

## **BILL ANALYSIS**

C.S.H.B. 31  
By: Thompson  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill author has informed the committee that reports of scandals and inefficiencies among the state's two existing juvenile justice agencies in 2011 resulted in their functions being merged into what is now known as the Texas Juvenile Justice Department (TJJD). The bill author has also informed the committee that, in 2023, the Sunset Advisory Commission found that the agency remains unstable, which heightens safety risks, decreases access to rehabilitation, and prevents focus from going towards diversion from TJJD commitments. In 2024, after conducting an investigation of conditions for children in five TJJD facilities, the U.S. Department of Justice (DOJ) published a report on its investigation. In the report, the DOJ stated that its investigation found that children in secure facilities are often exposed to excessive physical and chemical force and that children spend prolonged periods of time in isolation and without adequate mental health and educational services. The DOJ also found that children in secure facilities do not receive mental health assessments, that TJJD fails to provide adequate substance use disorder treatment, and that children with disabilities in TJJD's secure facilities do not receive a free appropriate public education or reasonable modifications to complete programs required for their release. The report stated that the negative impacts of TJJD's constitutional violations are mutually exacerbating, as children in secure facilities are exposed to conditions that cause serious and lasting physical, mental, and emotional harm while simultaneously being denied treatment and services needed to cope with their environment, earn release, and return to their communities. Finally, the report stated that the harmful environment in TJJD secure facilities undermines the rehabilitative purpose of children's commitment. C.S.H.B. 31 seeks to address systemic issues within TJJD and promote rehabilitation, public safety, and youth safety.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 12 of this bill.

### **ANALYSIS**

#### **Prohibition Against Placement on Community Supervision for Certain Offenses Committed in Certain Juvenile Facilities**

C.S.H.B. 31 amends the Code of Criminal Procedure to establish that a defendant is not eligible for community supervision, including deferred adjudication community supervision, for an offense punishable as a felony committed as follows:

- when the defendant was at least 17 years of age; and

- while the defendant was:
  - committed to the Texas Juvenile Justice Department (TJJD);
  - placed in a halfway house operated by or under contract with TJJD; or
  - placed in a secure correctional facility or secure detention facility, as defined by applicable juvenile justice code provisions.

### **Use of Chemical Dispensing Devices, Force, or Solitary Confinement in Juvenile Facilities**

C.S.H.B. 31 amends the Family Code to prohibit an employee, contractor, volunteer, intern, or service provider working in a juvenile facility from using a chemical dispensing device against a pregnant child in the facility. The bill defines the following terms:

- "juvenile facility" as:
  - a facility operated by TJJD or a private vendor under a contract with TJJD; or
  - a facility for the detention or placement of juveniles under juvenile court jurisdiction that is operated wholly or partly by a juvenile board or another governmental unit or by a private vendor under a contract with the juvenile board or governmental unit; and
- "chemical dispensing device" as a device that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being, including pepper spray, capsicum spray, OC gas, and oleoresin capsicum.

C.S.H.B. 31 requires TJJD to annually conduct an audit of use of force incidents to identify patterns, deficiencies, or instances of noncompliance with de-escalation protocols and the prohibition on the use of chemical dispensing devices on pregnant children in juvenile facilities. The bill requires the administrator of a juvenile facility operated by or under contract with a juvenile board or other local governmental unit to annually report to TJJD data regarding use of force incidents in the facility and requires an administrator to make the report in a form and by a date prescribed by TJJD. The bill requires TJJD, not later than August 31 of each year, to deliver a report to the legislature regarding the findings of the audit conducted and to timely post on TJJD's website the audit findings and aggregate data collected during the audit.

C.S.H.B. 31 prohibits a juvenile facility from placing a child in solitary confinement unless the following conditions are met:

- the child poses an immediate risk of physical harm to the child's self or another;
- placement in solitary confinement does not violate principles of trauma-informed care and does not interfere with de-escalation strategies;
- all other less restrictive methods of addressing the immediate risk of physical harm have been exhausted; and
- the child is placed in solitary confinement for a period that does not exceed the shortest period permitted for placement of a child in solitary confinement by a state or federal law, including an administrative rule.

