

BILL ANALYSIS

C.S.H.B. 3186
By: Leach
Youth Health & Safety, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the wake of recent tragedies, there is an increased recognition of the importance of early identification of, and response to, at-risk youth and youth living with mental illness. Experts believe that youth diversion, consisting of early identification and intervention, is key to decreasing recidivism, reducing juvenile justice system involvement, lowering long-term costs, helping youth and their families access needed services and programs, and reducing the burden on the justice system as a whole. Since civil courts cannot accommodate the immense volume of juvenile Class C misdemeanor cases, municipal and justice courts have become the frontline responders for children accused of Class C misdemeanors involving crimes such as curfew violations, underage drinking, and possession of drug paraphernalia.

Under current law, youth diversion strategies can only be ordered by a municipal or justice court on the back end of a case as part of a conviction or a deferred disposition. C.S.H.B. 3186, the Texas Youth Diversion and Early Intervention Act, seeks to make diversion strategies more effective by providing for the referral of certain children to youth diversion services without requiring a criminal adjudication and for the adoption of a youth diversion plan by each justice and municipal court. The bill also facilitates collaboration between applicable entities, including by authorizing local governments to collaborate in creating a regional youth diversion plan.

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

C.S.H.B. 3186, the Texas Youth Diversion and Early Intervention Act, amends the Code of Criminal Procedure, Family Code, Government Code, and Local Government Code to establish provisions relating to youth diversion from criminal prosecution and related court procedures and criminal justice matters.

Youth Diversion Eligibility and Strategies

C.S.H.B. 3186 requires a child who is alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense, to be diverted from formal criminal prosecution as provided by the bill. The bill makes a child eligible to enter into a diversion agreement only once every 365 days and makes a child ineligible for such diversion if the child has previously had an unsuccessful diversion or if the diversion is objected to by the

state's attorney. The bill prohibits a court from diverting a child from criminal prosecution without the written consent of the child and the child's parent. The bill establishes that diversion strategies include the following:

- requiring a child to participate in a program, including:
 - a court-approved teen court program operated by a service provider;
 - a school-related program;
 - an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program;
 - a rehabilitation program; or
 - a self-improvement program, including a program relating to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution;
- referring a child to a service provider for services, including:
 - at-risk youth services;
 - juvenile case manager services;
 - work and job skills training, including job interviewing and work preparation;
 - academic monitoring or tutoring, including preparation for a high school equivalency examination;
 - community-based services;
 - mental health screening and clinical assessment;
 - counseling, including private or in-school counseling; or
 - mentoring services;
- requiring a child to:
 - participate in mediation or other dispute resolution processes;
 - submit to alcohol or drug testing; or
 - substantially comply with a course of treatment prescribed by a physician or other licensed medical or mental health professional; and
- requiring a child, by court order, to:
 - pay restitution not to exceed \$100 for an offense against property;
 - perform not more than 20 hours of community service; or
 - perform any other reasonable action determined by the court.

The bill authorizes a diversion strategy to be imposed in connection with the following:

- a system of graduated sanctions imposed by a public school district before filing a criminal complaint against a child for certain school offenses; or
- an intermediate diversion or a diversion by a justice or judge, as established by the bill.

The bill prohibits a diversion strategy from requiring a child who is a home-schooled student to attend an elementary or secondary school or to use an educational curriculum other than the curriculum selected by the parent.

Youth Diversion Agreement, Coordinator, and Plan

C.S.H.B. 3186 authorizes a court to designate a youth diversion coordinator to assist the court in the following:

- determining whether a child is eligible for diversion;
- employing a youth diversion strategy authorized by the bill;
- presenting and maintaining diversion agreements;
- monitoring diversions;
- maintaining records regarding whether one or more diversions were successful or unsuccessful; and
- coordinating referrals to court.

The bill authorizes the responsibilities of the youth diversion coordinator to be performed by the following:

- a court administrator or court clerk, or a person who regularly performs the duties of court administrator or court clerk;

- an individual or entity that provides juvenile case manager services;
- a court-related services office;
- a community supervision and corrections department, including a juvenile probation department;
- a county or municipal employee, including a peace officer;
- a community volunteer;
- an institution of higher education, including a public, private, or independent institution of higher education; or
- a qualified nonprofit organization as determined by the court.

