

BILL ANALYSIS

H.B. 4606
By: White
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Municipal and justice courts reportedly adjudicate the highest volume of juvenile offenders in Texas, with approximately 50,000 cases annually involving non-traffic Class C misdemeanors being processed in the municipal court system. It is further noted that, even though state law allows these cases to be adjudicated in the juvenile justice system as a civil matter, the vast majority of cases involving young people between the ages of 10 and 16 years old are adjudicated in the criminal system. H.B. 4606 seeks to address this issue and to reduce the burden placed on the municipal court system by, among other things, increasing the availability of youth diversion programs for a child who is alleged to have engaged in conduct that constitutes a Class C misdemeanor, other than a traffic offense.

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

H.B. 4606 amends the Code of Criminal Procedure to require a child who is alleged to have engaged in conduct that constitutes a Class C misdemeanor other than a traffic offense to be diverted from formal criminal prosecution as provided by the bill's provisions. The bill makes a child who is 15 years of age or older at the time the child is alleged to have engaged in conduct that constitutes an offense ineligible for such diversion if the child has previously had two unsuccessful diversions for unrelated offenses. The bill sets out certain diversion strategies and authorizes a diversion strategy to be imposed under specified bill provisions with respect to:

- a diversion by law enforcement;
- an intermediate diversion from court;
- a diversion by a justice or judge; or
- a system of graduated sanctions for certain school offenses.

H.B. 4606 establishes that its provisions relating to youth diversion do not preclude a case involving a child from being referred, adjudicated, or disposed of as conduct indicating a need for supervision and do not preclude a waiver of criminal jurisdiction and transfer of a child's case to a juvenile court.

H.B. 4606 establishes that a youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion and does not limit the types of diversion strategies that may be imposed under a diversion agreement under the bill's provisions. The bill requires each justice and municipal court to adopt a youth diversion plan and to implement the plan not later than September 1, 2020. The bill sets out provisions relating to the youth diversion plan.

H.B. 4606 sets out provisions relating to:

- a court-designated youth diversion coordinator and a youth diversion advisory council, including a regional advisory council, established by a commissioners court of a county or the governing body of a municipality;
- a certain warning notice by a peace officer in lieu of taking a child into custody, issuing a citation, or filing a complaint for an offense;
- peace officer disposition of a case in lieu of issuing a citation to a child or filing a complaint in a justice or municipal court;
- a first offense diversion program established by a commissioners court or governing body for the referral and disposition of a case before the filing of a charge for a first offense;
- a youth diversion agreement generally, an intermediate diversion from court before a case is filed and an agreement under such a diversion, and a diversion by a justice or a judge after a case is filed and an agreement under such a diversion;
- a non-adversarial hearing for a child who does not successfully complete the terms of a diversion and is referred to court; and
- a local youth diversion administrative fee and the required maintenance by a justice or municipal court of statistics for each authorized diversion strategy.

H.B. 4606 reenacts and amends Articles 44.2811 and 45.0217, Code of Criminal Procedure, as amended by Chapters 1257 (H.B. 528), 1319 (S.B. 394), and 1407 (S.B. 393), Acts of the 83rd Legislature, Regular Session, 2013, to conform to changes made by Chapter 1257 and to:

- clarify that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a criminal case for a fine-only misdemeanor other than a traffic offense that is committed by a child and that is appealed are confidential and may not be disclosed to the public except as applicably provided by law; and
- authorize information relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense other than a traffic offense to be open to inspection by:
 - prosecutors and the staff of applicable judges or prosecutors;
 - a governmental agency if the disclosure is required or authorized by law or is for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;
 - an individual or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the individual or entity regarding the protection of the disclosed information; or
 - with leave of the justice or municipal court, any other person having a legitimate interest in the proceeding or in the work of the court.

H.B. 4606 takes the following actions with regard to procedures for justice and municipal courts:

- replaces the authorization for a judge to allow a defendant who is a child to elect at the time of conviction to discharge the fine and costs by performing community service or receiving tutoring or paying the fine and costs in a certain manner with a requirement for the judge to allow such a defendant to so elect;
- repeals provisions relating to community service in satisfaction of fine or costs for certain juvenile defendants younger than 17 years of age who are assessed a fine or costs for a Class C misdemeanor occurring in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense;
- revises provisions relating to community service in satisfaction of fine or costs by including a defendant who is a child and assessed a fine or costs among those who a justice or judge is authorized to require to discharge all or part of the fine or costs by performing community service and including attending a tutoring program if the defendant is a child among the types of such community service; and
- revises provisions relating to juvenile case managers to authorize a county court, justice court, municipal court, public school district, juvenile probation department, or other appropriate governmental agency, on approval of the appropriate authority, to contract for a juvenile case manager in addition to employing a juvenile case manager to provide services in certain cases and includes cases involving youth diversion among those cases.

H.B. 4606 reenacts and amends Article 45.056(c), Code of Criminal Procedure, as amended by Chapters 1213 (S.B. 1419) and 1407 (S.B. 393), Acts of the 83rd Legislature, Regular Session, 2013, to conform to changes made by Chapter 1213 and to revise the provisions to clarify that a governmental entity that jointly employs, jointly contracts for juvenile case manager services, or jointly contributes to the costs of a juvenile case manager or juvenile case manager services employs a juvenile case manager for purposes of statutory provisions relating to costs paid by defendants and Government Code provisions relating to court costs in criminal proceedings.

H.B. 4606 renames the truancy prevention and diversion fund as the youth diversion fund, clarifies that the fund is a dedicated account in the general revenue fund, and authorizes the custodian of a county treasury or municipal treasury to retain a certain amount of funds collected under the youth diversion fund to defray the costs of youth diversion, if the county or municipality has a youth diversion plan.

H.B. 4606 revises provisions relating to juvenile delinquency prevention funds to include the municipal juvenile delinquency prevention fund among such funds, to add providing funding for youth diversion as an authorized use of the municipal juvenile delinquency prevention fund, and to require the fund to be administered by or under the direction of the governing body of a municipality.

H.B. 4606 amends the Government Code to require the clerk of a justice court and the clerk of a municipal court to collect from a defendant a juvenile delinquency prevention and graffiti eradication fee in a certain amount on conviction of a graffiti offense.

H.B. 4606 applies only to an offense committed on or after September 1, 2020, and establishes that an offense was committed before that date if any element of the offense occurred before that date.

H.B. 4606 amends the Family Code to make conforming changes.

H.B. 4606 repeals the following provisions:

- Article 42.15(a-1), Code of Criminal Procedure, as added by Chapter 977 (H.B. 351),

Acts of the 85th Legislature, Regular Session, 2017

- Article 45.041(a-1), Code of Criminal Procedure, as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017
- Article 45.0492, Code of Criminal Procedure, as added by Chapter 277 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011
- Article 45.0492, Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011
- Article 42.15(f), Code of Criminal Procedure
- Section 52.031(a-1), Family Code

EFFECTIVE DATE

September 1, 2019.