The bill defines "solitary confinement," with respect to a child in a juvenile facility, as the involuntary separation of the child from other children placed in the facility in an area or room from which the child is prevented from leaving for a coercive, disciplinary, punitive, or retaliatory purpose, excluding the involuntary separation of the child for an administrative, medical, protective, or emergency interventional purpose in a manner consistent with applicable laws, including applicable administrative rules.

C.S.H.B. 31 requires the administrator or superintendent of a juvenile facility to create a report for annual submission to TJJD that documents each instance a child in the facility is placed in solitary confinement and to include in the report the reason for the placement, the duration of the placement, and any intervention attempted before the child was placed in solitary confinement.

C.S.H.B. 31 requires TJJD to monitor and enforce compliance with the bill's requirements by regularly auditing and reviewing juvenile facility practices related to placing children in solitary confinement.

C.S.H.B. 31 requires the Texas Juvenile Justice Board, not later than 180 days after the bill's effective date, to adopt rules necessary to implement these provisions.

### **Hearing to Transfer a Child From a Juvenile Court to a District Court or Criminal District Court**

C.S.H.B. 31 revises the offenses for which a juvenile court may waive its exclusive original jurisdiction and transfer a child that is alleged to have committed a felony offense to the appropriate district court or criminal district court for criminal proceedings as follows:

- removes an aggravated controlled substance felony or a first degree felony from the felony offenses for which a child who is 14 years of age or older at the time the child is alleged to have committed the offense may be transferred; and
- limits the offenses for which a child who is 15 years of age or older at the time the child is alleged to have committed the offense may be transferred to offenses constituting serious felony conduct, as defined by the bill's provisions.

C.S.H.B. 31 requires the juvenile court, prior to a hearing to consider such a transfer of a child, to admonish the child in open court and in the presence of the child's attorney regarding the following:

- the court's consideration of waiving its jurisdiction over the child and transferring the child to criminal court for criminal proceedings; and
- the child's right to participate or to decline to participate in any diagnostic study, social evaluation, or investigation ordered by the juvenile court.

The bill revises the requirement for the juvenile court to order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, the child's circumstances, and the circumstances of the alleged offense prior to the hearing by specifying that the court must make the order after the admonishment. The bill further requires the court to set the date of the transfer hearing after the admonishment. If the child declines to participate in a study, evaluation, or investigation, the child's attorney must state the refusal to the court in open court or in writing not later than the fifth business day after the date the court makes its order.

C.S.H.B. 31 establishes that in a hearing to consider transfer of a child for criminal proceedings, 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 and that the burden is on the state to overcome this presumption. These provisions apply only to a hearing that occurs on or after the bill's effective date. A hearing that occurs before the bill's effective date is governed by the law in effect at the time the hearing occurred, and the former law is continued in effect for that purpose.

C.S.H.B. 31 expands the matters the court is required to consider in making the determination to waive its exclusive original jurisdiction and transfer a child for criminal proceedings to include the following matters:

- the substantive requirements for waiving jurisdiction;
- relevant information ascertained in the full investigation of the child; and
- the benefits or harm of retaining the child in the juvenile justice system.

C.S.H.B. 31 requires the statement of reasons for waiver in a juvenile court's order to set forth a rational basis for the waiver of jurisdiction, with sufficient specificity to permit meaningful review, and to include case-specific findings of fact that do not rely solely on the nature or seriousness of the offense. These provisions apply only to an order of a juvenile court waiving jurisdiction and transferring a child to criminal court that is issued on or after the bill's effective date. An order of a juvenile court waiving jurisdiction and transferring a child to criminal court

that is issued before the bill's effective date is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose.

### **Disposition Hearing for Special Commitment of a Child to the Texas Juvenile Justice Department**

C.S.H.B. 31 changes the conduct in which a juvenile court must find that a child engaged for purposes of the court's authorization to specially commit a child to TJJD without a determinate sentence, subject to making the requisite findings, from delinquent conduct that violates a penal law of Texas or the United States of the grade of felony to delinquent conduct that constitutes serious felony conduct. The bill defines "serious felony conduct" as follows:

- conduct that constitutes any of the following offenses:
  - murder;
  - capital murder;
  - manslaughter;
  - kidnapping;
  - aggravated kidnapping;
  - continuous trafficking of persons;
  - continuous sexual abuse of young child or disabled individual;
  - indecency with a child;
  - sexual assault;
  - aggravated assault;
  - aggravated sexual assault;
  - injury to a child, elderly individual, or disabled individual;
  - arson;
  - aggravated robbery; or
  - intoxication manslaughter;
- conduct for which it is shown that a deadly weapon was used or exhibited during the commission of the conduct or during immediate flight from the commission of the conduct; or
- conduct constituting habitual felony conduct.

