88R19159 MCF-F

By:  Moody, Thompson of Harris, H.B. No. 16

     A. Johnson of Harris, Leach, Cook,

     et al.

Substitute the following for H.B. No. 16:

By:  A. Johnson of Harris C.S.H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to the adjudication and disposition of cases involving delinquent conduct, certain juvenile court proceedings, and planning and funding for services for children in the juvenile justice system.

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

SECTION 1.  Section 51.02, Family Code, is amended by adding Subdivision (7-a) to read as follows:

(7-a) "Mitigating evidence" means evidence or information presented at a proceeding under this title that:

(A)  is used to assess the growth, culpability, and maturity of a child; and

(B)  takes into consideration:

(i)  the diminished culpability of juveniles, as compared to that of adults;

(ii)  the hallmark features of youth; and

(iii)  the greater capacity of juveniles for change, as compared to that of adults.

SECTION 2.  Section 54.01, Family Code, is amended by adding Subsections (e-1), (e-2), and (e-3) to read as follows:

(e-1)  At the conclusion of the hearing, the court shall refer the child to the Department of Family and Protective Services for early youth intervention services described by Section 264.302 if the court does not release the child from detention due solely to a finding described by Subsection (e)(2) or (3).

(e-2)  On receipt of a referral under Subsection (e-1), the Department of Family and Protective Services shall:

(1)  conduct an early youth intervention services review not later than 72 hours, excluding weekends and holidays, after the conclusion of the hearing under Subsection (a); and

(2)  submit the review to the court.

(e-3)  A court that refers a child to the Department of Family and Protective Services under Subsection (e-1) shall:

(1)  as soon as practicable after receiving the early youth intervention services review, consider the review; and

(2)  if appropriate, release the child not later than the 10th working day after the date of the conclusion of the hearing.

SECTION 3.  Section 54.02, Family Code, is amended by adding Subsection (d-1) and amending Subsection (h) to read as follows:

(d-1)  In a hearing under this section, a presumption exists that it is in the best interest of the child and of justice that the juvenile court retain jurisdiction over the child. The burden is on the state to overcome this presumption.

(h)  If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver. The statement of reasons must include sufficient specificity to permit meaningful review, provide case-specific findings of fact that do not rely solely on the nature or seriousness of the offense, and refer to relevant mitigating evidence. The court shall [~~and~~] certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under Section 152.0015, Human Resources Code, the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under Article 4.19, Code of Criminal Procedure. A transfer of custody made under this subsection is an arrest.

SECTION 4.  Section 54.04(c), Family Code, is amended to read as follows:

(c)  No disposition may be made under this section unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made. If the court or jury does not so find, the court shall dismiss the child and enter a final judgment without any disposition. No disposition placing the child on probation outside the child's home may be made under this section unless the court or jury finds that the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of the probation. The court shall consider mitigating evidence of the child's circumstances in making a finding under this section.

SECTION 5.  Section 54.04013, Family Code, is amended to read as follows:

Sec. 54.04013.  SPECIAL COMMITMENT TO TEXAS JUVENILE JUSTICE DEPARTMENT. (a) Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

(b)  In making a special commitment finding under Subsection (a), the court may consider mitigating evidence of the child's circumstances.

SECTION 6.  Section 54.05(f), Family Code, is amended to read as follows:

(f)  Except as provided by Subsection (j), a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony may be modified so as to commit the child to the Texas Juvenile Justice Department [~~or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code,~~] if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court and makes a special commitment finding under Section 54.04013. A disposition based on a finding that the child engaged in habitual felony conduct as described by Section 51.031 or in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) may be modified to commit the child to the Texas Juvenile Justice Department [~~or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code,~~] with a possible transfer to the Texas Department of Criminal Justice for a definite term prescribed by[~~, as applicable,~~] Section 54.04(d)(3) [~~or Section 152.0016(g), Human Resources Code,~~] if the original petition was approved by the grand jury under Section 53.045 and if after a hearing to modify the disposition the court finds that the child violated a reasonable and lawful order of the court.

