

By: Thierry

H.B. No. 3325

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on placing juveniles in privately owned places of detention.

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

SECTION 1. Sections 51.02(13) and (14), Family Code, are amended to read as follows:

(13) "Secure correctional facility" means any ~~[public or private]~~ residential facility, including an alcohol or other drug treatment facility, that:

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and

(B) is used for the placement of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense.

(14) "Secure detention facility" means any ~~[public or private]~~ residential facility that:

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or any other individual accused of having committed a

1 criminal offense.

2 SECTION 2. Sections 51.12(b-1), (c), (c-1), and (i), Family
3 Code, are amended to read as follows:

4 (b-1) A pre-adjudication secure detention facility may be
5 operated only by[+]

6 [~~(1)~~] a governmental unit in this state as defined by
7 Section 101.001, Civil Practice and Remedies Code[~~, or~~

8 [~~(2) a private entity under a contract with a~~
9 ~~governmental unit in this state]~~.

10 (c) In each county, each judge of the juvenile court and a
11 majority of the members of the juvenile board shall personally
12 inspect all [~~public or private~~] juvenile pre-adjudication secure
13 detention facilities that are located in the county at least
14 annually and shall certify in writing to the authorities
15 responsible for operating and giving financial support to the
16 facilities and to the Texas Juvenile Justice Department that the
17 facilities are suitable or unsuitable for the detention of
18 children. In determining whether a facility is suitable or
19 unsuitable for the detention of children, the juvenile court judges
20 and juvenile board members shall consider:

21 (1) current monitoring and inspection reports and any
22 noncompliance citation reports issued by the department, including
23 the report provided under Subsection (c-1), and the status of any
24 required corrective actions;

25 (2) current governmental inspector certification
26 regarding the facility's compliance with local fire codes;

27 (3) current building inspector certification

1 regarding the facility's compliance with local building codes;

2 (4) for the 12-month period preceding the inspection,
3 the total number of allegations of abuse, neglect, or exploitation
4 reported by the facility and a summary of the findings of any
5 investigations of abuse, neglect, or exploitation conducted by the
6 facility, a local law enforcement agency, and the department;

7 (5) the availability of health and mental health
8 services provided to facility residents;

9 (6) the availability of educational services provided
10 to facility residents; and

11 (7) the overall physical appearance of the facility,
12 including the facility's security, maintenance, cleanliness, and
13 environment.

14 (c-1) The Texas Juvenile Justice Department shall annually
15 inspect each [~~public or private~~] juvenile pre-adjudication secure
16 detention facility. The department shall provide a report to each
17 juvenile court judge presiding in the same county as an inspected
18 facility indicating whether the facility is suitable or unsuitable
19 for the detention of children in accordance with:

20 (1) the requirements of Subsections (a), (f), and (g);
21 and

22 (2) minimum professional standards for the detention
23 of children in pre-adjudication secure confinement promulgated by
24 the department or, at the election of the juvenile board of the
25 county in which the facility is located, the current standards
26 promulgated by the American Correctional Association.

27 (i) Except for a facility as provided by Subsection (1), a

1 governmental unit [~~or private entity~~] that operates [~~or contracts~~
2 ~~for the operation of~~] a juvenile pre-adjudication secure detention
3 facility under Subsection (b-1) in this state shall:

4 (1) register the facility annually with the Texas
5 Juvenile Justice Department; and

6 (2) adhere to all applicable minimum standards for the
7 facility.

8 SECTION 3. Sections 51.125(a), (b), (c), and (d), Family
9 Code, are amended to read as follows:

10 (a) A post-adjudication secure correctional facility for
11 juvenile offenders may be operated only by[+]

12 [~~(1)~~] a governmental unit in this state as defined by
13 Section 101.001, Civil Practice and Remedies Code[~~, or~~

14 [~~(2) a private entity under a contract with a~~
15 ~~governmental unit in this state~~].

16 (b) In each county, each judge of the juvenile court and a
17 majority of the members of the juvenile board shall personally
18 inspect all [~~public or private~~] juvenile post-adjudication secure
19 correctional facilities that are not operated by the Texas Juvenile
20 Justice Department and that are located in the county at least
21 annually and shall certify in writing to the authorities
22 responsible for operating and giving financial support to the
23 facilities and to the department that the facility or facilities
24 are suitable or unsuitable for the confinement of children. In
25 determining whether a facility is suitable or unsuitable for the
26 confinement of children, the juvenile court judges and juvenile
27 board members shall consider:

1 (1) current monitoring and inspection reports and any
2 noncompliance citation reports issued by the department, including
3 the report provided under Subsection (c), and the status of any
4 required corrective actions; and

5 (2) the other factors described under Sections
6 51.12(c)(2)-(7).

