

- SUBJECT:** Revising juvenile justice system procedures
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 7 ayes — Goodman, A. Reyna, P. King, Menendez, Morrison, Naishtat, Nixon  
0 nays  
2 absent — E. Reyna, Tillery
- WITNESSES:** (*On original bill:*)  
For — David Montague, Tarrant County District Attorney’s Office; Robert O. Dawson  
  
Against — Patricia Ott, Justice of the Peace and Constables Association  
  
On — James Bethke; Donald Lee, Texas Conference of Urban Counties; Craig Pardue, Dallas County
- 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 Texas 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* (DC), 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
  - ! the 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 includes traffic offenses, which are under the jurisdiction of criminal courts.

A juvenile alleged to have committed a crime is referred to a local juvenile probation department, generally by law enforcement officers. In 1999, 38,186 juveniles were referred a total of 55,254 times to Texas' 17 major juvenile departments, which represent 23 counties, 52 percent of the state population, and 46 percent of statewide referrals.

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 98 percent of all juvenile cases are resolved locally through counseling, probation, dismissal, or diversion to other programs. Only 2 percent of cases 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 5,600 youths and supervises about 2,900 paroled youths.

The 76th Legislature in 1999 enacted HB 3517 by Goodman, which substantially revised the Family Code procedures for juvenile or other courts to handle accused children with mental illness and mental retardation. The

bill made other changes in the laws dealing with juveniles accused of crimes, including detention of juveniles, transfer of certain juveniles to the adult system, juvenile records, and reporting of child abuse and neglect.

A Class A misdemeanor is punishable by up to one year in jail and/or a maximum fine of \$4,000. A Class B misdemeanor is punishable by up to 180 days in jail and/or a maximum fine of \$2,000.

DIGEST:

CSHB 1118 would make various changes affecting the juvenile justice system to the Family Code, Code of Criminal Procedure, Human Resources Code, and Government Code, including provisions relating to youth records, sex-offender registration, juvenile board duties, justice and municipal courts, disposition (sentencing), appointment of attorney and continuation of representation, and temporary custody for the purpose of fingerprinting and photographing.

This bill would take effect September 1, 2001, unless otherwise noted.

**Automatic restriction of access to records.** CSHB 1118 would establish guidelines in Family Code, chapter 58 for the automatic restriction of access to juvenile records. Exempted from these restrictions would be sex-offender registration records and criminal combination (meaning three or more people who collaborate on criminal activities), certified cases, determinate-sentence cases (those sentencing the offender to confinement for a fixed period as specified by statute), and criminal street gang records. The Department of Public Safety (DPS) would have to certify the records to the juvenile court or juvenile probation department and could not disclose the existence of the records or any information from the records. The only exceptions would be limited access for criminal justice agencies for purposes such as investigations and punishment determinations and for TJPC, TYC, and the Criminal Justice Policy Council (CJPC) for research purposes.

Once the court had received the certification, it would have to order all agencies that provided care or custody of a juvenile offender to allow access to the records only when authorized. In those cases, a reasonable effort would have to be made to contact the subject of the report. DPS would have to ask the Federal Bureau of Investigation to place the information in its files with restricted access for use only by a criminal justice agency for criminal

justice purposes, or, if this were not possible, to delete all information concerning the case from the federal database.

The subject of the certified record would not have to disclose the existence of or any information in the file except when testifying as a defendant in a criminal case. The subject could not waive the restricted status of the records. The subject of the restricted file would have to be notified upon final discharge from the juvenile justice system of how restricted access works. When the youth first entered into TYC or the probation system, the TYC or probation officer would have to explain the provisions of automatic restricted access and give the youth and parent or custodian a written copy of the explanation. Automatic restricted access would not restrict the sealing or destruction of records under other laws.

This new subchapter would apply to records relating to all juvenile justice cases in existence before, on, or after the bill's effective date.

