

By: Moody

H.B. No. 3852

A BILL TO BE ENTITLED

AN ACT

relating to contempt of court committed by certain juvenile offenders and the detention of certain juvenile offenders.

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

SECTION 1. Articles 45.050(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) In this article, "child" has the meaning assigned by Article 45.058(h) and "status offense" has the meaning assigned by Section 51.02, Family Code.

(c) If a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court, after providing notice and an opportunity to be heard, may:

(1) refer the child to the appropriate juvenile court for ~~[delinquent conduct for]~~ contempt of the justice or municipal court order for:

(A) delinquent conduct, as defined by Section 51.03(a)(2), Family Code, if the order was issued in a case for an offense other than a status offense; or

(B) conduct indicating a need for supervision, as defined by Section 51.03(b)(9), Family Code, if the order was issued in a case for a status offense; or

(2) retain jurisdiction of the case, hold the child in contempt of the justice or municipal court, and order either or both

1 of the following:

2 (A) that the contemnor pay a fine not to exceed
3 \$500; or

4 (B) that the Department of Public Safety suspend
5 the contemnor's driver's license or permit or, if the contemnor does
6 not have a license or permit, to deny the issuance of a license or
7 permit to the contemnor until the contemnor fully complies with the
8 orders of the court.

9 SECTION 2. Article 45.058(f), Code of Criminal Procedure,
10 is amended to read as follows:

11 (f) A child taken into custody for an offense that a justice
12 or municipal court has jurisdiction of under Article 4.11 or 4.14
13 may be presented or detained in a detention facility designated by
14 the juvenile court under Section 52.02(a)(3), Family Code, only if:

15 (1) the child's non-traffic case is transferred to the
16 juvenile court by a justice or municipal court under Section
17 51.08(b), Family Code; or

18 (2) the child is referred to the juvenile court by a
19 justice or municipal court for delinquent conduct [~~contempt of~~
20 ~~court~~] under Article 45.050(c)(1)(A).

21 SECTION 3. Section 51.02, Family Code, is amended by
22 amending Subdivision (15) and adding Subdivision (15-a) to read as
23 follows:

24 (15) "Status offender" means a child who is accused,
25 adjudicated, or convicted of a status offense.

26 (15-a) "Status offense" means [~~for~~] conduct committed
27 by a child that would not, under state law, be a crime if committed

1 by an adult, including:

2 (A) truancy under Section 51.03(b)(2);

3 (B) running away from home under Section
4 51.03(b)(3);

5 (C) a fineable only offense under Section
6 51.03(b)(1) transferred to the juvenile court under Section
7 51.08(b), but only if the conduct constituting the offense would
8 not have been criminal if engaged in by an adult;

9 (D) failure to attend school under Section
10 25.094, Education Code;

11 (E) a violation of standards of student conduct
12 as described by Section 51.03(b)(5);

13 (F) a violation of a juvenile curfew ordinance or
14 order;

15 (G) a violation of a provision of the Alcoholic
16 Beverage Code applicable to minors only; or

17 (H) a violation of any other fineable only
18 offense under Section 8.07(a)(4) or (5), Penal Code, but only if the
19 conduct constituting the offense would not have been criminal if
20 engaged in by an adult.

21 SECTION 4. Sections 51.03(a) and (b), Family Code, are
22 amended to read as follows:

23 (a) Delinquent conduct is:

24 (1) conduct, other than a traffic offense, that
25 violates a penal law of this state or of the United States
26 punishable by imprisonment or by confinement in jail;

27 (2) conduct that violates a lawful order of a court,

1 other than the order of a court in a case for a status offense, under
2 circumstances that would constitute contempt of that court in:

3 (A) a justice or municipal court; or

4 (B) a county court for conduct punishable only by
5 a fine;

6 (3) conduct that violates Section 49.04, 49.05, 49.06,
7 49.07, or 49.08, Penal Code; or

8 (4) conduct that violates Section 106.041, Alcoholic
9 Beverage Code, relating to driving under the influence of alcohol
10 by a minor (third or subsequent offense).

11 (b) Conduct indicating a need for supervision is:

12 (1) subject to Subsection (f), conduct, other than a
13 traffic offense, that violates:

14 (A) the penal laws of this state of the grade of
15 misdemeanor that are punishable by fine only; or

16 (B) the penal ordinances of any political
17 subdivision of this state;

18 (2) the absence of a child on 10 or more days or parts
19 of days within a six-month period in the same school year or on
20 three or more days or parts of days within a four-week period from
21 school;

22 (3) the voluntary absence of a child from the child's
23 home without the consent of the child's parent or guardian for a
24 substantial length of time or without intent to return;

25 (4) conduct prohibited by city ordinance or by state
26 law involving the inhalation of the fumes or vapors of paint and
27 other protective coatings or glue and other adhesives and the

1 volatile chemicals itemized in Section 485.001, Health and Safety
2 Code;

3 (5) an act that violates a school district's
4 previously communicated written standards of student conduct for
5 which the child has been expelled under Section 37.007(c),
6 Education Code;

7 (6) conduct that violates a reasonable and lawful
8 order of a court entered under Section 264.305;

9 (7) notwithstanding Subsection (a)(1), conduct
10 described by Section 43.02(a)(1) or (2), Penal Code; ~~or~~

11 (8) notwithstanding Subsection (a)(1), conduct that
12 violates Section 43.261, Penal Code; or

13 (9) conduct that violates a lawful order of a court in
14 a case for a status offense, under circumstances that would
15 constitute contempt of that court in a justice, municipal, or
16 county court.

