

SUBJECT: Revising juvenile justice statutes

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Goodman, Baxter, Castro, Hodge, Morrison

0 nays

3 absent — Dunnam, J. Moreno, Reyna

WITNESSES: For — None

Against — None

On — (*On committee substitute:*) Neil Nichols, Texas Youth Commission;
Roy Getting, Texas Fathers Alliance

BACKGROUND: Family Code, Title 3 sets up a civil court system to adjudicate allegations against people age 17 or younger and to attempt to rehabilitate juvenile offenders. Youths 17 or older at the time of a criminal offense are considered adults, and offenders younger than 10 are referred through law enforcement agencies to the Department of Protective and Regulatory Services (DPRS).

Terminology in a juvenile case differs from that in an adult criminal case. For example, in the juvenile system, “adjudication” and “disposition” describe what in criminal proceedings are called “trial” and “sentencing.” The Family Code defines two kinds of offenses that can bring a child into the juvenile justice system:

- delinquent conduct, including violations of a Texas or federal penal law that is punishable by a prison or jail term and violations of a lawful order of a juvenile court; and
- less serious conduct indicating a need for supervision (CINS), including misdemeanors punishable by a fine only if transferred by a lower court; violations of a penal law of a political subdivision of the state if transferred by a lower court; inhalant abuse and public intoxication; truancy; and running away.

Neither category of offense includes traffic offenses, which are under the jurisdiction of criminal courts.

Responsibility for juvenile justice is shared by local police, county sheriffs, prosecutors, county juvenile probation departments, county juvenile courts, county juvenile boards, the Texas Juvenile Probation Commission (TJPC), and the Texas Youth Commission (TYC). About 97 percent of all juvenile cases are resolved locally through counseling, probation, dismissal, or diversion to other programs, and the remainder involve commitment to a state facility. County juvenile boards set local policy. Juvenile probation departments implement the policies of juvenile boards, process cases, provide services for juveniles referred to the juvenile justice system, supervise youths on probation, and run juvenile detention facilities.

TJPC assists counties with juvenile probation and detention services. The commission's duties include distributing state funds to local juvenile probation departments and setting uniform program and fiscal standards for local departments and training.

TYC oversees delinquent children committed to it by courts and provides parole supervision for children until TYC authority ends. The agency operates residential facilities or contracts for placements for about 5,100 youths and supervises about 3,000 paroled youths.

Sentences to the TYC usually are indeterminate; that is, TYC determines the length of commitment based on a number of factors. Juveniles found guilty of certain serious or violent crimes may be sentenced to a determinate (fixed) term of up to 40 years in a TYC facility, with possible future transfer to the adult prison system.

DIGEST: CSHB 2319 would make various changes in juvenile justice laws, as outlined below. This bill would take effect September 1, 2003.

Issuing and enforcing orders to parents and others. CSHB 2319 would establish court procedures for issuing orders to parents and other people to take or refrain from certain actions in a child's case. It would establish powers and procedures to enforce those orders and would revise Family Code statutes dealing with contempt of court. These powers and procedures to issue and

enforce orders would apply to all juvenile court orders except child-support orders, which are covered by other statutes.

The bill would establish requirements for issuing a juvenile court order to a parent or other person responsible for a child, including requiring sufficient notice of a proposed order and the opportunity for parents or others to be heard. The orders would be appealable.

The bill would establish requirements for motions to enforce a juvenile court order and would require that the motion be filed no later than six months after the youth's 18th birthday. Notice about a motion to enforce a court order would have to be given by personal service or certified mail by the 10th day before the date of the hearing on the motion. If a person did not appear at the hearing to enforce a motion, the court could not hold the person in contempt but could issue a *capias* warrant for the person's arrest.

Enforcement hearings would be conducted without a jury, and allegations in the motion for enforcement would have to be proved beyond a reasonable doubt. Attorneys would have to be appointed for indigent people who requested lawyers to represent them.

A person found in contempt of a court order could be sentenced to up to six months in jail or fined up to \$500, or both, or the court could issue an order requiring the person to comply with the court's previous order. A court could reduce a jail term or a fine or the burden of complying with a court order at any time.

