

BILL ANALYSIS

Senate Research Center
86R20197 ADM-D

C.S.S.B. 2191
By: Whitmire
Criminal Justice
3/20/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Typically, an individual who is charged with a crime and remains in jail awaiting their trial is housed in the county jail in the county where their case is pending. However, under certain circumstances, such as jail overcrowding, counties may choose to contract with jail facilities outside the county to house inmates. Currently, an individual could even find themselves detained outside of the state in these circumstances. Such was the case in 2018 when it was discovered that over 400 Harris County inmates were being detained out of state in a private, for-profit facility in Louisiana—over five hours away from Houston.

Jail outsourcing is a significant issue not only because it separates individuals from their families and support systems, but also because it prevents them from having direct access to their constitutionally-afforded legal representation. By requiring individuals to be held pretrial in jail facilities in Texas, detainees will have easier access to resources that will assist them in preparing for their day in court. In addition, jail facilities outside of Texas are exempt from the necessary oversight and standards of the Texas Commission on Jail Standards.

Currently, there are over 100 Texas youth being held post-adjudication in private facilities outside of Texas. A recently released report exposed abuse and misconduct by staff in a Pennsylvania facility, highlighting frequent instances of youth being beaten, choked, and suffering broken bones. Unfortunately, this is not always an uncommon occurrence. This practice not only places youth far from families and support systems, but in facilities where Texas has limited oversight of care.

This legislation amends sections in the Code of Criminal Procedure that pertain to confining pretrial defendants in jail who are awaiting trial. These changes serve to limit the scope of jails in which pretrial defendants denied release or who cannot make bond may be detained so that these individuals are held exclusively within Texas' jail facilities. In addition, the committee substitute amends portions of the Family Code to prevent juveniles from being housed in out-of-state facilities either pre- or post-adjudication.

This committee substitute ensures that Texas youth and adults in the criminal justice system remain here in Texas while they are under our care and custody so they are not separated from their families, support systems and legal representation.

C.S.S.B. 2191 amends current law relating to the confinement of a defendant pending trial and detention or placement of a juvenile offender.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.154, as follows:

Art. 17.154. CONFINEMENT OF DEFENDANT DENIED BAIL. Requires a judge or magistrate, if the judge or magistrate denies a defendant's release on bail pending trial, to order that the defendant be confined in a jail that is located in this state.

SECTION 2. Amends Article 17.27, Code of Criminal Procedure, as follows:

Art. 17.27. New heading: WHEN BAIL IS NOT PROVIDED. Requires the magistrate, if, after the allowance of a reasonable period, the accused is unable to provide the required bail bond, to order that the accused be confined in a jail that is located in this state, rather than requiring the magistrate, if after the allowance of a reasonable time, the security be not given, to make an order committing the accused to jail to be kept safely until legally discharged and to issue a commitment accordingly.

SECTION 3. Amends Section 51.12(j), Family Code, as follows:

(j) Authorizes a child, after being taken into custody, to be detained in a secure detention facility located in this state, rather than in a secure detention facility, until the child is released under Section 53.01 (Preliminary Investigation and Determinations; Notice to Parents), 53.012 (Review by Prosecutor), or 53.02 (Release From Detention), or until a detention hearing is held under Section 54.01(a) (relating to a requirement that a detention hearing without a jury be held in certain circumstances), regardless of whether the facility has been certified under Subsection (c) (relating to required inspection of certain detention facilities), if certain circumstances are met.

SECTION 4. Amends Section 54.04, Family Code, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Provides that, subject to Subsection (d-1), if the court or jury makes a finding specified in Subsection (c) (relating to certain circumstances authorizing disposition) allowing the court to make a disposition in the case:

(1) makes no changes to this subdivision;

(2) deletes existing text relating to a post-adjudication secure correctional facility under Section 54.04011(c)(1) (relating to commitment of a child without a determinate sentence), as applicable;

(3) deletes existing text relating to a post-adjudication secure correctional facility under Section 54.04011(c)(2) (relating to commitment of a child with a determinate sentence);

(4)–(5) makes no changes to these subdivisions; or

(6) deletes existing text relating to a disposition under Section 54.04011(c)(2)(A) (relating to child who commits certain violations of penal law or is a habitual felon).

(d-1) Prohibits a child from being placed under Subsection (d) in a facility located outside the state unless the receiving facility accepts supervision of the child when the child's parent or other person having legal custody resides or is undertaking residence in that state.

SECTION 5. (a) Makes application of Article 17.154, Code of Criminal Procedure, as added by this Act, and Article 17.27, Code of Criminal Procedure, as amended by this Act, prospective.

(b) Provides that Sections 51.12 (Place and Conditions of Detention) and 54.04 (Disposition Hearing), Family Code, as amended by this Act, do not apply to the detention or placement of children in a facility in another state under an agreement entered into or renewed before the effective date of this Act. Provides that an agreement for the detention or placement of children in a facility in another state entered into or

renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2019.