

BILL ANALYSIS

C.S.H.B. 2108
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed a need for uniformity in Texas counties concerning certain aspects of a waiver of jurisdiction hearing for a child being transferred from juvenile court to adult criminal court in order to ensure that all youth are informed of their rights and obligations throughout the process. Current law does not provide a specific process by which a child and their counsel can appear before a court and receive an explanation about the potentially lifelong consequences of being certified as an adult. It has been reported that youth are often ordered to participate in diagnostic studies, social evaluations, or full investigations without the advice of counsel, and that these exams have the potential to violate the right against self-incrimination and the right to remain silent. C.S.H.B. 2108 seeks to standardize juvenile court proceedings regarding a waiver of jurisdiction of a child, including by expanding the matters the court must consider in determining a waiver and by requiring the court to explain its consideration to waive jurisdiction and the child's right to agree to or decline participation in a study, evaluation, or investigation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2108 amends the Family Code to require a juvenile court, prior to the hearing to consider transfer of a child to criminal court for criminal proceedings, to admonish the child in open court and in the presence of the child's counsel 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 requires the court to set the date of the transfer hearing after the admonishment and clarifies that the requirement for the court to order the study, evaluation, or investigation is after the admonishment. The bill requires the attorney for a child who declines to participate in a study, evaluation, or investigation to state the refusal to the court in open court or in writing not later than the fifth business day after the date the court ordered the study, evaluation, or investigation.

C.S.H.B. 2108 requires a juvenile court to consider the following, among other matters, in making a determination to waive its original jurisdiction and transfer a child to the appropriate court for criminal proceedings:

- 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.

If the court waives jurisdiction, the statement of reasons for the waiver must set forth a rational basis for the waiver, with sufficient specificity to permit meaningful review, and must include case-specific findings of fact that do not rely solely upon the nature or seriousness of the offense. The bill establishes a presumption in a transfer hearing that it is in the best interest of the child and of justice that the juvenile court retain jurisdiction over the child and places the burden on the state to overcome this presumption.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2108 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions, which were absent from the original:

- a provision expanding the requisite considerations of a juvenile court when determining to waive jurisdiction and transfer a child to criminal court;
- certain requirements for the statement of reasons offered by a court that waives jurisdiction; and
- a provision establishing a presumption that a juvenile court's retained jurisdiction over a child is in the child's and justice's best interest and placing the burden to overcome the presumption on the state.