

By: Wu

H.B. No. 2108

A BILL TO BE ENTITLED

AN ACT

relating to the waiver of jurisdiction and discretionary transfer of a child from a juvenile court to a criminal court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 54.02, Family Code, is amended by amending Subsections (d), (f), (h), (l), and (n) and adding Subsections (d-1) and (d-2) to read as follows:

(d) Prior to the hearing, the juvenile court shall admonish the child in open court and in the presence of the child's counsel regarding:

(1) the court's consideration of waiving its jurisdiction over the child and transferring the child to criminal court for criminal proceedings; and

(2) the child's right to participate or to decline to participate in any diagnostic study, social evaluation, or investigation ordered by the juvenile court under Subsection (d-1).

(d-1) After the admonishment under Subsection (d), the juvenile court shall order ~~[and obtain]~~ a complete diagnostic study, social evaluation, and full investigation of the child, the child's ~~[his]~~ circumstances, and the circumstances of the alleged offense and shall set the date of the transfer hearing. If the child declines to participate in a study, evaluation, or investigation, the attorney for the child shall state the refusal to the court in open court or in writing not later than the fifth

1 business day after the date the court ordered the study,
2 evaluation, or investigation.

3 (d-2) In a hearing under this section, a presumption exists
4 that it is in the best interest of the child and of justice that the
5 juvenile court retain jurisdiction over the child. The burden is on
6 the state to overcome this presumption.

7 (f) In making the determination required by Subsection (a)
8 of this section, the court shall consider, among other matters:

9 (1) whether the alleged offense was against person or
10 property, with greater weight in favor of transfer given to
11 offenses against the person;

12 (2) the sophistication and maturity of the child;

13 (3) the record and previous history of the child;
14 [~~and~~]

15 (4) the prospects of adequate protection of the public
16 and the likelihood of the rehabilitation of the child by use of
17 procedures, services, and facilities currently available to the
18 juvenile court;

19 (5) the substantive requirements for waiving
20 jurisdiction;

21 (6) relevant information ascertained in the full
22 investigation of the child; and

23 (7) the benefits or harm of retaining the child in the
24 juvenile justice system.

25 (h) If the juvenile court waives jurisdiction, it shall
26 state specifically in the order its reasons for waiver. The
27 statement of reasons must set forth a rational basis for the waiver

1 of jurisdiction, with sufficient specificity to permit meaningful
2 review, and must include case-specific findings of fact that do not
3 rely solely upon the nature or seriousness of the offense. The
4 court shall [~~and~~] certify its action, including the written order
5 and findings of the court, and shall transfer the person to the
6 appropriate court for criminal proceedings and cause the results of
7 the diagnostic study of the person ordered under Subsection (d-1)
8 [~~(d)~~], including psychological information, to be transferred to
9 the appropriate criminal prosecutor. On transfer of the person for
10 criminal proceedings, the person shall be dealt with as an adult and
11 in accordance with the Code of Criminal Procedure, except that if
12 detention in a certified juvenile detention facility is authorized
13 under Section [152.0015](#), Human Resources Code, the juvenile court
14 may order the person to be detained in the facility pending trial or
15 until the criminal court enters an order under Article [4.19](#), Code of
16 Criminal Procedure. A transfer of custody made under this
17 subsection is an arrest.

18 (1) The juvenile court shall conduct a hearing without a
19 jury to consider waiver of jurisdiction under Subsection (j).
20 Except as otherwise provided by this subsection, a waiver of
21 jurisdiction under Subsection (j) may be made without the necessity
22 of conducting the diagnostic study [~~or complying with the~~
23 ~~requirements of discretionary transfer proceedings~~] under
24 Subsection (d-1) [~~(d)~~]. If requested by the attorney for the person
25 at least 10 days before the transfer hearing, the court shall order
26 that the person be examined pursuant to Section [51.20](#)(a) and that
27 the results of the examination be provided to the attorney for the

1 person and the attorney for the state at least five days before the
2 transfer hearing.

3 (n) A mandatory transfer under Subsection (m) may be made
4 without conducting the study required in discretionary transfer
5 proceedings by Subsection (d-1) [~~(d)~~]. The requirements of
6 Subsection (b) that the summons state that the purpose of the
7 hearing is to consider discretionary transfer to criminal court
8 does not apply to a transfer proceeding under Subsection (m). In a
9 proceeding under Subsection (m), it is sufficient that the summons
10 provide fair notice that the purpose of the hearing is to consider
11 mandatory transfer to criminal court.

12 SECTION 2. Section 54.02, Family Code, as amended by this
13 Act, applies only to conduct violating a penal law that occurs on or
14 after the effective date of this Act. Conduct violating a penal law
15 that occurs before the effective date of this Act is governed by the
16 law in effect when the conduct occurred, and the former law is
17 continued in effect for that purpose. For purposes of this section,
18 conduct occurs before the effective date of this Act if any element
19 of the conduct occurs before the effective date.

20 SECTION 3. This Act takes effect September 1, 2021.