



Franklin Hearing Type of Evaluations

Franklin Hearings have become common in juvenile delinquency court, especially since the passage of prop 57 (where the District Attorney Office is no longer able to direct file a petition against a minor in adult court regardless of age or seriousness of offense). Specifically, in Los Angeles County, District Attorney Gascon has issued “special directives” that no juveniles will be tried as adults. As such, we get several requests each month from defense attorneys and non-profit firms representing youthful offenders that have been given lengthy sentences or that are serving juvenile LWOP (Life Without Parole) to complete a psychological evaluation to be reviewed at a future parole hearing or upcoming parole hearing for post-conviction cases.

The recentness of Franklin Hearings poses a lot of questions related to how psychological evaluations are completed in a Franklin Hearing. There has not been much training or guidance in the area. This article will outline the background of Franklin’s case and our approach to completing a psychological evaluation for a Franklin Hearing.

People v. Tyris Lamar Franklin (2016) 63 Cal. 4th 261.

Juvenile Tyris Lamar Franklin was 16 years old when he shot and killed another teenager. A jury found him guilty and convicted him of first-degree murder with a firearm enhancement. The California trial court was obligated by statute to hand down two consecutive 25 year back-to-back sentences. Franklin’s total sentence was life in prison with the possibility of parole after 50 years.

After Franklin was sentenced, The Supreme court held that his sentence violated the Eighth Amendment to the federal Constitution- the prohibition against cruel and unusual punishment as indicated in *Miller v Alabama* (2012). *Miller v. Alabama* (2012) prohibits a mandatory life without parole (LWOP) sentence for a juvenile offender who commits homicide. Franklin appeared citing this case among others that supported the claim that his life sentence did not include judicial consideration of his youth and its relevance for sentencing.

Ultimately, The Supreme court ruled that an individual sentenced to a lengthy prison term for a crime committed while 26 or under **must** have had the opportunity to present, during trial, the mitigating evidence that would be relevant at a future parole hearing, even if the hearing is set to happen 10, 15, or 20 years from now.



Therefore, a franklin hearing is a special type of hearing where an attorney requests to present mitigating factors that were never introduced in the trial or sentencing of the original case.

Purpose of a Psychological Evaluation for a Franklin Hearing

The purpose of having a psychological evaluation at a Franklin Hearing is to provide a clinical picture of the offender and mitigating factors (if any) to be heard at a future parole hearing date. Potential mitigating factors include cognitive immaturity, trauma history, neurodevelopmental disorders, and mental disorder, and dysfunctional family dynamics, to name a few.

How We Complete a Franklin Hearing Type of Evaluation

First, a consultation is best to review your strategy and approach to the hearing. We can clarify the referral question during the consultation, thereby providing you with a concise and targeted sufficient report instead of 15 pages of words. We can review the considerations for Franklin Hearing evaluations and a review of the Miller factors.

Considerations for Franklin Hearing Evaluations:

Do you want the evaluation and report to address all 5 Miller factors?

1. Hallmark Features of Youth (chronological age, immaturity, failure to appreciate risks, etc.)
2. Home and Family (environmental, dysfunction, etc.)
3. Circumstances of Crime/Peer Pressure
4. Incompetencies of Youth
5. Evidence of Rehabilitation (and the possibility of needing a risk assessment)

OR

Do you want a limited purpose evaluation focusing on:

- Discussing adolescent brain development
- Trauma and Adverse Childhood Experiences
- Cognitive deficits and how they pertain to the Miller criteria
- Risk and Treatment (how prior treatments failed and why – perhaps they were not evidenced-based or dose-dependent).



- Addressing PTSD, TBI, or Substance Abuse and how these relate to the offense charged.

In sum, you select which referral question will assist you in your case. No matter what the exact referral question, we will focus on examining the concept of transient immaturity. Transient immaturity means we are assessing:

- Adolescent Brain Development
- Social Environment Factors
- Trauma and its effects on the brain
- The Crime Itself (psychosocial immaturity)
- Ability to deal with counsel & police (psychosocial immaturity)
- Evidence of Rehabilitation

Also, it is important to discuss or inform the psychologist about whether you want the facts of the case discussed or not. It is not necessary. However, it is most helpful in that we get a little more insight into the juvenile's maturity/immaturity levels at that time.

Records that will be helpful in the evaluation

1. School records, including special education and IEP.
2. Psychiatric/Treatment Records- outpatient therapy, inpatient (psychiatric hospitalization), crisis contacts, and medication.
3. Developmental/Pediatric Records- particularly if there is a history of neurodevelopmental impairments.
4. Medical Records- particularly if there is an indication of any injuries or medical problems.
As a bonus, it will be most helpful to send a list of collateral contacts (family, therapist, treatment providers we can interview for additional information). Alternatively, if you can retain an investigator who will conduct these interviews, you are more than welcome to send the investigation reports our way once completed.

Screening instruments & assessment tools are essential and help us gather objective data to support the forensic opinions. The following instruments are routinely used when we assess juveniles/adults in transfer and franklin cases. We are happy to discuss these in our consultation as well.



1. Risk Assessment (SAVRY, HCR-20)
2. Test of Cognitive Abilities (WAIS/WISC, TONI, RIAS, WASI)
3. Personality (MMPI-2-RF, PAI)
4. Effort/Motivation (TOMM, SIRS, MFAST)
5. Psychopathy (PCL-R)

Franklin Hearing type of evaluations are becoming more popular due to the passage of Prop 57 and other special directives made by The Los Angeles County District Attorney. It can be challenging for lawyers to figure out how to utilize a psychological evaluation in these types of hearings. The most important thing is to have the evaluation overview the transient immaturity of the person. Next, decide whether you want the psychologist to overview all of the Miller factors or conduct a more focused report. A consultation between the attorney and the psychologist can help flush out the details of the approach so that the attorney can decide how to best represent their client.

Our practice specializes in completing youthful offender evaluations for Franklin Hearings, including conducting a comprehensive risk for future violence assessment. Book your consultation [here](#).