

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1440
By: West
Criminal Justice
4/25/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.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. C.S.S.B. 1440 contains selected recommendations for technical and corrective amendments that were developed and vetted by the workgroup.

C.S.S.B. 1440 amends current law relating to adjudication and disposition of juvenile conduct.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Juvenile Probation Commission and the Texas Youth Commission is transferred to the Texas Juvenile Justice Department in SECTION 23 (Section 58.209, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 4.19, Code of Criminal Procedure, as follows:

Art. 4.19. New heading: TRANSFER OF PERSON CERTIFIED TO STAND TRIAL AS AN ADULT. (a) Creates this subsection from existing text. Authorizes the judge of a criminal court having jurisdiction over a person, notwithstanding the order of a juvenile court to detain a person under the age of 17 who has been certified to stand trial as an adult in a certified juvenile detention facility under Section 54.02(h) (relating to requiring the juvenile court, if it waives jurisdiction, to state specifically in the order its reasons for waiver and certify its action, and is required to transfer the person to the appropriate court and cause the results of the diagnostic study of the person to be transferred to the appropriate criminal prosecutor), Family Code, to order the person to be transferred to an adult facility, rather than authorizing the judge of a criminal court having jurisdiction over a child to order the child, notwithstanding the order of a juvenile court to detain a child in a certified juvenile detention facility under Section 54.02(h), Family Code, to be transferred to another facility and treated as an adult as provided by this code. Requires a child who is transferred to an adult facility to be detained under conditions meeting the requirements of Section 51.12 (Place and Conditions of Detention), Family Code.

(b) Requires the judge of the criminal court having jurisdiction over the person, on the 17th birthday of a person described by Subsection (a) who is detained in a certified juvenile detention facility under Section 54.02(h), Family Code, to order the person to be transferred to an adult facility.

SECTION 2. Amends Article 24.011, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (d-1), as follows:

(c) Authorizes the court, if the witness is in a placement in the custody of the Texas Juvenile Justice Department (TJJD), rather than the Texas Youth Commission (TYC), a

juvenile secure detention facility, or a juvenile secure correctional facility, to issue a bench warrant or direct that an attachment issue to require a peace officer or probation officer to secure custody of the person at the placement and produce the person in court. Requires the court, when the person is no longer needed as a witness or the period prescribed by Subsection (d-1) has expired without extension, to order the peace officer or probation officer to return the person to the placement from which the person was released.

(d-1) Authorizes a witness younger than 17 years of age held in custody under this article to be placed in a certified juvenile detention facility for a period not to exceed 30 days. Authorizes the length of placement to be extended in increments of 30 days by the court that issued the original bench warrant. Provides that if the placement is not extended, the period under this article expires and the witness may be returned as provided by Subsection (c).

SECTION 3. 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 4. 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 5. 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 6. Amends Section 51.07, Family Code, as follows:

Sec. 51.07. TRANSFER TO ANOTHER COUNTY FOR 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 under Section 54.04 (Disposition Hearing). Provides that consent by the court of the county where the child resides is not required.

(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 7. 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 (TJPC), 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, on initiating a transfer of probation supervision under this section, for a child ordered to submit a DNA sample as a condition of probation, 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 8. 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 9. Amends Section 51.17(c), Family Code, to provide that the Texas Rules of Evidence, except as otherwise provided by this title, applicable, rather than apply, to criminal cases and Articles 33.03 (Presence of Defendant) and 37.07 (Verdict Must be General; Separate Hearing on Proper Punishment) and Chapter 38 (Evidence in Criminal Actions), Code of Criminal Procedure, apply in a judicial proceeding under this title.

SECTION 10. Amends Section 52.0151, Family Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the court, if a witness is in a placement in the custody of TJJD, rather than in the custody of TYC, a juvenile secure detention facility, or a juvenile secure correctional facility, to issue a bench warrant or direct that an attachment issue to require a peace officer or probation officer to secure custody of the person at the placement and produce the person in court. Requires the court, once the person is no longer needed as a witness or the period prescribed by Subsection (c) has expired without extension, to order the peace officer or probation officer to return the person to the placement from which the person was released.

(c) Authorizes a witness held in custody under this section to be placed in a certified juvenile detention facility for a period not to exceed 30 days. Authorizes the length of placement to be extended in 30-day increments by the court that issued the original bench warrant. Provides that if the placement is not extended, the period under this article expires and the witness may be returned as provided by Subsection (a).

SECTION 11. Amends the heading to Section 53.045, Family Code, to read as follows:

Sec. 53.045. OFFENSES ELIGIBLE FOR DETERMINATE SENTENCE.

SECTION 12. Amends Section 54.011(e), Family Code, to authorize a status offender to be detained for a necessary period, not to exceed the period allowed under the Interstate Compact for Juveniles, rather than not to exceed five days, to enable the child's return to the child's home in another state under Chapter 60 (Uniform Interstate Compact on Juveniles).

SECTION 13. Amends Section 54.02, Family Code, by adding Subsection (h-1) and amending Subsections (k) and (l), as follows:

(h-1) Requires the juvenile court, if the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), 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.

(k) Requires that the petition and notice requirements of Sections 53.04 (Court Petition; Answer), 53.05 (Time Set for Hearing), 53.06 (Summons), and 53.07 (Service of Summons) of this code be satisfied, and requires that the summons state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) (relating to authorizing the juvenile court to waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings), rather than under Subsection (j) of this section. Provides that the person's parent, custodian, guardian, or guardian ad litem is not considered a party to a proceeding under Subsection (j) and it is not necessary to provide the parent, custodian, guardian, or guardian ad litem with notice.

