

1-1 By: McClendon (Senate Sponsor - West) H.B. No. 2862
1-2 (In the Senate - Received from the House May 9, 2013;
1-3 May 9, 2013, read first time and referred to Committee on Criminal
1-4 Justice; May 17, 2013, reported favorably by the following vote:
1-5 Yeas 7, Nays 0; May 17, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Whitmire	X		
1-9	Huffman	X		
1-10	Carona	X		
1-11	Hinojosa	X		
1-12	Patrick	X		
1-13	Rodriguez	X		
1-14	Schwertner	X		

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to procedures related to juvenile cases.
1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-19 SECTION 1. Articles 62.352(b) and (c), Code of Criminal
1-20 Procedure, are amended to read as follows:
1-21 (b) After a hearing under Article 62.351 or under a plea
1-22 agreement described by Article 62.355(b), the juvenile court may
1-23 enter an order:
1-24 (1) deferring decision on requiring registration
1-25 under this chapter until the respondent has completed treatment for
1-26 the respondent's sexual offense as a condition of probation or
1-27 while committed to the Texas Juvenile Justice Department [~~Youth~~
1-28 ~~Commission~~]; or
1-29 (2) requiring the respondent to register as a sex
1-30 offender but providing that the registration information is not
1-31 public information and is restricted to use by law enforcement and
1-32 criminal justice agencies, the Council on Sex Offender Treatment,
1-33 and public or private institutions of higher education.
1-34 (c) If the court enters an order described by Subsection
1-35 (b)(1), the court retains discretion and jurisdiction to require,
1-36 or exempt the respondent from, registration under this chapter at
1-37 any time during the treatment or on the successful or unsuccessful
1-38 completion of treatment, except that during the period of deferral,
1-39 registration may not be required. Following successful completion
1-40 of treatment, the respondent is exempted from registration under
1-41 this chapter unless a hearing under this subchapter is held on
1-42 motion of the prosecuting attorney [~~state~~], regardless of whether
1-43 the respondent is 18 years of age or older, and the court determines
1-44 the interests of the public require registration. Not later than
1-45 the 10th day after the date of the respondent's successful
1-46 completion of treatment, the treatment provider shall notify the
1-47 juvenile court and prosecuting attorney of the completion.
1-48 SECTION 2. Section 51.02(8-a), Family Code, is amended to
1-49 read as follows:
1-50 (8-a) "Nonsecure correctional facility" means a
1-51 facility described by Section 51.126 [~~, other than a secure~~
1-52 ~~correctional facility, that accepts only juveniles who are on~~
1-53 ~~probation and that is operated by or under contract with a~~
1-54 ~~governmental unit, as defined by Section 101.001, Civil Practice~~
1-55 ~~and Remedies Code~~].
1-56 SECTION 3. Section 51.12, Family Code, is amended by
1-57 amending Subsection (a) and adding Subsection (j-1) to read as
1-58 follows:
1-59 (a) Except as provided by Subsection (h), a child may be
1-60 detained only in a:
1-61 (1) juvenile processing office in compliance with
1-62 Section 52.025;
1-63 (2) place of nonsecure custody in compliance with
1-64 Article 45.058, Code of Criminal Procedure;

2-1 (3) certified juvenile detention facility that
 2-2 complies with the requirements of Subsection (f);

2-3 (4) secure detention facility as provided by
 2-4 Subsection (j); ~~[or]~~

2-5 (5) county jail or other facility as provided by
 2-6 Subsection (1); or

2-7 (6) nonsecure correctional facility as provided by
 2-8 Subsection (j-1).

2-9 (j-1) After being taken into custody, a child may be
 2-10 detained in a nonsecure correctional facility until the child is
 2-11 released under Section 53.01, 53.012, or 53.02 or until a detention
 2-12 hearing is held under Section 54.01(a), if:

2-13 (1) the nonsecure correctional facility has been
 2-14 appropriately registered and certified;

2-15 (2) a certified secure detention facility is not
 2-16 available in the county in which the child is taken into custody;

2-17 (3) the nonsecure correctional facility complies with
 2-18 the short-term detention standards adopted by the Texas Juvenile
 2-19 Justice Department; and

2-20 (4) the nonsecure correctional facility has been
 2-21 designated by the county juvenile board for the county in which the
 2-22 facility is located.

2-23 SECTION 4. Section 54.02, Family Code, is amended by adding
 2-24 Subsection (s) to read as follows:

2-25 (s) If a child is transferred to criminal court under this
 2-26 section, only the petition for discretionary transfer, the order of
 2-27 transfer, and the order of commitment, if any, are a part of the
 2-28 district clerk's public record.

