

BILL ANALYSIS

Senate Research Center

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By: Dutton (West, Royce)
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Juvenile justice practitioners, juvenile court judges and university faculty members assisted in making recommendations for juvenile justice legislation. Most significant were recommendations related to the inter-county transfer of supervision of youth on probation who move away from the county where they were adjudicated. Provisions are made in this bill to ensure that these youth continue to receive meaningful supervision in their new county of residence and that court orders related to them or their parents continue to be enforced. Other provisions provide for the employment and funding of juvenile case managers for justice and municipal courts in truancy cases, and, consistent with penal laws related to adult jails and prisons, make it a felony of the third degree to provide or attempt to provide controlled substances and other contraband items to youth in secure juvenile correctional or detention facilities. These areas of concern and a number of other proposed amendments reflect the changing needs of a juvenile justice system that has increased in size, sophistication and complexity since the reforms of the 74th Legislature.

There are a number of additional substantive, clarifying, and technical amendments covering a wide range of concerns that have come to light since the last legislative session. Amendments to the Family Code, Code of Criminal Procedure and other codes are included that relate to such things as referral of youth with mental illness who are on probation to appropriate mental health authorities; making implementation of the restricted access to records provisions more efficient; clarifying criteria for access to Texas Juvenile Probation Commission (TJPC) statistical and research information; requiring notice to parents of suspected abuse and neglect reporting procedures for TJPC investigations in juvenile facilities; disposition of contraband money possessed by youth in Texas Youth Commission (TYC) facilities; authorizing TYC to release determinate sentenced youth on parole without court approval at any time during the last nine months of the youth's sentence; and requiring court dismissal of complaints and referrals regarding truant behavior when school districts fail to timely file them.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Youth Commission is modified in SECTION 39 (Section 61.0432, Human Resources Code) and SECTION 42 (Section 141.042(a), Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

[The following bill analysis is based primarily on the analysis completed for the committee report from the House Committee on Juvenile Justice & Family Issues, the most recent analysis available. The bill has not been amended since being reported from that committee.]

SECTION 1. Amends Section 51.02(16), Family Code, to redefine "traffic offense" in the Juvenile Justice Code by excluding from its definition any offense that is punishable by imprisonment or confinement in jail.

SECTION 2. Amends Section 51.03(d), Family Code, to clarify that the affirmative defense of excused absences or involuntary absences in truancy or failure-to-attend-school proceedings is effective only when there are insufficient unexcused or voluntary absences remaining to constitute a violation of law.

SECTION 3. Amends Section 51.07, Family Code, to eliminate the requirement that a court's transfer of disposition of a child's case to the court in the child's county of residence requires the child's consent; to clarify that a county of residence to which a case is transferred for disposition has no right to refuse to accept the transfer; and to repeal a subsection that is the subject of the next few new sections related to transfer of probation supervision between counties.

SECTION 4. Amends Chapter 51, Family Code, by adding Sections 51.071-51.075, as follows:

Section 51.071. Prohibits the practice of courtesy supervision with regard to the transfer of probation supervision between counties, except as provided in Section 51.075.

Section 51.072. Requires a receiving county to provide interim supervision of a child from a sending county who has moved or intends to move to the receiving county and remain there for at least 60 days, unless the child is residing in a residential placement facility arranged by the sending county or in a foster care placement arranged by the Department of Family and Protective Services.

The sending county must provide certain specific information about the child in its request for interim supervision (identifying information related to the child and the child's caregiver in the receiving county, information related to the child's offense, probation and special needs, and information about the reasons for the child moving to the receiving county). Certain specified documentation must follow within 5 business days (court documents, social history report, psychological and psychiatric reports, Department of Public Safety (DPS) CR 43J form, tracking number, law enforcement reports on the offense for which the child is on probation, sex offender registration information, case plans, Texas Juvenile Probation Commission (TJPC) assessment tool results, social security number, Title IV-E eligibility screening information, school and immunization records, and victim information).

The child is supervised under the sending county's probation conditions. However, at the request of the receiving county's juvenile probation department, the juvenile court of the receiving county may modify the original conditions (other than financial conditions or the length of the probation term) and impose new ones. The juvenile court of the receiving county may revoke probation for violation of a condition that it has modified or imposed. If the child is believed to have violated a condition imposed by the juvenile court of the sending county, the juvenile court of the receiving county may modify the conditions of probation or extend the probation term, or require the probation department of the sending county to resume direct supervision of the child.

