

BILL ANALYSIS

S.B. 1149
By: Watson
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Recent legislation authorized the commitment of a juvenile in certain counties to a local post-adjudication secure correctional facility in lieu of commitment to the Texas Juvenile Justice Department. Interested parties note that during the course of one county's implementation of a local commitment program, necessary changes in the law were identified. S.B. 1149 seeks to make these changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1149 amends the Human Resources Code to prohibit, with certain exceptions, a juvenile board or local juvenile probation department from discharging from custody a person who is committed under a determinate sentence to a post-adjudication secure correctional facility operated by or under contract with such a board or department. The bill requires the juvenile board or local juvenile probation department to discharge without a court hearing a person committed to the department for a determinate sentence who has not been transferred to the Texas Department of Criminal Justice (TDCJ) under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent in the custody of the juvenile board or local juvenile probation department under the order of commitment equals the period of the sentence. The bill requires the juvenile board or local juvenile probation department to transfer to TDCJ a person who is committed to such a facility and who is the subject of an order transferring the person to the custody of TDCJ for the completion of the person's sentence. The bill requires the juvenile board or local juvenile probation department to discharge from its custody a person not already discharged on the person's 19th birthday, except that the juvenile board or local juvenile probation department is required to transfer a person who has been sentenced under a determinate sentence to commitment to such a facility or who has been returned to the juvenile board or local juvenile probation department under juvenile justice code provisions relating to release or transfer hearings to the custody of TDCJ on the person's 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on determinate sentence parole.

S.B. 1149 requires a juvenile board or local juvenile probation department, not later than the 90th day before the date the board or department transfers a person to the custody of TDCJ for

release on parole supervision under statutory provisions relating to the release under supervision of a child committed under a determinate sentence to such a facility or under the bill's provisions, to submit to TDCJ all pertinent information relating to the person. The bill requires the juvenile board or local juvenile probation department to provide instruction for TDCJ parole officers relating to juvenile programs provided by the juvenile board or local juvenile probation department and requires the juvenile boards, the local juvenile probation departments, and TDCJ to enter into a memorandum of understanding relating to the administration of such instruction. The bill requires TDCJ to grant credit for certain sentence time served by a person in the custody of a juvenile board or local juvenile probation department and in a juvenile detention facility in computing the person's eligibility for parole and discharge from TDCJ.

S.B. 1149 requires a juvenile board or local juvenile probation department to accept a child with a mental illness or an intellectual disability who is committed to the custody of the board or department. The bill requires the juvenile board or local juvenile probation department, unless a child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence, to discharge a child with a mental illness or an intellectual disability from its custody if the child has completed the minimum length of stay for the child's committing offense and if the juvenile board or local juvenile probation department determines that the child is unable to progress in the rehabilitation programs provided by the juvenile board or local juvenile probation department because of the child's mental illness or intellectual disability. The bill makes the discharge of a child who is not receiving court-ordered mental health services effective on the earlier of the date the court enters an order regarding an application for those services filed under the bill's provisions or the 30th day after the date the application is filed and makes the discharge of a child who is not receiving intellectual disability services effective on the 30th day after the date that the referral for those services is made under the bill's provisions. The bill makes the discharge of a child effective immediately if the child is receiving court-ordered mental health services or intellectual disability services. The bill requires the juvenile board or local juvenile probation department, if the child is receiving mental health services outside the child's home county, to notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective. The bill makes a child with a mental illness or an intellectual disability who is discharged from the custody of a juvenile board or local juvenile probation department eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments.

S.B. 1149 requires a juvenile board or local juvenile probation department to establish a system that identifies children with mental illnesses or intellectual disabilities who are in the custody of the juvenile board or local juvenile probation department. The bill requires a juvenile board or local juvenile probation department to arrange for a psychiatrist to examine a child who is identified as having a mental illness before the child is discharged from the custody of the juvenile board or local juvenile probation department under the bill's provisions and to refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. The bill requires a juvenile board or local juvenile probation department to file a sworn application for court-ordered mental health services for a child requiring inpatient psychiatric treatment if the child is not receiving court-ordered mental health services and if the psychiatrist who examined the child determines that the child has a mental illness and that the child meets at least one of the criteria required for court-ordered temporary mental health services. The bill requires a local juvenile probation department, before a child who is identified as having an intellectual disability is discharged from the custody of a juvenile board or local juvenile probation department under the bill's provisions, to refer the child for intellectual disability services if the child is not receiving intellectual disability services.