2-29 SECTION 5. Sections 54.04(b) and (d), Family Code, are
 2-30 amended to read as follows:

2-31 (b) At the disposition hearing, the juvenile court,
 2-32 notwithstanding the Texas Rules of Evidence or Chapter 37, Code of
 2-33 Criminal Procedure, may consider written reports from probation
 2-34 officers, professional court employees, or professional
 2-35 consultants in addition to the testimony of witnesses. On or
 2-36 before the second day before the date of ~~[Prior to]~~ the disposition
 2-37 hearing, the court shall provide the attorney for the child and the
 2-38 prosecuting attorney with access to all written matter to be
 2-39 considered by the court in disposition. The court may order
 2-40 counsel not to reveal items to the child or the child's parent,
 2-41 guardian, or guardian ad litem if such disclosure would materially
 2-42 harm the treatment and rehabilitation of the child or would
 2-43 substantially decrease the likelihood of receiving information
 2-44 from the same or similar sources in the future.

2-45 (d) If the court or jury makes the finding specified in
 2-46 Subsection (c) allowing the court to make a disposition in the case:

2-47 (1) the court or jury may, in addition to any order
 2-48 required or authorized under Section 54.041 or 54.042, place the
 2-49 child on probation on such reasonable and lawful terms as the court
 2-50 may determine:

2-51 (A) in the child's own home or in the custody of a
 2-52 relative or other fit person; or

2-53 (B) subject to the finding under Subsection (c)
 2-54 on the placement of the child outside the child's home, in:

2-55 (i) a suitable foster home;

2-56 (ii) a suitable public or private
 2-57 residential treatment facility licensed by a state governmental
 2-58 entity or exempted from licensure by state law, except a facility
 2-59 operated by the Texas Juvenile Justice Department ~~[Youth~~
 2-60 ~~Commission]~~; or

2-61 (iii) a suitable public or private
 2-62 post-adjudication secure correctional facility that meets the
 2-63 requirements of Section 51.125, except a facility operated by the
 2-64 Texas Juvenile Justice Department ~~[Youth Commission]~~;

2-65 (2) if the court or jury found at the conclusion of the
 2-66 adjudication hearing that the child engaged in delinquent conduct
 2-67 that violates a penal law of this state or the United States of the
 2-68 grade of felony and if the petition was not approved by the grand
 2-69 jury under Section 53.045, the court may commit the child to the
 2-70 Texas Juvenile Justice Department ~~[Youth Commission]~~ without a
 2-71 determinate sentence;

3-1 (3) if the court or jury found at the conclusion of the
 3-2 adjudication hearing that the child engaged in delinquent conduct
 3-3 that included a violation of a penal law listed in Section 53.045(a)
 3-4 and if the petition was approved by the grand jury under Section
 3-5 53.045, the court or jury may sentence the child to commitment in
 3-6 the Texas Juvenile Justice Department [~~Youth Commission~~] with a
 3-7 possible transfer to the Texas Department of Criminal Justice for a
 3-8 term of:

3-9 (A) not more than 40 years if the conduct
 3-10 constitutes:

- 3-11 (i) a capital felony;
- 3-12 (ii) a felony of the first degree; or
- 3-13 (iii) an aggravated controlled substance
 3-14 felony;

3-15 (B) not more than 20 years if the conduct
 3-16 constitutes a felony of the second degree; or

3-17 (C) not more than 10 years if the conduct
 3-18 constitutes a felony of the third degree;

3-19 (4) the court may assign the child an appropriate
 3-20 sanction level and sanctions as provided by the assignment
 3-21 guidelines in Section 59.003; [~~or~~]

3-22 (5) the court may place the child in a suitable
 3-23 nonsecure correctional facility that is registered and meets the
 3-24 applicable standards for the facility as provided by Section
 3-25 51.126; or

3-26 (6) if applicable, the court or jury may make a
 3-27 disposition under Subsection (m).

3-28 SECTION 6. Section 54.0482, Family Code, is amended by
 3-29 amending Subsections (a), (e), and (f) and adding Subsection (b-1)
 3-30 to read as follows:

3-31 (a) A juvenile probation department that receives a payment
 3-32 to a victim as the result of a juvenile court order for restitution
 3-33 shall immediately:

3-34 (1) deposit the payment in an interest-bearing account
 3-35 in the county treasury; and

3-36 (2) notify the victim [~~by certified mail, sent to the~~
 3-37 ~~last known address of the victim,~~] that a payment has been received.

