

By: Dutton

H.B. No. 349

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the waiver of jurisdiction and discretionary transfer
3 to criminal court by a juvenile court.

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

5 SECTION 1. Sections 54.02(a), (b), (c), (d), (e), (f), (g),
6 (h), (i), (m), and (n), Family Code, are repealed.

7 SECTION 2. Section 51.08(a), Family Code, is amended to
8 read as follows:

9 (a) If the defendant in a criminal proceeding is a child who
10 is charged with an offense other than perjury, a traffic offense, a
11 misdemeanor punishable by fine only other than public intoxication,
12 or a violation of a penal ordinance of a political subdivision,
13 ~~[unless he has been transferred to criminal court under Section~~
14 ~~54.02 of this code,]~~ the court exercising criminal jurisdiction
15 shall transfer the case to the juvenile court, together with a copy
16 of the accusatory pleading and other papers, documents, and
17 transcripts of testimony relating to the case, and shall order that
18 the child be taken to the place of detention designated by the
19 juvenile court, or shall release him to the custody of his parent,
20 guardian, or custodian, to be brought before the juvenile court at a
21 time designated by that court.

22 SECTION 3. Sections 51.10(a) and (b), Family Code, are
23 amended to read as follows:

24 (a) A child may be represented by an attorney at every stage

1 of proceedings under this title, including:

2 (1) the detention hearing required by Section 54.01 of
3 this code;

4 (2) ~~[the hearing to consider transfer to criminal~~
5 ~~court required by Section 54.02 of this code,~~

6 ~~[(3)]~~ the adjudication hearing required by Section
7 54.03 of this code;

8 (3) ~~[(4)]~~ the disposition hearing required by Section
9 54.04 of this code;

10 (4) ~~[(5)]~~ the hearing to modify disposition required
11 by Section 54.05 of this code;

12 (5) ~~[(6)]~~ hearings required by Chapter 55 of this
13 code;

14 (6) ~~[(7)]~~ habeas corpus proceedings challenging the
15 legality of detention resulting from action under this title; and

16 (7) ~~[(8)]~~ proceedings in a court of civil appeals or
17 the Texas Supreme Court reviewing proceedings under this title.

18 (b) The child's right to representation by an attorney shall
19 not be waived in:

20 (1) ~~[a hearing to consider transfer to criminal court~~
21 ~~as required by Section 54.02 of this code,~~

22 ~~[(2)]~~ an adjudication hearing as required by Section
23 54.03 of this code;

24 (2) ~~[(3)]~~ a disposition hearing as required by Section
25 54.04 of this code;

26 (3) ~~[(4)]~~ a hearing prior to commitment to the Texas
27 Youth Commission as a modified disposition in accordance with

1 Section 54.05(f) of this code; or

2 (4) [~~(5)~~] hearings required by Chapter 55 of this
3 code.

4 SECTION 4. Section 51.115(a), Family Code, is amended to
5 read as follows:

6 (a) Each parent of a child, each managing and possessory
7 conservator of a child, each court-appointed custodian of a child,
8 and a guardian of the person of the child shall attend each hearing
9 affecting the child held under:

10 (1) [~~Section 54.02 (waiver of jurisdiction and~~
11 ~~discretionary transfer to criminal court)~~];

12 [~~(2)~~] Section 54.03 (adjudication hearing);

13 (2) [~~(3)~~] Section 54.04 (disposition hearing);

14 (3) [~~(4)~~] Section 54.05 (hearing to modify
15 disposition); and

16 (4) [~~(5)~~] Section 54.11 (release or transfer
17 hearing).

18 SECTION 5. Section 51.12(h), Family Code, is amended to
19 read as follows:

20 (h) This section does not apply to a person[+]

21 [~~(1) after transfer to criminal court for prosecution~~
22 ~~under Section 54.02, or~~

23 [~~(2)~~] who is at least 17 years of age and who has been
24 taken into custody after having:

25 (1) [~~(A)~~] escaped from a juvenile facility operated by
26 or under contract with the Texas Youth Commission; or

27 (2) [~~(B)~~] violated a condition of release under

1 supervision of the Texas Youth Commission.

2 SECTION 6. Section 51.13(c), Family Code, is amended to
3 read as follows:

4 (c) A child may not be committed or transferred to a penal
5 institution or other facility used primarily for the execution of
6 sentences of persons convicted of crime, except:

7 (1) for temporary detention in a jail or lockup
8 pending juvenile court hearing or disposition under conditions
9 meeting the requirements of Section 51.12 of this code; or

10 (2) [~~after transfer for prosecution in criminal court~~
11 ~~under Section 54.02 of this code; or~~

12 [~~(3)~~] after transfer from the Texas Youth Commission
13 under Section 61.084, Human Resources Code.

