

By: Johnson

S.B. No. 404

A BILL TO BE ENTITLED

AN ACT

1
2 relating to status offenses committed by a child, including the
3 repeal of the status offense of a child voluntarily running away
4 from home.

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

6 SECTION 1. Article 45.0216(f), Code of Criminal Procedure,
7 is amended to read as follows:

8 (f) The court shall order the conviction, together with all
9 complaints, verdicts, sentences, and prosecutorial and law
10 enforcement records, and any other documents relating to the
11 offense, expunged from the person's record if the court finds that:

12 (1) for a person applying for the expunction of a
13 conviction for an offense described by Section 8.07(a)(4) or (5),
14 Penal Code, the person was not convicted of any other offense
15 described by Section 8.07(a)(4) or (5), Penal Code, while the
16 person was a child; and

17 (2) for a person applying for the expunction of a
18 conviction for an offense described by Section 43.261, Penal Code,
19 the person was not found to have engaged in conduct indicating a
20 need for supervision described by Section 51.03(b)(5)
21 [~~51.03(b)(6)~~], Family Code, while the person was a child.

22 SECTION 2. Section 33.051(2), Education Code, is amended to
23 read as follows:

24 (2) "Missing child" means a child whose whereabouts

1 are unknown to the legal custodian of the child and:

2 (A) the circumstances of whose absence indicate
3 that the child did not voluntarily leave the care and control of the
4 custodian and that the taking of the child was not authorized by
5 law; or

6 (B) the child has voluntarily left the child's
7 home without the consent of the custodian for a substantial length
8 of time or without intent to return [~~engaged in conduct indicating a~~
9 ~~need for supervision under Section 51.03(b)(2), Family Code~~].

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

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

15 (15-a) "Status offense" means [~~for~~] conduct committed
16 by a child that would not, under state law, be a crime if committed
17 by an adult, including:

18 (A) [~~running away from home under Section~~
19 ~~51.03(b)(2)~~],

20 [~~(B)~~] a fineable only offense under Section
21 51.03(b)(1) transferred to the juvenile court under Section
22 51.08(b), but only if the conduct constituting the offense would
23 not have been criminal if engaged in by an adult;

24 (B) [~~(C)~~] a violation of standards of student
25 conduct as described by Section 51.03(b)(3) [~~51.03(b)(4)~~];

26 (C) [~~(D)~~] a violation of a juvenile curfew
27 ordinance or order;

1 (D) [~~(E)~~] a violation of a provision of the
2 Alcoholic Beverage Code applicable to minors only; or

3 (E) [~~(F)~~] a violation of any other fineable only
4 offense under Section 8.07(a)(4) or (5), Penal Code, but only if the
5 conduct constituting the offense would not have been criminal if
6 engaged in by an adult.

7 SECTION 4. Section 51.03(b), Family Code, is amended to
8 read as follows:

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

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

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

14 (B) the penal ordinances of any political
15 subdivision of this state;

16 (2) ~~[the voluntary absence of a child from the child's
17 home without the consent of the child's parent or guardian for a
18 substantial length of time or without intent to return,~~

19 [~~(3)~~] conduct prohibited by city ordinance or by state
20 law involving the inhalation of the fumes or vapors of paint and
21 other protective coatings or glue and other adhesives and the
22 volatile chemicals itemized in Section 485.001, Health and Safety
23 Code;

24 (3) [~~(4)~~] an act that violates a school district's
25 previously communicated written standards of student conduct for
26 which the child has been expelled under Section 37.007(c),
27 Education Code;

1 (4) [~~(5)~~] notwithstanding Subsection (a)(1), conduct
2 described by Section 43.02(a) or (b), Penal Code; or

3 (5) [~~(6)~~] notwithstanding Subsection (a)(1), conduct
4 that violates Section 43.261, Penal Code.

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

7 (a-1) Notwithstanding any other provision of this section,
8 a child may only be detained in an office or place described by
9 Subsection (a)(1) or (2) or a nonsecure correctional facility that
10 meets the conditions of Subsections (j-1)(1), (3), and (4) if the
11 child is accused only of a status offense.

12 SECTION 6. Section 51.13(e), Family Code, is amended to
13 read as follows:

14 (e) A finding that a child engaged in conduct indicating a
15 need for supervision as described by Section 51.03(b)(5)
16 [~~51.03(b)(6)~~] is a conviction only for the purposes of Sections
17 43.261(c) and (d), Penal Code.