3-38 (b-1) If the victim does not make a claim for payment on or
 3-39 before the 30th day after the date of being notified under
 3-40 Subsection (a), the juvenile probation department shall notify the
 3-41 victim by certified mail, sent to the last known address of the
 3-42 victim, that a payment has been received.

3-43 (e) If a victim claims a payment on or before the fifth
 3-44 anniversary of the date on which the juvenile probation department
 3-45 mailed a notice to the victim under Subsection (b-1) [~~(a)~~], the
 3-46 juvenile probation department shall pay the victim the amount of
 3-47 the original payment, less any interest earned while holding the
 3-48 payment.

3-49 (f) If a victim does not claim a payment on or before the
 3-50 fifth anniversary of the date on which the juvenile probation
 3-51 department mailed a notice to the victim under Subsection (b-1)
 3-52 [~~(a)~~], the department:

3-53 (1) has no liability to the victim or anyone else in
 3-54 relation to the payment; and

3-55 (2) shall transfer the payment from the
 3-56 interest-bearing account to a special fund of the county treasury,
 3-57 the unclaimed juvenile restitution fund.

3-58 SECTION 7. Section 54.05(e), Family Code, is amended to
 3-59 read as follows:

3-60 (e) After the hearing on the merits or facts, the court may
 3-61 consider written reports from probation officers, professional
 3-62 court employees, or professional consultants in addition to the
 3-63 testimony of other witnesses. On or before the second day before
 3-64 the date of [~~Prior to~~] the hearing to modify disposition, the court
 3-65 shall provide the attorney for the child and the prosecuting
 3-66 attorney with access to all written matter to be considered by the
 3-67 court in deciding whether to modify disposition. The court may
 3-68 order counsel not to reveal items to the child or his parent,
 3-69 guardian, or guardian ad litem if such disclosure would materially
 3-70 harm the treatment and rehabilitation of the child or would
 3-71 substantially decrease the likelihood of receiving information

4-1 from the same or similar sources in the future.

4-2 SECTION 8. Section 54.051, Family Code, is amended by
4-3 amending Subsections (b), (e), (e-2), (e-3), and (i) and adding
4-4 Subsection (d-1) to read as follows:

4-5 (b) The hearing must be conducted before the person's
4-6 [child's] 19th birthday, or before the person's 18th birthday if the
4-7 offense for which the person was placed on probation occurred
4-8 before September 1, 2011, and must be conducted in the same manner
4-9 as a hearing to modify disposition under Section 54.05.

4-10 (d-1) After a transfer to district court under Subsection
4-11 (d), only the petition, the grand jury approval, the judgment
4-12 concerning the conduct for which the person was placed on
4-13 determinate sentence probation, and the transfer order are a part
4-14 of the district clerk's public record.

4-15 (e) A district court that exercises jurisdiction over a
4-16 person [child] transferred under Subsection (d) shall place the
4-17 person [child] on community supervision under Article 42.12, Code
4-18 of Criminal Procedure, for the remainder of the person's [child's]
4-19 probationary period and under conditions consistent with those
4-20 ordered by the juvenile court.

4-21 (e-2) If a person [child] who is placed on community
4-22 supervision under this section violates a condition of that
4-23 supervision or if the person [child] violated a condition of
4-24 probation ordered under Section 54.04(q) and that probation
4-25 violation was not discovered by the state before the person's
4-26 [child's] 19th birthday, the district court shall dispose of the
4-27 violation of community supervision or probation, as appropriate, in
4-28 the same manner as if the court had originally exercised
4-29 jurisdiction over the case. If the judge revokes community
4-30 supervision, the judge may reduce the prison sentence to any length
4-31 without regard to the minimum term imposed by Section 23(a),
4-32 Article 42.12, Code of Criminal Procedure.

4-33 (e-3) The time that a person [child] serves on probation
4-34 ordered under Section 54.04(q) is the same as time served on
4-35 community supervision ordered under this section for purposes of
4-36 determining the person's [child's] eligibility for early discharge
4-37 from community supervision under Section 20, Article 42.12, Code of
4-38 Criminal Procedure.

4-39 (i) If the juvenile court exercises jurisdiction over a
4-40 person who is 18 or 19 years of age or older, as applicable, under
4-41 Section 51.041 or 51.0412, the court or jury may, if the person is
4-42 otherwise eligible, place the person on probation under Section
4-43 54.04(q). The juvenile court shall set the conditions of probation
4-44 and immediately transfer supervision of the person to the
4-45 appropriate court exercising criminal jurisdiction under
4-46 Subsection (e).