Violations of conditions of probation, deferred prosecution, and release from detention could not be enforced by contempt of court proceedings against a child. The bill would eliminate a current provision allowing the enforcement of child support, restitution, and probation fees through civil contempt proceedings, although courts would retain the authority to use civil or coercive contempt proceedings to enforce orders.

Courts could punish children and others with direct contempt for conduct that occurred in the judge's presence. The maximum punishment would be 10 days' confinement in a juvenile detention facility and 40 hours of community service. Children could not be punished for direct contempt by a fine.

Rights of parents and others in juvenile proceedings. CSHB 2319 would enumerate the rights of parents, guardians, and custodians in juvenile proceedings, including the right to be informed of certain details of a child's case and the right to be informed about legal proceedings involving the child. Parents also would have the right to communicate privately in person for reasonable amounts of time with a child who had been taken into custody in a juvenile processing office, a detention facility, a correctional facility, TYC, or another placement facility.

Parents served with petitions and motions would have to be provided a form on which they could make a written statement about the needs of the child or family. Parents would have to return the form to the juvenile probation department, which would transmit it to the court.

In court hearings that did not involve a jury, parents would have to be given the opportunity to make an oral statement to the court about the child or the case. The court could not require the parent to be under oath, and the parent would not be subject to cross-examination.

Contempt of court in justice and municipal courts. CSHB 2319 would move many current powers and requirements relating to justice and municipal courts using contempt of court from other parts of the statutes to the Code of Criminal Procedure, art. 45, which governs the powers of these courts.

The bill would impose a new requirement on justice and municipal courts to provide notice and an opportunity to be heard before holding a child guilty of contempt of court for failing to obey a court order. Justice and municipal courts could hold people age 17 or older in contempt for court-order violations occurring at age 17 or older relating to an offense that occurred while the person was younger than 17. A court could hold a person in contempt if the person was younger than 17 when the court-order violations occurred, but the contempt proceedings could not be held until after the person's 17th birthday. Justice and municipal courts could not refer people who violated court orders when 17 or older to a juvenile court for delinquency proceedings for contempt of court.

Justice and municipal courts could issue notices of a continuing obligation to appear before the court to people age 17 or older to answer allegations that

occurred before the person turned 17. A person could not be arrested for fine-only offenses that occurred before his or her 17th birthday. The court would have to try all other available procedures to try and get the person to appear before the court. Failure to appear as required would be a Class C misdemeanor (punishable by a maximum fine of \$500) and could result in the court issuing a warrant for the person's arrest.

Excusing juvenile sex offenders from registration requirements. CSHB 2319 would allow hearings into whether a juvenile sex offender was to be excused from sex-offender registration requirements during, not only after, the disposition of a case. Motions for hearings and hearings could be held even if the person was at least 18 years old.

A juvenile for whom a court had deferred the decision on whether the juvenile would have to register could complete any type of treatment ordered by the court for the sex offense, rather than specifically "sex offender treatment." After the juvenile completed treatment program, he automatically would be excused from registration requirements unless the prosecutor moved to hold a hearing on the issue and the court decided that the public interest required registration.

A person required to register as a sex offender because of an offense committed in another state as a juvenile could ask a court to be excused from registration requirements. Courts would have to hold hearings upon receipt of such requests.

The proposed changes concerning hearings about sex-offender registration for juveniles would apply to all cases, regardless of when the conduct or proceedings occurred.

CSHB 2319 would establish procedures for courts and agencies to follow when a court has approved the deregistration of a youth. A court would have to send an order excusing registration for a person who already had registered to law enforcement agencies and to other entities which have the information. The offender would have to prove that the entity had the registration information and would have to pay a \$20 fee for each court order sent.

The Department of Public Safety (DPS), local law enforcement agencies, and

other entities would have to remove information from the sex offender registry when a person who was adjudicated as a juvenile for a sex offense no longer was required to register. The bill would establish specific procedures for the agencies removing information from the registry, including notifying each other of the removal.

An adult court to which probation supervision for a juvenile had been transferred could decide whether to excuse or require sex-offender registration of a juvenile placed on probation as part of deferred adjudication for a sex offense. Under the same circumstances, an adult court to which juvenile probation had been transferred could decide whether to excuse a youth from further compliance with registration requirements.

