

By: Dutton

H.B. No. 2616

Substitute the following for H.B. No. 2616:

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C.S.H.B. No. 2616

A BILL TO BE ENTITLED

AN ACT

relating to procedures related to juvenile justice proceedings;
increasing the punishment for certain delinquent conduct.

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

SECTION 1. Article 4.19(a), Code of Criminal Procedure, is
amended to read as follows:

(a) 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), Family Code, the judge of the criminal court having
jurisdiction over the person may order the person to be transferred
to an adult facility. A person under the age of 17 ~~[child]~~ who is
transferred to an adult facility must be detained under conditions
meeting the requirements of Section 51.12(f) ~~[51.12]~~, Family Code.

SECTION 2. Sections 51.02(2) and (8-a), Family Code, are
amended to read as follows:

(2) "Child" means a person who is:

(A) ten years of age or older and under 17 years
of age; or

(B) under the jurisdiction of a juvenile court,
is seventeen years of age or older and under 19 ~~[18]~~ years of age,
and ~~[who]~~ is alleged or found to have engaged in delinquent conduct
or conduct indicating a need for supervision as a result of acts
committed before becoming 17 years of age.

(8-a) "Nonsecure correctional facility" means any public or private residential [a] facility, other than a secure detention or correctional facility, that only accepts juveniles who:

(A) are on probation;

(B) have been detained in compliance with Section 53.02, 54.01, or 54.011; or

(C) have been placed at the facility as a condition of court-ordered deferred adjudication or prosecution under Section 53.03 [described by Section 51.126].

SECTION 3. Section 51.12, Family Code, is amended by adding Subsection (g-1) to read as follows:

(g-1) Subsection (g) does not apply to a person under 17 years of age who:

(1) has been transferred to a criminal court for prosecution under Section 54.02; and

(2) is detained in an adult jail or lockup pending trial.

SECTION 4. Sections 52.0151(b) and (c), Family Code, are amended to read as follows:

(b) The court may order that the person who is the witness be detained in a certified juvenile detention facility ~~[if the person is younger than 17 years of age]~~. If the person is at least 17 years of age and in the custody of the Texas Juvenile Justice Department or a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, as added by Chapter 1323 (S.B. 511), Acts of the 83rd Legislature, Regular Session, 2013,

1 the court may order that the person be detained without bond in an
2 appropriate county facility for the detention of adults accused of
3 criminal offenses.

4 (c) A witness held in custody under this section may be
5 placed in a certified juvenile detention facility or a county
6 facility for a period not to exceed 30 days. The length of placement
7 may be extended in 30-day increments by the court that issued the
8 original bench warrant. If the placement is not extended, the
9 period under this section expires and the witness shall ~~[may]~~ be
10 returned as provided by Subsection (a).

11 SECTION 5. Section 53.045(a), Family Code, is amended to
12 read as follows:

13 (a) Except as provided by Subsection (e), the prosecuting
14 attorney may refer the petition to the grand jury of the county in
15 which the court in which the petition is filed presides if the
16 petition alleges that the child engaged in delinquent conduct that
17 constitutes habitual felony conduct as described by Section 51.031
18 or that included the violation of any of the following provisions:

- 19 (1) Section 19.02, Penal Code (murder);
- 20 (2) Section 19.03, Penal Code (capital murder);
- 21 (3) Section 19.04, Penal Code (manslaughter);
- 22 (4) Section 20.04, Penal Code (aggravated
23 kidnapping);
- 24 (5) Section 22.011, Penal Code (sexual assault) or
25 Section 22.021, Penal Code (aggravated sexual assault);
- 26 (6) Section 22.02, Penal Code (aggravated assault);
- 27 (7) Section 29.03, Penal Code (aggravated robbery);

1 (8) Section 22.04, Penal Code (injury to a child,
2 elderly individual, or disabled individual), if the offense is
3 punishable as a felony, other than a state jail felony;

4 (9) Section 22.05(b), Penal Code (felony deadly
5 conduct involving discharging a firearm);

6 (10) Subchapter D, Chapter 481, Health and Safety
7 Code, if the conduct constitutes a felony of the first degree or an
8 aggravated controlled substance felony (certain offenses involving
9 controlled substances);

