

## **BILL ANALYSIS**

Senate Research Center  
83R9983 JSC-F

S.B. 1440  
By: West  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1440 is intended to address substantive and corrective changes relating to the adjudication and disposition of juvenile conduct under Title 3 (Juvenile Justice Code) of the Family Code and related statutes. In 2012, a workgroup of experienced juvenile justice practitioners 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 contains selected recommendations for technical and corrective amendments that were developed and vetted by the workgroup.

As proposed, S.B. 1440 amends current law relating to adjudication and disposition of juvenile conduct.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 45.0216(f), Code of Criminal Procedure, as follows:

(f) Requires the court to order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) Makes no change to this subdivision;and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261 (Electronic Transmission of Certain Visual Material Depicting Minor), Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(8), Family Code, rather than described by Section 51.03(b)(7), Family Code, while the person was a child.

SECTION 2. Reenacts Section 51.03(b), Family Code, as amended by Chapters 1150 (H.B. 2015) and 1322 (S.B. 407), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

(b) Provides that conduct indicating a need for supervision is:

(1)-(5) Makes no change to these subdivisions;

(6) Makes a nonsubstantive change;

(7) notwithstanding Subsection (a)(1) (relating to providing that delinquent conduct is conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail), conduct described by Section 43.02(a)(1) (relating to providing that a person

commits an offense if he knowingly offers to engage, agrees to engage, or engages in sexual conduct for a fee) or (2) (relating to providing that a person commits an offense if he knowingly solicits another in a public place to engage with him in sexual conduct for hire), Penal Code; or

(8) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

Makes nonsubstantive changes.

SECTION 3. Amends Section 51.0412, Family Code, as follows:

Sec. 51.0412. JURISDICTION OVER INCOMPLETE PROCEEDINGS. The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, a proceeding to modify disposition, a proceeding for waiver of jurisdiction and transfer to criminal court under Section 54.02(a) (relating to authorizing the juvenile court to waive its exclusive original jurisdiction and transfer a child to the appropriated district court or criminal district court for criminal proceedings), or a motion for transfer of determinate sentence probation to an appropriate district court if:

(1) the petition or motion was filed while the respondent was younger than 18 or 19 years of age, rather than the petition or motion to modify was filed while the respondent was younger than 18 years of age or the motion for transfer was filed while the respondent was younger than 19 years of age, as applicable; and

(2)-(3) Makes no change to these subdivisions.

SECTION 4. Amends Section 51.07, Family Code, as follows:

Sec. 51.07. New heading: TRANSFER TO ANOTHER COUNTY FOR DISPOSITION OR MODIFICATION OF DISPOSITION. (a) Creates this subsection from existing text. Authorizes the juvenile court, when a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 (Adjudication Hearing), to transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case or a modification of disposition under Section 54.04 (Disposition Hearing) or 54.05 (Hearing to Modify Disposition), respectively.

(b) Provides that a child, for purposes of Subsection (a), while the child is the subject of a suit under Title 5 (The Parent-Child Relationship and the 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.

SECTION 5. Amends Section 51.072, Family Code, by amending Subsection (f) and adding Subsections (f-2), (j-1), and (j-2), as follows:

(f) Requires the juvenile probation department of the sending county, not later than 10 business days after a receiving county has agreed to provide interim supervision of a child, to provide the juvenile probation department of the receiving county with a copy of the following documents:

(1)-(9) Makes no change to these subdivisions;

(10) the Texas Juvenile Justice Department (TJJD), rather than the Texas Juvenile Probation Commission, standard assessment tool results for the child;

(11)-(16) Makes no change to these subdivisions;

(17) Makes a nonsubstantive change;

(18) Makes no change to this subdivision; and

(19) if applicable, documentation that the sending county has required the child to provide a DNA sample to the Department of Public Safety of the State of Texas (DPS) under Section 54.0405 (Child Placed on Probation for Conduct Constituting Sexual Offense) or 54.0409 (DNA Sample Required on Certain Felony Adjudications) or under Subchapter G (DNA Database System), Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(f-2) Requires a sending county court that ordered a child to submit a DNA sample as a condition of probation, on initiating a transfer of probation supervision under this section, to provide to the receiving county documentation of compliance with the requirements of Section 54.0405 or 54.0409 or of Subchapter G, Chapter 411, Government Code, as applicable. Authorizing the receiving county, if the sending county has not provided the documentation required under this section within the time provided by Subsection (f), to refuse to accept interim supervision until the sending county has provided the documentation.

(j-1) Authorizes the sending county, notwithstanding Subsection (j) (relating to requiring the juvenile probation department, on receiving a directive from the juvenile court of the receiving county, to arrange for the prompt transportation of the child back to the sending county at the expense of the sending county), to request interim supervision from the receiving county that issued a directive under Subsection (i)(2) (relating to authorizing the juvenile court of the sending or receiving county to issue a directive to apprehend or detain the child in a certain detention facility, and authorizing the juvenile court of the receiving county to require that the juvenile probation department of the sending county resume direct supervision of the child). 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. Authorizes the sending and receiving counties to take into consideration whether:

(1) the person having legal custody of the child resides in the receiving county;

(2) the child has been ordered by the juvenile court of the sending county to reside with a parent, guardian, or other person who resides in the sending county or any other county; and

(3) the case meets the statutory requirements for collaborative supervision.

