

BILL ANALYSIS

S.B. 1440
By: West
Corrections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A workgroup of experienced juvenile justice 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. S.B. 1440 seeks to implement the recommendations for technical and corrective amendments to the applicable law that were developed and vetted by the workgroup.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1440 amends the Code of Criminal Procedure to clarify that the judge of a criminal court having jurisdiction over a person under the age of 17 who has been certified to stand trial as an adult is authorized to order the person to be transferred to an adult facility, notwithstanding the order of a juvenile court to detain the person in a certified juvenile detention facility. The bill requires the detention of a child who is transferred to an adult facility to meet the requirements under the juvenile justice code relating to the place and conditions of a child's detention. The bill requires the judge of the criminal court having jurisdiction over a person who has been certified to stand trial as an adult and who is detained in a certified juvenile detention facility, on the 17th birthday of that person, to order the person to be transferred to an adult facility.

S.B. 1440 authorizes a witness younger than 17 years of age held in the custody of the Texas Juvenile Justice Department (TJJD), a juvenile secure detention facility, or a juvenile secure correctional facility to be placed in a certified juvenile detention facility for a period not to exceed 30 days. The bill authorizes the length of such placement to be extended in increments of 30 days by the court that issued the original bench warrant to secure custody of the person and produce the person in court. The bill specifies that if the placement is not extended, the placement period expires and authorizes the return of the witness by a peace officer or probation officer, as applicable, to the placement from which the person was released.

S.B. 1440 amends the Family Code to extend a court's authority to retain jurisdiction over respondents in certain incomplete criminal proceedings to include a respondent in a proceeding for waiver of a juvenile court's jurisdiction over a child and transfer of the child to criminal court. The bill establishes that a child who is found to have engaged in delinquent conduct or conduct indicating a need for supervision, while the child is the subject of a suit affecting the parent-child relationship, is considered to reside in the county in which the court of continuing exclusive jurisdiction over the child is located for purposes of the transfer of the child's case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case.

S.B. 1440 expands the information that the juvenile probation department of a county that

originally placed a child on probation or assumed permanent supervision of the child under an inter-county transfer of probation supervision must provide the county to which the child has moved or intends to move to include, if applicable, a copy of documentation that the sending county has required the child to provide a DNA sample to the Department of Public Safety (DPS) for the DNA database system because the child was placed on probation for conduct constituting a sexual offense or was adjudicated as having engaged in conduct constituting the commission of a felony. The bill requires the sending county, on initiating a transfer of probation supervision of a child required to submit a DNA sample as a condition of probation, to provide to the receiving county documentation of compliance with the requirements applicable to a DNA sample. The bill authorizes the receiving county, if the sending county has not provided such documentation within the prescribed time period, to refuse to accept interim supervision until the sending county has provided the documentation.

S.B. 1440 authorizes a sending county to request interim supervision from a receiving county that issued a directive requiring the juvenile probation department of the sending county to resume direct supervision of the child because the child was found to have violated a condition of probation imposed by the juvenile court of the sending county. The bill authorizes the sending and receiving counties, following the conclusion of any judicial proceedings in the sending county or on the completion of any residential placement ordered by the juvenile court of the sending county, to mutually agree to return the child to the receiving county and specifies the circumstances that the counties may consider in reaching such an agreement. The bill limits the period of such interim supervision to 180 days.

S.B. 1440 authorizes a witness held in the custody of TJJD, a juvenile secure detention facility, or a juvenile secure correctional facility to be placed in a certified juvenile detention facility for a period not to exceed 30 days. The bill authorizes the length of such placement to be extended in increments of 30 days by the court that issued the original bench warrant issued to secure custody of the person and produce the person in court. The bill specifies that if the placement is not extended, the placement period expires and authorizes the return of the witness by a peace officer or probation officer, as applicable, to the placement from which the person was released.

S.B. 1440 changes the maximum period during which a child who is a status offender may be detained for the purposes of enabling the child's return to the child's home in another state from five days to the period allowed under the Interstate Compact for Juveniles.

S.B. 1440 requires a juvenile court, if the juvenile court orders a person detained in a certified juvenile detention facility pending trial in a court for criminal proceedings or until the criminal court enters an order for the person to be transferred to an adult facility, to set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses. The bill specifies that a person's parent, custodian, guardian, or guardian ad litem is not considered a party to a criminal proceeding after a juvenile court waives its exclusive jurisdiction of the person's case and that it is not necessary to provide such persons with the notice otherwise required. The bill authorizes a juvenile court's waiver of exclusive jurisdiction to be made without the necessity of obtaining a complete diagnostic study, social evaluation, and full investigation of the child, the child's circumstances, and the circumstances of the alleged offense. The bill requires a court, if requested by the attorney for the person at least 10 days before a hearing on the transfer of the person to the appropriate district court or criminal district court for criminal proceedings, to order that the person undergo a physical or mental examination to determine whether the person has a mental illness or is a person with mental retardation and that the results of the examination be provided to the attorney for the person and the attorney for the state at least five days before the transfer hearing.

S.B. 1440 restricts the types of records collected or maintained by TJJD that are not subject to an order sealing the records of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision or a person taken into custody to determine whether

the person engaged in such conduct to statistical data.

S.B. 1440 authorizes DPS, on certification by DPS that the records in a person's juvenile case are subject to automatic restriction, to permit access to the information in the juvenile justice information system relating to the case by, among others, the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records; with the permission of the juvenile court at the request of the person who is the subject of the records; or with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit.

S.B. 1440 makes statutory provisions authorizing an agency maintaining juvenile records subject to automatic restriction, on receipt of a juvenile court order restricting access to the records, to allow access to the records only by certain entities and persons and requiring the agency to respond to a request for information about such records by stating that the records do not exist inapplicable if the subject of such an order is under the jurisdiction of the juvenile court or TJJD or if the agency has received notice that the records are not subject to restricted access on the basis of the subject's conviction of or placement on deferred adjudication for a felony or misdemeanor punishable by confinement in jail for an offense committed after the person reached the age of 17. The bill authorizes an agency that may access juvenile records subject to automatic restriction to permit the state military forces or the United States military forces to have access to juvenile records held by that agency. The bill authorizes an agency, on receipt of a request from the state military forces or the United States military forces, to provide access to juvenile records held by that agency in the same manner authorized by law for records the access to which has not been restricted.

S.B. 1440 requires a probation officer or an official at the TJJD reception center, when a child is placed on probation for an offense that may be eligible for automatic restricted access to records at age 17 or when a child is received by TJJD on an indeterminate commitment, to explain to the child as soon as practicable that if the child is under the jurisdiction of the juvenile court or TJJD on or after the child's 17th birthday, the law regarding restricted access will not apply until the person is discharged from the jurisdiction of the court or TJJD, as applicable.

S.B. 1440 amends the Human Resources Code to require a court that commits a child to TJJD to provide TJJD with a copy of the TJJD standard assessment tool results for the child, the DPS CR-43J form or tracking incident number concerning the child, and documentation that the committing court has required the child to provide a DNA sample to DPS.

S.B. 1440 amends the Government Code to make a nonsubstantive change.

EFFECTIVE DATE

September 1, 2013.