7 (c) The Texas Juvenile Justice Department shall annually
8 inspect each [~~public or private~~] juvenile post-adjudication secure
9 correctional facility that is not operated by the department. The
10 department shall provide a report to each juvenile court judge
11 presiding in the same county as an inspected facility indicating
12 whether the facility is suitable or unsuitable for the confinement
13 of children in accordance with minimum professional standards for
14 the confinement of children in post-adjudication secure
15 confinement promulgated by the department or, at the election of
16 the juvenile board of the county in which the facility is located,
17 the current standards promulgated by the American Correctional
18 Association.

19 (d) A governmental unit [~~or private entity~~] that operates
20 [~~or contracts for the operation of~~] a juvenile post-adjudication
21 secure correctional facility in this state under Subsection (a),
22 except for a facility operated by or under contract with the Texas
23 Juvenile Justice Department, shall:

24 (1) register the facility annually with the
25 department; and

26 (2) adhere to all applicable minimum standards for the
27 facility.

1 SECTION 4. Sections 51.126(a) and (d), Family Code, are
2 amended to read as follows:

3 (a) A nonsecure correctional facility for juvenile
4 offenders may be operated only by~~+~~

5 [~~(1)~~] a governmental unit, as defined by Section
6 101.001, Civil Practice and Remedies Code~~+, or~~

7 [~~(2) a private entity under a contract with a~~
8 ~~governmental unit in this state~~].

9 (d) A governmental unit [~~or private entity~~] that operates
10 [~~or contracts for the operation of~~] a juvenile nonsecure
11 correctional facility in this state under Subsection (a), except
12 for a facility operated by or under contract with the Texas Juvenile
13 Justice Department, shall:

14 (1) register the facility annually with the Texas
15 Juvenile Justice Department; and

16 (2) adhere to all applicable minimum standards for the
17 facility.

18 SECTION 5. Chapter 51, Family Code, is amended by adding
19 Section 51.127 to read as follows:

20 Sec. 51.127. PLACEMENT IN PRIVATE CORRECTIONAL FACILITY
21 PROHIBITED. Notwithstanding any other law, a child may not be
22 placed in a correctional facility owned, operated, or managed by a
23 private vendor.

24 SECTION 6. Section 54.011(f), Family Code, is amended to
25 read as follows:

26 (f) Except as provided by Subsection (a), a nonoffender,
27 including a person who has been taken into custody and is being held

1 solely for deportation out of the United States, may not be detained
2 for any period of time in a secure detention facility or secure
3 correctional facility[~~, regardless of whether the facility is~~
4 ~~publicly or privately operated~~]. A nonoffender who is detained in
5 violation of this subsection is entitled to immediate release from
6 the facility and may bring a civil action for compensation for the
7 illegal detention against any person responsible for the detention.
8 A person commits an offense if the person knowingly detains or
9 assists in detaining a nonoffender in a secure detention facility
10 or secure correctional facility in violation of this subsection.
11 An offense under this subsection is a Class B misdemeanor.

12 SECTION 7. Section 54.04(d), Family Code, is amended to
13 read as follows:

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

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

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

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

24 (i) a suitable foster home;

25 (ii) a suitable public or private
26 residential treatment facility licensed by a state governmental
27 entity or exempted from licensure by state law, except a facility

1 operated by the Texas Juvenile Justice Department; or

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

6 (2) if the court or jury found at the conclusion of the
7 adjudication hearing that the child engaged in delinquent conduct
8 that violates a penal law of this state or the United States of the
9 grade of felony, the court or jury made a special commitment finding
10 under Section 54.04013, and the petition was not approved by the
11 grand jury under Section 53.045, the court may commit the child to
12 the Texas Juvenile Justice Department under Section 54.04013, or a
13 post-adjudication secure correctional facility under Section
14 54.04011(c)(1), as applicable, without a determinate sentence;

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

23 (A) not more than 40 years if the conduct
24 constitutes:

25 (i) a capital felony;

26 (ii) a felony of the first degree; or

27 (iii) an aggravated controlled substance

1 felony;

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

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

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

9 (5) the court may place the child in a suitable
10 nonsecure correctional facility that is registered and meets the
11 applicable standards for the facility as provided by Section
12 51.126; or

13 (6) if applicable, the court or jury may make a
14 disposition under Subsection (m) or Section 54.04011(c)(2)(A).