Transfer to adult system for capital murderers. CSHB 2319 would repeal a current requirement that an offender who had been given a determinate sentence for capital murder be transferred automatically from TYC to the adult prison system at age 21 if the offender had not been released on parole by the court or had not served at least 10 years.

State appeal of determinate sentences. CSHB 2319 would authorize the state to appeal cases in which juveniles had been given determinate (fixed) sentences for violent or habitual offenses. The state could appeal cases in which the court dismissed a petition, arrested or modified a judgment, granted a new trial, sustained a claim of former jeopardy, or granted a motion to suppress evidence, a confession, or an admission, if jeopardy had not attached in the case, the prosecutor certified that the appeal was not for the purpose of delay, and the item suppressed was of substantial importance in the case.

The state would be entitled to a stay in the proceedings pending the appeal, and a child could not be held in detention while an appeal was pending. Attorneys would have to be appointed for appeals in cases in which the parents were indigent.

Juvenile adjudications used as prior offense for mandatory life sentence. CSHB 2319 would prohibit a juvenile adjudication for a felony that resulted in commitment to TYC from being counted as a prior felony that can be used to sentence certain repeat sex offenders to life in prison. These changes would apply to all cases, regardless of when the conduct or proceedings occurred.

Commitment to TYC for certain probation violations. Courts could commit to TYC youths who violated their probation for Class A or Class B misdemeanors if the youth had at least one previous adjudication for a felony or a Class A or B misdemeanor before the adjudication that resulted in the current term of probation. Courts could extend probation after the period of probation had expired if the motion to revoke or extend probation had been filed before the expiration of the probation period and the order to extend the probation occurred within a year of the expiration date.

Holding youths being transferred to adult system. Courts could place youths who were at least 17 years old and were being transferred to the adult criminal justice system under a determinate sentence to be held in an adult correctional facility. If these juveniles were held in a juvenile detention facility pending a transfer, they would have to be kept separate from other children, to the extent practicable.

Juvenile probation facilities and standards. TJPC would have to inspect and monitor detention and correctional facilities biennially instead of annually. TJPC would have to investigate complaints about juvenile boards and determine whether a commission rule had been violated.

Juvenile boards would have to comply with all minimum standards adopted by TJPC for juvenile probation programs, facilities, and services, and with all data reporting requirements, even if the board did not accept state funding. However, if a juvenile board did not accept state funding and operated a detention or correctional facility formally accredited by the American Correctional Association, the board could comply with that association's standards if they conflicted with TJPC's rules.

Other provisions. CSHB 2319 would make many other changes to the laws governing the juvenile justice system, including:

- extending requirements for detention hearings to include hearings based on violations of probation orders;
- allowing courts to order parents or guardians who were present at a detention hearing to perform actions or to refrain from certain actions to help the child comply with the release conditions;

- requiring DPS to expunge a DNA record from the state's DNA database if the agency was given a copy of a court order sealing the juvenile record that resulted in the DNA record;
- allowing appeals of issues dealing with certifying juveniles to stand trial in adult court in cases in which the juvenile received deferred adjudication;
- requiring parents of juveniles accused of traffic offenses to appear in justice or municipal court with the youths, as is required for other fine-only offenses;
- changing the term of driver's license suspension for juveniles adjudicated for certain offenses from the period until a juvenile turns 19 years old to a maximum of one year;
- requiring school districts to give students credit for high school graduation courses completed in a TYC educational program;
- authorizing students to receive a high school diploma or certificate of coursework completion for work done that meets certain public school conditions and requirements;
- requiring justice and municipal courts to report to the Office of Court Administration the information about truancy cases and information about cases in which children fail to obey court orders;
- excluding 18-year olds placed on deferred adjudication whose juvenile probation is transferred to an adult criminal court from certain restrictions on probation, certain minimum probation terms, and certain minimum prison terms if probation is revoked, that courts must impose on adults convicted of certain serious and violent offenses;
- allowing a law enforcement officer to take into custody a juvenile who the officer has probable cause to believe has violated probation and to bring the juvenile to juvenile court intake;
- authorizing a juvenile court to place a juvenile on deferred adjudication at any time and limiting the amount of time a child can be placed on deferred adjudication to one year;
- making all TYC files and records, not only treatment records, confidential, with certain exceptions;
- allowing TYC to disclose a child's records to the child and the child's parents only if the disclosure would not hurt the child's treatment and rehabilitation and would not decrease the likelihood of TYC receiving information from the sources in the future;

