

BILL ANALYSIS

Senate Research Center
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H.B. 2862
By: McClendon (West)
Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2862 contains substantive and corrective changes related to the adjudication and disposition of juvenile conduct under Title 3 (Juvenile Justice Code) of the Family Code and related statutes. It is the second of such bills submitted during this legislative session and contains changes in addition to those proposed in S.B. 1440. In 2012, a work group of juvenile justice practitioners held a series of meetings to conduct a comprehensive evaluation of laws governing Texas's system of juvenile justice to identify needed statutory revisions that would improve the administration of juvenile justice at the state and county level.

H.B. 2862 includes selected recommendations for technical and corrective language that were developed by the juvenile justice work group. Those recommendations include creating greater efficiencies in how local juvenile departments provide notice to victims of juvenile related offenses and also incorporates changes made regarding youth who received a determinate sentence. The bill also addresses risk and needs assessments and mental health screening for juvenile age offenders.

H.B. 2862 amends current law relating to procedures related to juvenile cases.

RULEMAKING AUTHORITY

Rulemaking authority previously granted the Texas Juvenile Justice Board is modified in SECTION 13 (Section 222.003, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 62.352(b) and (c), Code of Criminal Procedure, as follows:

(b) Changes a reference to the Texas Youth Commission (TYC) to the Texas Juvenile Justice Department (TJJD).

(c) Provides that following successful completion of treatment, the respondent is exempted from registration under this chapter unless a hearing under this subchapter is held on motion of the prosecuting attorney, rather than on motion of the state, regardless of whether the respondent is 18 years of age or older, and the court determines the interests of the public require registration.

SECTION 2. Amends Section 51.02(8-a), Family Code, to redefine "nonsecure correctional facility."

SECTION 3. Amends Section 51.12, Family Code, by amending Subsection (a) and adding Subsection (j-1), as follows:

(a) Authorizes a child, except as provided by Subsection (h), to be detained only in certain places, including nonsecure correctional facility as provided by Subsection (j-1).

(j-1) Authorizes a child, after being taken into custody, to be detained in a nonsecure correctional facility until the child is released under Section 53.01 (Preliminary Investigation and Determinations; Notice to Parents), 53.012 (Review by Prosecutor), or

53.02 (Release from Detention) or until a detention hearing is held under Section 54.01(a) (relating to requiring that a detention hearing without a jury be held promptly, except as provided by Subsection (p), but not later than the second working day after the child is taken into custody if the child is not released under Section 53.02; and requiring that such a detention hearing be held on the first working day after a child is taken into custody when the child is detained on a Friday or Saturday), if:

- (1) the nonsecure correctional facility has been appropriately registered and certified;
- (2) a certified secure detention facility is not available in the county in which the child is taken into custody;
- (3) the nonsecure correctional facility complies with the short-term detention standards adopted by TJJD; and
- (4) the nonsecure correctional facility has been designated by the county juvenile board for the county in which the facility is located.

SECTION 4. Amends Section 54.02, Family Code, by adding Subsection (s), to provide that if a child is transferred to criminal court under this section, only the petition for discretionary transfer, the order of transfer, and the order of commitment, if any, are a part of the district clerk's public record.

SECTION 5. Amends Sections 54.04(b) and (d), Family Code, as follows:

(b) Requires the court, on or before the second day before the date of the disposition hearing, to provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in disposition, rather than requiring the court, prior to the disposition hearing, to provide the attorney for the child with access to all written matter to be considered in disposition.

(d) Changes references to TYC to TJJD. Provides that if the court or jury makes the finding specified in Subsection (c) (relating to prohibiting a disposition from being made under this section unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition to be made) allowing the court to make a disposition in the case, the court is authorized to place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standards for the facility as provided by Section 51.126 (Nonsecure Correctional Facilities).

SECTION 6. Amends Section 54.0482, Family Code, by amending Subsections (a), (e), and (f) and adding Subsection (b-1), as follows:

(a) Requires a juvenile probation department that receives a payment to a victim as the result of a juvenile court order for restitution to immediately take certain actions, including to immediately notify the victim that a payment has been received, rather than notify the victim by certified mail, sent to the last known address of the victim, that a payment has been received.

(b-1) Requires the juvenile probation department to notify the victim by certified mail, sent to the last known address of the victim, that a payment has been received if the victim does not make a claim for payment on or before the 30th day after the date of being notified under Subsection (a).

