

## **BILL ANALYSIS**

Senate Research Center

H.B. 1550  
By: Goodman (Harris)  
Jurisprudence  
4-29-97  
Committee Report (Amended)

### **DIGEST**

Extensive changes were made in the juvenile justice system as a result of legislation enacted during the 74th Legislature. During the interim following the session, the House Committee on Juvenile Justice and Family Issues was assigned a number of charges by Speaker Laney. One of the charges was to review the changes in the juvenile justice laws made by the 74th Legislature and make recommendations addressing new juvenile justice problems; reports from the juvenile justice agencies and the Criminal Justice Policy Council concerning implementation of Progressive Sanctions Guidelines; and errors, omissions, and conflicts in current law. The Committee's Interim Report to the 75th Texas Legislature, submitted in December 1996, included these recommendations. Also during the interim other juvenile justice practitioners and officials who contributed to the development of the juvenile justice reforms during the last legislative session made recommendations addressing additional problem areas and areas needing clarification.

### **PURPOSE**

As proposed, H.B. 1550 makes a number of clarifying and technical amendments to the Juvenile Justice Code (Title 3, Texas Family Code) that have been discovered since the major reforms of the last legislative session. It changes the classification of two offenses (arson and DWI); streamlines statutory warning requirements; authorizes the Texas Youth Commission to accept offenders with mental illness and requires it to discharge offenders with mental disorders under certain circumstances; amends progressive sanctions guidelines in several respects; and makes several amendments related to the maintenance and release of information in youth records.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to Texas Juvenile Probation Commission in SECTION 49 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 51.03(a) and (b), Family Code, to delete existing Subdivision (4) regarding certain conduct. Makes a conforming change.

SECTION 2. Amends Section 51.031, Family Code, to set forth habitual felony conduct. Provides that an adjudication is final if a child is placed on probation or committed to the Texas Youth Commission. Provides that an adjudication based on conduct that occurred before January 1, 1996, may not be considered in a disposition made under this section.

SECTION 3. Amends Chapter 51, Family Code, by adding Section 51.0411, as follows:

Sec. 51.0411. JURISDICTION FOR TRANSFER OR RELEASE HEARING. Sets forth jurisdiction for a transfer or a release hearing.

SECTION 4. Amends Chapter 51, Family Code, by amending Section 51.09 and by adding Section 51.095, as follows:

Sec. 51.09. WAIVER OF RIGHTS. Makes a conforming change.

Sec. 51.095. ADMISSIBILITY OF A STATEMENT OF A CHILD. Sets forth requirements

of a child's statement. Deletes existing Subdivisions (E) and (F). Deletes existing Subsection (c). Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 51.13(d), Family Code, to provide that an adjudication under Section 54.03 that occurred on or after January 1, 1996 is considered a final felony for certain purposes.

SECTION 6. Amends Chapter 51, Family Code, by adding Section 51.19, as follows:

Sec. 51.19. LIMITATION PERIOD. Sets forth the statute of limitations.

SECTION 7. Amends Section 53.013, Family Code, to require a juvenile court or probation department that deviates from certain guidelines to submit in writing to the juvenile board the reasons for the deviation.

SECTION 8. Amends Section 53.045(a), Family Code, to authorize a prosecutor to refer a petition to a grand jury in which the petition was filed if the violation includes Section 28.02, Penal Code, if bodily injury or death is suffered by any person by reason of the commission of the conduct.

SECTION 9. Amends Section 54.01(e), Family Code, to require the court to order the child to a detention facility unless he may threaten the safety of the public.

SECTION 10. Amends Section 54.03, Family Code, by adding Subsections (i) and (j), to sets forth requirements and procedures for preserving appellate or collateral review and agreements to the disposition of the case.

SECTION 11. Amends Section 54.04(d), Family Code, to delete Subdivision (C) regarding adjudication. Makes conforming changes.

SECTION 12. Amends Section 54.08, Family Code, to set forth requirements for closing a hearing to the public. Defines "family." Makes conforming and nonsubstantive changes.