- authorizing juvenile courts to order parents or others responsible for children to reimburse the county for payments the county made to an attorney appointed for a juvenile;
- allowing juvenile courts to order parents or other people responsible for a child's support to pay all or part of the costs of a child's treatment program that is part of probation if the court finds they are able to pay;
- adding two traffic offenses (driving with invalid license and duty on striking fixture or highway landscaping) to the offenses that are under the jurisdiction of juvenile courts;
- authorizing trial courts, under certain circumstances, to use fines for outstanding judgments against adults who were convicted of offenses before turning 17 years old; and
- exempting governmental bodies from responding to requests for information from youths in juvenile correctional and detention facilities just as they are exempt from responding to requests from adults in correctional facilities.

**SUPPORTERS
SAY:**

Issuing and enforcing orders to parents and others. CSHB 2319 would give courts guidelines to follow in issuing orders to parents and would give courts the tools to enforce those orders. Currently, a court may issues orders to parents to perform or refrain from an action, but no uniform guidelines exist. For example, a court may order a parent to participate in a treatment or counseling program, to attend a court hearing, or to make certain payments for fees or restitution, but the court has no explicit powers to enforce the orders if the parents refuse. For that reason, courts often do not even try to enforce their orders.

CSHB 2319 would establish uniform procedures for issuing orders to ensure that all courts statewide follow the same procedures and that the process is fair to all parents. For example, the bill would require that parents be given notice of court orders and notice of motions to enforce orders.

The bill would give the a court fair, appropriate means to enforce its orders. It would allow parents to be assessed a \$500 fine or up to six months in jail for contempt of court relating to the motions, but the penalties would be capped at one fine and one jail sentence, regardless of the number of findings of contempt. Also, instead of a fine or jail sentence, a court could require the person to comply with the court's previous orders. This would allow courts to

use their muscle to get parents to perform the required actions, reserving fines and jail time only for cases that warrant it.

Many of the court powers and procedures, including allowing arrest warrants for people who do not appear at a court hearing to enforce a court order, would be the same as or similar to those in Family Code, ch. 157, dealing with enforcing child support and other family law orders. The punishments for contempt of court would be the same as those in the Government Code.

Revisions to the Family Code statutes dealing with contempt of court would make the law more clear and useful. The bill would eliminate a current limit on enforcing restitution and probation fees with civil contempt and would replace it with criminal contempt because civil contempt is more appropriate for situations in which a person can comply promptly with the court order at any time. Although courts would use these powers of contempt, they would retain broad authority to use civil contempt, if appropriate.

The bill would give courts authority to use direct contempt against a child for conduct that occurred in front of the judge. This would give judges a tool to handle children who openly defy or disrespect the court.

The bill would prohibit contempt proceedings for violations of probation, because these are handled more appropriately by modifying probation, reinstating prosecution, or other means.

Rights of parents and others in juvenile proceedings. CSHB 2319 would give parents and others explicit rights in juvenile proceedings for the first time, ensuring that parents were treated fairly and equally in proceedings throughout the state. For example, parents would have a right to be heard during the proceedings and a right to communicate with their children. Much of the bill's language is similar to language in victims' rights legislation.

Contempt of court in justice and municipal courts. CSHB 2319 would give justice and municipal courts tools to deal with juvenile offenders who cannot be located or fail to appear as required. Courts could give notices to appear before the court to a person at least 17 years old if the court had tried to secure the person's appearance before the person turned 17. Because these people are now adults, failing to appear would be an additional offense, and a

court could issue a warrant to have them taken into custody for not appearing. This would help hold young adults responsible for their behavior, rather than allowing them simply to hide from the courts until they turn 17.