C.S.H.B. 3186 requires a diversion agreement to identify the parties to the agreement and the responsibilities of the child and the child's parent to ensure their meaningful participation in an intermediate diversion or a diversion by a justice or judge. Stated objectives in a diversion agreement must be measurable, realistic, and reasonable and consider the circumstances of the child, the best interests of the child, and the long-term safety of the community. A diversion agreement must include the following:

- the terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner and identifying any offense or charge being diverted;
- possible outcomes or consequences of a successful diversion and an unsuccessful diversion;
- an explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion;
- an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement;
- the period of the diversion;
- a verification that:
 - the child and the child's parent were notified of the child's rights, including the right to refuse diversion; and
 - the child knowingly and voluntarily consents to participate in the diversion; and
- written acknowledgment and acceptance of the agreement by the child and the child's parent.

The terms of an agreement may vary depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used. A charge may not be filed against a child or, if filed, must be dismissed by the court if the child does not contest the charge, is eligible for diversion under the bill's provisions, and accepts the terms of the agreement. The bill establishes that entering into a diversion agreement extends the court's jurisdiction for the term of the agreement. On entering into a diversion agreement, a copy of the agreement must be provided to the child and the child's parent, the clerk of the court, a youth diversion coordinator, and any person specified by the youth diversion plan.

C.S.H.B. 3186 requires a youth diversion coordinator or juvenile case manager, if provided by a youth diversion plan, to advise the child and the child's parent before a case is filed that the case may be diverted for a reasonable period not to exceed 180 days if:

- the child is eligible for diversion under the bill's provisions;
- diversion is in the best interests of the child and promotes the long-term safety of the community;
- the child and the child's parent consent to diversion with the knowledge that diversion is optional; and
- the child and the child's parent are informed that they may terminate the diversion at any time and, if terminated, the case will be referred to court.

The terms of a diversion agreement must be in writing and may include any of the diversion strategies under the bill. The bill requires the case of a child who successfully complies with the terms of the diversion agreement to be closed and reported as successful to the court. A child

who does not comply with the terms of the diversion agreement must be referred to court under the bill's provisions.

C.S.H.B. 3186 requires a justice or judge, if a charge involving a child who is eligible for diversion is filed with the court, to divert the case as follows:

- if the child does not contest the charge, a justice or judge must divert the case without the child having to enter a plea; or
- if the child contests the charge, a justice or judge must divert the case at the conclusion of trial on a finding of guilt without entering a judgment of conviction.

The bill caps the diversion period at 180 days. The terms of the diversion agreement must be in writing and may include any of the diversion strategies under the bill. The bill requires the case of a child who successfully complies with the terms of the diversion agreement to be closed and reported as successful to the court. A child who does not comply with the terms of the diversion agreement to be referred to court for a hearing under the bill's provisions.

C.S.H.B. 3186 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 that does not limit the types of diversion strategies that may be imposed under a diversion agreement. The bill requires each justice and municipal court to adopt a youth diversion plan and to implement the plan not later than January 1, 2025. The bill authorizes the following:

- a youth diversion plan to be devised for a county or municipality or an individual court within a county or municipality;
- a local government to enter into an agreement under the Interlocal Cooperation Act with one or more local governments to create a regional youth diversion plan and collaborate in the implementation of youth diversion;
- a youth diversion plan to include an agreement with a service provider to provide services for a diversion strategy; and
- a youth diversion plan to contain discretionary guidelines for disposition or diversion of a child's case by law enforcement.

The bill requires a current youth diversion plan to be maintained on file for public inspection in each justice and municipal court, including courts that collaborate with one or more counties or municipalities. The bill authorizes a court or local government to adopt rules necessary to coordinate services under a youth diversion plan or to implement youth diversion. The bill defines "service provider" as a governmental agency, political subdivision, open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families.