### **Special Commitment of a Child to Texas Juvenile Justice Department; Modification of Disposition**

C.S.H.B. 31 expands the conditions under which a juvenile court may make a special commitment of a child to TJJD without a determinate sentence, subject to making the requisite finding, to include the condition that the court may do so after a hearing to modify a disposition of a juvenile case. The bill authorizes the court, in making a special commitment finding relating to the child's behavioral health or other special needs for purposes of special commitment to TJJD, to consider mitigating evidence of the child's circumstances. The bill defines "mitigating evidence" as evidence presented at a proceeding under the juvenile justice code that:

- reduces the culpability of a child;
- is used to assess the growth and maturity of a child; and
- takes into consideration:
  - the diminished culpability of children, as compared to that of adults;
  - the hallmark features of youth; and
  - the greater capacity of children for change, as compared to that of adults.

These provisions apply only to a hearing that occurs on or after the bill's effective date. A hearing that occurs before that date is governed by the law in effect at the time the hearing occurred, and the former law is continued in effect for that purpose.

C.S.H.B. 31 conditions the authority of a juvenile court to modify a disposition based on a finding that a child engaged in delinquent conduct violating a penal law of Texas or the United States of the grade of felony for purposes of committing the child to TJJD on the court making a special commitment finding, in addition to finding by a preponderance of the evidence that the

child violated a reasonable and lawful order of the court as required under current law. These provisions apply only to a hearing that occurs on or after the bill's effective date. A hearing that occurs before that date is governed by the law in effect at the time the hearing occurred, and the former law is continued in effect for that purpose.

### **Transfer of a Determinate Sentence Probation to the Appropriate District Court**

C.S.H.B. 31 revises the requirement for a district court that exercises jurisdiction over a person transferred from a juvenile court's determinate sentence of probation and that places the person on community supervision as required by state law, if the person placed on community supervision violates an applicable condition of that supervision or if the person violated an applicable condition of probation and that probation violation was not discovered by the state before a certain date, to dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case by changing that date from the person's 19th birthday to the date the person was transferred to the district court.

C.S.H.B. 31 authorizes a juvenile court, if a motion concerning a child who is placed on probation for a period that will continue after the child's 19th birthday to determine whether to transfer the child to an appropriate district court or to discharge the child from the sentence of probation includes an allegation that, after the child's 18th birthday, the child violated an applicable condition of probation, to hold a hearing to determine whether there is probable cause to believe that the child committed the alleged violation. The bill authorizes the court, if the court determines that there is probable cause to believe that the child committed the alleged violation, to immediately transfer the child to an appropriate district court. The bill establishes that a district court exercising jurisdiction over a child transferred from a juvenile court's sentence of probation does not have jurisdiction over an alleged violation of a condition of probation known to the juvenile court before the child was transferred to the district court.

C.S.H.B. 31 revises the authorization for a juvenile court, if the juvenile court exercises jurisdiction over a person who is 18 or 19 years of age or older, as applicable, after an appeal by the person or if the proceedings are incomplete, to place an otherwise eligible person on probation by limiting the otherwise eligible persons the court may place on probation to persons who are 19 years of age or older.

C.S.H.B. 31 establishes that these provisions apply to a child placed on probation on or after the bill's effective date, regardless of whether the conduct for which the child was placed on probation was committed before, on, or after the bill's effective date.

### **Hearing to Return a Child to an Institution for a Violation of a Condition of Release**

C.S.H.B. 31 amends the Government Code to authorize a prosecuting attorney serving on the special prosecution unit, at the request of TJJD, to participate in a hearing regarding the return of a child to an institution after TJJD finds that the child has violated an order under which the child is released under supervision. The bill authorizes a prosecuting attorney serving on the unit, with the consent of TJJD, to serve any role in such a hearing. However, the bill prohibits such a prosecuting attorney from representing the child or acting as a hearing officer under these provisions. These provisions apply only to a hearing that occurs on or after the bill's effective date. A hearing that occurs before the bill's effective date is governed by the law in effect at the time the hearing occurred, and the former law is continued in effect for that purpose.