The receiving county's juvenile probation department is entitled to any supervision fees while providing interim supervision. The sending county must pay for any special treatment program or placement that its juvenile court has ordered, if the child's family is unable to pay for it.

The period of interim supervision may not exceed 180 days, unless the youth is on determinate sentence probation in the sending county. Except for youth on determinate sentence probation, permanent supervision transfers automatically at the end of the 180-day period, or earlier if requested by the receiving county. For youth on determinate sentence probation, permanent supervision transfers automatically after the expiration of one third of the youth's probation term, or earlier if ordered by the sending court. The receiving county must send progress reports concerning the child to the sending county every 90 days during the interim supervision period.

Section 51.073. Requires that, at the time permanent supervision transfers, the order of transfer from the sending county's juvenile court be filed with the clerk of the juvenile court of the receiving county, along with the petition, order of adjudication, order of disposition and conditions of probation. The child must be brought before that juvenile court, with representation by counsel, in order to impose conditions of probation. Once permanent supervision is transferred, the sending county has no further jurisdiction over the child's case.

Section 51.074. Authorizes a juvenile court to transfer interim supervision, but not permanent supervision, in deferred prosecution cases (maximum term of 180 days).

Section 51.075. Authorizes collaborative supervision between counties when a child who is on probation in one county spends substantial time in an adjoining county (such as for work, school or residence). A probation officer in the adjoining county may act as an agent of the probation department of the county in which the child was placed on probation and provide collaborative supervision and periodic reports.

SECTION 5. Amends Section 51.095, Family Code, to authorize a magistrate who is giving juvenile warnings for a videotaped interrogation to require the officer to return the child and videotape to the magistrate for a determination of voluntariness. If a magistrate uses this procedure, a child's statement is not admissible unless the magistrate determines that the statement was given voluntarily.

SECTION 6. Amends Section 51.17, Family Code, by adding a new Subsection (g) to make Articles 21.07, 26.07, 26.08, 26.09, and 26.10, Code of Criminal Procedure, apply in a juvenile proceeding. These provisions relate to names of adult defendants in a criminal case, ensuring that failure to disclose a true name cannot be used as a defense.

SECTION 7. Amends Section 51.20, Family Code, by adding Subsections (c), (d) and (e) to require juvenile probation departments to refer youth on probation or deferred prosecution supervision to the local mental health or mental retardation authority when a qualified professional determines them to have mental illness or mental retardation and to notify the Texas Juvenile Probation Commission(TJPC) of each such referral; and by adding Subsection (e) to authorize juvenile courts to order physical exams of children in the system at any stage of juvenile court proceedings.

SECTION 8. Amends Chapter 51, Family Code, by adding Section 51.21 to require a juvenile probation department to refer a youth to the local mental health authority if the youth's scores on the mental health screening instrument or clinical assessment indicate the need for further assessment and if the department or the youth do not have access to another mental health professional. The probation department must notify TJPC of each such referral.

SECTION 9. Amends Section 52.01(a), Family Code, to authorize a probation officer to take a child into custody if there is probable cause to believe the child violated the conditions of release imposed by a juvenile court or referee.

SECTION 10. Amends Chapter 52, Family Code, by adding Section 52.0151 to authorize a court to issue a bench warrant or direct that an attachment issue to require a peace officer or probation officer to secure custody of a youth witness who is in custody of the Texas Youth Commission (TYC) or another secure juvenile detention or correctional facility. Once the person is no longer needed as a witness, the peace officer or probation officer must be ordered to return the youth to the placement. The youth may be ordered held in the county juvenile detention facility if younger than 17 or, if at least 17, held without bond in an appropriate county facility for the detention of adults accused of criminal offenses.

SECTION 11. Amends Section 53.03, Family Code, by adding Subsection (k) to authorize a juvenile court to consider professional representations by the parties concerning the nature of the case and the background of the respondent when asked to grant deferred prosecution. Any information obtained from the youth or the youth's attorney is inadmissible against the youth at a trial should the court deny deferred prosecution.