SECTION 7.  Section 59.009(a), Family Code, is amended to read as follows:

(a)  For a child at sanction level six, the juvenile court may commit the child to the custody of the Texas Juvenile Justice Department [~~or a post-adjudication secure correctional facility under Section 54.04011(c)(1)~~]. The department[~~, juvenile board, or local juvenile probation department, as applicable,~~] may:

(1)  require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than nine months or more than 24 months unless the department, board, or probation department reduces or extends the period and the reason for a reduction or an extension is documented;

(2)  require the child to make restitution to the victim of the child's conduct or perform community service restitution appropriate to the nature and degree of the harm caused and according to the child's ability, if there is a victim of the child's conduct;

(3)  require the child and the child's parents or guardians to participate in programs and services for their particular needs and circumstances; and

(4)  if appropriate, impose additional sanctions.

SECTION 8.  Sections 264.302(d) and (e), Family Code, are amended to read as follows:

(d)  The department shall [~~may~~] provide services under this section to a child who engages in conduct for which the child may be found by a court to be an at-risk child, without regard to whether the conduct violates a penal law of this state of the grade of felony other than a state jail felony, if the child was younger than 13 [~~10~~] years of age at the time the child engaged in the conduct.

(e)  The department shall provide services for a child and the child's family if [~~a contract to provide services under this section is available in the county and~~] the child is referred to the department as an at-risk child by:

(1)  a juvenile court or probation department under Section 54.01 or as part of a progressive sanctions program under Chapter 59;

(2)  a law enforcement officer or agency under Section 52.03; or

(3)  a justice or municipal court under Article 45.057, Code of Criminal Procedure.

SECTION 9.  Chapter 203, Human Resources Code, is amended by adding Section 203.0171 to read as follows:

Sec. 203.0171.  COMMUNITY-BASED DIVERSION AND INTERVENTION PLAN; TASK FORCE. (a) The department shall develop, and the board shall adopt, a strategic diversion and intervention plan to establish a network of community-based programs and services, within defined geographic regions of this state, to rehabilitate and keep children closer to home instead of placing children in post-adjudication secure correctional facilities. The plan must:

(1)  develop or update an inventory of community-based programs and services provided by local juvenile justice organizations and community-based organizations that serve juveniles;

(2)  create an intercept map that:

(A)  plots resources and gaps across each intercept point within the juvenile justice system;

(B)  identifies local behavioral health services to support diversion from the justice system;

(C)  introduces community system leaders and staff to evidence-based practices and emerging best practices related to each intercept point; and

(D)  includes customized, local maps and action plans to address plotted gaps;

(3)  describe barriers to securing rehabilitative and programmatic mental health and therapeutic treatment service providers in rural, multicounty, and regional jurisdictions;

(4)  identify ways in which research-validated initial risk assessments may be utilized to connect resources with risk and protective factors identified in the assessments to create individualized diversion plans;

(5)  highlight state and national models for community-based collaborations and cross-system partnerships for assessments and referrals of juveniles in need of mental health and substance use treatment, aftercare, and recovery services;

(6)  develop a model memorandum of understanding and provider contract for community-based programs and services;

(7)  describe and track the dispositional impact of the variability of diversionary community-based programs and services on court decisions to detain children in post-adjudication secure correctional facilities;

(8)  identify effective strategies for leveraging community resources and strengths to divert children from placement in post-adjudication secure correctional facilities;

(9)  include a description of various community-based programs and services that promote and incorporate trauma-informed services, equity- and culturally responsive services, gender-specific services, family involvement, wraparound services, and services that promote rehabilitative juvenile services through a therapeutic perspective; and

(10)  examine any other issue pertaining to juvenile justice service providers and community-based infrastructure in this state.