C.S.H.B. 31 establishes that the special prosecution unit is a unit that participates in such hearings, in addition to cooperating with and supporting prosecuting attorneys in prosecuting offenses and delinquent conduct committed on property owned or operated by or under contract with the Texas Department of Criminal Justice (TDCJ) or TJJD, or committed by or against a

person in the custody of TDCJ or TJJD while the person is performing a duty away from TDCJ or TJJD property as required under state law.

### **Tampering with an Electronic Monitoring Device**

C.S.H.B. 31 amends the Penal Code to expand the conduct constituting the offense of tampering with an electronic monitoring device to include a person who is required to submit to electronic monitoring of the person's location as a condition of probation imposed by a juvenile court, release under supervision from TJJD custody, or placement in a halfway house operated by or under contract with TJJD and who knowingly removes or disables, or causes or conspires or cooperates with another person to remove or disable, a tracking device that the person is required to wear to enable the electronic monitoring of the person's location. This provision applies only to an offense committed under statutory provisions relating to the offense or conduct violating those provisions that occurs on or after the bill's effective date. 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 these purposes, an offense was committed or conduct occurred before the bill's effective date if any element of the offense or conduct occurred before that date.

### **Procedural Provision**

C.S.H.B. 31 applies only to conduct violating a penal law that occurs or an offense committed on or after the bill's effective date. Conduct that occurred or an offense committed before that date is covered by the law in effect at the time the conduct occurred or the offense was committed, and the former law is continued in effect for that purpose. For these purposes, conduct occurred or an offense was committed before the bill's effective date if any element of the conduct or offense occurred before that date.

### **EFFECTIVE DATE**

September 1, 2025.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 31 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 provisions absent from introduced establishing that a defendant is not eligible for community supervision, including deferred adjudication community supervision, for an offense punishable as a felony committed:

- when the defendant was at least 17 years of age; and
- while the defendant was:
  - committed to TJJD;
  - placed in a halfway house operated by or under contract with TJJD; or
  - placed in a secure correctional facility or secure detention facility.

Both the introduced and the substitute prohibit an employee, volunteer, intern, or service provider working in a juvenile facility from using a chemical dispensing device against children in the facility. However, whereas the introduced made that prohibition applicable with respect to any children in the facility, the substitute makes the prohibition applicable with respect to pregnant children in the facility. Accordingly, the substitute replaces the introduced version's requirement for TJJD to annually conduct an audit of, among other information, the prohibition on chemical dispensing devices in juvenile facilities with a requirement for TJJD to annually conduct an audit of, among other information, the use of chemical dispensing devices on pregnant children in juvenile facilities.

While both the introduced and the substitute define "solitary confinement," the versions differ in the following ways:

- while both the introduced and the substitute define the term as, with respect to a child in a juvenile facility, the involuntary separation of the child from other children placed in the facility in an area or room from which the child is prevented from leaving, the substitute specifies that the child is prevented from leaving for a coercive, disciplinary, punitive, or retaliatory purpose, whereas the introduced did not.
- whereas the introduced excluded the involuntary separation of the child for a medical purpose from the term, the substitute excludes the involuntary separation of the child for an administrative, medical, protective, or emergency interventional purpose in a manner consistent with applicable laws, including applicable administrative rules.

Both the introduced and the substitute revise the offenses for which a juvenile court may waive its exclusive original jurisdiction and transfer a child that is alleged to have committed a felony offense to the appropriate district court or criminal district court for criminal proceedings by limiting the offenses for which a child who is 15 years of age or older at the time the child is alleged to have committed the offense may be transferred. However, whereas the introduced limited those offenses to murder or sexual assault but included as an alternative to such offenses the condition that the petition for a felony offense alleges that the child engaged in conduct that constitutes habitual felony conduct, the substitute limits those offenses to offenses involving serious felony conduct.