**Destruction of records for housekeeping purposes.** CSHB 1118 would establish guidelines for the destruction of certain physical records and files. These records and files could be destroyed after being placed on microfilm or microfiche or being duplicated in an electronic version. Custodians of files for juvenile boards, law enforcement agencies, and prosecuting attorneys could destroy files and records only if:

- ! the subject was at least 18 years old and the most serious allegation or adjudicated offense was CINS, or the referral did not relate to CINS or DC and therefore the court did not take action;
- ! the subject was at least 21 years old and the most serious allegation or adjudicated offense was a misdemeanor; or
- ! the subject was at least 31 years old and the most serious adjudicated offense was a felony.

If a file or record contained more than one case, information for each case could be destroyed only if it could be separated from other case information that was not authorized for destruction.

This new subchapter would apply to the destruction of juvenile justice records and files on or after the bill's effective date, without regard to

whether the files destroyed existed before, on, or after the effective date of this act.

**Hearing to determine need to register juvenile as a sex offender.** CSHB 1118 would establish guidelines for determining whether or not a juvenile offender could be exempt or deferred from being registered as a sex offender. Upon a juvenile's motion, the juvenile court could conduct a hearing without a jury to determine exemption, following disposition of the case. The burden of persuasion would be on the youth. The court could make its determination based on exhibits, testimony of witnesses, representations of counsel, or a social history prepared by a juvenile probation department, and all written matter would have to be disclosed to the parties.

CSHB 1118 would authorize a juvenile court, after a hearing, to excuse a youth's compliance with sex-offender registration if the court found that the registration would not increase protection of the public or that any potential increase in public protection clearly would be outweighed by the anticipated substantial harm to the youth and the youth's family.

CSHB 1118 would allow a prosecutor to waive a hearing and agree to a motion to excuse a juvenile from registration. The court then would have to enter an order excusing compliance with registration. However, if the waiver was entered under a plea bargain, the court either could excuse compliance with registration or could order a hearing. If a hearing was ordered, the court could permit the youth to withdraw the plea.

CSHB 1118 would permit both the youth and the prosecutor to file a civil appeal for a determination of whether the juvenile court had committed procedural error or abused its discretion in excusing the youth from complying with registration. The prosecutor's appeal could not include any other issues in the case.

A juvenile court could enter an order after a hearing or plea agreement that would defer decision on sex-offender registration of a juvenile until the youth had completed a sex-offender treatment program as a condition of probation or while the youth was committed to TYC. The court could require or excuse registration at any time during or after the treatment program.

A juvenile court could enter an order after a hearing or plea agreement that would require a type of limited sex-offender registration that could be used only by law enforcement or criminal justice agencies, and that could prevent the registration from being posted on the Internet or released to the public as required under the registration law.

CSHB 1118 would allow a person who already had registered as a sex offender for an adjudication of DC to file a motion with the adjudicating court to be excused from registration, but only if a motion had not been filed previously under this section, or a motion asking to make registration nonpublic, even if the person was at least 18 years old at the time of the filing. The motion would have to include a list of all possible agencies and organizations that held sex-offender information about the case. If the court granted the excuse from compliance, a copy of the order would have to be sent to each agency or organization, and each would have to comply with the order by either deleting the information or making it nonpublic. Failure to comply within 30 days would bar the agency or organization from receiving future sex-offender information from any government entity in Texas.

This new article would apply to juveniles whether or not their offense and adjudication had happened before, on, or after the effective date.

**TYC commitment criteria.** CSHB 1118 would authorize juvenile courts to sentence youths to TYC for a Class A or B misdemeanor if the child had been adjudicated for at least one felony in the past. Current law authorizes a court to sentence a youth to TYC for a Class A or B misdemeanor if the child has been adjudicated for at least two Class A or B misdemeanors in the past.

CSHB 1118 would prohibit confinement in a post-adjudication secure correctional facility, including a drug and alcohol treatment center, for a first-time status offense, such as truancy, running away, or underage drinking. It also would prohibit confinement or TYC commitment for a youth adjudicated for contempt of a court of a municipal, justice, or juvenile court.