17 SECTION 5. Section 51.12, Family Code, is amended by adding
18 Subsection (a-1) to read as follows:

19 (a-1) Notwithstanding any other provision of this section,
20 a child may only be detained in an office or place described by
21 Subsection (a)(1) or (2) or a nonsecure correctional facility that
22 meets the conditions of Subsections (j-1)(1), (3), and (4) if a
23 child is accused only of:

24 (1) a status offense;

25 (2) the violation of a valid court order, as defined by
26 Section 51.02(17); or

27 (3) conduct in need of supervision under Section

1 51.03(b)(9).

2 SECTION 6. Section 52.02(a), Family Code, is amended to
3 read as follows:

4 (a) Except as provided by Subsection (c), a person taking a
5 child into custody, without unnecessary delay and without first
6 taking the child to any place other than a juvenile processing
7 office designated under Section 52.025, shall do one of the
8 following:

9 (1) release the child to a parent, guardian, custodian
10 of the child, or other responsible adult upon that person's promise
11 to bring the child before the juvenile court as requested by the
12 court;

13 (2) bring the child before the office or official
14 designated by the juvenile board if there is probable cause to
15 believe that the child engaged in delinquent conduct, conduct
16 indicating a need for supervision, or conduct that violates a
17 condition of probation imposed by the juvenile court;

18 (3) bring the child to a detention facility designated
19 by the juvenile board, unless Section 51.12(a-1) applies to the
20 child;

21 (4) bring the child to a secure detention facility as
22 provided by Section 51.12(j), unless Section 51.12(a-1) applies to
23 the child;

24 (5) bring the child to a medical facility if the child
25 is believed to suffer from a serious physical condition or illness
26 that requires prompt treatment;

27 (6) dispose of the case under Section 52.03; [~~or~~]

1 (7) if school is in session and the child is a student,
2 bring the child to the school campus to which the child is assigned
3 if the principal, the principal's designee, or a peace officer
4 assigned to the campus agrees to assume responsibility for the
5 child for the remainder of the school day; or

6 (8) if Section 51.12(a-1) applies to the child:

7 (A) bring the child to a place of nonsecure
8 custody in compliance with Articles 45.058(c), (d), and (e), Code
9 of Criminal Procedure; or

10 (B) if a juvenile processing office or place of
11 nonsecure custody is not available, bring the child to a nonsecure
12 correctional facility that meets the conditions of Sections
13 51.12(j-1)(1), (3), and (4).

14 SECTION 7. Section 54.011, Family Code, is amended by
15 amending Subsections (a), (b), and (c) and adding Subsection (a-1)
16 to read as follows:

17 (a) The detention hearing for a [~~status offender or~~]
18 nonoffender who has not been released administratively under
19 Section 53.02 shall be held before the 24th hour after the time the
20 child arrived at a detention facility, excluding hours of a weekend
21 or a holiday. Except as otherwise provided by this section, the
22 judge or referee conducting the detention hearing shall release the
23 [~~status offender or~~] nonoffender from secure detention.

24 (a-1) If Section 51.12(a-1) applies to a child, the child
25 may not be detained at a place of detention for longer than 24 hours
26 after the time the child arrived at the place of detention. If the
27 child is not released before the sixth hour after the time the child

1 arrived at the place of detention, the child is entitled to a
2 detention hearing that must be held before the 24th hour after the
3 time the child arrived at the place of detention, excluding
4 weekends and holidays. Except as otherwise provided by this
5 section, the judge or referee conducting the detention hearing
6 shall release the child from detention.

7 (b) The judge or referee may order a child in detention
8 accused of the violation of a valid court order as defined by
9 Section 51.02(17) [~~51.02~~] detained not longer than 24 [~~72~~] hours
10 after the time the detention order was entered, excluding weekends
11 and holidays, if:

12 (1) the judge or referee finds at the detention
13 hearing that there is probable cause to believe the child violated
14 the valid court order; and

15 (2) the detention of the child is justified under
16 Section 54.01(e)(1), (2), or (3).

17 (c) Except as provided by Subsection (d), a detention order
18 entered under Subsection (b) may be extended for one additional
19 24-hour [~~72-hour~~] period, excluding weekends and holidays, only on
20 a finding of good cause by the juvenile court.