Related Court Procedures

C.S.H.B. 3186 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 under the juvenile justice code and do not preclude a waiver of criminal jurisdiction and transfer of a child's case to a juvenile court.

C.S.H.B. 3186 requires a court to conduct a non-adversarial hearing for a child who does not successfully complete the terms of an intermediate diversion or a diversion by a justice or judge and is referred to the court. The bill establishes that the hearing is an opportunity for a justice or judge to confer with the child and the child's parent to determine whether a diversion should be declared unsuccessful by the court. The bill authorizes the court to also hear from any person who may be of assistance to the child or the court in determining what is in the best interests of the child and the long-term safety of the community. After the hearing, a court may enter an order as follows:

- amending or setting aside terms in the diversion agreement;
- extending the diversion for a period not to exceed one year from the initial start date of the diversion;

- issuing a continuance for the hearing for a period not to exceed 60 days to allow an opportunity for compliance with the terms of the diversion;
- requiring the child's parent to perform any act or refrain from performing any act as the court determines will increase the likelihood the child will successfully complete the diversion and comply with any other order of the court that is reasonable and necessary for the welfare of the child;
- finding the diversion successful on the basis of substantial compliance; or
- finding the diversion unsuccessful and:
 - transferring the child to juvenile court for alleged conduct indicating a need for supervision; or
 - referring the charge to the prosecutor for consideration of re-filing.

The bill prohibits an order regarding the child's parent from having the substantive effect of interfering with a parent's fundamental right to determine how to raise the parent's child, unless the court finds that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health. The bill makes such an order enforceable against the parent by contempt. The bill establishes that the statute of limitations of two years is tolled during the diversion period for purposes of an order finding the diversion unsuccessful and referring the charge to the prosecutor for consideration of re-filing.

C.S.H.B. 3186 authorizes the clerk of a justice or municipal court to collect from a child's parent a \$50 administrative fee to defray the costs of the diversion of the child's case. The bill prohibits the fee from being collected unless specified as a term of the diversion agreement accepted by the child's parent. If the fee is not paid after giving the child's parent an opportunity to be heard, the court must order the parent, if financially able, to pay the fee to the clerk of the court. The bill does the following:

- requires a court to waive the fee if the child's parent is indigent or does not have sufficient resources or income to pay the fee;
- authorizes a court to adopt rules for the waiver of a fee for financial hardship;
- makes an order for a child's parent to pay the fee enforceable against the parent by contempt;
- requires the clerk of the court to keep a record of the collected fees and to forward the funds to the county treasurer, municipal treasurer, or person fulfilling the role of a county treasurer or municipal treasurer, as appropriate;
- requires a collected fee to be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under the bill's provisions;
- prohibits a fee from being assessed for a child diverted under the bill's programs, except for the required \$50 local youth diversion administrative fee; and
- prohibits the diversion of a child from being contingent on payment of any such fees.

The bill provides for the required maintenance by a justice or municipal court of statistics for each authorized diversion strategy and for the confidentiality and expunction of applicable records pertaining to a child.

C.S.H.B. 3186 requires a justice or municipal court, in a case involving a child who is eligible for diversion that results in a trial and if the court determines the evidence presented in a bench trial would support a finding of guilt or if a jury returns a verdict of guilty, to provide the child and the child's parents the opportunity to accept placement in diversion instead of entering an adjudication of guilt. The bill provides for the child's placement in diversion or for the court's finding of the child's guilt and sentencing, as applicable. The bill replaces the authorization for a judge to allow a child defendant to elect at the time of conviction to perform community service or receive tutoring in lieu of paying the fine and costs with a requirement to do so, provided a diversion is not required under the bill's provisions.