SECTION 13. Amends Section 54.10(b), Family Code, to set forth a time for adopting, modifying, or rejecting a referee's recommendations. Deletes existing text with regard to a detention hearing.

SECTION 14. Amends Section 55.03(a), Family Code, to delete text regarding determination of mental retardation.

SECTION 15. Amends Section 56.01(b), Family Code, to set forth requirements and procedures for filing certain appeals.

SECTION 16. Amends Section 58.001, Family Code, by amending Subsection (c) and adding Subsections (d)-(f). Prohibits a law enforcement agency from forwarding certain information. Sets forth requirements for destroying or retaining all information relating to a child under this section.

SECTION 17. Amends Section 58.002, Family Code, by adding Subsections (c) and (d), to set forth requirements for photographing and fingerprinting a child. Provides that this section does not apply to applications for a driver's license or personal identification card.

SECTION 18. Amends Section 58.003, Family Code, by adding Subsection (m), to set forth requirements for sealing records under Article 6252-13c.1, V.T.C.S.

SECTION 19. Amends Section 58.007(a), Family Code, to provide that this section does not apply to a record or file relating to a child that is maintained by a municipal or justice court.

SECTION 20. Amends Section 58.007, Family Code, by amending Subsection (c) and adding Subsection (g), to provide that law enforcement records concerning a child may not be disclosed to the public. Provides that an exception to Subdivision (2) is Subchapter B. Sets forth procedures for offering a record as evidence in the punishment phase of a trial.

SECTION 21. Amends Section 58.104(f), Family Code, to require the Department of Public Safety to send certification of records that the department determines, according to the department's records are eligible for sealing.

SECTION 22. Amends Section 59.003, Family Code, to authorize a prosecuting attorney or juvenile court in a modification hearing under Section 54.05 to assign a child to a certain sanction level, including a capital and certain first degree felonies. Deletes text regarding a petition approved by a grand jury. Sets forth requirements for a child engaged in an adjudication hearing under Section 54.03. Deletes existing Subsection (b). Sets forth exceptions for Subsection (c). Requires the court to hold a hearing modifying the disposition as required by Section 54.05. Makes conforming changes.

SECTION 23. Amends Section 59.004(a), Family Code, to authorize the court, if a child is at a level one sanction, to require the child's parents to participate in the program, if a program under Section 264.302 is available.

SECTION 24. Amends Section 59.005(a), Family Code, to make conforming changes.

SECTION 25. Amends Section 59.006(a), Family Code, to authorize the juvenile court, for a child at a level three sanction, to place a child on probation for more than six months and not more than 12 months.

SECTION 26. Amends Section 59.007(a), Family Code, to make a conforming change.

SECTION 27. Amends Section 59.008(a), Family Code, to authorize the court for a child at sanction level five to place a child on probation between six and 12 months in a post-adjudication secure correctional facility.

SECTION 28. Amends Section 59.009(a), Family Code, to authorize a juvenile court to take certain actions with regard to a child placed at a sanction level six.

SECTION 29. Amends Section 59.010(a), Family Code, to make a conforming change.

SECTION 30. Amends Section 264.302(e), Family Code, to require the department to provide services for a child and the child's family if a contract to provide services under this section is available in the county.

SECTION 31. Amends Article 37.07(3), Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (h), to provide that evidence of an adjudication for conduct that is a violation of a penal law of the grade of misdemeanor punishable by confinement in jail is admissible only if the conduct upon which the adjudication is based occurred on or after January 1, 1996. Makes a conforming change.

SECTION 32. Amends Section 61.073, Human Resources Code, to make conforming changes.

SECTION 33. Amends Section 61.077, Human Resources Code, as follows:

Sec. 61.077. New heading: CHILDREN WITH MENTAL ILLNESS OR MENTAL RETARDATION. Requires the Texas Youth Commission to accept a child committed to the commission who is mentally ill or mentally retarded. Sets forth requirements for discharging a child who is mentally ill or mentally retarded.