The bill would allow a juvenile court to appoint an administrative body instead of a court to conduct yearly permanency hearings to determine the living situation of a child placed outside the home in foster care with federal

Title IV-E funds.

These changes to the guidelines for disposition hearings would apply to dispositions made on or after the bill's effective date, whether or not the previous adjudications of DC on which the disposition was based occurred before, on, or after the effective date.

**Responsibilities of juvenile boards, courts, and probation departments.**

CSHB 1118 would amend the Family Code by changing some duties of juvenile boards, courts, and probation departments, including:

- ! requiring the juvenile board, instead of the juvenile court, to designate the juvenile processing office, place of detention, and referral official;
- ! requiring the juvenile board, instead of the juvenile court, to be responsible for controlling the terms and conditions of detention; and
- ! requiring a majority, rather than all the members, of the juvenile board to inspect pre- and post-adjudication facilities and certify compliance with required standards.

CSHB 1118 would require the juvenile board, instead of the juvenile court, to do the following:

- ! designate the law enforcement office at which warning notices were filed;
- ! designate the office at which law enforcement sentencing statistics were filed; and
- ! designate the office responsible for receiving school-expulsion notices and notifying the school district of the determinations regarding the notices.

The juvenile board could designate a person or agency to conduct an audit of the law enforcement agency responsible for destroying photographs and fingerprints in order to verify destruction. The juvenile board would have to adopt a budget and establish policies, including financial policies, for juvenile services within the board's jurisdiction.

The bill would authorize, instead of require, the juvenile board to appoint a citizen advisory council of any number of members the board found appropriate. The board could include a prosecuting attorney and mental-

health, medical-health, and education professionals. The juvenile board could determine the term of service of the council members.

CSHB 1118 would require the juvenile probation department, as opposed to the juvenile board, to designate a community service project as a condition of probation. It also would authorize a juvenile probation department to release information in accordance with the guidelines of the juvenile board of juvenile records without permission from the juvenile court.

**Appointment of attorney and continuation of representation.** CSHB 1118 would establish guidelines for the appointment of attorneys for juveniles. Upon the filing of the petition, the juvenile court would have to determine if the child's family was indigent. An attorney would have to be appointed for a juvenile from an indigent family at the time of the initial detention hearing, or immediately afterward if the youth had been detained, and within five working days of the filing of petition for adjudication or a transfer hearing if the youth had not been detained. An attorney would have to be appointed within five working days of the filing of a motion or petition to modify sentencing to commit a juvenile to TYC or to place the juvenile in a secure correction facility. Once appointed, the attorney would have to continue to represent the juvenile in all cases until the case was terminated, the family retained counsel, or new counsel was appointed.

**Justice and municipal courts.** CSHB 1118 would amend the Family Code, Code of Criminal Procedure, and Education Code regarding municipal and justice courts. It would authorize a justice or municipal court, with the written consent of the city council or commissioners court, either individually or jointly with other justice or municipal courts, to employ a case manager for juvenile cases. If a court decided to appoint a case manager, it could retain its jurisdiction over the third fine-only offense committed by the juvenile instead of transferring the case to juvenile court.

CSHB 1118 would permit a justice or municipal court to impose a fine of up to \$500, order nonsecure custody for up to six hours, or order suspension of a driver's license or permit if a youth violated a court order. The bill would prohibit imprisonment or confinement for a contempt order from a justice or municipal court. It would prohibit the transfer of a person after age 17 to a juvenile court as a penalty for contempt.



CSHB 1118 would delete subsections of Family Code, sec. 52.027 that refer only to children taken into custody for traffic and status offenses in order to conform with the provision relating to children younger than age 17.

