By:  Schwertner S.B. No. 2589

(In the Senate - Filed March 29, 2023; April 5, 2023, read first time and referred to Committee on Criminal Justice; April 19, 2023, reported favorably by the following vote: Yeas 6, Nays 1; April 19, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Flores          X

Bettencourt     X

Hinojosa        X

Huffman         X

King            X

Miles               X

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and punishment of juveniles who commit certain felony offenses while committed to the custody of the Texas Juvenile Justice Department and the waiver of jurisdiction and discretionary transfer of a child from a juvenile court to a criminal court; changing eligibility for community supervision.

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

SECTION 1.  Article 42A.054, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1)  Article 42A.053 does not apply to a defendant if it is shown that the defendant committed an offense punishable as a felony when the defendant was:

(1)  at least 17 years of age;

(2)  committed to the Texas Juvenile Justice Department; and

(3)  confined in a secure facility operated under Subtitle C, Title 12, Human Resources Code.

SECTION 2.  Article 42A.056, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.056.  LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION. A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

(1)  is sentenced to a term of imprisonment that exceeds 10 years;

(2)  is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3)  is adjudged guilty of an offense under Section 19.02, Penal Code;

(4)  is convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(5)  is convicted of an offense under Section 20.04, Penal Code, if:

(A)  the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B)  the actor committed the offense with the intent to violate or abuse the victim sexually;

(6)  is convicted of an offense under Section 20A.02, 20A.03, 43.04, 43.05, or 43.25, Penal Code;

(7)  is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections; [~~or~~]

(8)  is convicted of an offense under Section 481.1123, Health and Safety Code, if the offense is punishable under Subsection (d), (e), or (f) of that section; or

(9)  is convicted of an offense punishable as a felony when the defendant was:

(A)  at least 17 years of age;

(B)  committed to the Texas Juvenile Justice Department; and

(C)  confined in a secure facility operated under Subtitle C, Title 12, Human Resources Code.

SECTION 3.  Section 53.045(a), Family Code, is amended to read as follows:

(a)  Except as provided by Subsection (e), the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that:

(1)  constitutes habitual felony conduct as described by Section 51.031;

(2)  [~~or that~~] included the violation of any of the following provisions:

(A) [~~(1)~~]  Section 19.02, Penal Code (murder);

(B) [~~(2)~~]  Section 19.03, Penal Code (capital murder);

(C) [~~(3)~~]  Section 19.04, Penal Code (manslaughter);

(D) [~~(4)~~]  Section 20.04, Penal Code (aggravated kidnapping);

(E) [~~(5)~~]  Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);

(F) [~~(6)~~]  Section 22.02, Penal Code (aggravated assault);

(G) [~~(7)~~]  Section 29.03, Penal Code (aggravated robbery);

(H) [~~(8)~~]  Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other than a state jail felony;

(I) [~~(9)~~]  Section 22.05(b), Penal Code (felony deadly conduct involving discharging a firearm);

(J) [~~(10)~~]  Subchapter D, Chapter 481, Health and Safety Code, if the conduct constitutes a felony of the first degree or an aggravated controlled substance felony (certain offenses involving controlled substances);

(K) [~~(11)~~]  Section 15.03, Penal Code (criminal solicitation);

(L) [~~(12)~~]  Section 21.11(a)(1), Penal Code (indecency with a child);

(M) [~~(13)~~]  Section 15.031, Penal Code (criminal solicitation of a minor);

(N) [~~(14)~~]  Section 15.01, Penal Code (criminal attempt), if the offense attempted was an offense under Section 19.02, Penal Code (murder), or Section 19.03, Penal Code (capital murder), or an offense listed by Article 42A.054(a), Code of Criminal Procedure;

(O) [~~(15)~~]  Section 28.02, Penal Code (arson), if bodily injury or death is suffered by any person by reason of the commission of the conduct;

(P) [~~(16)~~]  Section 49.08, Penal Code (intoxication manslaughter); or

(Q) [~~(17)~~]  Section 15.02, Penal Code (criminal conspiracy), if the offense made the subject of the criminal conspiracy includes a violation of any of the provisions referenced in Paragraphs (A) through (P); or

(3)  constitutes a felony of the first, second, or third degree committed while the child was committed to the Texas Juvenile Justice Department [~~Subdivisions (1) through (16)~~].

SECTION 4.  Sections 54.02(a) and (j), Family Code, are amended to read as follows:

(a)  The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1)  the child is alleged to have violated a penal law of the grade of felony;

(2)  the child was:

(A)  14 years of age or older at the time the child [~~he~~] is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or

(B)  15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree [~~or a state jail felony~~], and no adjudication hearing has been conducted concerning that offense; and

(3)  after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

(j)  The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1)  the person is 18 years of age or older;

(2)  the person was:

(A)  10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code;

(B)  14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under Section 19.02, Penal Code; or

(C)  15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree [~~or a state jail felony~~];

(3)  no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4)  the juvenile court finds from a preponderance of the evidence that:

(A)  for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B)  after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i)  the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;

(ii)  the person could not be found; or

(iii)  a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5)  the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

SECTION 5.  The changes in law made by this Act to Articles 42A.054 and 42A.056, Code of Criminal Procedure, and Sections 53.045 and 54.02, Family Code, apply only to an offense committed or conduct that occurs on or after the effective date of this Act. An offense committed or conduct that occurred before that date is governed by the law in effect on the date the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed or conduct occurred before the effective date of this Act if any element of the offense or conduct occurred before that date.

SECTION 6.  This Act takes effect September 1, 2023.

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