14 SECTION 7. Section 51.151, Family Code, is amended to read
15 as follows:

16 Sec. 51.151. POLYGRAPH EXAMINATION. If a child is taken
17 into custody under Section 52.01 of this code, a person may not
18 administer a polygraph examination to the child without the consent
19 of the child's attorney or the juvenile court [~~unless the child is~~
20 ~~transferred to criminal court for prosecution under Section 54.02~~
21 ~~of this code~~].

22 SECTION 8. Section 53.045(c), Family Code, is amended to
23 read as follows:

24 (c) The grand jury has all the powers to investigate the
25 facts and circumstances relating to a petition submitted under this
26 section as it has to investigate other criminal activity but may not
27 issue an indictment [~~unless the child is transferred to a criminal~~

1 ~~court as provided by Section 54.02 of this code].~~

2 SECTION 9. Section 59.003(a), Family Code, is amended to
3 read as follows:

4 (a) Subject to Subsection (e), after a child's first
5 commission of delinquent conduct or conduct indicating a need for
6 supervision, the probation department or prosecuting attorney may,
7 or the juvenile court may, in a disposition hearing under Section
8 54.04 or a modification hearing under Section 54.05, assign a child
9 one of the following sanction levels according to the child's
10 conduct:

11 (1) for conduct indicating a need for supervision,
12 other than conduct described in Section 51.03(b)(5) or a Class A or
13 B misdemeanor, the sanction level is one;

14 (2) for conduct indicating a need for supervision
15 under Section 51.03(b)(5) or a Class A or B misdemeanor, other than
16 a misdemeanor involving the use or possession of a firearm, or for
17 delinquent conduct under Section 51.03(a)(2), the sanction level is
18 two;

19 (3) for a misdemeanor involving the use or possession
20 of a firearm or for a state jail felony or a felony of the third
21 degree, the sanction level is three;

22 (4) for a felony of the second degree, the sanction
23 level is four;

24 (5) for a felony of the first degree, other than a
25 felony involving the use of a deadly weapon or causing serious
26 bodily injury, the sanction level is five;

27 (6) for a felony of the first degree involving the use

1 of a deadly weapon or causing serious bodily injury, for an
2 aggravated controlled substance felony, or for a capital felony,
3 the sanction level is six; or

4 (7) for a felony of the first degree involving the use
5 of a deadly weapon or causing serious bodily injury, for an
6 aggravated controlled substance felony, or for a capital felony, if
7 the petition has been approved by a grand jury under Section 53.045,
8 ~~[or if a petition to transfer the child to criminal court has been~~
9 ~~filed under Section 54.02,~~] the sanction level is seven.

10 SECTION 10. Section 59.010(a), Family Code, is amended to
11 read as follows:

12 (a) For a child at sanction level seven, the juvenile court
13 may ~~[certify and transfer the child under Section 54.02 or]~~
14 sentence the child to commitment to the Texas Youth Commission
15 under Section 54.04(d)(3), 54.04(m), or 54.05(f). The commission
16 may:

17 (1) require the child to participate in a highly
18 structured residential program that emphasizes discipline,
19 accountability, fitness, training, and productive work for not less
20 than 12 months or more than 10 years unless the commission extends
21 the period and the reason for the extension is documented;

22 (2) require the child to make restitution to the
23 victim of the child's conduct or perform community service
24 restitution appropriate to the nature and degree of harm caused and
25 according to the child's ability, if there is a victim of the
26 child's conduct;

27 (3) require the child and the child's parents or

1 guardians to participate in programs and services for their
2 particular needs and circumstances; and

3 (4) impose any other appropriate sanction.

4 SECTION 11. Articles 26.057 and 44.47, Code of Criminal
5 Procedure, are repealed.

6 SECTION 12. (a) This Act takes effect September 1, 2003.

7 (b) This Act applies only to conduct that occurs on or after
8 the effective date of this Act. Conduct violating the penal law of
9 this state occurs on or after the effective date of this Act if any
10 element of the violation occurs on or after that date.

11 (c) Conduct that occurs before the effective date of this
12 Act is governed by the law in effect at the time the conduct
13 occurred, and that law is continued in effect for that purpose.