

BILL ANALYSIS

Senate Research Center
82R7042 AJZ-D

S.B. 1209
By: Whitmire
Criminal Justice
4/15/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, upon certification of a juvenile for prosecution as an adult in a criminal court, the youth is treated as an adult and transferred to the adult county jail for incarceration pending the completion of his or her adult proceeding and trial. In most cases, due to the requirements of separation of sight and sound, the juvenile is housed in conditions that are not conducive to his or her rehabilitation and may be harmful to the juvenile's mental health.

S.B. 1209 allows a juvenile board to establish a policy that specifies that a youth who has been certified under current law to be prosecuted as an adult may be detained in a juvenile facility pending trial.

As proposed, S.B. 1209 amends current law relating to the detention of certain juvenile offenders.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 51.12(f) and (h), Family Code, as follows:

(f) Provides that a person who has been transferred for prosecution in criminal court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court) and is under 17 years of age is considered a child for the purposes of this subsection.

(h) Provides that this section does not apply to a person:

(1) who has been transferred to a criminal court, rather than after transfer to criminal court, for prosecution under Section 54.02 and is at least 17 years of age;
or

(2) Makes no changes to this subdivision.

SECTION 2. Amends Section 51.13(c), Family Code, as follows:

(c) Prohibits a child from being committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

(1) Makes a nonsubstantive change;

(2) after transfer for prosecution in criminal court under Section 54.02, unless the juvenile court orders the detention of the child in a certified juvenile detention facility under Section 54.02(h) (relating to requiring the juvenile court to state specifically in its order the reasons for its waiver of jurisdiction); or

(3) Makes no changes to this subdivision.

Makes a conforming change.

SECTION 3. Amends Section 152.0007, Human Resources Code, by adding Subsection (c), to require the juvenile board to establish a policy that specifies whether a person who has been transferred for criminal prosecution under Section 54.02, Family Code, and is younger than 17 years of age may be detained in a juvenile facility pending trial.

SECTION 4. Amends Section 54.02(h), Family Code, as follows:

(h) Requires the person, on transfer of the person for criminal proceedings, to be dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under Section 152.0007(c), Human Resources Code, the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under Article 4.19, Code of Criminal Procedure. Provides that a transfer of custody made under this subsection is an arrest. Makes a nonsubstantive change.

SECTION 5. Amends Chapter 4, Code of Criminal Procedure, by adding Article 4.19, as follows:

Art. 4.19. TRANSFER OF CHILD. Authorizes the judge of the criminal court having jurisdiction over the child, notwithstanding the order of a juvenile court to detain a child in a certified juvenile detention facility under Section 54.02(h), Family Code, to order the child to be transferred to another facility and treated as an adult as provided by this code.

SECTION 6. Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of certain matters, including criminal actions, with certain actions given preference over other criminal actions, including criminal actions against children who are detained as provided by Section 51.12 (Place and Conditions of Detention), Family Code, after transfer for prosecution in criminal court under Section 54.02, Family Code.

SECTION 7. (a) Provides that the change in law made by this Act applies only to the detention of a child for conduct that occurs on or after the effective date of this Act. Provides that conduct violating a penal law that occurs before the effective date of this Act is governed by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose.

(b) Provides that, for purposes of this section, conduct violating a penal law occurred before the effective date of this Act if any element of the violation occurred before that date.

SECTION 8. Effective date: September 1, 2011.