SECTION 12. Amends Section 54.01, Family Code, by adding a new Subsection (q-1) to authorize a juvenile board to impose shorter filing deadlines than the ones provided in this section (generally 30 days for first degree felonies and 15 days for other offenses) when a child has not been released after an initial detention hearing has been held and a petition has not yet been filed. It may specify consequences for not meeting its deadline. It may authorize, but not require, a juvenile court to release a child from detention if the deadlines are not met.

SECTION 13. Amends Section 54.012(a), Family Code, to authorize video hearings for initial detention hearings as well as for subsequent ones.

SECTION 14. Amends Chapter 54, Family Code, by adding Section 54.0408 to require a juvenile probation department to refer a youth on probation to an appropriate local mental health or mental retardation authority at least 3 months before the probation term ends if the youth is determined to have mental illness or mental retardation that is not currently being treated by the authority in the county where the youth resides.

SECTION 15. Amends Section 54.05, Family Code to add a new Subsection (m) to require that the same findings required to be made by a judge in a disposition hearing (that it is in the child's best interest to be placed outside the child's home; that reasonable efforts were made to prevent or eliminate the need for the child's removal from home and to make it possible for the child to return home; and that the child, in the child's home, cannot be provided the quality of care and level of support and supervision the child needs to meet the conditions of probation) be made by a judge when modifying a prior disposition to order the child's removal from home. The provision also authorizes the judge to approve an administrative body to conduct a permanency hearing under federal law if it is required during the child's placement or commitment.

SECTION 16. Amends Section 58.003(a), Family Code, to delete the requirement that Department of Public Safety(DPS) certify to the juvenile court that records are eligible for sealing. Also amends Section 58.003, Family Code, by adding subsection (g-1) to make any records collected or maintained by TJPC, including statistical data, not subject to a sealing order. Also amends Section 58.003(o), Family Code, and adds subsection (p) to require that an application for sealing of juvenile records and an order for sealing include the applicant's full name, gender, race or ethnicity, date of birth, driver's license or identification card number, and social security number and include the offense for which the applicant was charged or referred, the date of the offense and county of occurrence, and the cause number and county of any petition filed. An explanation must be included for any missing information.

SECTION 17. Amends Chapter 58, Family Code, by adding Section 58.0072 to clarify that TJPC information in any form or medium that is collected and maintained for statistical and research purposes is confidential and may not be disseminated by the commission except for research and statistical purposes or other purposes approved by the commission to criminal justice agencies, the Texas Education Agency (TEA), a Health and Human Services agency, or a public or private university. A researcher working on a state or federally funded project approved by the commission or a governmental entity with an agreement authorizing access for limited purposes that ensures confidentiality of the information and sanctions for violations may be granted access for purposes approved by the commission. TJPC must grant access to information for legislative purposes in accordance with legal requirements. Except for listed state agencies and governmental entities with an agreement, TJPC may not release information in an identifiable form. TJPC is not required to release or disclose information to any person not identified under this section.

SECTION 18. Amends Section 58.104(f), Family Code, to remove the requirement that DPS notify local juvenile courts when it certifies a juvenile record is eligible for sealing according to its records.

SECTION 19. Amends Section 58.203, Family Code, to require DPS restricted access certification notices to go directly to each probation department that serves a juvenile court with multi-county jurisdiction. On receipt of the notice, each probation department determines whether the certification pertains to a youth referred to it and, if so, takes the required restrictive action. DPS may distribute the notices by electronic means.

SECTION 20. Amends Section 58.207(a), Family Code, to remove the requirement that records maintained by any agency that provided care or custody of a child under order or arrangement of the juvenile court be included in a juvenile court's restricted access to records order. Also, amends the section to require notice to the person who is the subject of the records for which access has been restricted only if the person has requested such notification in writing and has provided a current address.

SECTION 21. Amends Section 58.208, Family Code, to add to the information required to be given a child on final discharge regarding automatic restricted access to records, notice that if the child wishes to receive notification of action restricting access, the child must before the child's 21st birthday provide the juvenile probation department with a current address where the child can receive such notification.

