

1-1 By: Whitmire S.B. No. 1209  
1-2 (In the Senate - Filed March 7, 2011; March 16, 2011, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 21, 2011, reported favorably by the following vote: Yeas 7,  
1-5 Nays 0; April 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the detention of certain juvenile offenders.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subsections (f) and (h), Section 51.12, Family  
1-11 Code, are amended to read as follows:

1-12 (f) A child detained in a building that contains a jail,  
1-13 lockup, or other place of secure confinement, including an alcohol  
1-14 or other drug treatment facility, shall be separated by sight and  
1-15 sound from adults detained in the same building. Children and  
1-16 adults are separated by sight and sound only if they are unable to  
1-17 see each other and conversation between them is not possible. The  
1-18 separation must extend to all areas of the facility, including  
1-19 sally ports and passageways, and those areas used for admission,  
1-20 counseling, sleeping, toileting, showering, dining, recreational,  
1-21 educational, or vocational activities, and health care. The  
1-22 separation may be accomplished through architectural design. A  
1-23 person who has been transferred for prosecution in criminal court  
1-24 under Section 54.02 and is under 17 years of age is considered a  
1-25 child for the purposes of this subsection.

1-26 (h) This section does not apply to a person:

1-27 (1) who has been transferred [~~after transfer~~] to  
1-28 criminal court for prosecution under Section 54.02 and is at least  
1-29 17 years of age; or

1-30 (2) who is at least 17 years of age and who has been  
1-31 taken into custody after having:

1-32 (A) escaped from a juvenile facility operated by  
1-33 or under contract with the Texas Youth Commission; or

1-34 (B) violated a condition of release under  
1-35 supervision of the Texas Youth Commission.

1-36 SECTION 2. Subsection (c), Section 51.13, Family Code, is  
1-37 amended to read as follows:

1-38 (c) A child may not be committed or transferred to a penal  
1-39 institution or other facility used primarily for the execution of  
1-40 sentences of persons convicted of crime, except:

1-41 (1) for temporary detention in a jail or lockup  
1-42 pending juvenile court hearing or disposition under conditions  
1-43 meeting the requirements of Section 51.12 [~~of this code~~];

1-44 (2) after transfer for prosecution in criminal court  
1-45 under Section 54.02, unless the juvenile court orders the detention  
1-46 of the child in a certified juvenile detention facility under  
1-47 Section 54.02(h) [~~of this code~~]; or

1-48 (3) after transfer from the Texas Youth Commission  
1-49 under Section 61.084, Human Resources Code.

1-50 SECTION 3. Section 152.0007, Human Resources Code, is  
1-51 amended by adding Subsection (c) to read as follows:

1-52 (c) The board shall establish a policy that specifies  
1-53 whether a person who has been transferred for criminal prosecution  
1-54 under Section 54.02, Family Code, and is younger than 17 years of  
1-55 age may be detained in a juvenile facility pending trial.

1-56 SECTION 4. Subsection (h), Section 54.02, Family Code, is  
1-57 amended to read as follows:

1-58 (h) If the juvenile court waives jurisdiction, it shall  
1-59 state specifically in the order its reasons for waiver and certify  
1-60 its action, including the written order and findings of the court,  
1-61 and shall transfer the person to the appropriate court for criminal  
1-62 proceedings and cause the results of the diagnostic study of the  
1-63 person ordered under Subsection (d), including psychological  
1-64 information, to be transferred to the appropriate criminal  
1-65 prosecutor. On transfer of the person for criminal proceedings,  
1-66 the person shall be dealt with as an adult and in accordance with  
1-67 the Code of Criminal Procedure, except that if detention in a

2-1 certified juvenile detention facility is authorized under Section  
2-2 152.0007(c), Human Resources Code, the juvenile court may order the  
2-3 person to be detained in the facility pending trial or until the  
2-4 criminal court enters an order under Article 4.19, Code of Criminal  
2-5 Procedure. A [The] transfer of custody made under this subsection  
2-6 is an arrest.

2-7 SECTION 5. Chapter 4, Code of Criminal Procedure, is  
2-8 amended by adding Article 4.19 to read as follows:

2-9 Art. 4.19. TRANSFER OF CHILD. Notwithstanding the order of  
2-10 a juvenile court to detain a child in a certified juvenile detention  
2-11 facility under Section 54.02(h), Family Code, the judge of the  
2-12 criminal court having jurisdiction over the child may order the  
2-13 child to be transferred to another facility and treated as an adult  
2-14 as provided by this code.

2-15 SECTION 6. Subsection (a), Section 23.101, Government Code,  
2-16 is amended to read as follows:

2-17 (a) The trial courts of this state shall regularly and  
2-18 frequently set hearings and trials of pending matters, giving  
2-19 preference to hearings and trials of the following:

2-20 (1) temporary injunctions;  
2-21 (2) criminal actions, with the following actions given  
2-22 preference over other criminal actions:

2-23 (A) criminal actions against defendants who are  
2-24 detained in jail pending trial;

2-25 (B) criminal actions involving a charge that a  
2-26 person committed an act of family violence, as defined by Section  
2-27 71.004, Family Code;

2-28 (C) an offense under:

2-29 (i) Section 21.02 or 21.11, Penal Code;

2-30 (ii) Chapter 22, Penal Code, if the victim  
2-31 of the alleged offense is younger than 17 years of age;

2-32 (iii) Section 25.02, Penal Code, if the  
2-33 victim of the alleged offense is younger than 17 years of age;

2-34 (iv) Section 25.06, Penal Code; or

2-35 (v) Section 43.25, Penal Code; ~~and~~

2-36 (D) an offense described by Article 62.001(6)(C)  
2-37 or (D), Code of Criminal Procedure; and

2-38 (E) criminal actions against children who are  
2-39 detained as provided by Section 51.12, Family Code, after transfer  
2-40 for prosecution in criminal court under Section 54.02, Family Code;

2-41 (3) election contests and suits under the Election  
2-42 Code;

2-43 (4) orders for the protection of the family under  
2-44 Subtitle B, Title 4, Family Code;

2-45 (5) appeals of final rulings and decisions of the  
2-46 division of workers' compensation of the Texas Department of  
2-47 Insurance regarding workers' compensation claims and claims under  
2-48 the Federal Employers' Liability Act and the Jones Act;

2-49 (6) appeals of final orders of the commissioner of the  
2-50 General Land Office under Section 51.3021, Natural Resources Code;

2-51 (7) actions in which the claimant has been diagnosed  
2-52 with malignant mesothelioma, other malignant asbestos-related  
2-53 cancer, malignant silica-related cancer, or acute silicosis; and

2-54 (8) appeals brought under Section 42.01 or 42.015, Tax  
2-55 Code, of orders of appraisal review boards of appraisal districts  
2-56 established for counties with a population of less than 175,000.

2-57 SECTION 7. (a) The change in law made by this Act applies  
2-58 only to the detention of a child for conduct that occurs on or after  
2-59 the effective date of this Act. Conduct violating a penal law that  
2-60 occurs before the effective date of this Act is governed by the law  
2-61 in effect when the conduct occurred, and the former law is continued  
2-62 in effect for that purpose.

2-63 (b) For purposes of this section, conduct violating a penal  
2-64 law occurred before the effective date of this Act if any element of  
2-65 the violation occurred before that date.

2-66 SECTION 8. This Act takes effect September 1, 2011.