

1-1 By: Schwertner S.B. No. 2589
 1-2 (In the Senate - Filed March 29, 2023; April 5, 2023, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 19, 2023, reported favorably by the following vote: Yeas 6,
 1-5 Nays 1; April 19, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Whitmire	X			
1-8 Flores	X			
1-9 Bettencourt	X			
1-10 Hinojosa	X			
1-11 Huffman	X			
1-12 King	X			
1-13 Miles		X		

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the prosecution and punishment of juveniles who commit
 1-18 certain felony offenses while committed to the custody of the Texas
 1-19 Juvenile Justice Department and the waiver of jurisdiction and
 1-20 discretionary transfer of a child from a juvenile court to a
 1-21 criminal court; changing eligibility for community supervision.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Article 42A.054, Code of Criminal Procedure, is
 1-24 amended by adding Subsection (b-1) to read as follows:

1-25 (b-1) Article 42A.053 does not apply to a defendant if it is
 1-26 shown that the defendant committed an offense punishable as a
 1-27 felony when the defendant was:

- 1-28 (1) at least 17 years of age;
- 1-29 (2) committed to the Texas Juvenile Justice
 1-30 Department; and
- 1-31 (3) confined in a secure facility operated under
 1-32 Subtitle C, Title 12, Human Resources Code.

1-33 SECTION 2. Article 42A.056, Code of Criminal Procedure, is
 1-34 amended to read as follows:

1-35 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY
 1-36 SUPERVISION. A defendant is not eligible for community supervision
 1-37 under Article 42A.055 if the defendant:

- 1-38 (1) is sentenced to a term of imprisonment that
 1-39 exceeds 10 years;
- 1-40 (2) is convicted of a state jail felony for which
 1-41 suspension of the imposition of the sentence occurs automatically
 1-42 under Article 42A.551;
- 1-43 (3) is adjudged guilty of an offense under Section
 1-44 19.02, Penal Code;
- 1-45 (4) is convicted of an offense under Section 21.11,
 1-46 22.011, or 22.021, Penal Code, if the victim of the offense was
 1-47 younger than 14 years of age at the time the offense was committed;
- 1-48 (5) is convicted of an offense under Section 20.04,
 1-49 Penal Code, if:

1-50 (A) the victim of the offense was younger than 14
 1-51 years of age at the time the offense was committed; and

1-52 (B) the actor committed the offense with the
 1-53 intent to violate or abuse the victim sexually;

1-54 (6) is convicted of an offense under Section 20A.02,
 1-55 20A.03, 43.04, 43.05, or 43.25, Penal Code;

1-56 (7) is convicted of an offense for which punishment is
 1-57 increased under Section 481.134(c), (d), (e), or (f), Health and
 1-58 Safety Code, if it is shown that the defendant has been previously
 1-59 convicted of an offense for which punishment was increased under
 1-60 any of those subsections; ~~or~~

1-61 (8) is convicted of an offense under Section 481.1123,

2-1 Health and Safety Code, if the offense is punishable under
2-2 Subsection (d), (e), or (f) of that section; or
2-3 (9) is convicted of an offense punishable as a felony
2-4 when the defendant was:

- 2-5 (A) at least 17 years of age;
- 2-6 (B) committed to the Texas Juvenile Justice
- 2-7 Department; and
- 2-8 (C) confined in a secure facility operated under
- 2-9 Subtitle C, Title 12, Human Resources Code.

2-10 SECTION 3. Section 53.045(a), Family Code, is amended to
2-11 read as follows:

2-12 (a) Except as provided by Subsection (e), the prosecuting
2-13 attorney may refer the petition to the grand jury of the county in
2-14 which the court in which the petition is filed presides if the
2-15 petition alleges that the child engaged in delinquent conduct that:

2-16 (1) constitutes habitual felony conduct as described
2-17 by Section 51.031;

2-18 (2) ~~[or that]~~ included the violation of any of the
2-19 following provisions:

2-20 (A) ~~[(1)]~~ Section 19.02, Penal Code (murder);

2-21 (B) ~~[(2)]~~ Section 19.03, Penal Code (capital
2-22 murder);

2-23 (C) ~~[(3)]~~ Section 19.04, Penal Code
2-24 (manslaughter);

2-25 (D) ~~[(4)]~~ Section 20.04, Penal Code (aggravated
2-26 kidnapping);

2-27 (E) ~~[(5)]~~ Section 22.011, Penal Code (sexual
2-28 assault) or Section 22.021, Penal Code (aggravated sexual assault);

2-29 (F) ~~[(6)]~~ Section 22.02, Penal Code (aggravated
2-30 assault);

2-31 (G) ~~[(7)]~~ Section 29.03, Penal Code (aggravated
2-32 robbery);

2-33 (H) ~~[(8)]~~ Section 22.04, Penal Code (injury to a
2-34 child, elderly individual, or disabled individual), if the offense
2-35 is punishable as a felony, other than a state jail felony;

2-36 (I) ~~[(9)]~~ Section 22.05(b), Penal Code (felony
2-37 deadly conduct involving discharging a firearm);

2-38 (J) ~~[(10)]~~ Subchapter D, Chapter 481, Health and
2-39 Safety Code, if the conduct constitutes a felony of the first degree
2-40 or an aggravated controlled substance felony (certain offenses
2-41 involving controlled substances);

