own capabilities
- Irritability
- Depression
- Suicidal thoughts or behaviors

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Addictive Disorders

- Addiction is a type of mental illness
 - It is included in (DSM-5) published by the American Psychiatric Association
- Characteristics and behaviors vary depending on what a person is addicted to and the level of the addiction
 - Addiction fundamentally changes a person's brain
 - Punishment will not "fix" addiction
 - Treatment is necessary to address addiction
- Frequently occurs when a person attempts to use drugs or alcohol to self-medicate or cope with another disability, especially another mental illness

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Disabilities That Have Physical Characteristics

Examples: Cerebral Palsy, Epilepsy, Muscular Dystrophy, Spina bifida, Amputations and Limb Differences, Blindness, Deafness

- Mobility issues
- Transportation issues
- Challenges interacting with surroundings

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Specific Information for EDO's, Truancy, & Juvenile Criminal Cases

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Emergency
Detention
Orders
(Ch. 573,
Subchapter
B, Health and
Safety Code)

Can be done for juveniles

Just make sure transport officer knows – may affect their protocols.



But one of the requirements for an EDO is that the person must show evidence of a mental illness as defined by Section 571.003(14) of the Health and Safety Code.

So what all falls under this?

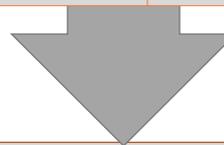
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“Mental Illness”
Under HSC
571.003(14)

An illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

substantially impairs a person's thought, perception of reality, emotional process, or judgment; OR

grossly impairs behavior as demonstrated by recent disturbed behavior.



For info on the procedures for EDO's, see Ch. 3 of TJCTC's Magistration Deskbook.

So could apply to certain disabilities you may not usually think of as mental illness.

Can you think of an example?

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Truancy

--Section 65.065, Family Code

A party may make a motion requesting dismissal because the child has a mental illness as defined by Section 571.003(14) of the Health and Safety Code.

The court SHALL temporarily stay the case & determine whether probable cause exists to believe the child has a mental illness.

(The court may consider the motion, supporting docs, professional statements of counsel, and witness testimony; and may observe the child).

- ➡ If yes, court SHALL dismiss the petition.
- ➡ If no, court SHALL dissolve the stay & proceed.

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Mental Illness” Under HSC 571.003(14)

An illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

substantially impairs a person's thought, perception of reality, emotional process, or judgment; OR

grossly impairs behavior as demonstrated by recent disturbed behavior.

So again, this could apply to certain disabilities you may not usually think of as mental illness.

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Truancy

--Section 25.086, 25.0915(c),
Education Code

A child is exempt from compulsory school attendance if the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible.

(They must have documentation from a doctor specifying the condition and indicating the treatment prescribed and the anticipated period of the child's absence).



The court SHALL dismiss if a truancy petition is filed for a child in this situation.

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Truancy

--Section 25.086, 25.0915(c),
Education Code

A child is exempt from compulsory school attendance if the child is eligible for a special education program and cannot be properly served by the school district.



The court SHALL dismiss if a truancy petition is filed for a child in this situation.

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Truancy

--Section 25.0915(b),(c), Education Code; Section 65.053(c), Family code

For info on Truancy procedures, see Ch. 1 of TJCTC's Juvenile Deskbook.

A truancy petition may NOT be filed if the referral from the school does not specify whether the student is eligible for or receives special education services.



The court SHALL dismiss if a petition is filed.

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Juvenile Criminal Cases

--Section 8.08, Penal Code

- On a motion by the state, the defendant, a parent, or on the court's own motion, the court shall determine whether probable cause exists to believe that a child (including a child with a mental illness or developmental disability):
 - lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed; or
 - lacks substantial capacity either to appreciate the wrongfulness of their conduct or to follow the law.
- If yes, the court may dismiss the complaint after providing notice to the state (and the state may appeal under CCP 44.01).

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Juvenile Criminal Cases

--Section 51.08(f),
Family Code

*For info on criminal case procedures,
see TJCTC's Juvenile Deskbook.*

A justice court must transfer a case to juvenile court if:

- The charge is a fine-only offense (other than a traffic offense) filed against a child; and
- The court, or another court, has previously dismissed a complaint against the child on grounds of mental illness, developmental disability, or lack of capacity under Section 8.08, Penal Code.

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Scenarios: What Would You Do?

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You place a teenage defendant on a 7-day deferred disposition and order her to write a research paper about her offense and submit it to the court. The teenager's mother tells the court that her daughter has dyslexia and is going to have trouble complying with the order.

- What adjustments should be made?

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A teenager has been diagnosed with ADHD and has sensory issues (they are sensitive to crowds, loud noises, and certain textures). They have a traffic case in your court and are put on deferred disposition. A condition of the deferred is that they complete 20 hours of community service.

- Which of the following would probably be the best option for community service:
 - Picking up trash along a busy highway
 - Playing games with a couple residents at an assisted living center
 - Serving meals at a large soup kitchen
 - Tutoring kids at an elementary school.

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A 16-year-old who has been diagnosed with severe depression did not complete their ordered community service on time.

- What should the court do?

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A 15-year-old with autism is in court to enter their plea on a tobacco case. The courtroom is unfamiliar to them and crowded. After waiting for awhile, they become increasingly agitated, have a meltdown, do not follow instructions from the judge, and run out of the courtroom.

- How should you respond?

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A 16-year-old defendant has their 3rd alcohol case in your court this year. They plead guilty and are convicted.

- In the judgment, what orders might be good to include in addition to the required sanctions?

(See the "Chart of Orders Upon Conviction or Deferral of Juvenile Offenses" on p. 73 of TJCTC's Juvenile Deskbook for information on available options)

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A 16-year-old with a truancy case has an intellectual disability. The referral from the school states that he is receiving special education services. He has frequently been refusing to go to school because getting pulled out of classes for services "isn't cool." His mother says that he generally requires a lot of supervision and gets a lot of accommodations at school. She is worried about you ordering things in the remedial order that he will not be able to do. He is already receiving tutoring as required by his IEP and the mother says that she and the school have agreed that any more would be overwhelming for him.

- Would it make sense to consult with the school regarding the remedial order?
- What do you think should be included in the remedial order in this situation?

(See p. 23-25 of TJCTC's Juvenile Deskbook for what can and can't be included in a truancy case remedial order)

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Self-Evaluation

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Think about when you have had cases involving children with disabilities in your court.

- What are best practices you have used?
- What are examples of when a court process or action could have been improved?

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Thank You!