

BILL ANALYSIS

C.S.H.B. 2862
By: McClendon
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A workgroup of experienced juvenile practitioners recently convened a series of meetings to conduct a comprehensive examination aimed at identifying statutory revisions that would facilitate juvenile proceedings and the administration of the juvenile justice system at the state and county level. C.S.H.B. 2862 seeks to implement selected recommendations of the workgroup for clarification and to make substantive amendments to applicable state law in order to increase the efficiency of the juvenile justice system and help facilitate orderly justice for Texas juveniles.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 13 of this bill.

ANALYSIS

C.S.H.B. 2862 amends the Family Code to authorize the detention of a child, after being taken into custody, in a nonsecure correctional facility until the child is released or until a detention hearing is held if the nonsecure correctional facility has been appropriately registered and certified, a certified secure detention facility is not available in the county in which the child is taken into custody, the nonsecure correctional facility complies with the short-term detention standards adopted by the Texas Juvenile Justice Department (TJJD), and the nonsecure correctional facility has been designated by the county juvenile board for the county in which the facility is located. The bill removes language defining "nonsecure correctional facility" as a facility, other than a secure correctional facility, that accepts only juveniles who are on probation and that is operated by or under contract with a governmental unit and instead provides that such a facility is described by statutory provisions as a facility for juvenile offenders operated only by a governmental unit or a private entity under contract with a governmental unit.

C.S.H.B. 2862 establishes that only the petition for discretionary transfer, the order of transfer, and the order of commitment, if any, for a child transferred from a juvenile court to a criminal court are a part of the district clerk's public record. The bill changes the deadline for a court to provide the attorney for a child in a disposition hearing or in a hearing to modify a disposition with access to all written matter to be considered by the court from prior to the hearing to on or before the second day before the date of the hearing and requires the court to also provide access by that date to the prosecuting attorney. The bill authorizes a court, if the court or jury makes the finding necessary for the court to make a disposition in a case, to place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standard for the facility as provided by statute.

C.S.H.B. 2862 removes the requirement that notification of payment sent by a juvenile probation department on receipt of a payment to a victim as the result of a juvenile court order for restitution be sent by certified mail to the last known address of the victim and instead requires the victim to be notified in any manner that payment has been received. The bill requires the

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 initially notified of the payment.

C.S.H.B. 2862 requires a hearing to determine whether a child who is placed on probation for a period that will continue after the child's 19th birthday should be transferred to an appropriate district court or discharged from the sentence of probation to be conducted before the child's 18th birthday if the offense for which the child was placed on probation occurred before September 1, 2011. The bill establishes that, after a transfer to district court is made, only the petition, the grand jury approval, the judgment concerning the conduct for which the child was placed on determinate sentence probation, and the transfer order are a part of the district clerk's public record. The bill authorizes a court, in a hearing on the transfer of a person from TJJD to the Texas Department of Criminal Justice or the release under supervision of a person committed to TJJD, to consider supporting documents from probation officers, professional court employees, professional consultants, or TJJD employees. The bill changes the deadline for the court to provide the attorney for the person to be transferred or released with access to all written matter to be considered by the court from at least one day before the hearing to on or before the fifth day before the date of the hearing. The bill makes all written matter admissible in evidence at the hearing.

C.S.H.B. 2862 includes an exception to the requirement that a juvenile court to which a juvenile court order affecting a parent or other eligible person has been transferred require the parent or other eligible person to appear before the court to notify the person of the existence and terms of the order, if the permanent supervision hearing has been waived. The bill makes technical corrections.

C.S.H.B. 2862 amends the Human Resources Code to specify that the type of hearing at which statutory provisions relating to the admissibility of a statement made by a child under the jurisdiction of and properly referred to a juvenile probation department and any mental health data obtained from the child during the administration of a mental health screening instrument or the initial risk and needs assessment instruments applies is an adjudication hearing. The bill requires the Texas Juvenile Justice Board to adopt by rule certification standards for persons who are employed in nonsecure correctional facilities that accept juveniles, rather than those facilities that accept only juveniles who are on probation.

C.S.H.B. 2862 amends the Code of Criminal Procedure to make a technical correction.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2862 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Articles 62.352(b) and (c), Code of Criminal Procedure, are amended.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 51.02(8-a), Family Code, is amended to read as follows:
(8-a) "Nonsecure correctional facility"

means a facility described by Section 51.126, ~~other than a secure correctional facility, that accepts only juveniles who are on probation and that is operated by or under contract with a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code~~].

