By: Wu   H.B. No. 491

A BILL TO BE ENTITLED

1   AN ACT

2 relating to the age of a child at which a juvenile court may

3 exercise jurisdiction over the child and to the minimum age of

4 criminal responsibility.

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

6   SECTION 1. Article 45.058(h), Code of Criminal Procedure,

7 is amended to read as follows:

8   (h) In this article, "child" means a person who is:

9   (1) at least 12 [10] years of age and younger than 17

10 years of age; and

11   (2) charged with or convicted of an offense that a

12 justice or municipal court has jurisdiction of under Article 4.11

13 or 4.14.

14   SECTION 2. Section 37.141(1), Education Code, is amended to

15 read as follows:

16   (1) "Child" means a person who is:

17   (A) a student; and

18   (B) at least 12 [10] years of age and younger than

19 18 years of age.

20   SECTION 3. Section 51.02(2), Family Code, is amended to

21 read as follows:

22   (2) "Child" means a person who is:

23   (A) 10 [ten] years of age or older and under 18

24 [17] years of age who is alleged or found to have engaged in conduct

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1 that violates a penal law of the grade of felony as a result of acts

2 committed before becoming 12 years of age; or

3   (B) 12 [seventeen] years of age or older and

4 under 18 years of age who is alleged or found to have engaged in

5 delinquent conduct or conduct indicating a need for supervision as

6 a result of acts committed after becoming 12 years of age and before

7 becoming 17 years of age.

8   SECTION 4. Section 52.02, Family Code, is amended by adding

9 Subsection (e) to read as follows:

10   (e) A child younger than 12 years of age must be released

11 from custody in accordance with Subsection (a)(1) unless the child

12 poses an immediate threat to public safety or to the child's own

13 safety.

14   SECTION 5. Sections 53.01(b) and (b-1), Family Code, are

15 amended to read as follows:

16   (b) Except as provided by Subsection (b-1), if [If] it is

17 determined that the person is not a child or there is no probable

18 cause, the person shall immediately be released.

19   (b-1) The person who is conducting the preliminary

20 investigation may [shall], as appropriate, refer the child's case

21 to a community resource coordination group, a local-level

22 interagency staffing group, or other community juvenile services

23 [service] provider for services under Section 53.011, if the person

24 determines that:

25   (1) the child is younger than 12 years of age;

26   (2) the child is not subject to the jurisdiction of a

27 juvenile court because the child is not alleged to have engaged in

2

1 conduct that violates a penal law of the grade of felony as a result

2 of acts committed before becoming 12 years of age [~~there is probable~~

3 ~~cause to believe the child engaged in delinquent conduct or conduct~~

4 ~~indicating a need for supervision;~~

5   [~~(3) the child's case does not require referral to the~~

6 ~~prosecuting attorney under Subsection (d) or (f);~~

7   [~~(4) the child is eligible for deferred prosecution~~

8 ~~under Section 53.03~~]; and

9   (3) [~~(5)~~] the child and the child's family are not

10 currently receiving services under Section 53.011 and would benefit

11 from receiving the services.

12   SECTION 6. Section 53.011(b), Family Code, is amended to

13 read as follows:

14   (b) On receipt of a referral under Section 53.01(b-1) or

15 54.015(f), a community resource coordination group, a local-level

16 interagency staffing group, or another community juvenile services

17 provider shall evaluate the child's case and make recommendations

18 to the juvenile probation department for appropriate services for

19 the child and the child's family.

20   SECTION 7. Chapter 54, Family Code, is amended by adding

21 Section 54.015 to read as follows:

22   Sec. 54.015. JURISDICTIONAL HEARING FOR CHILD YOUNGER THAN

23 12 YEARS OF AGE. (a) On request of any party, a court shall hold a

24 jurisdictional hearing without a jury to determine whether to

25 retain jurisdiction over a child younger than 12 years of age.

26   (b) A hearing under this section must be held:

27   (1) if the child was not released under Section 53.02,

1 immediately before considering whether to release the child at the

2 detention hearing under Section 54.01; or

3   (2) if the child was not detained and the requirements

4 of Sections 53.04, 53.05, 53.06, and 53.07 are satisfied,

5 immediately before the hearing on the petition.

6   (c) At a hearing under this section, the court must

7 determine whether to retain jurisdiction over the child by

8 considering whether:

9   (1) probable cause exists to believe the child engaged

10 in conduct that violates a penal law of the grade of felony;

11   (2) normal interventions by the child's parent,

12 guardian, or family, child protective services, or the child's

13 school will be sufficient to ensure the safety of the public and of

14 the child;

15   (3) intervention by the court is warranted; and

16   (4) it is in the best interest of the child for the

17 court to intervene.

18   (d) If the court retains jurisdiction over a child under

19 this section, the court may proceed with the detention hearing

20 under Section 54.01 or an adjudication hearing under Section 54.03,

21 as applicable.

22   (e) If the court waives jurisdiction over the child, the

23 court shall immediately dismiss the child and the charges against

24 the child. A waiver under this section is a waiver of jurisdiction

25 over the child only for the dismissed charges.

26   (f) If the court waives jurisdiction over the child, the

27 court shall notify the person who conducted the preliminary

1 investigation of the child under Section 53.01 of the court's

2 waiver of jurisdiction. The person may, as appropriate, refer the

3 child's case to a community resource coordination group,

4 local-level interagency staffing group, or other community

5 juvenile services provider for services under Section 53.011.

6   SECTION 8. Sections 8.07(d) and (e), Penal Code, are

7 amended to read as follows:

8   (d) Notwithstanding Subsection (a), a person may not be

9 prosecuted for or convicted of an offense described by Subsection

10 (a)(4) or (5) that the person committed when younger than 12 [10]

11 years of age.

12   (e) A person who is at least 12 [10] years of age but younger

13 than 15 years of age is presumed incapable of committing an offense

14 described by Subsection (a)(4) or (5), other than an offense under a

15 juvenile curfew ordinance or order. This presumption may be

16 refuted if the prosecution proves to the court by a preponderance of

17 the evidence that the actor had sufficient capacity to understand

18 that the conduct engaged in was wrong at the time the conduct was

19 engaged in. The prosecution is not required to prove that the actor

20 at the time of engaging in the conduct knew that the act was a

21 criminal offense or knew the legal consequences of the offense.

22   SECTION 9. The following provisions are repealed:

23   (1) Article 45.058(j), Code of Criminal Procedure;

24   (2) Sections 37.124(d) and 37.126(c), Education Code;

25   (3) Section 53.011(d), Family Code; and

26   (4) Section 42.01(f), Penal Code.

27   SECTION 10. The changes in law made by this Act apply only

1 to an offense committed or conduct that occurs on or after the

2 effective date of this Act. An offense committed or conduct that

3 occurred before that date is governed by the law in effect on the

4 date the offense was committed or the conduct occurred, and the

5 former law is continued in effect for that purpose. For purposes of

6 this section, an offense was committed or conduct occurred before

7 the effective date of this Act if any element of the offense or

8 conduct occurred before that date.

9   SECTION 11. This Act takes effect September 1, 2023.