

By: Whitmire
(Marquez, Madden, Allen, Perry, Workman, et al.)

S.B. No. 1209

A BILL TO BE ENTITLED

AN ACT

relating to the detention of certain juvenile offenders.

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

SECTION 1. Subsections (f) and (h), Section 51.12, Family Code, are amended to read as follows:

(f) A child detained in a building that contains a jail, lockup, or other place of secure confinement, including an alcohol or other drug treatment facility, shall be separated by sight and sound from adults detained in the same building. Children and adults are separated by sight and sound only if they are unable to see each other and conversation between them is not possible. The separation must extend to all areas of the facility, including sally ports and passageways, and those areas used for admission, counseling, sleeping, toileting, showering, dining, recreational, educational, or vocational activities, and health care. The separation may be accomplished through architectural design. A person who has been transferred for prosecution in criminal court under Section 54.02 and is under 17 years of age is considered a child for the purposes of this subsection.

(h) This section does not apply to a person:

(1) who has been transferred [~~after transfer~~] to criminal court for prosecution under Section 54.02 and is at least 17 years of age; or

(2) who is at least 17 years of age and who has been

1 taken into custody after having:

2 (A) escaped from a juvenile facility operated by
3 or under contract with the Texas Youth Commission; or

4 (B) violated a condition of release under
5 supervision of the Texas Youth Commission.

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

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

11 (1) for temporary detention in a jail or lockup
12 pending juvenile court hearing or disposition under conditions
13 meeting the requirements of Section 51.12 ~~[of this code]~~;

14 (2) after transfer for prosecution in criminal court
15 under Section 54.02, unless the juvenile court orders the detention
16 of the child in a certified juvenile detention facility under
17 Section 54.02(h) ~~[of this code]~~; or

18 (3) after transfer from the Texas Youth Commission
19 under Section 61.084, Human Resources Code.

20 SECTION 3. Section 152.0007, Human Resources Code, is
21 amended by adding Subsection (c) to read as follows:

22 (c) The board shall establish a policy that specifies
23 whether a person who has been transferred for criminal prosecution
24 under Section 54.02, Family Code, and is younger than 17 years of
25 age may be detained in a juvenile facility pending trial.

26 SECTION 4. Subsection (h), Section 54.02, Family Code, is
27 amended to read as follows:

1 (h) If the juvenile court waives jurisdiction, it shall
2 state specifically in the order its reasons for waiver and certify
3 its action, including the written order and findings of the court,
4 and shall transfer the person to the appropriate court for criminal
5 proceedings and cause the results of the diagnostic study of the
6 person ordered under Subsection (d), including psychological
7 information, to be transferred to the appropriate criminal
8 prosecutor. On transfer of the person for criminal proceedings,
9 the person shall be dealt with as an adult and in accordance with
10 the Code of Criminal Procedure, except that if detention in a
11 certified juvenile detention facility is authorized under Section
12 152.0007(c), Human Resources Code, the juvenile court may order the
13 person to be detained in the facility pending trial or until the
14 criminal court enters an order under Article 4.19, Code of Criminal
15 Procedure. A [The] transfer of custody made under this subsection
16 is an arrest.

17 SECTION 5. Chapter 4, Code of Criminal Procedure, is
18 amended by adding Article 4.19 to read as follows:

19 Art. 4.19. TRANSFER OF CHILD. Notwithstanding the order of
20 a juvenile court to detain a child in a certified juvenile detention
21 facility under Section 54.02(h), Family Code, the judge of the
22 criminal court having jurisdiction over the child may order the
23 child to be transferred to another facility and treated as an adult
24 as provided by this code.

25 SECTION 6. Subsection (a), Section 23.101, Government Code,
26 is amended to read as follows:

27 (a) The trial courts of this state shall regularly and

1 frequently set hearings and trials of pending matters, giving
2 preference to hearings and trials of the following:

3 (1) temporary injunctions;

4 (2) criminal actions, with the following actions given
5 preference over other criminal actions:

6 (A) criminal actions against defendants who are
7 detained in jail pending trial;

8 (B) criminal actions involving a charge that a
9 person committed an act of family violence, as defined by Section
10 71.004, Family Code;

11 (C) an offense under:

12 (i) Section 21.02 or 21.11, Penal Code;

13 (ii) Chapter 22, Penal Code, if the victim
14 of the alleged offense is younger than 17 years of age;

15 (iii) Section 25.02, Penal Code, if the
16 victim of the alleged offense is younger than 17 years of age;

17 (iv) Section 25.06, Penal Code; or

18 (v) Section 43.25, Penal Code; ~~and~~

19 (D) an offense described by Article 62.001(6)(C)
20 or (D), Code of Criminal Procedure; and

21 (E) criminal actions against children who are
22 detained as provided by Section 51.12, Family Code, after transfer
23 for prosecution in criminal court under Section 54.02, Family Code;

24 (3) election contests and suits under the Election
25 Code;

26 (4) orders for the protection of the family under
27 Subtitle B, Title 4, Family Code;

1 (5) appeals of final rulings and decisions of the
2 division of workers' compensation of the Texas Department of
3 Insurance regarding workers' compensation claims and claims under
4 the Federal Employers' Liability Act and the Jones Act;

5 (6) appeals of final orders of the commissioner of the
6 General Land Office under Section 51.3021, Natural Resources Code;

7 (7) actions in which the claimant has been diagnosed
8 with malignant mesothelioma, other malignant asbestos-related
9 cancer, malignant silica-related cancer, or acute silicosis; and

10 (8) appeals brought under Section 42.01 or 42.015, Tax
11 Code, of orders of appraisal review boards of appraisal districts
12 established for counties with a population of less than 175,000.

13 SECTION 7. (a) The change in law made by this Act applies
14 only to the detention of a child for conduct that occurs on or after
15 the effective date of this Act. Conduct violating a penal law that
16 occurs before the effective date of this Act is governed by the law
17 in effect when the conduct occurred, and the former law is continued
18 in effect for that purpose.

19 (b) For purposes of this section, conduct violating a penal
20 law occurred before the effective date of this Act if any element of
21 the violation occurred before that date.

22 SECTION 8. This Act takes effect September 1, 2011.