SECTION 34. Amends Chapter 61E, Human Resources Code, by adding Section 61.0772, as follows:

Sec. 61.0772. EXAMINATION BEFORE DISCHARGE. Sets forth requirements for an examination before discharge.

SECTION 35. Amends Section 61.093, Human Resources Code, by adding Subsection (c),

to set forth information that is authorized to be disseminated regarding a child who has escaped from custody.

SECTION 36. Amends Section 61.101, Human Resources Code, to delete Subsections (b)-(d). Makes conforming changes.

SECTION 37. Amends Section 141.042(a), Human Resources Code, to make a conforming change.

SECTION 38. Amends Section 574.001, Health and Safety Code, by amending Subsection (b) and adding Subsection (f), to authorize an application in which a proposed patient is a child in the custody of the Texas Youth Commission is to be filed in the county where the child's commitment to the commission was ordered. Makes a conforming change.

SECTION 39. Amends Section 593.041, Health and Safety Code, to make conforming changes.

SECTION 40. Amends Sections 729.001(a) and (c), Transportation Code, to delete text regarding persons 14 years of age. Provides that an offense under this section is a Class C misdemeanor. Makes conforming changes.

SECTION 41. Amends Section 51.02(16), Family Code, to redefine "traffic offense."

SECTION 42. Amends Section 8.07(a), Penal Code, to make conforming changes.

SECTION 43. Amends Section 729.002, Transportation Code, to make conforming changes.

SECTION 44. Amends Section 729.003(a), Transportation Code, to make conforming changes.

SECTION 45. Amends Section 51.02(15), Family Code, to redefine "status offender."

SECTION 46. Amends Section 52.025(b), Family Code, to make conforming changes.

SECTION 47. Amends Title 7C, Local Government Code, by adding Chapter 244, as follows:

#### CHAPTER 244. CORRECTIONAL OR REHABILITATION FACILITY LOCATION

Sec. 244.001. DEFINITIONS. Defines "correctional or rehabilitation facility," "private residence," and "residential zoning area."

Sec. 244.002. PROXIMITY OF CORRECTIONAL OR REHABILITATION FACILITY. Sets forth requirements for constructing or operating a correctional or rehabilitation facility within a certain distance of a residential zoning area. Sets forth requirements of waiving the distance requirement for a correctional or rehabilitation facility by the governing body of a house of worship.

Sec. 244.003. LOCAL CONSENT. Sets forth the provisions of local consent. Authorizes the commissioners court to rescind a resolution under Subsection (a)(1) or (2).

Sec. 244.004. EXEMPTIONS. Sets forth the applicability of this chapter.

SECTION 48. Repealers: Section 58.004, Family Code (Compilation of information pertaining to a criminal combination), Sections 61.0386, 61.0771, 61.102, and 61.103, Human Resources Code (Texas Youth Council), and Section 105(e), Chapter 262, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 49. Requires the Texas Juvenile Probation Commission to adopt rules relating to the implementation of a progressive sanctions program no later than January 1, 1998.

SECTION 50. Makes application of this Act prospective.

SECTION 51. Makes application of Section 58.007(a), Family Code, retroactive.

SECTION 52. Makes application of this Act prospective.

SECTION 53. (a) Provides that this Act conforms the Transportation Code to changes in law made by Section 9(6), Chapter 34, Acts of the 74th Legislature, Regular Session, 1995.

(b) Provides that this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions and corrections to enacted codes.

SECTION 54. (a) Effective date: September 1, 1997.

(b) Provides that Section 51.0411, Family Code; Sections 574.001 and 593.041, Health and Safety Code, Sections 61.077, 61.093, and 61.0772, Human Resources Code take effect immediately.

SECTION 55. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### Amendment 1.

Delete proposed SECTION 47 and add a new SECTION 47, amending Title 7C, Local Government Code, by adding Chapter 244 regarding correctional or rehabilitation facility locations.

#### Amendment 2.

On page, 30, line 7, insert the phrase "on probation" after "the child."

#### Amendment 3.

On page 10, line 4, strike the phrase "or a peace officer."