Excusing juvenile sex offenders from registration requirements. CSHB 2319 would clear up current confusion over when a hearing on excusing sex-offender registration for a youth can occur by stating clearly that the hearing could occur during the dispositional phase of a juvenile proceeding.

CSHB 2319 would clear up ambiguity about what happens after a youth who has had the decision on whether he must register as a sex offender deferred completes a treatment program. Currently, it is not clear whether a youth must register or not after completing a treatment program and whether or not a hearing is necessary. The bill would allow the youth to be excused from the registration requirements unless the prosecutor asked for a hearing on the issue. This would be appropriate in cases where the court has deferred the decision on registration pending the treatment program. Courts would continue to make decisions about juveniles whose offenses and situations warranted registration, because prosecutors would ask for hearings in these cases. CSHB 2319 would promote judicial efficiency by allowing juveniles to be excused from registration if the prosecutor did not request a hearing and would be in keeping with the principles of juvenile justice, which include allowing juveniles who have rehabilitated themselves to have a clean start.

The bill also would give courts more flexibility by allowing any kind of appropriate treatment for a sex offender instead of only specialized treatment for sex offenses.

CSHB 2319 would spell out the mechanics of deregistering a youth who had been required to register as a sex offender so that all entities would be clear about their responsibilities. The bill would require DPS and others to remove information under certain circumstances so that the registry did not contain outdated information on people no longer required to register. DPS should have no problem performing the actions required by this bill.

A registry full of outdated information on those no longer required to register could cause problems. For example, a sex offender could move to a different address, but the DPS database might still have the former address in the

database. This could lead to people mistaking the new resident — who was not a sex offender — for the registrant. Even when information is removed from the sex offender database, it remains in DPS' criminal history file.

State appeal of determinate sentences. CSHB 2319 would give the state the same rights of appeal in certain juvenile cases that it has in adult criminal cases. The state could appeal only if double-jeopardy protections were not violated, as with laws governing appeals cases for adult criminal defendants.

Current law prohibiting appeals in these cases has more to do with the mechanical difficulties in instituting appeals because of the different types of sentences in juvenile cases. This bill would allow appeals only in determinate sentence cases, because sentences in these cases can be implemented if an appeals court reverses a juvenile court's ruling and the case is sent back to the trial court. In contrast, in other cases, sentences are measured by the youth's age, with commitment to TYC expiring when the youth reaches 21 years old and probation terms expiring when the youth reaches 18. These cases should not be appealable, because juveniles could be older than these expiration ages after an appeal had been completed.

Transfer to adult system for capital murderers. CSHB 2319 would give the juvenile and adult systems more flexibility in handling juveniles adjudicated for capital murder and would ensure that these youths would be treated in same manner as youths sentenced to TYC for other offenses. For all offenses except capital murder, youths who have not been released or transferred already are released automatically at age 21 to serve the rest of their sentences on parole. However, current law requires that youths adjudicated for capital murder be moved from the juvenile system to the adult system automatically at age 21 if they have not been paroled earlier by the court. CSHB 2319 would allow these youths, if still at TYC upon reaching age 21, to serve the rest of their sentences on adult parole.

TYC would continue to send to the adult system any youth adjudicated for capital murder for whom it would be appropriate. Dangerous, violent, or unrehabilitated youths would continue to be moved to the adult system, but youths who worked hard in TYC to be rehabilitated would have the possibility of release on parole to motivate them. If a youth was dangerous or

unrehabilitated, TYC would go the court and ask to have the youth moved to the adult system long before the youth's 21st birthday.

Any youth released on parole would continue to be supervised by the adult parole system and could be sent to adult prison for violating the conditions of parole. If TYC thought that a youth should be moved to the adult system, a hearing would have to be held to ensure that a court was aware of what was happening and that the youth had an opportunity to be heard.

Juvenile adjudications used as prior offense for mandatory life sentence. CSHB 2319 would prohibit counting juvenile offenses as prior offenses for sentencing some sex offenders to life in prison, just as they are prohibited from being considered when sentencing some habitual offenders to 25 years to life. At the time the law was enacted allowing juvenile offenses to be counted as "priors" for enhancing some penalties, the law mandating life in prison for some repeat sex offenders did not exist. It is only fair that a serious punishment like life in prison not be issued based in part on an act committed by a juvenile. Juvenile offenses still could be considered in some situations when enhancing punishments for other felonies.