**Temporary custody for purpose of fingerprinting and photographing.**

CSHB 1118 would establish guidelines for taking a child into temporary custody for the purpose of fingerprinting and photographing. It would authorize a law enforcement officer to take temporary custody of a child to obtain fingerprints or photographs if the officer had probable cause to believe that the child had engaged in DC and that the child's fingerprints would match latent fingerprints or the child's photograph would materially assist the investigation. Temporary custody would not mean custody as defined by Family Code, sec. 52.01, which is taking custody pursuant to a juvenile court order, the laws of arrest, or an officer having probable cause that a juvenile had engaged in DC or CINS. The bill also would prohibit the temporary custody from being reported to the juvenile justice information system.

If the child was not taken into custody under Family Code, sec. 52.01, the child would have to be released as soon as fingerprints or photographs were obtained. The officer would have to destroy the prints or photographs if they did not lead to a positive comparison or identification and would have to make a reasonable effort to notify the child's parent or guardian of the actions. The fingerprints or photographs would have to be obtained in a location that afforded reasonable privacy to the child or in a juvenile processing office.

CSHB 1118 would authorize a law enforcement officer to obtain fingerprints or photographs of a runaway child if necessary to obtain the identity of the child. Once the child was identified or it was determined that the child could not be identified, the fingerprints and photographs would have to be destroyed.

**Miscellaneous provisions.** CSHB 1118 would make other changes to current law, including:

- ! requiring that jury selections in determinate-sentence cases accord with the requirements of criminal cases;

- ! requiring restitution orders to follow a youth from juvenile court to district court when probation was transferred at age 18 in a determinate-sentence proceeding;
- ! requiring the Texas Department of Mental Health and Mental Retardation to provide the same standard of care for services ordered by the juvenile court as it provides for other court-ordered services, except that an intent-to-discharge order would have to be sent to the juvenile court at least 10 days before discharge from a mental-health facility and at least 20 days before discharge or furlough from a residential facility;
- ! authorizing the detention of a person over 18 in a juvenile facility or in an adult facility under bond if an appellate court had reversed an appeal and remanded the case to the juvenile court;
- ! requiring TJPC, instead of CJPC, to prepare an annual statistical report for the governor and Legislature, and requiring that the report be submitted by August 15 every year;
- ! requiring that a hearing be held before placement in a post-adjudication secure correctional facility for a period longer than 30 days (as now is required for commitment to TYC);
- ! deleting the provision that a violation of a reasonable and lawful order of a juvenile court would be considered delinquent conduct;
- ! deleting the requirement that TYC and TJPC compile quarterly information regarding the progressive sanctions guidelines, and instead requiring CJPC to analyze trends and compile a report for the governor and Legislature on or before January 15 of every odd-numbered year;
- ! requiring that reports of alleged abuse or neglect of children in facilities or programs be made to TJPC and not only to the local law enforcement agency;
- ! providing a streamlined process for expunging a person's justice or municipal court records on or after age 17 when the case involved only one jailable misdemeanor (except offenses covered in other codes, including underage drinking and truancy);
- ! allowing TJPC, juvenile boards, and juvenile probation departments to have access to criminal-history record information for criminal background checks for job applicants and for those seeking or holding TJPC certification;
- ! requiring TJPC to select a mental-health screening instrument that all probation departments would use to perform initial screening of juveniles;

- ! prohibiting a peace officer, prosecuting attorney, or other relevant person from acting as a juvenile detention or corrections officer;
- ! prohibiting a juvenile detention or corrections officer from carrying a firearm on duty (except TYC employees);
- ! granting immunity from liability to authorized employees and the juvenile board for damages arising from the administration of medication to a youth if the medication was administered at the request of the child's parent or legal guardian and the medication appeared to be in its original container and was labeled (except for an act or omission that was reckless, intentional, or grossly negligent); and
- ! granting immunity to individual members of a juvenile board from liability for damages arising from an act or omission committed while performing duties as a board member (except an act or omission that was reckless, intentional, or grossly negligent).

SUPPORTERS  
SAY:

CSHB 1118 would remedy problems with many provisions of current law to reflect changing needs in the juvenile justice system. Two workgroups of judges, attorneys, probation officials, and others with an interest in the juvenile justice system have identified these problems, and most of this bill's provisions are the result of recommendations by these practitioners and officials. The changes recommended would move the state toward a stronger juvenile justice system and would ensure meaningful consequences for juvenile offenders.