(e) Requires the juvenile probation department to pay the victim the amount of the original payment, less any interest earned while holding the payment if a victim claims a payment on or before the fifth anniversary of the date on which the juvenile probation department mailed a notice to the victim under Subsection (b-1), rather than under Subsection (a).

(f) Makes a conforming change.

SECTION 7. Amends Section 54.05(e), Family Code, to require the court, on or before the second day before the date of the hearing to modify disposition, rather than requiring the court prior to the hearing to modify disposition, to provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in deciding whether to modify disposition.

SECTION 8. Amends Section 54.051, Family Code, by amending Subsections (b), (e), (e-2), (e-3), and (i) and adding Subsection (d-1), as follows:

(b) Requires that the hearing be conducted before the person's 19th birthday, or before the person's 18th birthday if the offense for which the person was placed on probation occurred before September 1, 2011, and to be conducted in the same manner as a hearing to modify disposition under Section 54.05 (Hearing to Modify Disposition), rather than requiring that the hearing be conducted before the child's 19th birthday and in the same manner as a hearing to modify disposition under Section 54.05.

(d-1) Provides that after a transfer to district court under Subsection (d) (relating to requiring the court to transfer the child to an appropriate district court on the child's 19th birthday if, after a hearing, the court determines to transfer the child), only the petition, the grand jury approval, the judgment concerning the conduct for which the person was placed on determinate sentence probation, and the transfer order are a part of the district clerk's public record.

(e), (e-2), and (e-3) Makes nonsubstantive changes.

(i) Authorizes the court or jury, if the person is otherwise eligible, to place the person on probation under Section 54.04(q) (relating to authorizing the court to place a child on probation under Subsection (d)(1) as an alternative to making the disposition under Subsection (d)(3) if a court or jury sentences the child to commitment in TYC under Subsection (d)(3) for a certain term) if the juvenile court exercises jurisdiction over a person who is 18 or 19 years of age or older, as applicable, under Section 51.041 (Jurisdiction After Appeal) or 51.0412 (Jurisdiction Over Incomplete Proceedings).

SECTION 9. Amends Sections 54.11(b) and (d), Family Code, as follows:

(b) Changes a reference to TYC to TJJD.

(d) Authorizes the court, at a hearing under this section, to consider written reports and supporting documents from probation officers, professional court employees, professional consultants, or employees of TJJD, in addition to the testimony of witnesses. Requires the court, on or before the fifth day before the date of the hearing, rather than at least one day before the hearing, to provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court. Provides that all written matter is admissible in evidence at the hearing. Makes a conforming change.

SECTION 10. Amends Section 58.007(b), Family Code, to provide that except as provided by Section 54.051(d-1) and by Article 15.27 (Notification to Schools Required), Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title (Juvenile Justice Code) are open to inspection only by certain persons and entities.

SECTION 11. Amends Section 61.0031(d), Family Code, to require the juvenile court to which the order has been transferred to require the parent or other eligible person to appear before the court to notify the person of the existence and terms of the order, unless the permanent supervision hearing under Section 51.073(c) (relating to requiring the juvenile court of the receiving county to require that the child be brought before the court in order to impose new or

different conditions of probation than those originally ordered by the sending county or ordered by the receiving county during the period of interim supervision) has been waived.

SECTION 12. Amends Section 221.003(c), Human Resources Code, as follows:

(c) Provides that any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at any adjudication hearing, rather than at any other hearing. Requires the person administering the mental health screening instrument or initial risk and needs assessment instruments to inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any adjudication hearing, rather than at any other hearing.

SECTION 13. Amends Section 222.003(a), Human Resources Code, to require the Texas Juvenile Justice Board to adopt certification standards for persons who are employed in nonsecure correctional facilities that accept juveniles and that are operated by or under contract with a governmental unit, rather than nonsecure correctional facilities that accept only juveniles who are on probation and that are operated by or under contract with a governmental unit, as defined by Section 101.001 (Definitions), Civil Practice and Remedies Code.

SECTION 14. (a) Provides that Sections 54.02(s) and 54.051(d-1), Family Code, as added by this Act, and Section 58.007(b), Family Code, as amended by this Act, apply to a record created before, on, or after the effective date of this Act.

(b) Makes application of Sections 54.04(b), 54.05(e), and 54.11(d), Family Code, as amended by this Act, prospective.

SECTION 15. Effective date: September 1, 2013.