No equivalent provision.

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

(a) Except as provided by Subsection (h), a child may be detained only in a:

(1) juvenile processing office in compliance with Section 52.025;

(2) place of nonsecure custody in compliance with Article 45.058, Code of Criminal Procedure;

(3) certified juvenile detention facility that complies with the requirements of Subsection (f);

(4) secure detention facility as provided by Subsection (j); ~~or~~

(5) county jail or other facility as provided by Subsection (l); or

(6) nonsecure correctional facility as provided by Subsection (j-1).

(j-1) After being taken into custody, a child may be detained in a nonsecure correctional facility until the child is released under Section 53.01, 53.012, or 53.02 or until a detention hearing is held under Section 54.01(a), 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 the Texas Juvenile Justice Department; and

(4) the nonsecure correctional facility has been designated by the county juvenile board for the county in which the facility is located.

SECTION 2. Section 54.02, Family Code, is amended by adding Subsection (s) to read as follows:

(s) If a child is transferred to criminal court under this section, only the petition for discretionary transfer, the order of transfer,

SECTION 4. Section 54.02, Family Code, is amended by adding Subsection (s) to read as follows:

(s) 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. All other documents filed in the case must be transferred under seal and made available only to the judge, prosecution, and defense.

SECTION 3. Section 54.04(b), Family Code, is amended to read as follows:

(b) At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. On or before the second day before the date of [~~Prior to~~] the disposition hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in disposition. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

and the order of commitment, if any, are a part of the district clerk's public record.

SECTION 5. Sections 54.04(b) and (d), Family Code, are amended to read as follows:

(b) At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. On or before the second day before the date of [~~Prior to~~] the disposition hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in disposition. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable foster home;

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by the Texas Juvenile Justice Department [~~Youth Commission~~]; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Juvenile Justice Department [~~Youth~~

~~Commission~~];

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony and if the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas ~~Juvenile Justice Department~~ ~~[Youth Commission]~~ without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas ~~Juvenile Justice Department~~ ~~[Youth Commission]~~ with a possible transfer to the Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003; ~~[or]~~

~~(5) the court may 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; or~~

~~(6) if applicable, the court or jury may make a disposition under Subsection (m).~~

SECTION 4. Section 54.0482, Family Code, is amended.

SECTION 5. Section 54.05(e), Family Code, is amended.

SECTION 6. Section 54.051, Family Code, is amended by amending Subsections (b), (e), (e-2), (e-3), and (i) and adding

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Section 54.051, Family Code, is amended by amending Subsections (b), (e), (e-2), (e-3), and (i) and adding

Subsection (d-1) to read as follows:

(b) The hearing must be conducted before the person's [child'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 must be conducted in the same manner as a hearing to modify disposition under Section 54.05.

(d-1) After a transfer to district court under Subsection (d), only the initial petition, the initial grand jury approval, the original judgment, and the transfer order are a part of the district clerk's public record.

All other documents filed in the case must be transferred under seal and made available only to the judge, prosecution, and defense.

(e) A district court that exercises jurisdiction over a person [child] transferred under Subsection (d) shall place the person [child] on community supervision under Article 42.12, Code of Criminal Procedure, for the remainder of the person's [child's] probationary period and under conditions consistent with those ordered by the juvenile court.

(e-2) If a person [child] who is placed on community supervision under this section violates a condition of that supervision or if the person [child] violated a condition of probation ordered under Section 54.04(q) and that probation violation was not discovered by the state before the person's [child's] 19th birthday, the district court shall dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case. If the judge revokes community supervision, the judge may reduce the prison sentence to any length without regard to the minimum term imposed by Section 23(a), Article 42.12, Code of Criminal Procedure.

(e-3) The time that a person [child] serves on probation ordered under Section 54.04(q) is the same as time served on community supervision ordered under this section for purposes of determining the person's [child's] eligibility for early discharge from community supervision under Section 20, Article 42.12, Code of Criminal Procedure.

(i) If the juvenile court exercises jurisdiction over a person who is 18 or 19

Subsection (d-1) to read as follows:

(b) The hearing must be conducted before the person's [child'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 must be conducted in the same manner as a hearing to modify disposition under Section 54.05.