C.S.H.B. 3186 extends the applicability of provisions relating to community service in satisfaction of a fine or costs in justice and municipal courts to a child defendant under youth diversion and revises provisions relating to juvenile case managers as follows:

- authorizes a county court, justice court, municipal court, public school district, juvenile probation department, or other appropriate governmental entity, on approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate entity, to contract for a juvenile case manager as an alternative to direct employment;
- includes cases involving youth diversion among the duties of the juvenile case manager and requires the case manager to give priority to those cases;
- requires an entity that applies to the criminal justice division of the governor's office for reimbursement of costs relating to a contract for or employment of a juvenile case manager or juvenile case manager services for purposes of youth diversion to present a youth diversion plan that addresses the juvenile case manager's role in the effort to the office as a condition of reimbursement eligibility;
- provides for the effect of an entity's joint employment of, contract for, or contribution to the costs of a juvenile case manager or related services, as applicable, on the determination of certain costs, fees, and fines in criminal proceedings;
- authorizes an applicable court or governing body to pay the costs of contracting for juvenile case manager services from the local youth diversion fund; and
- authorizes the governing body of a county or municipality that does not employ or contract with a juvenile case manager, in consultation with the court, to direct money from the local youth diversion fund to be used for the support of a local mental health authority, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designed to prevent or reduce the number of juvenile referrals to the court.

Other Provisions

C.S.H.B. 3186 extends the applicability of provisions relating to juvenile delinquency prevention funds to municipalities and requires municipal courts and justice courts to impose \$50 fines for juvenile delinquency prevention and graffiti eradication. The bill includes funding for youth diversion as an authorized use of funds from a municipal or county juvenile delinquency prevention fund and requires a municipal juvenile delinquency prevention fund to be administered by or under the direction of the governing body of the municipality. The bill includes funding for youth diversion as an authorized use of certain child safety funds in certain municipalities and counties.

C.S.H.B. 3186 includes a court's referral of a child as an at-risk child under the bill's youth diversion provisions among the referrals for which the Department of Family and Protective Services must provide early youth intervention services for an eligible child and the child's family if a contract to provide such services is available in the county. The bill provides for the inclusion of instruction related to youth diversion and issues related to mental health and children with disabilities in the course required to be completed by certain court judges with jurisdiction to hear a complaint against a child alleging a violation of certain fine-only misdemeanors.

C.S.H.B. 3186 applies only to an offense committed on or after January 1, 2025. The bill provides for the continuation of the law in effect before that date for purposes of an offense, or any element thereof, that occurred before that date.

Definitions

C.S.H.B. 3186 defines the following terms for purposes of the bill's provisions regarding youth diversion:

- "charge" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint;
- "child" by reference means a person who is:
 - at least 10 years of age and younger than 17 years of age; and

- charged with or convicted of an offense for which a justice or municipal court has jurisdiction;
- "court" means a justice court, municipal court, or other court subject to the bill's provisions regarding youth diversion;
- "diversion" means an intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child's actions, including an intermediate diversion or a diversion by a justice or judge;
- "offense" means a misdemeanor punishable by fine only, other than a traffic offense;
- "parent" by reference means a person standing in parental relation, a managing conservator, or a custodian; and
- "youth diversion plan" means a plan adopted under the bill's provisions.

EFFECTIVE DATE

January 1, 2024.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3186 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision absent from the introduced that limits a child's eligibility to enter into a diversion agreement to once every 365 days.

Whereas the introduced made a child ineligible for youth diversion under the bill's provisions if the child has previously had two unsuccessful youth diversions for offenses that were not part of a single criminal episode, the substitute makes a child ineligible if the child has previously had any unsuccessful youth diversion under the bill's provisions. Accordingly, the substitute omits the authorization in the introduced for a court to find a child eligible for youth diversion if they have two or more prior unsuccessful diversions.

Whereas the introduced included a school district in the definition of "service provider," the substitute omits school district from that definition.

While both the introduced and the substitute require a justice or municipal court, in a case involving a child who is eligible for youth diversion that results in a trial, to provide the opportunity to accept placement in youth diversion instead of entering a finding or adjudication of guilt, as applicable, the substitute includes a jury's guilty verdict as a condition that triggers such a requirement and specifies that the evidence supporting a finding of guilt is evidence presented in a bench trial.

The substitute includes a short title absent from the introduced establishing that the bill may be cited as the Texas Youth Diversion and Early Intervention Act.