

By: McClendon

H.B. No. 2862

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures related to juvenile cases.

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

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

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

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

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

19 (c) If the court enters an order described by Subsection  
20 (b)(1), the court retains discretion and jurisdiction to require,  
21 or exempt the respondent from, registration under this chapter at  
22 any time during the treatment or on the successful or unsuccessful  
23 completion of treatment, except that during the period of deferral,  
24 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 54.02, Family Code, is amended by adding  
10 Subsection (s) to read as follows:

11 (s) If a child is transferred to criminal court under this  
12 section, only the petition for discretionary transfer, the order of  
13 transfer, and the order of commitment, if any, are a part of the  
14 district clerk's public record. All other documents filed in the  
15 case must be transferred under seal and made available only to the  
16 judge, prosecution, and defense.

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

19 (b) At the disposition hearing, the juvenile court,  
20 notwithstanding the Texas Rules of Evidence or Chapter 37, Code of  
21 Criminal Procedure, may consider written reports from probation  
22 officers, professional court employees, or professional  
23 consultants in addition to the testimony of witnesses. On or  
24 before the second day before the date of [~~Prior to~~] the disposition  
25 hearing, the court shall provide the attorney for the child and the  
26 prosecuting attorney with access to all written matter to be  
27 considered by the court in disposition. The court may order

1 counsel not to reveal items to the child or the child's parent,  
2 guardian, or guardian ad litem if such disclosure would materially  
3 harm the treatment and rehabilitation of the child or would  
4 substantially decrease the likelihood of receiving information  
5 from the same or similar sources in the future.

6 SECTION 4. Section 54.0482, Family Code, is amended by  
7 amending Subsections (a), (e), and (f) and adding Subsection (b-1)  
8 to read as follows:

9 (a) A juvenile probation department that receives a payment  
10 to a victim as the result of a juvenile court order for restitution  
11 shall immediately:

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

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

16 (b-1) If the victim does not make a claim for payment on or  
17 before the 30th day after the date of being notified under  
18 Subsection (a), the juvenile probation department shall notify the  
19 victim by certified mail, sent to the last known address of the  
20 victim, that a payment has been received.

21 (e) If a victim claims a payment on or before the fifth  
22 anniversary of the date on which the juvenile probation department  
23 mailed a notice to the victim under Subsection (b-1) [~~(a)~~], the  
24 juvenile probation department shall pay the victim the amount of  
25 the original payment, less any interest earned while holding the  
26 payment.

27 (f) If a victim does not claim a payment on or before the

1 fifth anniversary of the date on which the juvenile probation  
2 department mailed a notice to the victim under Subsection (b-1)  
3 [~~(a)~~], the department:

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

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

9 SECTION 5. Section 54.05(e), Family Code, is amended to  
10 read as follows:

11 (e) After the hearing on the merits or facts, the court may  
12 consider written reports from probation officers, professional  
13 court employees, or professional consultants in addition to the  
14 testimony of other witnesses. On or before the second day before  
15 the date of [~~Prior to~~] the hearing to modify disposition, the court  
16 shall provide the attorney for the child and the prosecuting  
17 attorney with access to all written matter to be considered by the  
18 court in deciding whether to modify disposition. The court may  
19 order counsel not to reveal items to the child or his parent,  
20 guardian, or guardian ad litem if such disclosure would materially  
21 harm the treatment and rehabilitation of the child or would  
22 substantially decrease the likelihood of receiving information  
23 from the same or similar sources in the future.

24 SECTION 6. Section 54.051, Family Code, is amended by  
25 amending Subsections (b), (e), (e-2), (e-3), and (i) and adding  
26 Subsection (d-1) to read as follows:

27 (b) The hearing must be conducted before the person's

1 ~~[child's]~~ 19th birthday, or before the person's 18th birthday if the  
2 offense for which the person was placed on probation occurred  
3 before September 1, 2011, and must be conducted in the same manner  
4 as a hearing to modify disposition under Section 54.05.

5 (d-1) After a transfer to district court under Subsection  
6 (d), only the initial petition, the initial grand jury approval,  
7 the original judgment, and the transfer order are a part of the  
8 district clerk's public record. All other documents filed in the  
9 case must be transferred under seal and made available only to the  
10 judge, prosecution, and defense.

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

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

1 Article 42.12, Code of Criminal Procedure.

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

8 (i) If the juvenile court exercises jurisdiction over a  
9 person who is 18 or 19 years of age or older, as applicable, under  
10 Section 51.041 or 51.0412, the court or jury may, if the person is  
11 otherwise eligible, place the person on probation under Section  
12 54.04(q). The juvenile court shall set the conditions of probation  
13 and immediately transfer supervision of the person to the  
14 appropriate court exercising criminal jurisdiction under  
15 Subsection (e).

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

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

20 (1) the person to be transferred or released under  
21 supervision;

22 (2) the parents of the person;

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

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

27 (5) the victim of the offense that was included in the

1 delinquent conduct that was a ground for the disposition, or a  
2 member of the victim's family; and

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

6 (d) At a hearing under this section the court may consider  
7 written reports and supporting documents from probation officers,  
8 professional court employees, professional consultants, or  
9 employees of the Texas Juvenile Justice Department [~~Youth~~  
10 ~~Commission~~], in addition to the testimony of witnesses. On or  
11 before the fifth day [~~At least one day~~] before the date of the  
12 hearing, the court shall provide the attorney for the person to be  
13 transferred or released under supervision with access to all  
14 written matter to be considered by the court. All written matter is  
15 per se admissible in evidence at the hearing.

16 SECTION 8. 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 9. 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 10. (a) Sections 54.02(s) and 54.051(d-1), Family  
10 Code, as added by this Act, apply to a transfer hearing commenced  
11 under Section 54.02 or 54.051, Family Code, as applicable, on or  
12 after the effective date of this Act. A transfer hearing commenced  
13 before the effective date of this Act is governed by the law in  
14 effect on the date the hearing was commenced, and the former law is  
15 continued in effect for that purpose.

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

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