

BILL ANALYSIS

H.B. 2037
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Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Chapter 55 Advisory Committee, a committee of juvenile justice and mental health stakeholders from across Texas, convened in December of 2021 to evaluate Chapter 55 of the Family Code and to propose related legislative changes. As originally written, language from the Code of Criminal Procedure and the Health and Safety Code, which were written to apply to adults, was incorporated into the Family Code provisions. There was a need for comprehensive revisions to make Chapter 55 more appropriate for and applicable to children and youth. The advisory committee recommended that the legislature streamline processes relating to a child's fitness to proceed and lack of responsibility, improve expert examinations and reports, and expand the use of outpatient services when appropriate and available. H.B. 2037 seeks to implement the advisory committee's recommendations by revising Chapter 55 of the Family Code with respect to juvenile court proceedings for children with mental illness and intellectual disabilities. The bill also revises provisions relating to the mental examination of a juvenile.

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. 2037 amends the Family Code to revise certain provisions relating to referral and proceedings concerning children with mental illness or an intellectual disability under the juvenile justice code.

Examination of a Child With Mental Illness or an Intellectual Disability

H.B. 2037 authorizes a juvenile court to order a forensic mental examination by a disinterested physician or psychologist if the court determines that probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision is a child with mental illness, is unfit to proceed in juvenile court due to mental illness or an intellectual disability, or lacks responsibility for the conduct due to mental illness or an intellectual disability.

H.B. 2037 requires information obtained from the court-ordered forensic mental examination for determining a child's lack of responsibility for conduct to include expert opinion as to whether the child is a child with mental illness or an intellectual disability, whether the child

meets criteria for court-ordered mental health or intellectual disability services, and the specific criteria the child meets, if applicable.

H.B. 2037 revises the qualifications of a physician or psychologist to be appointed as an expert under statutory provisions relating to a juvenile proceeding concerning a child with mental illness or an intellectual disability by requiring such a person to be a physician licensed in Texas or be a psychologist licensed in Texas who has a doctoral degree in psychology and to, as appropriate, meet the following criteria:

- have the following certification or training:
 - certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry or the American Board of Professional Psychology in forensic psychology; or
 - training consisting of at least 24 hours of specialized forensic training relating to specified topics and at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the date of the appointment; and
- have completed six hours of required continuing education in courses in forensic psychiatry or psychology in the 24 months preceding the appointment.

The bill authorizes a court to appoint a physician or psychologist as an expert who does not meet the criteria only if the court determines that exigent circumstances require the court to appoint an expert with specialized expertise that is not ordinarily possessed by a physician or psychologist who meets the requirements to examine a child established under the bill.

Court-Ordered Inpatient and Outpatient Mental Health Services

H.B. 2037 authorizes a juvenile court to order a child who is subject to the court's jurisdiction to receive temporary or extended inpatient mental health services only if the court finds, from clear and convincing evidence, that the child is a child with a mental illness and as a result of the illness, the child is, as follows:

- likely to cause serious harm to the child's self or others; or
- suffering severe and abnormal mental, emotional, or physical distress, experiencing substantial mental or physical deterioration of the child's ability to function independently, and unable to make a rational and informed decision as to whether to submit to treatment or is unwilling to submit to treatment.

In addition to such findings, the court may order such a child to receive extended inpatient mental health services only if the court finds, from clear and convincing evidence, that the child's condition is expected to continue for more than 90 days and the child has received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months.

H.B. 2037 authorizes a juvenile court to order a child who is subject to the court's jurisdiction to receive temporary or extended outpatient mental health services only if the court finds that appropriate mental health services are available to the child and finds clear and convincing evidence that the following apply:

- the child is a child with severe and persistent mental illness;
- as a result of the mental illness, the child will, if not treated, experience deterioration of the ability to function independently to the extent that the child will be unable to live safely in the community without court-ordered outpatient mental health services;
- such services are needed to prevent a relapse that would likely result in serious harm to the child or others; and
- the child has an inability to effectively and voluntarily participate in outpatient treatment services, demonstrated by any of the child's actions occurring within the two-year period preceding the hearing date or specific characteristics of the child's clinical condition that significantly impair the child's ability to make a rational and informed decision as to whether to submit to voluntary outpatient treatment.

In addition to such findings, the court may order the child to receive extended outpatient mental health services only if the child's condition is expected to continue for more than 90 days and

the child has received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months or court-ordered outpatient mental health services during the preceding 60 days.