SECTION 22. Amends Subchapter C, Chapter 58, Family Code, to add Section 58.211 to require DPS to notify the appropriate juvenile probation departments if it receives information that a record has been placed on restricted access as well as if the person's records are no longer subject to restricted access due to a conviction or deferred adjudication for a felony or jailable misdemeanor committed after the person reached age 17. On receipt of the notification, the probation departments must notify the agencies that maintain the records that the records are no longer subject to restricted access.

SECTION 23. Amends Section 58.301(5) to eliminate certain mandatory language from this section related to the establishment of local juvenile justice information systems to make the statutory framework more flexible with regard to partner agencies and components of the system.

SECTION 24. Amends Section 58.303(b) and (c), Family Code, to eliminate certain mandatory language from this section related to the establishment of local juvenile justice information systems to make the statutory framework more flexible with regard to partner agencies and components of the system.

SECTION 25. Amends Section 58.305, Family Code, to eliminate certain mandatory language from this section related to the establishment of local juvenile justice information systems to make the statutory framework more flexible with regard to partner agencies and components of the system.

SECTION 26. Amends Subchapter A, Chapter 61 of the Family Code, to add a new Section 61.0031 to authorize a juvenile court that entered an order against a parent or other eligible person to transfer that order to the county to which a child has moved (or intends to move) and where interim or permanent supervision has been established if the parent or other eligible person will reside in the same county as the child. The juvenile court must provide the parent or other eligible person written notice of the transfer, including identification of the court to which the order has been transferred. The court to which the order is transferred must require the parent or other eligible person to appear before the court to notify the person of the order's existence and terms. Failure to do so renders the order unenforceable. The court to which the order is transferred may modify, extend, or enforce the order as though it originally entered the order.

SECTION 27. Amends Section 261.101(b), Family Code, to add to this section related to the special abuse or neglect reporting requirements for certain professionals a reference to the definition of abuse and neglect contained in Section 261.401 that relates to state agency investigations.

SECTION 28. Amends Section 261.405, Family Code, to require that as soon as practicable after a child is taken into custody or placed in a juvenile justice facility or program that the child's parents be provided with information regarding the reporting of suspected abuse, neglect or exploitation there in the Texas Juvenile Probation Commission (TJPC) and of the commission's toll-free number for this reporting.

SECTION 29. Amends Section 106.041(f), Alcoholic Beverage Code, to not allow a minor who is at least 17 years of age to receive deferred adjudication for driving under the influence of alcohol by a minor if the minor has been previously convicted of the same offense twice before.

SECTION 30. Amends Section 106.071(f) and (i), Alcoholic Beverage Code, to not allow a minor who is at least 17 years of age to receive deferred adjudication for an alcohol-related offense if the minor has been previously convicted of an alcohol-related offense twice before.

SECTION 31. Amends Article 15.27, Code of Criminal Procedure, by adding Subsection (i) to authorize electronic notification to schools of offenses alleged to have been committed by students, instead of oral notice followed by written notice.

SECTION 32. Amends Article 24.011, Code of Criminal Procedure, by adding Subsections (c), (d), and (e) to clarify that juveniles who are in the custody of the Texas Youth Commission or another secure juvenile correctional facility may be witnesses in criminal or civil proceedings upon the issuance of a subpoena or bench warrant. Requires law enforcement or probation officers to transport the witness to and from the court. Allows a youth to be held in the county juvenile detention facility or, if the youth is 17 years of age or older, in the county jail.

SECTION 33. Amends Article 45.0215, Code of Criminal Procedure, by adding Subsection (d) to require a parent to attend justice and municipal court proceedings against the parent's child in conformity with related law contained in Article 45.057(e).

SECTION 34. Amends Article 45.056(a) and adds Subsections (c), (d) and (e) to the Code of Criminal Procedure, to authorize a justice or county court, on approval of the commissioners court, or a municipal court, on approval of the city council, to employ juvenile case managers to assist the court in monitoring its orders. Authorizes the salaries to be paid from the juvenile case manager fund authorized in SECTION 35 of the bill. Provides that juvenile case managers work primarily on truancy case.

SECTION 35. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0174 to authorize a city council or commissioners court to create a juvenile case manager fund for the salaries and benefits of juvenile case managers employed by the local governmental entity under Article 45.056, Code of Criminal Procedure. Authorizes a local governmental entity to require a person convicted of a fine-only misdemeanor offense in a municipal court, county or justice court to pay a juvenile case manager fee of up to \$5 as a cost of court, which the judge may waive in the case of financial hardship. Requires the respective court clerks to collect the fees and pay them to the appropriate treasurer.