2-42 (K) ~~[(11)]~~ Section 15.03, Penal Code (criminal
2-43 solicitation);

2-44 (L) ~~[(12)]~~ Section 21.11(a)(1), Penal Code
2-45 (indecent with a child);

2-46 (M) ~~[(13)]~~ Section 15.031, Penal Code (criminal
2-47 solicitation of a minor);

2-48 (N) ~~[(14)]~~ Section 15.01, Penal Code (criminal
2-49 attempt), if the offense attempted was an offense under Section
2-50 19.02, Penal Code (murder), or Section 19.03, Penal Code (capital
2-51 murder), or an offense listed by Article 42A.054(a), Code of
2-52 Criminal Procedure;

2-53 (O) ~~[(15)]~~ Section 28.02, Penal Code (arson), if
2-54 bodily injury or death is suffered by any person by reason of the
2-55 commission of the conduct;

2-56 (P) ~~[(16)]~~ Section 49.08, Penal Code
2-57 (intoxication manslaughter); or

2-58 (Q) ~~[(17)]~~ Section 15.02, Penal Code (criminal
2-59 conspiracy), if the offense made the subject of the criminal
2-60 conspiracy includes a violation of any of the provisions referenced
2-61 in Paragraphs (A) through (P); or

2-62 (3) constitutes a felony of the first, second, or
2-63 third degree committed while the child was committed to the Texas
2-64 Juvenile Justice Department ~~[Subdivisions (1) through (16)].~~

2-65 SECTION 4. Sections 54.02(a) and (j), Family Code, are
2-66 amended to read as follows:

2-67 (a) The juvenile court may waive its exclusive original
2-68 jurisdiction and transfer a child to the appropriate district court
2-69 or criminal district court for criminal proceedings if:

3-1 (1) the child is alleged to have violated a penal law
3-2 of the grade of felony;

3-3 (2) the child was:

3-4 (A) 14 years of age or older at the time the child
3-5 ~~[he]~~ is alleged to have committed the offense, if the offense is a
3-6 capital felony, an aggravated controlled substance felony, or a
3-7 felony of the first degree, and no adjudication hearing has been
3-8 conducted concerning that offense; or

3-9 (B) 15 years of age or older at the time the child
3-10 is alleged to have committed the offense, if the offense is a felony
3-11 of the second or third degree ~~[or a state jail felony]~~, and no
3-12 adjudication hearing has been conducted concerning that offense;
3-13 and

3-14 (3) after a full investigation and a hearing, the
3-15 juvenile court determines that there is probable cause to believe
3-16 that the child before the court committed the offense alleged and
3-17 that because of the seriousness of the offense alleged or the
3-18 background of the child the welfare of the community requires
3-19 criminal proceedings.

3-20 (j) The juvenile court may waive its exclusive original
3-21 jurisdiction and transfer a person to the appropriate district
3-22 court or criminal district court for criminal proceedings if:

3-23 (1) the person is 18 years of age or older;

3-24 (2) the person was:

3-25 (A) 10 years of age or older and under 17 years of
3-26 age at the time the person is alleged to have committed a capital
3-27 felony or an offense under Section 19.02, Penal Code;

3-28 (B) 14 years of age or older and under 17 years of
3-29 age at the time the person is alleged to have committed an
3-30 aggravated controlled substance felony or a felony of the first
3-31 degree other than an offense under Section 19.02, Penal Code; or

3-32 (C) 15 years of age or older and under 17 years of
3-33 age at the time the person is alleged to have committed a felony of
3-34 the second or third degree ~~[or a state jail felony]~~;

3-35 (3) no adjudication concerning the alleged offense has
3-36 been made or no adjudication hearing concerning the offense has
3-37 been conducted;

3-38 (4) the juvenile court finds from a preponderance of
3-39 the evidence that:

3-40 (A) for a reason beyond the control of the state
3-41 it was not practicable to proceed in juvenile court before the 18th
3-42 birthday of the person; or

3-43 (B) after due diligence of the state it was not
3-44 practicable to proceed in juvenile court before the 18th birthday
3-45 of the person because:

3-46 (i) the state did not have probable cause to
3-47 proceed in juvenile court and new evidence has been found since the
3-48 18th birthday of the person;

3-49 (ii) the person could not be found; or

3-50 (iii) a previous transfer order was
3-51 reversed by an appellate court or set aside by a district court; and

3-52 (5) the juvenile court determines that there is
3-53 probable cause to believe that the child before the court committed
3-54 the offense alleged.

3-55 SECTION 5. The changes in law made by this Act to Articles
3-56 42A.054 and 42A.056, Code of Criminal Procedure, and Sections
3-57 53.045 and 54.02, Family Code, apply only to an offense committed or
3-58 conduct that occurs on or after the effective date of this Act. An
3-59 offense committed or conduct that occurred before that date is
3-60 governed by the law in effect on the date the offense was committed
3-61 or the conduct occurred, and the former law is continued in effect
3-62 for that purpose. For purposes of this section, an offense was
3-63 committed or conduct occurred before the effective date of this Act
3-64 if any element of the offense or conduct occurred before that date.

3-65 SECTION 6. This Act takes effect September 1, 2023.

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