

By: McClendon

H.B. No. 2862

A BILL TO BE ENTITLED

AN ACT

relating to procedures related to juvenile cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Articles 62.352(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) After a hearing under Article 62.351 or under a plea agreement described by Article 62.355(b), the juvenile court may enter an order:

(1) deferring decision on requiring registration under this chapter until the respondent has completed treatment for the respondent's sexual offense as a condition of probation or while committed to the Texas Juvenile Justice Department [~~Youth Commission~~]; or

(2) requiring the respondent to register as a sex offender but providing that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment, and public or private institutions of higher education.

(c) If the court enters an order described by Subsection (b)(1), the court retains discretion and jurisdiction to require, or exempt the respondent from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment, except that during the period of deferral, registration may not be required. Following successful completion

1 of treatment, the respondent is exempted from registration under
2 this chapter unless a hearing under this subchapter is held on
3 motion of the prosecuting attorney ~~[state]~~, regardless of whether
4 the respondent is 18 years of age or older, and the court determines
5 the interests of the public require registration. Not later than
6 the 10th day after the date of the respondent's successful
7 completion of treatment, the treatment provider shall notify the
8 juvenile court and prosecuting attorney of the completion.

9 SECTION 2. Section 51.02(8-a), Family Code, is amended to
10 read as follows:

11 (8-a) "Nonsecure correctional facility" means a
12 facility described by Section 51.126 ~~[, other than a secure~~
13 ~~correctional facility, that accepts only juveniles who are on~~
14 ~~probation and that is operated by or under contract with a~~
15 ~~governmental unit, as defined by Section 101.001, Civil Practice~~
16 ~~and Remedies Code].~~

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

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

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

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

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

1 (4) secure detention facility as provided by
2 Subsection (j); ~~[or]~~

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

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

7 (j-1) After being taken into custody, a child may be
8 detained in a nonsecure correctional facility until the child is
9 released under Section 53.01, 53.012, or 53.02 or until a detention
10 hearing is held under Section 54.01(a), if:

11 (1) the nonsecure correctional facility has been
12 appropriately registered and certified;

13 (2) a certified secure detention facility is not
14 available in the county in which the child is taken into custody;

15 (3) the nonsecure correctional facility complies with
16 the short-term detention standards adopted by the Texas Juvenile
17 Justice Department; and

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

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

23 (s) If a child is transferred to criminal court under this
24 section, only the petition for discretionary transfer, the order of
25 transfer, and the order of commitment, if any, are a part of the
26 district clerk's public record.

27 SECTION 5. Sections 54.04(b) and (d), Family Code, are

1 amended to read as follows:

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

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

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

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

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

26 (i) a suitable foster home;

27 (ii) a suitable public or private

1 residential treatment facility licensed by a state governmental
2 entity or exempted from licensure by state law, except a facility
3 operated by the Texas Juvenile Justice Department [~~Youth~~
4 ~~Commission~~]; or

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

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

16 (3) if the court or jury found at the conclusion of the
17 adjudication hearing that the child engaged in delinquent conduct
18 that included a violation of a penal law listed in Section 53.045(a)
19 and if the petition was approved by the grand jury under Section
20 53.045, the court or jury may sentence the child to commitment in
21 the Texas Juvenile Justice Department [~~Youth Commission~~] with a
22 possible transfer to the Texas Department of Criminal Justice for a
23 term of:

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

26 (i) a capital felony;

27 (ii) a felony of the first degree; or

1 (iii) an aggravated controlled substance
2 felony;

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

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

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

10 (5) the court may place the child in a suitable
11 nonsecure correctional facility that is registered and meets the
12 applicable standards for the facility as provided by Section
13 51.126; or

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

16 SECTION 6. Section 54.0482, Family Code, is amended by
17 amending Subsections (a), (e), and (f) and adding Subsection (b-1)
18 to read as follows:

19 (a) A juvenile probation department that receives a payment
20 to a victim as the result of a juvenile court order for restitution
21 shall immediately:

22 (1) deposit the payment in an interest-bearing account
23 in the county treasury; and

24 (2) notify the victim [~~by certified mail, sent to the~~
25 ~~last known address of the victim,~~] that a payment has been received.

26 (b-1) If the victim does not make a claim for payment on or
27 before the 30th day after the date of being notified under

1 Subsection (a), the juvenile probation department shall notify the
2 victim by certified mail, sent to the last known address of the
3 victim, that a payment has been received.

4 (e) If a victim claims a payment on or before the fifth
5 anniversary of the date on which the juvenile probation department
6 mailed a notice to the victim under Subsection (b-1) [~~(a)~~], the
7 juvenile probation department shall pay the victim the amount of
8 the original payment, less any interest earned while holding the
9 payment.

10 (f) If a victim does not claim a payment on or before the
11 fifth anniversary of the date on which the juvenile probation
12 department mailed a notice to the victim under Subsection (b-1)
13 [~~(a)~~], the department:

14 (1) has no liability to the victim or anyone else in
15 relation to the payment; and

16 (2) shall transfer the payment from the
17 interest-bearing account to a special fund of the county treasury,
18 the unclaimed juvenile restitution fund.

19 SECTION 7. Section 54.05(e), Family Code, is amended to
20 read as follows:

21 (e) After the hearing on the merits or facts, the court may
22 consider written reports from probation officers, professional
23 court employees, or professional consultants in addition to the
24 testimony of other witnesses. On or before the second day before
25 the date of [~~Prior to~~] the hearing to modify disposition, the court
26 shall provide the attorney for the child and the prosecuting
27 attorney with access to all written matter to be considered by the

1 court in deciding whether to modify disposition. The court may
2 order counsel not to reveal items to the child or his parent,
3 guardian, or guardian ad litem if such disclosure would materially
4 harm the treatment and rehabilitation of the child or would
5 substantially decrease the likelihood of receiving information
6 from the same or similar sources in the future.