SECTION 36. Amends Section 25.094(f), Education Code, to conform to the change in SECTION 2 to clarify that in failure to attend school charges, the affirmative defense of excused absences or involuntary absences applies to defeat the charges only when there are insufficient unexcused and voluntary absences remaining to constitute a violation of law.

SECTION 37. Amends Section 25.0951(a) and adds subsection (d), Education Code, to require that a court dismiss a complaint or referral regarding a student's failure to attend school or a parent's contributing to the child's nonattendance when a school district fails to file the complaint or referral within two school days of the student's last absence.

SECTION 38. Amends Sections 102.061, 102.081, 102.101, and 102.121, Government Code, to require the clerks of a statutory county court, county court, justice court, and municipal court to collect as court costs any juvenile case manager fees created by units of local government under SECTION 35.

SECTION 39. Amends Section 61.0432, Human Resources Code, to require that money possessed by a youth committed to TYC that is determined by TYC rules to be contraband money be deposited in the student benefit fund that is described in Sec. 61.0431, Human Resources Code, and not in the youth's own trust fund account. TYC must notify each youth that the possession of contraband money is subject to confiscation by the agency under this section.

SECTION 40. Amends Section 61.079(c), Human Resources Code, to authorize TYC to refer a paroled youth with a determinate sentence to the juvenile court for a prison transfer hearing if there is a juvenile court adjudication or criminal court conviction for a felony offense while the youth was on parole or a determination under Section 61.075(4) revoking the youth's release under supervision is required before referral of the youth to the juvenile court. An additional parole revocation hearing would no longer be required.

SECTION 41. Amends Section 61.081, Human Resources Code, by adding Subsection (i) to authorize TYC to release a youth with a determinate sentence on parole without court approval at any time during the last 9 months of the youth's sentence.

SECTION 42. Amends Sections 141.042(a) and (e), Human Resources Code, to delete a reference to "corrections" officer in this section dealing with TJPC training and certification standards for probation and detention officers and court-supervised community-based program personnel and a code of ethics for such officer. The amendment in Subsection (e) authorizes a timely clinical assessment by a licensed mental health professional to substitute for the mental health screening instrument selected by TJPC for the initial screening of youth by juvenile probation departments.

SECTION 43. Amends Subchapter D, Chapter 141, Human Resources Code, to add a new Section 141.0611 related to minimum standards for detention officers. To be eligible for appointment as a juvenile detention officer, a person not employed as a detention officer before September 1, 2005 must be of good moral character, be at least 21 years of age, have a high school diploma or its equivalent, have satisfactorily completed TJPC's pre-service training or other instruction it requires, have passed the tests or examinations it requires, and possess the level of certification it requires.

SECTION 44. Amends Section 141.065, Human Resources Code, to clarify that the chief administrative officer of a juvenile probation department may not be a person who is employed by or who reports directly to a law enforcement or prosecution official. A chief administrative officer, regardless of title, is defined as a person hired or appointed by or under contract with a juvenile board and responsible for the oversight of the operations of a juvenile probation department or any juvenile justice program operated by or under the authority of the juvenile board. A reference to "corrections" officer is deleted.

SECTION 45. Amends Section 8.07(a), Penal Code, to except traffic violations for which the person convicted may be sentenced to imprisonment or confinement in jail from the list of traffic offense violations (Chapter 729, Transportation Code) for which a person may be prosecuted or convicted when the violations are committed when the person is younger than 15 years of age.

SECTION 46. Amends Section 22.04(k), Penal Code, and adds Subsection (l) to authorize youth charged with injury to a child to assert a defense to the charges when they were no more than three years older than the victim and the victim was a child 14 years of age or younger at the time of the offense.

SECTION 47. Amends the heading to Section 38.11, Penal Code to read: "Prohibited Substances and Items in Adult or Juvenile Correctional or Detention Facility or on Property of Texas Department of Criminal Justice or Texas Youth Commission."