S.B. 1149 authorizes a juvenile board or local juvenile probation department to petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence. The bill requires such a petition to

be treated as a motion under juvenile justice code provisions relating to the determination of mental illness and requires the juvenile court to proceed in accordance with juvenile justice code provisions governing a proceeding concerning a child with mental illness. The bill requires a juvenile board or local juvenile probation department to cooperate with the juvenile court in any such proceeding. The bill requires the juvenile court to credit to the term of the child's commitment to a juvenile board or local juvenile probation department any time the child is committed to an inpatient mental health facility. The bill prohibits the release of a child committed to an inpatient mental health facility as a result of such a petition from the facility on a pass or furlough. The bill requires an inpatient mental health facility to notify the juvenile court that entered an order of commitment committing a child to a juvenile board or local juvenile probation department if the term of the order committing the child to the facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered. The bill authorizes the juvenile court to transfer the child to the custody of the juvenile board or local juvenile probation department, to transfer the child to TDCJ, or to release the child under supervision, as appropriate.

S.B. 1149 requires a juvenile board or local juvenile probation department that operates or contracts for the operation of a post-adjudication secure correctional facility, after a child without a determinate sentence has completed the minimum length of stay established by the board or department, to discharge the child from the custody of the board or department, to release the child under supervision, or to extend the child's length of stay in the custody of the board or department. The bill conditions such an extension of custody on the basis of clear and convincing evidence that the child is in need of additional rehabilitation from the juvenile board or local juvenile probation department and that the post-adjudication secure correctional facility will provide the most suitable environment for that rehabilitation. The bill authorizes a juvenile board or local juvenile probation department to request at any time approval from the juvenile court that ordered a child's commitment to the department's facility of the department's decision to release the child under supervision. The bill changes the provisions under which the juvenile board or local juvenile probation department may release a child with a determinate sentence without juvenile court approval. The bill limits the applicability of statutory provisions relating to the apprehension of a child after the child's escape from Texas Juvenile Justice Department (TJJD) custody or after the child violates a condition of release and to TJJD's release of a child under supervision to a child who has been committed to a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department and who has either escaped or violated the conditions of release under supervision. The bill grants a hearing examiner who conducts a revocation of a child's release from such a facility the same subpoena authority as provided to a hearing officer at TJJD.

S.B. 1149 adds temporary provisions, set to expire December 31, 2018, to require the independent ombudsman with TJJD to perform the ombudsman's required duties with respect to children committed to TJJD and children committed to a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department. Effective January 1, 2019, the bill limits the powers of the office of the independent ombudsman to secure facilities operated by TJJD and services provided by TJJD related to those facilities.

S.B. 1149 amends the Family Code to include as an exception to the prohibition against the commitment or transfer of a child to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime that the commitment or transfer occurs after transfer from a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department. The bill specifies that in order for an adjudication for conduct constituting a felony offense resulting in commitment to such a facility to be considered a final felony conviction for purposes of Penal Code provisions governing penalties for repeat and habitual felony offenders, the conduct must have occurred on or after December 1, 2013. The bill establishes that for purposes of the transfer of a child to

TDCJ under the bill's provisions, a juvenile court petition alleging a child engaged in conduct for which the child is eligible for a determinate sentence that is approved by a grand jury is an indictment presented by the grand jury.

S.B. 1149 makes juvenile justice code provisions governing release or transfer hearings applicable to a child with a determinate sentence who is committed to a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department and who is referred to the applicable juvenile court for approval of the child's transfer to TDCJ. The bill includes such a juvenile board or local juvenile probation department among the required recipients of notice for such a hearing if the child is committed to a post-adjudication secure correctional facility operated by a board or department, and includes the reports and other documents of employees of such a post-adjudication secure correctional facility among the items a court may consider at the hearing. The bill includes among the information a juvenile court judge in a county with a population of 600,000 or more is required to post in a report on the website of the county in which the court is located the total number of children committed by the judge to such a post-adjudication secure correctional facility.

S.B. 1149 amends the Government Code to make statutory provisions governing the transfer of a person to TDCJ from TJJD applicable to a person transferred to TDCJ from a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department and to make statutory provisions governing determinate sentence parole applicable to a person transferred to TDCJ for release on parole by such a facility or under the bill's provisions.

S.B. 1149 applies to a person committed to or serving a sentence in a post-adjudication secure correctional facility on or after the bill's effective date, regardless of whether the underlying conduct giving rise to the commitment and sentence occurred before, on, or after that date.

S.B. 1149 repeals Section 152.0016(b), Human Resources Code, as added by Chapter 1323 (S.B. 511), Acts of the 83rd Legislature, Regular Session, 2013.

EFFECTIVE DATE

September 1, 2015.