7 SECTION 8. Section 54.051, Family Code, is amended by
8 amending Subsections (b), (e), (e-2), (e-3), and (i) and adding
9 Subsection (d-1) to read as follows:

10 (b) The hearing must be conducted before the person's
11 [child's] 19th birthday, or before the person's 18th birthday if the
12 offense for which the person was placed on probation occurred
13 before September 1, 2011, and must be conducted in the same manner
14 as a hearing to modify disposition under Section 54.05.

15 (d-1) After a transfer to district court under Subsection
16 (d), only the petition, the grand jury approval, the judgment
17 concerning the conduct for which the person was placed on
18 determinate sentence probation, and the transfer order are a part
19 of the district clerk's public record.

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

26 (e-2) If a person ~~[child]~~ who is placed on community
27 supervision under this section violates a condition of that

1 supervision or if the person [~~child~~] violated a condition of
2 probation ordered under Section 54.04(q) and that probation
3 violation was not discovered by the state before the person's
4 [~~child's~~] 19th birthday, the district court shall dispose of the
5 violation of community supervision or probation, as appropriate, in
6 the same manner as if the court had originally exercised
7 jurisdiction over the case. If the judge revokes community
8 supervision, the judge may reduce the prison sentence to any length
9 without regard to the minimum term imposed by Section 23(a),
10 Article 42.12, Code of Criminal Procedure.

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

17 (i) If the juvenile court exercises jurisdiction over a
18 person who is 18 or 19 years of age or older, as applicable, under
19 Section 51.041 or 51.0412, the court or jury may, if the person is
20 otherwise eligible, place the person on probation under Section
21 54.04(q). The juvenile court shall set the conditions of probation
22 and immediately transfer supervision of the person to the
23 appropriate court exercising criminal jurisdiction under
24 Subsection (e).

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

27 (b) The court shall notify the following of the time and

1 place of the hearing:

2 (1) the person to be transferred or released under
3 supervision;

4 (2) the parents of the person;

5 (3) any legal custodian of the person, including the
6 Texas Juvenile Justice Department [~~Youth Commission~~];

7 (4) the office of the prosecuting attorney that
8 represented the state in the juvenile delinquency proceedings;

9 (5) the victim of the offense that was included in the
10 delinquent conduct that was a ground for the disposition, or a
11 member of the victim's family; and

12 (6) any other person who has filed a written request
13 with the court to be notified of a release hearing with respect to
14 the person to be transferred or released under supervision.

15 (d) At a hearing under this section the court may consider
16 written reports and supporting documents from probation officers,
17 professional court employees, professional consultants, or
18 employees of the Texas Juvenile Justice Department [~~Youth
19 Commission~~], in addition to the testimony of witnesses. On or
20 before the fifth day [~~At least one day~~] before the date of the
21 hearing, the court shall provide the attorney for the person to be
22 transferred or released under supervision with access to all
23 written matter to be considered by the court. All written matter is
24 admissible in evidence at the hearing.

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

27 (b) Except as provided by Section 54.051(d-1) and by Article

1 15.27, Code of Criminal Procedure, the records and files of a
2 juvenile court, a clerk of court, a juvenile probation department,
3 or a prosecuting attorney relating to a child who is a party to a
4 proceeding under this title are open to inspection only by:

5 (1) the judge, probation officers, and professional
6 staff or consultants of the juvenile court;

7 (2) a juvenile justice agency as that term is defined
8 by Section 58.101;

9 (3) an attorney for a party to the proceeding;

10 (4) a public or private agency or institution
11 providing supervision of the child by arrangement of the juvenile
12 court, or having custody of the child under juvenile court order; or

13 (5) with leave of the juvenile court, any other
14 person, agency, or institution having a legitimate interest in the
15 proceeding or in the work of the court.

16 SECTION 11. Section 61.0031(d), Family Code, is amended to
17 read as follows:

18 (d) The juvenile court to which the order has been
19 transferred shall require the parent or other eligible person to
20 appear before the court to notify the person of the existence and
21 terms of the order, unless the permanent supervision hearing under
22 Section 51.073(c) has been waived. Failure to do so renders the
23 order unenforceable.

24 SECTION 12. Section 221.003(c), Human Resources Code, is
25 amended to read as follows:

26 (c) Any statement made by a child and any mental health data
27 obtained from the child during the administration of the mental

1 health screening instrument or the initial risk and needs
2 assessment instruments under this section is not admissible against
3 the child at any adjudication [~~other~~] hearing. The person
4 administering the mental health screening instrument or initial
5 risk and needs assessment instruments shall inform the child that
6 any statement made by the child and any mental health data obtained
7 from the child during the administration of the instrument is not
8 admissible against the child at any adjudication [~~other~~] hearing.

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

11 (a) The board by rule shall adopt certification standards
12 for persons who are employed in nonsecure correctional facilities
13 that accept [~~only~~] juveniles [~~who are on probation~~] and that are
14 operated by or under contract with a governmental unit, as defined
15 by Section 101.001, Civil Practice and Remedies Code.

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

20 (b) Sections 54.04(b), 54.05(e), and 54.11(d), Family Code,
21 as amended by this Act, apply only to conduct that occurs on or
22 after the effective date of this Act. Conduct that occurs before the
23 effective date of this Act is covered by the law in effect at the
24 time the conduct occurred, and the former law is continued in effect
25 for that purpose. For the purposes of this section, conduct occurs
26 before the effective date of this Act if any element of the conduct
27 occurred before that date.

1 SECTION 15. This Act takes effect September 1, 2013.