10 (11) Section 15.03, Penal Code (criminal
11 solicitation);

12 (12) Section 21.11(a)(1), Penal Code (indecent with a
13 child);

14 (13) Section 15.031, Penal Code (criminal
15 solicitation of a minor);

16 (14) Section 15.01, Penal Code (criminal attempt), if
17 the offense attempted was an offense under Section 19.02, Penal
18 Code (murder), or Section 19.03, Penal Code (capital murder), or an
19 offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal
20 Procedure;

21 (15) Section 28.02, Penal Code (arson), if bodily
22 injury or death is suffered by any person by reason of the
23 commission of the conduct;

24 (16) Section 49.08, Penal Code (intoxication
25 manslaughter); ~~[or]~~

26 (17) Section 30.02, Penal Code (burglary), if the
27 offense is punishable under Section 30.02(d), Penal Code, and the

actor committed the offense with intent to commit a felony under Section 21.11, 22.011, 22.021, or 22.02, Penal Code; or

(18) Section 15.02, Penal Code (criminal conspiracy), if the offense made the subject of the criminal conspiracy includes a violation of any of the provisions referenced in Subdivisions (1) through (17) [~~(16)~~].

SECTION 6. Section 54.04(d), Family Code, is amended to read as follows:

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

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

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

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

(i) a suitable foster home;

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by the Texas Juvenile Justice Department; ~~or~~

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Juvenile Justice Department; or

1 (iv) a suitable public or private nonsecure
2 correctional facility that meets the requirements of Section
3 51.126, other than a nonsecure facility operated by the Texas
4 Juvenile Justice Department;

5 (2) if the court or jury found at the conclusion of the
6 adjudication hearing that the child engaged in delinquent conduct
7 that violates a penal law of this state or the United States of the
8 grade of felony and if the petition was not approved by the grand
9 jury under Section 53.045, the court may commit the child to the
10 Texas Juvenile Justice Department or a post-adjudication secure
11 correctional facility under Section 54.04011(c)(1) without a
12 determinate sentence;

13 (3) if the court or jury found at the conclusion of the
14 adjudication hearing that the child engaged in delinquent conduct
15 that included a violation of a penal law listed in Section 53.045(a)
16 and if the petition was approved by the grand jury under Section
17 53.045, the court or jury may sentence the child to commitment in
18 the Texas Juvenile Justice Department or a post-adjudication secure
19 correctional facility under Section 54.04011(c)(2) with a possible
20 transfer to the Texas Department of Criminal Justice for a term of:

21 (A) not more than 40 years if the conduct
22 constitutes:

23 (i) a capital felony;
24 (ii) a felony of the first degree; or
25 (iii) an aggravated controlled substance
26 felony;

27 (B) not more than 20 years if the conduct

1 constitutes a felony of the second degree; or

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

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

7 (5) ~~[the court may place the child in a suitable~~
8 ~~nonsecure correctional facility that is registered and meets the~~
9 ~~applicable standards for the facility as provided by Section~~
10 ~~51.126; or~~

11 ~~[(6)]~~ if applicable, the court or jury may make a
12 disposition under Subsection (m) or Section 54.04011(c)(2)(A).

13 SECTION 7. Section 58.003(b), Family Code, is amended to
14 read as follows:

15 (b) A court may not order the sealing of the records of a
16 person who has received a determinate sentence for engaging in
17 delinquent conduct that violated a penal law listed in Section
18 53.045 or engaging in habitual felony conduct as described by
19 Section 51.031 if the person has been transferred to:

20 (1) a district court under Section 54.051; or

21 (2) the Texas Department of Criminal Justice under
22 Section 54.11 or under Section 245.151(e), Human Resources Code.

23 SECTION 8. Section 58.0071, Family Code, is amended by
24 adding Subsection (g) to read as follows:

25 (g) Notwithstanding Subsection (f), Subsection (d) applies
26 to the destruction of physical records and files in a juvenile case,
27 without regard to whether the physical records or files were

created before, on, or after September 1, 2001.