Commitment to TYC for certain probation violations. CSHB 2319 would clear up confusion over current law that sometimes has been interpreted to mean that a youth must have more than one previous adjudication for a felony or a Class A or B misdemeanor before certain probations violations can result in commitment to TYC. The 1999 law was intended to require only one previous violation of this type, and CSHB 2319 would make this clear.

Holding youths being transferred to adult system. CSHB 2319 would allow older youths who were being considered for transfer to the adult system to be held in an adult facility, just as youths who are at least 17 and violate their parole or escape from custody can be held now. In some cases, an adult facility would be a more appropriate place than a juvenile facility to hold these youths, since they have been adjudicated for serious or violent crimes and have been referred for a transfer because of misconduct at TYC. It would be appropriate to keep these older, dangerous youths separate from other youths who could be as young as 10 years old. If, however, these older, violent youths were kept in a juvenile detention facility, CSHB 2319 would ensure that they were kept separate from other children, if possible.

Juvenile probation facilities and standards. CSHB 2319 would allow TJPC to inspect facilities every two years, instead of every year, so the commission can focus its resources on the facilities that need the most attention. Currently, the commission has eight monitors and slightly more than 100 facilities. This bill would allow TJPC to inspect and monitor facilities that need attention more than once a year, but it would not have to visit facilities that were in compliance with commission rules.

Currently, no counties refuse to take state money, so all are subject to the commissions standards. CSHB 2319 would ensure that if any county decided to turn down state money, TJPC still could protect juveniles by requiring that those counties follow state standards.

OPPONENTS
SAY:

Issuing and enforcing orders to parents and others. CSHB 2319 should not give courts the authority to use civil or coercive contempt to enforce orders. This type of contempt should be reserved for situations in which the person can get out of jail at any time by promptly complying with court orders. This is best used in situations such as jailing people until they reveal certain information, not in enforcing juvenile court orders. Courts should be limited to the contempt tools outlined in the bill.

Excusing juvenile sex offenders from registration requirements. No sex offender — even a juvenile who has been sent to treatment and has had the decision about their being registered deferred — should be excused automatically from sex-offender registration requirements. The purpose of the sex offender database is to ensure that the public has tools to protect itself from potentially dangerous sex offenders, and this purpose should not be undermined by allowing some offenders to be excused automatically. Any decision about excusing registration, even for juveniles who have completed treatment, should be made after deliberate considerations by a court.

State appeal of determinate sentences. The state's right to appeal should not be expanded. The right to appeal court decisions should be held by people who might not be treated fairly when up against the resources of the state. The state has wide latitude in presenting evidence and information during an adjudication and sentencing, and it should not be given an extra avenue to pursue juvenile cases through appeals.

Juvenile adjudications used as prior offense for mandatory life sentence. The bill should not prohibit the consideration of certain juvenile offenses in sentencing some repeat sex offenders to life in prison, because these offenses could demonstrate the continuing threat a person poses to public safety.

Transfer to adult system for capital murderers. The state should not relax current requirements for juveniles convicted of capital murder. These juveniles have committed a serious, violent crime and should not be released on parole automatically when they turn 21. The default in these cases should be for the youths to go into the adult system where they can be paroled, if warranted.

Juvenile probation facilities and standards. The state should not require juvenile boards to comply with probation programs, facilities, services, and data reporting requirements even if they do not accept state funds. Although this situation does not exist now, in the future, a juvenile board might want to forgo state money because the state had imposed unreasonable or unattainable requirements. In such a case, it would be unfair to require the board to meet state standards, since the board would not be accepting state aid. Juvenile boards still would have to handle juveniles in a constitutionally approved way, even if not meeting statutory standards.

NOTES:

The committee substitute removed a provision from the bill as introduced that would penalize public and private entities holding sex-offender registration information if the entities did not remove information from their database within 30 days of receiving a notice from DPS to do so. The organizations would not have been able to receive sex-offender registrations from state, county, or local entities in the future.