4-47 SECTION 9. Sections 54.11(b) and (d), Family Code, are
4-48 amended to read as follows:

4-49 (b) The court shall notify the following of the time and
4-50 place of the hearing:

4-51 (1) the person to be transferred or released under
4-52 supervision;

4-53 (2) the parents of the person;

4-54 (3) any legal custodian of the person, including the
4-55 Texas Juvenile Justice Department [Youth Commission];

4-56 (4) the office of the prosecuting attorney that
4-57 represented the state in the juvenile delinquency proceedings;

4-58 (5) the victim of the offense that was included in the
4-59 delinquent conduct that was a ground for the disposition, or a
4-60 member of the victim's family; and

4-61 (6) any other person who has filed a written request
4-62 with the court to be notified of a release hearing with respect to
4-63 the person to be transferred or released under supervision.

4-64 (d) At a hearing under this section the court may consider
4-65 written reports and supporting documents from probation officers,
4-66 professional court employees, professional consultants, or
4-67 employees of the Texas Juvenile Justice Department [Youth
4-68 Commission], in addition to the testimony of witnesses. On or
4-69 before the fifth day [At least one day] before the date of the
4-70 hearing, the court shall provide the attorney for the person to be
4-71 transferred or released under supervision with access to all

5-1 written matter to be considered by the court. All written matter is
5-2 admissible in evidence at the hearing.

5-3 SECTION 10. Section 58.007(b), Family Code, is amended to
5-4 read as follows:

5-5 (b) Except as provided by Section 54.051(d-1) and by Article
5-6 15.27, Code of Criminal Procedure, the records and files of a
5-7 juvenile court, a clerk of court, a juvenile probation department,
5-8 or a prosecuting attorney relating to a child who is a party to a
5-9 proceeding under this title are open to inspection only by:

5-10 (1) the judge, probation officers, and professional
5-11 staff or consultants of the juvenile court;

5-12 (2) a juvenile justice agency as that term is defined
5-13 by Section 58.101;

5-14 (3) an attorney for a party to the proceeding;

5-15 (4) a public or private agency or institution
5-16 providing supervision of the child by arrangement of the juvenile
5-17 court, or having custody of the child under juvenile court order; or

5-18 (5) with leave of the juvenile court, any other
5-19 person, agency, or institution having a legitimate interest in the
5-20 proceeding or in the work of the court.

5-21 SECTION 11. Section 61.0031(d), Family Code, is amended to
5-22 read as follows:

5-23 (d) The juvenile court to which the order has been
5-24 transferred shall require the parent or other eligible person to
5-25 appear before the court to notify the person of the existence and
5-26 terms of the order, unless the permanent supervision hearing under
5-27 Section 51.073(c) has been waived. Failure to do so renders the
5-28 order unenforceable.

5-29 SECTION 12. Section 221.003(c), Human Resources Code, is
5-30 amended to read as follows:

5-31 (c) Any statement made by a child and any mental health data
5-32 obtained from the child during the administration of the mental
5-33 health screening instrument or the initial risk and needs
5-34 assessment instruments under this section is not admissible against
5-35 the child at any adjudication ~~[other]~~ hearing. The person
5-36 administering the mental health screening instrument or initial
5-37 risk and needs assessment instruments shall inform the child that
5-38 any statement made by the child and any mental health data obtained
5-39 from the child during the administration of the instrument is not
5-40 admissible against the child at any adjudication ~~[other]~~ hearing.

5-41 SECTION 13. Section 222.003(a), Human Resources Code, is
5-42 amended to read as follows:

5-43 (a) The board by rule shall adopt certification standards
5-44 for persons who are employed in nonsecure correctional facilities
5-45 that accept ~~[only]~~ juveniles ~~[who are on probation]~~ and that are
5-46 operated by or under contract with a governmental unit, as defined
5-47 by Section 101.001, Civil Practice and Remedies Code.

5-48 SECTION 14. (a) Sections 54.02(s) and 54.051(d-1), Family
5-49 Code, as added by this Act, and Section 58.007(b), Family Code, as
5-50 amended by this Act, apply to a record created before, on, or after
5-51 the effective date of this Act.

5-52 (b) Sections 54.04(b), 54.05(e), and 54.11(d), Family Code,
5-53 as amended by this Act, apply only to conduct that occurs on or
5-54 after the effective date of this Act. Conduct that occurs before the
5-55 effective date of this Act is covered by the law in effect at the
5-56 time the conduct occurred, and the former law is continued in effect
5-57 for that purpose. For the purposes of this section, conduct occurs
5-58 before the effective date of this Act if any element of the conduct
5-59 occurred before that date.

5-60 SECTION 15. This Act takes effect September 1, 2013.

5-61 * * * * *