Court-Ordered Residential Intellectual Disability Services for a Child

H.B. 2037 prohibits a court from ordering a child to receive services at a residential care facility unless the child is a child with an intellectual disability and the following applies:

- evidence is presented showing that because of the child's intellectual disability, the child represents a substantial risk of physical impairment or injury to the child or others or is unable to provide for and is not providing for the child's most basic personal physical needs;
- the child cannot be adequately and appropriately habilitated in an available, less restrictive setting;
- the residential care facility provides habilitative services, care, training, and treatment appropriate to the child's needs; and
- an interdisciplinary team recommends placement in the residential care facility.

The bill defines "interdisciplinary team" as a group of intellectual disability professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with an intellectual disability and make recommendations for services for that person.

Determination of Mental Illness

H.B. 2037, in provisions relating to a juvenile court's determination whether probable cause exists to believe an applicable child is a child with mental illness, requires information obtained from a forensic mental examination to include expert opinion as to whether the child meets the criteria for court-ordered mental health services under the bill's provisions and, if applicable, the specific criteria the child meets for those services. The bill changes from commitment criteria under the Texas Mental Health Code to criteria for court-ordered mental health services established by the bill the criteria under which a juvenile court determines that the child is a child with a mental illness. The bill provides for the court to dissolve the stay and continue the court proceedings upon determination that evidence does not exist to support a finding that the child is a child with a mental illness or that the child meets such criteria.

Standards of Care and Discharge From Mental Health Services

H.B. 2037 provides for court-ordered outpatient services in the application of standards of care for mental health services, as provided by the Texas Mental Health Code. The bill requires court-ordered treatment for a child with mental illness to focus on the stabilization of the child's mental illness and on meeting the child's psychiatric needs in the least restrictive appropriate setting. The bill defines "least restrictive appropriate setting" as the treatment or service setting closest to the child's home that provides the child with the greatest probability of improvement and is no more restrictive of the child's physical or social liberties than is necessary to provide the child with the most effective treatment or services and to protect adequately against any danger the child poses to self or others.

H.B. 2037 provides for outpatient treatment services in provisions relating to procedures for discharging a child before reaching 18 years of age from court-ordered mental health services and specifies that the court may dissolve the stay of a child who is discharged from such services or from a mental health facility, as applicable.

Discretionary Transfer to Criminal Court

H.B. 2037 revises provisions relating to the transfer of proceedings from a juvenile court to a criminal court on the 18th birthday of a child for whom the court ordered inpatient mental health services or residential care, as follows:

- authorizes the juvenile court to waive its exclusive original jurisdiction;
- changes from a requirement to an authorization for a juvenile court to transfer all pending proceedings to a criminal court;
- clarifies that a waiver of jurisdiction and discretionary transfer may occur on or after the child's 18th birthday;
- requires a court conducting a waiver of jurisdiction and discretionary transfer hearing to conduct the hearing according to applicable statutory provisions; and
- conditions the requirement for the court to notify the applicable facility of the child's transfer on the court waiving its jurisdiction and transferring the person to criminal court.

Unfit to Proceed or Lack of Responsibility for Conduct

H.B. 2037 requires an expert, during a forensic mental examination to determine if a child is unfit to proceed as a result of mental illness or an intellectual disability and in any report based on that examination, to consider the following information in addition to other issues determined relevant by the expert:

- whether the child, as supported by current indications and the child's personal history, is a child with mental illness or an intellectual disability;
- the child's capacity to appreciate the allegations against the child, appreciate the range and nature of allowable dispositions that may be imposed in the proceedings against the child, understand the roles of the participants and the adversarial nature of the legal process, display appropriate courtroom behavior, and testify relevantly; and
- the degree of impairment resulting from the child's mental illness or intellectual disability and the specific impact on the child's capacity to engage with counsel in a reasonable and rational manner.

The bill sets out the required components of the expert's report to the court that states an opinion regarding the child's fitness to proceed or an explanation of why the expert is unable to state such an opinion.