15 SECTION 8. Section 54.04011(d), Family Code, is amended to
16 read as follows:

17 (d) Nothing in this section may be construed to prohibit:

18 (1) a juvenile court or jury from making a disposition
19 under Section 54.04, including:

20 (A) placing a child on probation on such
21 reasonable and lawful terms as the court may determine, including
22 placement in a [~~public or private~~] post-adjudication secure
23 correctional facility under Section 54.04(d)(1)(B)(iii); or

24 (B) placing a child adjudicated under Section
25 54.04(d)(3) or (m) on probation for a term of not more than 10
26 years, as provided in Section 54.04(q); or

27 (2) the attorney representing the state from filing a

1 motion concerning a child who has been placed on probation under
2 Section 54.04(q) or the juvenile court from holding a hearing under
3 Section 54.051(a).

4 SECTION 9. Chapter 203, Human Resources Code, is amended by
5 adding Section 203.019 to read as follows:

6 Sec. 203.019. CERTAIN CONTRACTS PROHIBITED.
7 Notwithstanding any other law, the board may not enter into a
8 contract with a private vendor under which a child committed to the
9 department will be placed in a correctional facility owned,
10 operated, or managed by a private vendor.

11 SECTION 10. Sections 221.002(a) and (c), Human Resources
12 Code, are amended to read as follows:

13 (a) The board shall adopt reasonable rules that provide:

14 (1) minimum standards for personnel, staffing, case
15 loads, programs, facilities, record keeping, equipment, and other
16 aspects of the operation of a juvenile board that are necessary to
17 provide adequate and effective probation services;

18 (2) a code of ethics for probation and detention
19 officers and for the enforcement of that code;

20 (3) appropriate educational, preservice and
21 in-service training, and certification standards for probation and
22 detention officers or court-supervised community-based program
23 personnel;

24 (4) subject to Subsection (d), minimum standards for
25 ~~[public and private]~~ juvenile pre-adjudication secure detention
26 facilities, ~~[public]~~ juvenile post-adjudication secure
27 correctional facilities that are operated under the authority of a

1 juvenile board or governmental unit, [~~private juvenile~~
2 ~~post-adjudication secure correctional facilities operated under a~~
3 ~~contract with a governmental unit,~~] except those facilities exempt
4 from certification by Section 42.052(g), and nonsecure
5 correctional facilities operated by [~~or under contract with~~] a
6 governmental unit; and

7 (5) minimum standards for juvenile justice
8 alternative education programs created under Section 37.011,
9 Education Code, in collaboration and conjunction with the Texas
10 Education Agency, or its designee.

11 (c) The department shall operate a statewide registry for
12 all [~~public and private~~] juvenile pre-adjudication secure
13 detention facilities and all [~~public and private~~] juvenile
14 post-adjudication secure correctional facilities.

15 SECTION 11. Section 221.053, Human Resources Code, is
16 amended to read as follows:

17 Sec. 221.053. CONTRACTS FOR OUT-OF-STATE JUVENILE INMATES.

18 (a) The only entities other than the state authorized to operate a
19 correctional facility to house in this state juvenile inmates
20 convicted of offenses committed against the laws of another state
21 of the United States are[+]

22 [~~(1)~~] a county or municipality[~~, and~~

23 [~~(2) a private vendor operating a correctional~~
24 ~~facility under a contract with a county or municipality].~~

25 (b) The board shall develop rules, procedures, and minimum
26 standards applicable to [~~county or private~~] correctional
27 facilities housing out-of-state juvenile inmates. A contract made

1 under Subsection (a) shall require the county or[7] municipality[7]
2 ~~or private vendor~~] to operate the facility in compliance with
3 minimum standards adopted by the board.

4 SECTION 12. Subchapter B, Chapter 221, Human Resources
5 Code, is amended by adding Section 221.057 to read as follows:

6 Sec. 221.057. CERTAIN CONTRACTS PROHIBITED.
7 Notwithstanding any other law, a juvenile board may not enter into a
8 contract with a private vendor under which a child will be committed
9 to a correctional facility owned, operated, or managed by a private
10 vendor.

11 SECTION 13. Section 51.127, Family Code, as added by this
12 Act, applies to the placement of a child in a correctional facility
13 on or after the effective date of this Act, regardless of whether
14 the conduct for which the child is placed occurred before, on, or
15 after the effective date of this Act.

16 SECTION 14. Sections 203.019 and 221.057, Human Resources
17 Code, as added by this Act, do not apply to a contract entered into
18 or renewed before the effective date of this Act. A contract
19 entered into or renewed before the effective date of this Act is
20 governed by the law in effect at the time the contract was entered
21 into or renewed, and the former law is continued in effect for that
22 purpose. A governmental entity may not renew a contract to which
23 those sections apply after the effective date of this Act and must
24 transfer children who are placed in a private correctional facility
25 to a public correctional facility as soon as practicable on or
26 before the expiration of the contract for the placement of children
27 in the private facility.

1 SECTION 15. This Act takes effect September 1, 2017.