18 SECTION 7. Section 52.02(a), Family Code, is amended to
19 read as follows:

20 (a) Except as provided by Subsection (c), a person taking a
21 child into custody, without unnecessary delay and without first
22 taking the child to any place other than a juvenile processing
23 office designated under Section 52.025, shall do one of the
24 following:

25 (1) release the child to a parent, guardian, custodian
26 of the child, or other responsible adult upon that person's promise
27 to bring the child before the juvenile court as requested by the

1 court;

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

7 (3) bring the child to a detention facility designated
8 by the juvenile board;

9 (4) bring the child to a secure detention facility as
10 provided by Section 51.12(j), unless the child is accused only of a
11 status offense;

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

15 (6) dispose of the case under Section 52.03; ~~or~~

16 (7) if school is in session and the child is a student,
17 bring the child to the school campus to which the child is assigned
18 if the principal, the principal's designee, or a peace officer
19 assigned to the campus agrees to assume responsibility for the
20 child for the remainder of the school day; or

21 (8) if the child is accused only of a status offense:

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

25 (B) if a juvenile processing office or place of
26 nonsecure custody is not available, bring the child to a nonsecure
27 correctional facility that meets the conditions of Sections

1 51.12(j-1)(1), (3), and (4).

2 SECTION 8. Section 54.011, Family Code, is amended by
3 amending Subsection (a) and adding Subsection (a-1) to read as
4 follows:

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

12 (a-1) If a child is accused only of a status offense, the
13 child may not be detained at a place of nonsecure custody for longer
14 than six hours, or at a nonsecure correctional facility for longer
15 than 24 hours, after the time the child arrived at the place of
16 detention. If the child is not released before the sixth hour after
17 the time the child arrived at the place of detention, the child is
18 entitled to a detention hearing that must be held before the 24th
19 hour after the time the child arrived at the place of detention,
20 excluding weekends and holidays. Except as otherwise provided by
21 this section, the judge or referee conducting the detention hearing
22 shall release the child from detention.

23 SECTION 9. Section 54.04(o), Family Code, is amended to
24 read as follows:

25 (o) In a disposition under this title:

26 (1) a status offender may not, under any
27 circumstances, be committed to the Texas Juvenile Justice

1 Department for engaging in conduct that would not, under state or
2 local law, be a crime if committed by an adult;

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

6 (3) a child adjudicated for contempt of a county,
7 justice, or municipal court order may not, under any circumstances,
8 be placed in a post-adjudication secure correctional facility or
9 committed to the Texas Juvenile Justice Department for that
10 conduct.

11 SECTION 10. Section 54.0404(a), Family Code, is amended to
12 read as follows:

13 (a) If a child is found to have engaged in conduct
14 indicating a need for supervision described by Section 51.03(b)(5)
15 [~~51.03(b)(6)~~], the juvenile court may enter an order requiring the
16 child to attend and successfully complete an educational program
17 described by Section 37.218, Education Code, or another equivalent
18 educational program.

19 SECTION 11. Section 59.003(a), Family Code, is amended to
20 read as follows:

21 (a) Subject to Subsection (e), after a child's first
22 commission of delinquent conduct or conduct indicating a need for
23 supervision, the probation department or prosecuting attorney may,
24 or the juvenile court may, in a disposition hearing under Section
25 54.04 or a modification hearing under Section 54.05, assign a child
26 one of the following sanction levels according to the child's
27 conduct:

1 (1) for conduct indicating a need for supervision,
2 other than conduct described in Section 51.03(b)(2) or (3)
3 [~~51.03(b)(3) or (4)~~] or a Class A or B misdemeanor, the sanction
4 level is one;

5 (2) for conduct indicating a need for supervision
6 under Section 51.03(b)(2) or (3) [~~51.03(b)(3) or (4)~~] or a Class A
7 or B misdemeanor, other than a misdemeanor involving the use or
8 possession of a firearm, or for delinquent conduct under Section
9 51.03(a)(2), the sanction level is two;

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

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

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

18 (6) for a felony of the first degree involving the use
19 of a deadly weapon or causing serious bodily injury, for an
20 aggravated controlled substance felony, or for a capital felony,
21 the sanction level is six; or

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

1 SECTION 12. The following provisions of the Family Code are
2 repealed:

3 (1) Sections 51.03(e) and 54.04(n); and

4 (2) Section 58.0022.

5 SECTION 13. The changes in law made by this Act apply only
6 to conduct that occurs on or after the effective date of this Act.
7 Conduct that occurs before the effective date of this Act is
8 governed by the law in effect on the date the conduct occurred, and
9 the former law is continued in effect for that purpose. For the
10 purposes of this section, conduct occurred before the effective
11 date of this Act if any element of the conduct occurred before that
12 date.

13 SECTION 14. This Act takes effect September 1, 2021.