

SUBJECT: Juvenile justice revisions

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, Naishtat, A. Reyna, Smith

0 nays

1 absent — Williams

WITNESSES: For — Steve Lyons, Houston Police Department

Against — None

On — Beth Mitchell, Advocacy, Inc.; Lisa A. Capers, Robert Dawson

BACKGROUND : The 74th Legislature enacted HB 327 by Goodman et al., which made major revisions to the Juvenile Justice Code and other statutes dealing with adjudication and rehabilitation of juvenile offenders. During the interim, the Juvenile Justice and Family Issues Committee was charged to review the changes made to juvenile laws and recommend ways to address new juvenile justice problems reported by agencies administering or studying the juvenile justice system and errors, omissions and conflicts in current law.

The juvenile justice issues that were examined included:

- **The progressive sanctions model** for imposing incrementally more serious conditions for worsening levels of offenses. The seven sanction levels may include minimum probation terms, required restitution or community service, required participation of juveniles and parents in court-designated programs, restrictions on the child's activities, requirements for the child's behavior, monitoring by probation officers, commitment to residential programs, commitment to the Texas Youth Commission (TYC), and parole restrictions.

- **Determinate sentences** for juveniles found guilty of certain violent crimes, including transfer to adult prison systems. In cases involving juveniles, courts usually make determinate sentencing to TYC, which then decides when to release the juvenile.
- **Intermediate sanction facilities** that provide secure residential care for children adjudicated for delinquent conduct and for children on probation.
- **Miranda warnings** advising children in a detention facility or in the custody of an officer of their right to remain silent and have an attorney present during questioning.

DIGEST:

CSHB 1550 would amend the Juvenile Justice Code and other related laws, making substantive changes in the following areas:

Progressive sanctions guidelines. First degree felonies involving the use of a deadly weapon or causing serious bodily injury, aggravated controlled substance felonies, and capital felonies where the case has been certified or transferred to criminal court would be punishable at sanction level seven.

A child adjudicated for previous conduct who was found to have engaged in delinquent conduct on two additional separate occasions, each involving lower sanction levels than the previous conduct, could be assigned a sanction level one level higher than the previous conduct, unless the level of the previous conduct was six. A child would no longer be placed at the next level of sanction based on a parent's report to the court that the child was not complying with the parent's rules.

A juvenile court or probation department that deviated from the progressive sanctions guidelines would be required to submit to the juvenile board written reasons for doing so regardless of whether the board had adopted a progressive sanctions program.

Before a court assigned a child a sanction level that involved revoking probation and committing the child to the TYC, it would have to hold a hearing to modify the disposition.

A juvenile court could place a child at sanction level three on probation for more than six months but not more than 12 months. Courts would be authorized to require children at level four to participate as a condition of probation for three to 12 months in a highly intensive and regimented program that emphasized discipline, physical fitness, social responsibility and productive work. Courts would be authorized to place children at level five in a post-adjudication secure correctional facility for six to 12 months. At levels six and seven, courts would be authorized, but not required, to commit children or certify and transfer them to TYC custody.

The Texas Juvenile Probation Commission (TJPC) would be required to adopt rules to implement of a progressive sanctions program meeting these requirements by January 1, 1998.

Offense classifications. The first offense of driving while intoxicated or under the influence of intoxicating liquor would be classified as delinquent conduct. Arson resulting in bodily injury or death would be a determinate sentence offense.

Juveniles who committed certain traffic violations tried in municipal or justice court would commit a Class C misdemeanor punishable by a \$500 fine, rather than an offense punishable by a \$100 fine.

TYC facilities. A court would no longer have the authority to place a child on probation in an intermediate sanction facility.

TYC would be required to accept mentally ill or mentally retarded children. Unless committed to TYC under a determinate sentence, a mentally ill or mentally retarded child would have to be discharged from TYC custody if the child completed the minimum length of stay for the committing offense and TYC determined that the child was unable to progress in its rehabilitation programs because of the mental illness or mental retardation. TYC would have to establish a system for identifying mentally ill or mentally retarded children in its custody and would have to initiate an examination of and proceedings to obtain appropriate services for those children 30 days prior to discharge.

***Miranda* warnings.** A written statement of a child in a detention facility or in the custody of an officer could be admissible in court if the magistrate had administered *Miranda* warnings. The magistrate no longer would have to give warnings explaining determinate sentencing or criminal court transfer.

The electronically recorded oral statement of a child in a detention facility or in the custody of an officer would be admissible in court if the recording showed that the child had received *Miranda* warnings and knowingly, intelligently, and voluntarily waived each right stated in the warnings. In addition, certain authentication requirements would have to be met, the child's attorney would have to receive a copy of the recording within 20 days, and the recording would have to be preserved until all juvenile or criminal matters relating to any conduct referred to in the child's statement were final. Either a peace officer or a magistrate would be authorized to give the warnings for electronically recorded statements.

Juvenile court proceedings. In order to preserve the error for an appeal, a child's attorney would have to object to the failure of the court to give the child the required pre-adjudication admonishments. The objection must be supported and made before testimony began or, if the adjudication was uncontested, before the child entered a plea or agreed to a stipulation of evidence.