Both the introduced and the substitute define "serious felony conduct" as conduct, among other conduct, that constitutes certain offenses. However, the substitute includes manslaughter, arson, and intoxication manslaughter among the offenses the conduct of which is classified as serious felony conduct, whereas the introduced did not.

Both the introduced and the substitute define "mitigating evidence" as evidence presented at a proceeding under the juvenile justice code that meets certain criteria. However, the versions differ in the following ways:

- the substitute includes as one of those conditions that the evidence reduces the culpability of a child, whereas the introduced did not; and
- the substitute replaces the introduced version's references to "juveniles" with references to "children" throughout the definition.

The substitute includes provisions absent from the introduced that do the following:

- revise the requirement for a district court exercising jurisdiction over a person transferred from a juvenile court's determinate sentence of probation and that places the person on community supervision, if the person placed on community supervision violates an applicable condition of that supervision or if the person violated an applicable condition of probation and that probation violation was not discovered by the state before a certain date, to dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case by changing that date from the person's 19th birthday to the date the person was transferred to the district court;
- authorize a juvenile court, if a motion concerning a child who is placed on probation for a period that will continue after the child's 19th birthday to determine whether to transfer the child to an appropriate district court or to discharge the child from the sentence of probation includes an allegation that, after the child's 18th birthday, the child violated a condition of probation, to hold a hearing to determine whether there is probable cause to believe that the child committed the alleged violation;
- authorize the court, if the court determines that there is probable cause to believe that the child committed the alleged violation, to immediately transfer the child to an appropriate district court and establishes that a district court exercising jurisdiction over a child transferred from a juvenile court's sentence of probation does not have jurisdiction over

an alleged violation of a condition of probation known to the juvenile court before the child was transferred to the district court; and

- revise the authorization for a juvenile court, if the juvenile court exercises jurisdiction over a person who is 18 or 19 years of age or older, as applicable, after an appeal by the person or if the proceedings are incomplete, to place an otherwise eligible person on probation by limiting the otherwise eligible persons the court is authorized to place on probation to persons who are 19 years of age or older.

The substitute includes a corresponding procedural provision absent from the introduced.

The substitute includes provisions absent from the introduced that do the following:

- authorize a prosecuting attorney serving on the special prosecution unit, at the request of TJJD, to participate in a hearing regarding the return of a child to an institution after TJJD finds that the child has violated an order under which the child is released under supervision;
- authorize a prosecuting attorney serving on the unit, with the consent of TJJD, to serve any role in such a hearing; and
- prohibit such a prosecuting attorney from representing the child or acting as a hearing officer.

The substitute includes a corresponding procedural provision absent from the introduced.

The substitute includes a provision absent from the introduced that establishes that the special prosecution unit is a unit that participates in such hearings, in addition to the other functions of the special prosecution unit as required under state law.

The substitute includes a provision absent from the introduced expanding the conduct constituting the offense of tampering with an electronic monitoring device to include a person who is required to submit to electronic monitoring of the person's location as a condition of probation imposed by a juvenile court, release under supervision from TJJD custody, or placement in a halfway house operated by or under contract with TJJD and who knowingly removes or disables, or causes or conspires or cooperates with another person to remove or disable, a tracking device that the person is required to wear to enable the electronic monitoring of the person's location. The bill includes a corresponding procedural provision absent from the introduced.

The substitute includes a procedural provision absent from the introduced establishing that the bill applies only to conduct violating a penal law that occurs or an offense committed on or after the bill's effective date, that conduct that occurred or an offense committed before that date is covered by the law in effect at the time the conduct occurred or the offense was committed, that the former law is continued in effect for that purpose, and that for these purposes, conduct occurred or an offense was committed before the bill's effective date if any element of the conduct or offense occurred before that date. The substitute includes corresponding procedural provisions absent from the introduced with respect to the following provisions:

- the provision establishing that, in a hearing to consider transfer of a child for criminal proceedings, 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 and that the burden is on the state to overcome this presumption; and
- the requirement for the statement of reasons for waiver in a juvenile court's order to set forth a rational basis for the waiver of jurisdiction, with sufficient specificity to permit meaningful review, and to include case-specific findings of fact that do not rely solely on the nature or seriousness of the offense.