SECTION 9. Section 58.204(b), Family Code, as amended by Chapters 871 (H.B. 694) and 1299 (H.B. 2862), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(b) On certification of records in a case under Section 58.203, the department may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(2) for research purposes, by the Texas Juvenile Justice Department;

(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; or

(6) ~~[(3)]~~ with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

SECTION 10. Section 58.207, Family Code, is amended to read as follows:

Sec. 58.207. NOTICE OF [JUVENILE COURT ORDERS ON] CERTIFICATION. (a) On receipt of a certification of records in a case under Section 58.203, the juvenile probation department ~~[court]~~ shall notify all appropriate entities ~~[order]~~.

~~[(1)]~~ that the following records relating to the case may be accessed only as provided by Section 58.204(b):

(1) ~~[(A)]~~ if the respondent was committed to the Texas Juvenile Justice Department, records maintained by the department;

(2) ~~[(B)]~~ records maintained by the juvenile probation department;

(3) ~~[(C)]~~ records maintained by the clerk of the court;

(4) ~~[(D)]~~ records maintained by the prosecutor's office; and

(5) ~~[(E)]~~ records maintained by a law enforcement agency. ~~[, and]~~

(a-1) The ~~[(2)]~~ ~~the~~ juvenile probation department shall ~~to~~ make a reasonable effort to notify the person who is the subject of records for which access has been restricted of the action restricting access and the legal significance of the action for the person, but only if the person has requested the notification in writing and has provided the juvenile probation department with a current address.

(b) Except as provided by Subsection (c), on receipt of a notice ~~[an order]~~ under Subsection (a) ~~[(a)(1)]~~, the agency

maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

~~[(c) Notwithstanding Subsection (b) of this section and Section 58.206(b), with the written permission of the subject of the records, an agency under Subsection (a)(1) may allow military personnel, including a recruiter, of this state or the United States to access juvenile records in the same manner authorized by law for records to which access has not been restricted under this section.]~~

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

(1) the subject of the records ~~[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) Notwithstanding Subsection (b) and Section 58.206(b), with the permission of the subject of the records, an agency listed in Subsection (a) ~~[(a)(1)]~~ may permit the state military forces or the United States military forces to have access to juvenile records held by that agency. On receipt of a request from the state military forces or the United States military forces, an agency may 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 11. Section 61.0031(d), Family Code, is amended to read as follows:

(d) The juvenile court to which the order has been transferred shall require the parent or other eligible person to appear before the court to notify the parent or other eligible person of the existence and terms of the order, unless the parent or other eligible person ~~[permanent supervision hearing under Section 51.073(c)]~~ has ~~[been]~~ waived, in writing, the right to appear. Failure to do so renders the order unenforceable.

SECTION 12. Section 261.401, Family Code, is amended by adding Subsection (e) to read as follows:

(e) In this section, for purposes of an investigation conducted by the Texas Juvenile Justice Department, "child" means an individual who is:

(1) 10 years of age or older and younger than 19 years of age; and

(2) committed to the department under Title 3.

SECTION 13. Section 261.405, Family Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended by amending Subsections (a), (b), (c), and (e) to read as follows:

(a) In this section:

(1) "Child" means a person who is:

(A) 10 years of age or older and younger than 19 years of age; and

(B) under the jurisdiction of a juvenile court.

(2) "Juvenile justice facility" means a facility

1 operated wholly or partly by the juvenile board, by another
2 governmental unit, or by a private vendor under a contract with the
3 juvenile board, county, or other governmental unit that serves
4 juveniles under juvenile court jurisdiction. The term includes:

5 (A) a public or private juvenile
6 pre-adjudication secure detention facility, including a holdover
7 facility;

8 (B) a public or private juvenile
9 post-adjudication secure correctional facility except for a
10 facility operated solely for children committed to the Texas
11 Juvenile Justice Department; and

12 (C) a public or private nonsecure [~~non-secure~~]
13 juvenile post-adjudication residential treatment facility that is
14 not licensed by the Department of Family and Protective Services or
15 the Department of State Health Services.

16 (3) [~~(2)~~] "Juvenile justice program" means a program
17 or department operated wholly or partly by the juvenile board or by
18 a private vendor under a contract with a juvenile board that serves
19 juveniles under juvenile court jurisdiction. The term includes:

20 (A) a juvenile justice alternative education
21 program;

22 (B) a non-residential program that serves
23 juvenile offenders under the jurisdiction of the juvenile court;
24 and

25 (C) a juvenile probation department.