SECTION 48. Amends Section 38.11(a), (b), (c), (d), (e), (f), (i), and (j), Penal Code, to make it a felony of the third degree to:

- a. provide or attempt to provide an alcoholic beverage, controlled substance (except on prescription of a physician or practitioner), dangerous drug, deadly weapon, cellular phone, cigarette, tobacco product or money (except in accordance with facility rules) to a youth in a secure juvenile correctional or detention facility;
- b. take or attempt to take an alcoholic beverage, controlled substance, or dangerous drug into a secure juvenile correctional or detention facility (except for delivery to a warehouse, pharmacy, or physician and except for alcoholic beverage use by clergy in religious ceremonies);
- c. take a controlled substance or dangerous drug on property owned, used, or controlled by TYC or by any secure juvenile correctional or detention facility (except for delivery to a warehouse, pharmacy, or physician); and
- d. possess a controlled substance or dangerous drug on property owned, used, or controlled by TYC or by any secure juvenile correctional or detention facility(except

possession of a personal prescription or possession for delivery to a warehouse, pharmacy, or physician) or possess a deadly weapon in a secure juvenile correctional or detention facility (except by peace officers);

e. provides an affirmative defense to prosecution under Subsection (d)(1) if person is in possession of a personal prescription issued by s practitioner or possession while delivery to a warehouse, pharmacy, or physician on property owned and operated by TYC or by any secure juvenile correctional or detention facility;

f. “Secure correctional facility” and “secure detention facility” have the meanings assigned by Section 51.02 of the Family Code;

i. provides an affirmative defense to prosecution if the actor is a duly authorized member of clergy, and that they take four ounces or less of an alcoholic beverage and personally consumes all of the alcoholic beverage or departs from the facility as defined by subsection (f) with a portion not consumed;

j. by possession of a cellular telephone in a secure juvenile correctional or detention facility, if the phone is possessed by a youth in placement there.

SECTION 49. Amends Subchapter O, Chapter 521, Transportation Code, by adding Section 521.3452 to move the requirements of Section 729.003, Transportation Code, to a more suitable location in the Transportation Code.

SECTION 50. Amends Section 521.201, Transportation Code to make a conforming amendment to substitute Section 521.3452 for Section 729.003, Transportation Code.

SECTION 51. Amends Section 521.294, Transportation Code, to make a conforming amendment to substitute Sec. 521.3452 for Sec. 729.003, Transportation Code.

SECTION 52. Repeals Section 106.11, Alcoholic Beverage Code, relating to the requirement that parents or legal guardians be present when a person under age 18 is convicted of an offense under the chapter, and repeals Section 729.003, Transportation Code, relating to the requirement in cases involving traffic offenses by minors that the court report to DPS when the person does not appear in court and when there is final disposition of those cases.

SECTION 53. Related to Section 51.07, Family Code, as amended, and Sections 51.071, 51.072, 51.073, 51.074, and 51.075, Family Code, as added, the legislature finds that: children and families in Texas are becoming increasingly mobile and children on probation frequently move to other counties; it is in their interests and the interests of society that the child’s probation supervision continue with as little interruption as possible; transfer of probation to another county should not impede appropriate legal consequences for a child’s violation of a condition of probation; numerous issues are raised by transfer of probation between counties that are not currently addressed by law and should be resolved; similar supervision and services should be provided to transferred children as are provided to children adjudicated in the same county; and the current informal system of courtesy supervision provides neither the assistance to the child nor the protection of the public that should be provided.

SECTION 54. (a) Provides for the prospective application of the Act for conduct, or any element of a penal law violation, occurring on or after the effective date.

(b) Provides for the continuing effectiveness of laws that were in effect at the time of conduct occurring before the effective date.

(c) Provides for the application of the following provisions to all judicial proceedings or official actions or decisions on or after the effective date without regard to whether any prior event connected to the proceeding, action, or decision occurred before the effective date:

(1) Sections 51.21, 52.0151, 54.0408 and 58.211, Family Code, as added by this Act;

(2) Sections 51.20, 53.03, 54.01, 54.012, 54.05, 58.003, 58.104, 58.203, and 58.207, Family Code, as amended by this Act;

(3) Articles 15.27, 24.011, and 45.0215, Code of Criminal Procedure, as amended by this Act; and

(4) Sections 61.0432, Human Resources Code, as amended by this Act.

SECTION 55. Effective date: This Act takes effect September 1, 2005.