H.B. 2037, with respect to a child found unfit to proceed or not responsible for the child's conduct as a result of mental illness or an intellectual disability, replaces the criteria for commitment under the Texas Mental Health Code or the Persons with an Intellectual Disability Act with criteria for inpatient mental health services or residential intellectual disability services established under the bill, as applicable. The bill provides for the following with respect to a child who does not meet the bill's criteria:

- the requirement for the court to order the child, as appropriate, to receive treatment or services in an alternative setting on an outpatient basis for a period of 90 days, with the possibility of extension as ordered by the court;
- if a child receives such treatment or services, the authority of juvenile probation departments to provide restoration classes in collaboration with an outpatient alternative setting;
- the authorization for the state or political subdivision to be ordered to pay any costs associated with the services; and
- the consultation of the court with the local juvenile probation department, local mental health authority, and local intellectual and developmental disability authority, as applicable, before issuing an order for treatment or services in an alternative setting.

H.B. 2037 requires a report sent by a public or private facility or alternative setting to the court that states the opinion of the facility director that the child is unfit to proceed or the child is a child with mental illness or an intellectual disability, as applicable, to also include an opinion and the reasons for that opinion as to whether the child meets the criteria for court-ordered mental health services or court-ordered intellectual disability services. The bill requires the report of an outpatient alternative setting collaborating with a juvenile probation department to provide restoration classes to include any information provided by the department regarding the child's assessment at the conclusion of such classes.

H.B. 2037 defines "restoration classes" as curriculum-based educational sessions a child attends to assist in restoring the child's fitness to proceed, including the child's capacity to understand the proceedings in juvenile court and to assist in the child's own defense.

Proceedings for Mental Health or Residential Intellectual Disability Services

H.B. 2037 revises provisions relating to juvenile court referral and proceedings for a child with mental illness and for a child found unfit to proceed or who lacks responsibility for conduct due to mental illness or an intellectual disability by requiring the court to take the following actions, in accordance with the Texas Mental Health Code:

- direct the local mental health authority to file, before the date set for the hearing, its recommendation for the child's proposed treatment;
- identify the person responsible for court-ordered outpatient mental health services at least three days before or not later than the third day before, as applicable, the date set for a hearing that may result in the court ordering the child to receive court-ordered outpatient mental health services; and
- give consideration to the least restrictive appropriate setting for the child's treatment or services and to the parent's, managing conservator's, or guardian's availability and willingness to participate in the child's treatment or services, as applicable.

The bill requires the Health and Human Services Commission, on receipt of the court's order for inpatient mental health or residential intellectual disability services, to identify a facility and admit the child to the identified facility.

H.B. 2037 specifies that, if a juvenile court initiates proceedings for a child found unfit to proceed or who lacks responsibility for conduct due to intellectual disability, a prosecuting attorney may file an application for an interdisciplinary team report and recommendation that the child is in need of long-term placement in a residential care facility. The bill revises the procedure for a court to refer proceedings for such a child by specifying that the court is required to send to the clerk of the applicable court all papers relating to the child's mental illness or intellectual disability, the child's unfitness to proceed, and the finding that the child was not responsible for the child's conduct, as applicable. The bill provides for the required court actions, including conducting a detention hearing, if the court makes findings to support further detention of such a child.

H.B. 2037 requires a juvenile court, regarding such proceedings or referral for such proceedings, to take the following action if the child is currently detained in a juvenile detention facility:

- order the child released from detention to an appropriate place;
- order the child detained or placed in an appropriate facility other than a juvenile detention facility; or
- conduct a detention hearing and, if the court makes findings to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention court orders.

H.B. 2037 requires the juvenile court, on receipt of a report that a child is a child with a mental illness or intellectual disability or is unfit to proceed as a result of mental illness or intellectual disability and meets applicable criteria for court-ordered services established by the bill, to take the following action, as applicable:

- initiate proceedings, as provided by applicable bill provisions, for temporary or extended mental health services or court-ordered residential intellectual disability services; or
- refer the child's case, as provided by applicable bill provisions, for the initiation of proceedings in that court for temporary or extended mental health services or court-ordered residential intellectual disability services.

Other Provisions

H.B. 2037 repeals the following provisions of the Family Code:

- Section 55.39, relating to referral for commitment proceedings for mental illness;
- Section 55.42, relating to referral for commitment proceedings for children with intellectual disability;
- Section 55.57, relating to commitment proceedings in juvenile court for mental illness;
- Section 55.58, relating to referral for commitment proceedings for mental illness;
- Section 55.60, relating to commitment proceedings in juvenile court for children with intellectual disability; and
- Section 55.61, relating to referral for commitment proceedings for children with intellectual disability.

H.B. 2037 updates certain archaic references to "mental retardation" and "mental retardation authority" used in the juvenile justice code.

H.B. 2037 applies only to a juvenile court hearing or proceeding that commences on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.