(d-1) After a transfer to district court under Subsection (d), 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) A district court that exercises jurisdiction over a person [child] transferred under Subsection (d) shall place the person [child] on community supervision under Article 42.12, Code of Criminal Procedure, for the remainder of the person's [child's] probationary period and under conditions consistent with those ordered by the juvenile court.

(e-2) If a person [child] who is placed on community supervision under this section violates a condition of that supervision or if the person [child] violated a condition of probation ordered under Section 54.04(q) and that probation violation was not discovered by the state before the person's [child's] 19th birthday, the district court shall dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case. If the judge revokes community supervision, the judge may reduce the prison sentence to any length without regard to the minimum term imposed by Section 23(a), Article 42.12, Code of Criminal Procedure.

(e-3) The time that a person [child] serves on probation ordered under Section 54.04(q) is the same as time served on community supervision ordered under this section for purposes of determining the person's [child's] eligibility for early discharge from community supervision under Section 20, Article 42.12, Code of Criminal Procedure.

(i) 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 or 51.0412, the court or jury may, if the person is otherwise eligible, place the person on probation under Section 54.04(q). The juvenile court shall set the conditions of probation and immediately transfer supervision of the person to the appropriate court exercising criminal jurisdiction under Subsection (e).

SECTION 7. Sections 54.11(b) and (d), Family Code, are amended to read as follows:

(b) The court shall notify the following of the time and place of the hearing:

- (1) the person to be transferred or released under supervision;
- (2) the parents of the person;
- (3) any legal custodian of the person, including the Texas Juvenile Justice Department [~~Youth Commission~~];
- (4) the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings;
- (5) the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family; and
- (6) any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.

(d) At a hearing under this section the court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, or employees of the Texas Juvenile Justice Department [~~Youth Commission~~], in addition to the testimony of witnesses. On or before the fifth day [At least one day] before the date of the hearing, the court shall 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. All written matter is per se admissible in evidence at the hearing.

No equivalent provision.

years of age or older, as applicable, under Section 51.041 or 51.0412, the court or jury may, if the person is otherwise eligible, place the person on probation under Section 54.04(q). The juvenile court shall set the conditions of probation and immediately transfer supervision of the person to the appropriate court exercising criminal jurisdiction under Subsection (e).

SECTION 9. Sections 54.11(b) and (d), Family Code, are amended to read as follows:

(b) The court shall notify the following of the time and place of the hearing:

- (1) the person to be transferred or released under supervision;
- (2) the parents of the person;
- (3) any legal custodian of the person, including the Texas Juvenile Justice Department [~~Youth Commission~~];
- (4) the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings;
- (5) the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family; and
- (6) any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.

(d) At a hearing under this section the court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, or employees of the Texas Juvenile Justice Department [~~Youth Commission~~], in addition to the testimony of witnesses. On or before the fifth day [At least one day] before the date of the hearing, the court shall 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. All written matter is admissible in evidence at the hearing.

SECTION 10. Section 58.007(b), Family Code, is amended to read as follows:

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, 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 are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

SECTION 8. Section 61.0031(d), Family Code, is amended.

SECTION 11. Same as introduced version.

SECTION 9. Section 221.003(c), Human Resources Code, is amended.

SECTION 12. Same as introduced version.

No equivalent provision.

SECTION 13. Section 222.003(a), Human Resources Code, is amended to read as follows:

- (a) The board by rule shall adopt certification standards for persons who are employed in 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, Civil Practice and Remedies Code.

SECTION 10. (a) Sections 54.02(s) and 54.051(d-1), Family Code, as added by this Act, apply to a transfer hearing commenced under Section 54.02 or 54.051, Family Code, as applicable, on or after the effective date of this Act. A transfer hearing commenced before the effective date of this Act is governed by the law in effect on the date the hearing was commenced, and the former law is continued in effect for that purpose.

SECTION 14. (a) 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) Sections 54.04(b), 54.05(e), and 54.11(d), Family Code, as amended by this

(b) Sections 54.04(b), 54.05(e), and 54.11(d), Family Code, as amended by this

Act, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.

SECTION 11. This Act takes effect September 1, 2013.

Act, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For the purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurred before that date.

SECTION 15. Same as introduced version.