21 SECTION 8. Section 54.04(o), Family Code, is amended to
22 read as follows:

23 (o) In a disposition under this title, [+]
24 [~~(1)~~] a child [~~status offender~~] may not, under any
25 circumstances, be placed in a post-adjudication secure
26 correctional facility or committed to the Texas Juvenile Justice
27 Department only [~~Youth Commission~~] for:

1 (1) engaging in conduct that is a status offense
2 ~~[would not, under state or local law, be a crime if committed by an~~
3 ~~adult];~~

4 (2) violating a valid court order ~~[a status offender~~
5 ~~may not, under any circumstances other than as provided under~~
6 ~~Subsection (n), be placed in a post-adjudication secure~~
7 ~~correctional facility]; or [and]~~

8 (3) conduct indicating a need for supervision under
9 Section 51.03(b)(9) ~~[a child adjudicated for contempt of a county,~~
10 ~~justice, or municipal court order may not, under any circumstances,~~
11 ~~be placed in a post-adjudication secure correctional facility or~~
12 ~~committed to the Texas Youth Commission for that conduct].~~

13 SECTION 9. Section 59.003(a), Family Code, is amended to
14 read as follows:

15 (a) Subject to Subsection (e), after a child's first
16 commission of delinquent conduct or conduct indicating a need for
17 supervision, the probation department or prosecuting attorney may,
18 or the juvenile court may, in a disposition hearing under Section
19 54.04 or a modification hearing under Section 54.05, assign a child
20 one of the following sanction levels according to the child's
21 conduct:

22 (1) for conduct indicating a need for supervision,
23 other than conduct described in Section 51.03(b)(4), ~~[or]~~ (5), or
24 (9) or a Class A or B misdemeanor, the sanction level is one;

25 (2) for conduct indicating a need for supervision
26 under Section 51.03(b)(4), ~~[or]~~ (5), or (9) or a Class A or B
27 misdemeanor, other than a misdemeanor involving the use or

1 possession of a firearm, or for delinquent conduct under Section
2 51.03(a)(2), the sanction level is two;

3 (3) for a misdemeanor involving the use or possession
4 of a firearm or for a state jail felony or a felony of the third
5 degree, the sanction level is three;

6 (4) for a felony of the second degree, the sanction
7 level is four;

8 (5) for a felony of the first degree, other than a
9 felony involving the use of a deadly weapon or causing serious
10 bodily injury, the sanction level is five;

11 (6) for a felony of the first degree involving the use
12 of a deadly weapon or causing serious bodily injury, for an
13 aggravated controlled substance felony, or for a capital felony,
14 the sanction level is six; or

15 (7) for a felony of the first degree involving the use
16 of a deadly weapon or causing serious bodily injury, for an
17 aggravated controlled substance felony, or for a capital felony, if
18 the petition has been approved by a grand jury under Section 53.045,
19 or if a petition to transfer the child to criminal court has been
20 filed under Section 54.02, the sanction level is seven.

21 SECTION 10. Section 71.0352, Government Code, is amended to
22 read as follows:

23 Sec. 71.0352. JUVENILE DATE: JUSTICE, MUNICIPAL, AND
24 JUVENILE COURTS. As a component of the official monthly report
25 submitted to the Office of Court Administration of the Texas
26 Judicial System:

27 (1) justice and municipal courts shall report the

1 number of cases filed for the following offenses:

2 (A) failure to attend school under Section
3 25.094, Education Code;

4 (B) parent contributing to nonattendance under
5 Section 25.093, Education Code; and

6 (C) violation of a local daytime curfew ordinance
7 adopted under Section 341.905 or 351.903, Local Government Code;
8 and

9 (2) in cases in which a child fails to obey an order of
10 a justice or municipal court under circumstances that would
11 constitute contempt of court, the justice or municipal court shall
12 report the number of incidents in which the child is:

13 (A) referred to the appropriate juvenile court
14 for delinquent conduct or conduct indicating a need for supervision
15 as provided by Article 45.050(c)(1), Code of Criminal Procedure,
16 and Section 51.03(a)(2) or (b)(9), Family Code; or

17 (B) held in contempt, fined, or denied driving
18 privileges as provided by Article 45.050(c)(2), Code of Criminal
19 Procedure.

20 SECTION 11. Section 54.04(n), Family Code, is repealed.

21 SECTION 12. The changes in law made by this Act apply only
22 to conduct violating a penal law that occurs on or after the
23 effective date of this Act. Conduct violating a penal law that
24 occurs before the effective date of this Act is governed by the law
25 in effect when the conduct occurred, and the former law is continued
26 in effect for that purpose. For purposes of this section, conduct
27 violating a penal law occurred before the effective date of this Act

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1 if any element of the violation occurred before that date.

2 SECTION 13. This Act takes effect September 1, 2015.