(j-2) Prohibits the period of interim supervision under Subsection (j-1) from exceeding the period under Subsection (m).

SECTION 6. Amends Sections 51.13(d) and (e), Family Code, as follows:

(d) Provides that an adjudication under Section 54.03 that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to TJJD, rather than the Texas Youth Commission (TYC), under Section 54.04(d)(2) (relating to providing that if the court or jury makes the finding allowing the court to make a disposition in the case, authorizing the court to commit the child to TYC without a determinate sentence ), (d)(3) (relating to providing relating to providing that if the court or jury makes the finding allowing the court to make a disposition in the case authorizing the court or jury to sentence the child to commitment in TYC with a possible transfer to the Texas Department of Criminal Justice), or (m) (relating to authorizing the court or jury to sentence a child adjudicated for habitual felony conduct and applicable to the conduct adjudicated in the pending case) or 54.05(f) (relating to authorizing a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony to be modified so as to commit the child to TYC if the child violated a certain court orders) is a final felony

conviction only for the purposes of Sections 12.42(a) (relating to requiring a defendant to be punished for a felony of the second degree, if it is shown on the trial of a felony of the third degree that defendant had been previously convicted of a certain felony), (b) (relating to requiring a convicted defendant to be punished for a felony of the first degree, if it is shown on the trial of a felony of the second degree that the defendant had previously been convicted of a certain felony), and (c)(1) (relating to requiring a defendant to be punished by imprisonment for life, if it is shown on trial of a felony of the first degree that the defendant had previously been convicted of a certain felony), Penal Code, rather than Sections 12.42(a), (b), (c)(1), and (e) [Repealed], Penal Code.

(e) Provides that a finding that a child engaged in conduct indicating a need for supervision as described by Section 51.03(b)(8), rather than as described by Section 51.03(b)(7), is a conviction only for the purposes of Sections 43.261(c) (relating to providing that a certain offense is a Class B misdemeanor) and (d) (relating to providing that it is a defense to prosecution that the actor engaged in the conduct that constitutes a certain offense because the actor was the victim of conduct that constitutes an offense), Penal Code.

SECTION 7. Amends Section 54.0404(a), Family Code, to authorize the juvenile court, if a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(8), rather than described by Section 51.03(b)(7), to enter an order requiring the child to attend and successfully complete an educational program described by Section 37.218 (Programs on Dangers of Students Sharing Visual Material Depicting Minor Engaged in Sexual Conduct), Education Code, or another equivalent educational program.

SECTION 8. Amends Section 58.003(c-3), Family Code, as added by Chapter 1322 (S.B. 407), Acts of the 82nd Legislature, Regular Session, 2011, by redesignating it as Section 58.003(c-5), Family Code.

SECTION 9. Amends Section 58.003(c-4), Family Code, as added by Chapter 1322 (S.B. 407), Acts of the 82nd Legislature, Regular Session, 2011, by redesignating it as Section 58.003(c-6), Family Code, and making conforming changes.

SECTION 10. Reenacts Section 58.003(d), Family Code, as amended by Chapters 1150 (H.B. 2015) and 1322 (S.B. 407), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

(d) Authorizes the court to grant to a child the relief authorized in Subsection (a) (relating to providing that on the application of a person who has been found to have engaged in certain conduct, or a person taken into custody to determine whether the person engaged in certain conduct, on the juvenile court's own motion the court is required to order the sealing of the records in the case if certain information is found), (c-1) (relating to authorizing a juvenile court to order the sealing of records concerning a child adjudicated as having engaged in certain conduct), (c-3), or (c-5) at any time after final discharge of the child or after the last official action in the case if there was no adjudication, subject, if applicable, to Subsection (e) (relating to requiring the court to hold a hearing before sealing a person's records unless the applicant waives the right to a hearing). Makes a nonsubstantive change.

SECTION 11. Amends Section 243.005, Human Resources Code, as follows:

Sec. 243.005. INFORMATION PROVIDED BY COMMITTING COURT. Requires a court that commits a child to TJJD, in addition to the information provided under Section 243.004, to provide TJJD with a copy of the following documents:

(1)-(16) Makes no change to these subdivisions;

(17) Makes a nonsubstantive change;

(18) Makes no change to this subdivision;

(19) TJJD standard assessment tool results for the child;

(20) DPS CR 43J form or tracking incident number concerning the child; and

(21) documentation that the committing court has required the child to provide a DNA sample to DPS.

SECTION 12. (a) Provides that Section 51.07, Family Code, as amended by this Act, applies to a juvenile case transfer that occurs on or after the effective date of this Act, regardless of whether the delinquent conduct or conduct indicating a need for supervision that is the basis of the case occurred before, on, or after the effective date of this Act.

(b) Provides that Section 51.072 (Transfer of Probation Supervision Between Counties: Interim Supervision), Family Code, as amended by this Act, applies to a request for interim supervision that is initiated on or after the effective date of this Act, regardless of whether the child was placed on probation before, on, or after the effective date of this Act.

(c) Provides that Section 243.005, Human Resources Code, as amended by this Act, applies to a child who is committed to TJJD on or after the effective date of this Act, regardless of whether the delinquent conduct or conduct indicating a need for supervision for which the child was committed occurred before, on, or after the effective date of this Act.

SECTION 13. Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 14. Effective date: September 1, 2013.