In cases where the child and the state agreed to the disposition of the case, the prosecuting attorney would be required to inform the court of the agreement. The court would have to tell the child that it was not required to accept the agreement. If the court rejected the agreement, it would have to allow the child to withdraw the plea or stipulation of evidence, and no document, testimony or other evidence placed before the court relating to the rejected agreement would be allowed to be considered by the court in a subsequent hearing in the case.

The limitation periods that apply to adult criminal offenses under Chapter 12, Code of Criminal Procedure, would apply also to juvenile proceedings, and any offense or conduct that was not given a specific limitation period under that chapter would have a two-year statute of limitations.

Juvenile records. The records of a child who completed a first offender program would have to be destroyed within 90 days after the date of completion, but some information could be maintained for the sole purpose of determining the child's eligibility to participate in another first offender program. If a document contained information about the child and an adult, the law enforcement agency would be required to alter the document so that information relating to the child was destroyed and information about the adult preserved. Deletion of computer records would constitute destruction of those records.

Law enforcement officials could take photographs or fingerprints of a child not in custody if the child consented. In addition, fingerprints could be required on applications for a driver's license or identification card.

A record created or maintained under the Texas Sexual Offender Registration Program could not be sealed if the person who was the subject of the record had a continuing obligation under the program to register.

Law enforcement records and files concerning a child could not be disclosed to the public. However, a prosecuting attorney would be allowed to obtain a defendant's adjudication record for the purpose of offering the record as evidence during the punishment phase of a criminal proceeding.

When a child escaped from its custody, TYC would be authorized to disseminate information about the child to the public, including the child's name and aliases, physical description, photograph, and, if necessary to protect the welfare of the community, any other information that revealed dangerous propensities of the child or expedited apprehension.

Other provisions. CSHB 1550 also would make a number of changes that define current law:

- prior adjudications used in finding habitual felony conduct would have to be final and based on conduct that occurred on or after January 1, 1996;

- a juvenile court would retain jurisdiction over persons older than 18 who received a determinate sentence for the purpose of conducting hearings involving transfer to the Texas Department of Criminal Justice or release under supervision;
- penalties in subsequent criminal proceedings could be only enhanced by felony adjudications leading to TYC commitment that were based on conduct occurring on or after January 1, 1996;
- juvenile courts would not be required to order a child released from detention if the court found that the child could threaten the safety of the public; and
- juvenile courts would no longer be required to initiate proceedings to order commitment of a mentally retarded child to a residential care facility when test results showed a certain level of mental retardation.

Effective date. Most provisions of CSHB 1550 would take effect September 1, 1997. The provisions on juvenile court jurisdiction over determinate sentences and mental health services would apply immediately if the bill is finally approved by a two-thirds record vote of the membership of each house but only to conduct that occurred on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1550 would remedy several drafting and technical problems discovered since major juvenile justice reforms were enacted last session, and address several provisions needing clarification.

The bill would implement many recommendations made by the interim committee and the agencies responsible for administering the juvenile justice system. It would increase penalties for the serious offenses of driving while intoxicated and arson that causes bodily injury or death, set the fine for children who commit certain traffic offenses at the same level as the fine for adults who commit those offenses, and provide for higher sanction levels when multiple subsequent violations of law have occurred. These changes would continue the move toward a stronger juvenile justice system and ensure meaningful consequences for juvenile offenders.

CSHB 1550 would streamline the statutory warning requirements for the admissibility in court of a child's statements. *Miranda* warnings are more than sufficient to preserve the rights of the child. Currently, required warnings regarding determinate sentencing and criminal court transfer often do not provide useful information to the child, and they have caused extensive problems for police and the courts. At the same time, the bill would institute more meaningful protections for children in the court system by instituting better plea bargain procedures, making the juvenile system similar to the adult system in this area. CSHB 1550 would prohibit public disclosure of a child's law enforcement record, but would also protect the public by allowing TYC to release information regarding an escaped child.

CSHB 1550 would help TYC and many children by setting forth clear requirements for the commission, care and discharge of mentally ill children.

Furthermore, the bill would go a long way to helping police deal with the serious problem of gangs by allowing officers to photograph and fingerprint a consenting children for inclusion in a gang book.

OPPONENTS
SAY:

This bill would continue the unfortunate trend, started by HB 327, of making the juvenile system more like the adult criminal system. For example, making arson a determinate sentence offense would result in more juveniles being moved into the adult prison system where their chances of being rehabilitated are small. The juvenile justice system has developed differently from the adult system because children have different needs. Wiping out the differences in order to ease the job of court officials would be counterproductive to the goal of rehabilitating wayward youngsters.

NOTES:

Major changes in the committee substitute included deletion of provisions addressing reporting to the juvenile board of deviations from transfer guidelines, certain changes to sanction guidelines, and administration of psychoactive medication to youth in the TYC who refuse to take it voluntarily. It also added the Class C misdemeanor penalty for juveniles that commit certain traffic violations, the new limitation periods,

authorization to take photos and fingerprints of children who consent, preservation of Texas Sexual Offender Registration Program records for so long as the child is required to register, and new plea bargain provisions.