(b)  The board shall appoint a task force, in collaboration with the department's regionalization division established under Section 203.017, to consult with the department in developing the plan. The task force is composed of the following members:

(1)  representatives designated by the advisory council on juvenile services;

(2)  regional representatives;

(3)  a juvenile court prosecutor, including a juvenile court prosecutor serving on the Juvenile Law Council of the Juvenile Law Section of the State Bar of Texas;

(4)  a juvenile defense attorney, including a defense attorney serving on the Juvenile Law Council of the Juvenile Law Section of the State Bar of Texas;

(5)  a juvenile court judge;

(6)  subject matter experts designated by the department;

(7)  a representative designated by the Department of Family and Protective Services;

(8)  a representative designated by the Office of Court Administration of the Texas Judicial System;

(9)  a youth advocate from a nonprofit or nongovernmental organization with experience in juvenile justice;

(10)  a member of the public who has personal experience with or has been personally impacted by the juvenile justice system;

(11)  a public or private program or service provider;

(12)  an academic researcher from an accredited institution of higher education who specializes in juvenile justice issues;

(13)  a staff member designated by an interested member of the legislature; and

(14)  any other individual the board considers necessary, including experts who may serve in an advisory capacity.

(c)  Not later than December 1, 2024, the department shall submit a copy of the plan under this section to each member of the legislature.

SECTION 10.  Subchapter A, Chapter 221, Human Resources Code, is amended by adding Section 221.013 to read as follows:

Sec. 221.013.  COMMUNITY REINVESTMENT FUND. (a) Each county shall establish a community reinvestment fund.

(b)  The juvenile board or juvenile probation department of the county shall partner with research-based service providers in the community to use money in the community reinvestment fund to provide services as an alternative to juvenile detention for youth in the community, including by providing mentoring, behavioral and mental health services, financial or housing assistance, job training, educational services, and after-school activities.

(c)  The community reinvestment fund may be funded by:

(1)  surplus funds of the department;

(2)  the county; or

(3)  gifts, grants, and donations.

SECTION 11.  Chapter 223, Human Resources Code, is amended by adding Section 223.007 to read as follows:

Sec. 223.007.  INCENTIVE FUNDING FOR COMMUNITY-BASED DIVERSION AND INTERVENTION. (a) The legislature may establish a special account in the general revenue fund to supplement local funds and encourage efficiencies in the formation of a network of community-based programs and services within the regions of this state and to generate savings by decreasing the population of post-adjudication secure correctional facilities.

(b)  The department shall use the money in the account to initiate and support the implementation of the strategic community-based diversion and intervention plan under Section 203.0171, including the implementation of projects dedicated to specific target populations based on risk and needs, and with established recidivism reduction goals. The department shall develop discretionary grant funding protocols based on documented, data-driven, and research-based practices.

(c)  A region is eligible to receive funding from the department under this section only if the region meets the performance standards established by the department and adopted in contracts for community-based programs and services.

(d)  Funding under this section is authorized in addition to reimbursements allocated by the department under Section 203.017.

(e)  The department shall prepare a report that:

(1)  outlines the amount of funds distributed as incentive for the specific strategies, programs, and services implemented as part of the plan described by Section 203.0171;

(2)  demonstrates that certain regions or geographic areas are implementing the strategies implemented as part of the plan described by Section 203.0171;

(3)  defines efficiencies of scale in measurable terms;

(4)  proposes a payment schedule for distributing funds under this section; and

(5)  establishes a method for the documentation and reporting of fund distributions under this section.

(f)  Not later than December 1, 2024, the department shall submit a copy of the report under this section to each member of the legislature.

SECTION 12.  Section 243.002, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c)  The department shall give credit toward the minimum length of stay established for the child for time spent in a pre-adjudication secure detention facility after commitment but before the child's transfer to the department.

SECTION 13.  The following provisions of the Family Code are repealed:

(1)  Section 54.04(z); and

(2)  Section 264.302(c).

SECTION 14.  (a) Sections 54.01, 54.02, 54.04, 54.04013, and 54.05, Family Code, as amended by this Act, apply only to a hearing that occurs on or after the effective date of this Act. A hearing that occurs before the effective date of this Act is governed by the law in effect at the time the hearing occurred, and the former law is continued in effect for that purpose.

(b)  The changes in law made by this Act to Section 59.009(a), Family Code, do not apply to a child committed to a post-adjudication secure correctional facility under former Section 54.04011(c)(1), Family Code, and the former law is continued in effect for a child committed to the facility.

SECTION 15.  This Act takes effect September 1, 2023.