26 (b) A report of alleged abuse, neglect, or exploitation in
27 any juvenile justice program or facility shall be made to the Texas

1 Juvenile Justice Department [~~Probation Commission~~] and a local law
2 enforcement agency for investigation.

3 (c) The Texas Juvenile Justice Department [~~Probation~~
4 ~~Commission~~] shall conduct an investigation as provided by this
5 chapter if the Texas Juvenile Justice Department [~~commission~~]
6 receives a report of alleged abuse, neglect, or exploitation in any
7 juvenile justice program or facility.

8 (e) As soon as practicable after a child is taken into
9 custody or placed in a juvenile justice facility or juvenile
10 justice program, the facility or program shall provide the child's
11 parents with:

12 (1) information regarding the reporting of suspected
13 abuse, neglect, or exploitation of a child in a juvenile justice
14 facility or juvenile justice program to the Texas Juvenile Justice
15 Department [~~Probation Commission~~]; and

16 (2) the Texas Juvenile Justice Department's
17 [~~commission's~~] toll-free number for this reporting.

18 SECTION 14. Subchapter A, Chapter 152, Human Resources
19 Code, is amended by adding Section 152.0018 to read as follows:

20 Sec. 152.0018. COORDINATION OF SERVICES FOR JUVENILES IN
21 CONSERVATORSHIP. A juvenile board or local juvenile probation
22 department and the Department of Family and Protective Services
23 shall plan and coordinate services for a child who is in the
24 conservatorship of the Department of Family and Protective Services
25 and subject to proceedings under Title 3, Family Code, including
26 services for a child who is:

27 (1) released from detention under conditions provided

1 under Section 53.02(a), Family Code;

2 (2) released from detention under conditions provided
3 under Section 54.01(f), Family Code, after a hearing conducted
4 under Section 54.01, Family Code;

5 (3) detained as a result of a hearing conducted under
6 Section 54.01, Family Code;

7 (4) placed in a secure correctional facility,
8 nonsecure correctional facility, or other placement, including a
9 placement that qualifies for funding under Title IV-E, Social
10 Security Act (42 U.S.C. Section 670 et seq.), by a juvenile court as
11 a condition of probation under Section 54.04(d), Family Code; or

12 (5) placed on probation under Section 54.04, Family
13 Code, and released to the custody of the Department of Family and
14 Protective Services.

15 SECTION 15. Section 201.001(a)(2), Human Resources Code, is
16 amended to read as follows:

17 (2) "Child" means an individual:

18 (A) 10 years of age or older and younger than 19
19 ~~[18]~~ years of age who is under the jurisdiction of a juvenile court;
20 or

21 (B) 10 years of age or older and younger than 19
22 years of age who is committed to the department under Title 3,
23 Family Code.

24 SECTION 16. Section 58.002(b), Family Code, is repealed.

25 SECTION 17. Section 53.045(a), Family Code, as amended by
26 this Act, applies only to conduct violating a penal law that occurs
27 on or after the effective date of this Act. Conduct violating a

1 penal law that occurs before the effective date of this Act is
2 governed by the law in effect when the conduct occurred, and the
3 former law is continued in effect for that purpose. For purposes of
4 this section, conduct occurs before the effective date of this Act
5 if any element of the conduct occurs before the effective date.

6 SECTION 18. The changes in law made by the following
7 provisions of the Family Code apply to any records or files relating
8 to any offense committed or conduct that occurred before, on, or
9 after the effective date of this Act:

- 10 (1) Section 58.003(b), as amended by this Act;
11 (2) Section 58.0071(g), as added by this Act;
12 (3) Section 58.204(b), as amended by Chapters 871
13 (H.B. 694) and 1299 (H.B. 2862), Acts of the 83rd Legislature,
14 Regular Session, 2013, as reenacted and amended by this Act; and
15 (4) Section 58.207, as amended by this Act.

16 SECTION 19. To the extent of any conflict, this Act prevails
17 over another Act of the 84th Legislature, Regular Session, 2015,
18 relating to nonsubstantive additions to and corrections in enacted
19 codes.

20 SECTION 20. This Act takes effect September 1, 2015.