(l) Requires the juvenile court to conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j), rather than under Subsection (j) of this section. Authorizes a waiver of jurisdiction under Subsection (j), except as otherwise provided by this subsection, to be made without the necessity of conducting the diagnostic study or complying with the requirements of discretionary transfer proceedings under Subsection

(d) (relating to requiring the juvenile court, prior to the hearing, to order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense). Requires the court, if requested by the attorney for the person at least 10 days before the transfer hearing, to order that the person be examined pursuant to Section 51.20(a) (relating to authorizing the juvenile court to order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in certain conduct to be examined by one of certain persons) 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.

SECTION 14. 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 15. Amends the heading to Section 56.03, Family Code, to read as follows:

Sec. 56.03. APPEAL BY STATE IN CASES OF OFFENSES ELIGIBLE FOR DETERMINATE SENTENCE.

SECTION 16. 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 17. 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 18. 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 19. Amends Section 58.003(g-1), Family Code, to provide that statistical data, rather than any records, collected or maintained by TJJD, including statistical data submitted under Section 221.007 (Juvenile Board Records and Reports), Human Resources Code, is not subject to a sealing order issued under this section, and makes a nonsubstantive change.

SECTION 20. Amends Section 58.203(a), Family Code, as follows:

(a) Requires the Department of Public Safety of the State of Texas (DPS) to certify to the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if:

(1) Makes no change to this subdivision;

(2) the juvenile case did not include conduct resulting in determinate sentence proceedings, rather than the juvenile case did not include violent or habitual felony conduct resulting in proceedings, in the juvenile court under Section 53.045; and

(3) Makes no change to this subdivision.

SECTION 21. Amends Section 58.204(b), Family Code, as follows:

(b) Authorizes DPS, on certification of records in a case under Section 58.203 (Certification), to permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) Makes nonsubstantive changes;

(2) for research purposes, by TJJD, rather than for research purposes by the Texas Juvenile Probation Commission (TJPC), TYC, or the Criminal Justice Policy Council;

(3) by 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;

(4) with the permission of the juvenile court at the request of the person who is the subject of the records; or

(5) 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.

SECTION 22. Amends Section 58.207, Family Code, as follows:

Sec. 58.207. JUVENILE COURT ORDERS ON CERTIFICATION. (a) Requires the juvenile court, on certification of records in a case under Section 58.203, to order:

(1) that the following records relating to the case are authorized to be accessed only as provided by Section 58.204(b):

(A) if the respondent was committed to TJJD, records maintained by TJJD, rather than if the respondent was committed to TYC, records maintained by TYC; and

(B)-(E) Makes no change to these paragraphs; and

(2) Makes no change to this subdivision.

(b) Provides that the agency maintaining the records, except as provided by Subsection (c), on receipt of an order under Subsection (a)(1) is authorized to allow access only as provided by Section 58.204(b), and is required to respond to a request for information about the records by stating that the records do not exist.

(c) Provides that Subsection (b) does not apply if:

(1) the subject of an order issued under Subsection (a)(1) is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department; or

(2) the agency has received notice that the records are not subject to restricted access under Section 58.211.

(d) Authorizes an agency listed in Subsection (a)(1), notwithstanding Subsection (b) and Section 58.206(b) (relating to prohibiting a person who is the subject of certified records from waiving the restricted status of the records or the consequences of the restricted status), with the permission of the subject of the records, to permit the state military forces or the United States military forces to have access to juvenile records held by that agency. 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 that have not been restricted under Subsection (a).

SECTION 23. Amends Section 58.209, Family Code, as follows:

Sec. 58.209. New heading: INFORMATION TO CHILD BY PROBATION OFFICER OR TEXAS JUVENILE JUSTICE DEPARTMENT. (a) Requires a probation officer or an official at TJJD, rather than TYC, reception center, as soon as practicable, when a child is placed on probation for an offense that may be eligible for automatic restricted access at age 17 or when a child is received by TJJD, rather than TYC, on an indeterminate commitment, to explain the substance of the following information to the child:

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

(5) Makes a nonsubstantive change;

(6) Makes no change to this subdivision; and

(7) 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 appropriate.

(b) Requires the probation officer or TJJD official, rather than TYC official, to give the child a written copy of the explanation provided, and communicate the same information to at least one of the child's parents or, if none can be found, to the child's guardian or custodian.

(c) Requires TJJD, rather than TJPC and TYC, to adopt rules to implement this section and to facilitate the effective explanation of the information required to be communicated by this section.

SECTION 24. Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of certain appeals, actions, offenses, and injunctions, including criminal actions given preference over other criminal actions against persons, rather than children, who are detained as provided by Section 51.12, Family Code, after transfer for prosecution in criminal court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court), Family Code.

SECTION 25. 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 26. Amends the heading to Section 244.014, Human Resources Code, to read as follows:

Sec. 244.014. REFERRAL OF DETERMINATE SENTENCE OFFENDERS FOR TRANSFER.

SECTION 27. (a) Provides that Article 4.19, Code of Criminal Procedure, and Section 51.07, Family Code, as amended by this Act, apply 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 Article 24.011 (Subpoenas; Child Witnesses), Code of Criminal Procedure, and Section 52.0151 (Bench Warrant; Attachment of Witness in Custody), Family Code, as amended by this Act, apply to the detention of a witness that occurs on or after the effective date of this Act, regardless of whether any prior event connected to the proceeding, action, or decision occurred before the effective date of this Act.

(c) 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.

(d) Provides that Section 243.005 (Information Provided by Committing Court), 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 28. 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 29. Effective date: September 1, 2013.