TYC could absorb the costs projected in the fiscal note. The anticipated increased demand would equal about 11 beds a year, and at \$102 a day, these projected commitment costs would be well within the budget conditions that the agency anticipates.

**Automatic restriction of access to records.** CSHB 1118 would require a new approach to the confidentiality of juvenile records. If enacted, these provisions would be the first of their type in the country. The bill would not alter current law relating to the destruction or sealing of juvenile records, but it would allow records to remain where they were and be obtained by restricted personnel only under certain conditions. These provisions would provide a "fresh start" for juveniles in the criminal justice system and should give them an incentive not to commit crimes as adults. The restricted access

would not hinder law enforcement because criminal justice agencies still could obtain access for law enforcement purposes.

**Destruction of records for housekeeping purposes.** These provisions would be beneficial because physical records now accumulate and have to be maintained at a considerable expense. Many of these records are kept for no apparent purpose. Current provisions relating to the destruction of records are so narrow that they are virtually useless. If there is a foreseeable use for records, they can be copied into a more space-efficient form. These provisions would not authorize the destruction of clerk of juvenile court records, the source of the juvenile records used in criminal court. Also, the authority to destroy certain files would be related to the seriousness of the offense and sentence.

**Hearing to determine need to register juvenile as a sex offender.** Current laws requiring juvenile sex offenders to register with law enforcement agencies and to have their information made public may be counterproductive and too onerous in some cases. CSHB 1118 would allow courts to decide on a case-by-case basis if sex-offender registration by juveniles was appropriate and to determine the risk to the public at large. Federal law does not require states to register juvenile sex offenders.

According to studies by the Association for the Treatment of Sexual Abusers, there is little evidence that the majority of juvenile sex offenders will become adult sex offenders, and many juveniles are more amenable to intervention. For adolescents who will not become adult sex offenders, the public nature of the information in sex-offender registration can be very detrimental to the juvenile and can undermine successful treatment.

**TYC commitment criteria.** Allowing courts to send a juvenile to TYC for Class A or B misdemeanors after one felony conviction would be appropriate because it could be viewed as the equivalent of sending a juvenile to TYC for a misdemeanor after two misdemeanor convictions. This would help clear up confusion relating to sentencing for a misdemeanor after a felony conviction.

**Responsibilities of juvenile boards, courts, and probation departments.** A single juvenile board now exists in every county, and it is more

appropriate for them to make policy than for juvenile courts, of which a county often has many, often leading to conflicts or confusion.

**Appointment of attorney and continuation of representation.** Many Texas counties have no across-the-board guidelines for appointing counsel and continuing representation for juveniles from indigent families. CSHB 1118 would help ensure that indigent youth were appointed counsel in a timely manner and could retain counsel throughout their proceedings.

**Temporary custody for purpose of fingerprinting and photographing.** Allowing a law enforcement officer to take a child into temporary custody for fingerprinting or photographing would aid investigations and would not infringe on the child's civil liberties. It would be a brief and constitutional detention only for the purpose of fingerprinting or photographing and only with probable cause. If the probable cause was negated after fingerprinting or photographing, the evidence would have to be destroyed. If probable cause remained, the child would be taken into custody under Family Code, sec. 52.01, and the proper procedures for evidence would be followed. The bill would ensure that children would be handled properly by requiring that the child be afforded reasonable privacy while being fingerprinted or photographed.

OPPONENTS  
SAY:

**Automatic restriction of access to records.** Current law regarding sealing records and confidentiality of records is sufficient. The Family Code requires records to be sealed if two years have elapsed and the child has not been convicted of any additional offense. Access to information obtained for the purpose of evaluation, treatment, or referral is granted to criminal justice agencies, probation officers, and others who are authorized by law.

**Destruction of records for housekeeping purposes.** Destruction of some records could be inappropriate. For example, the bill would allow the destruction of records or files if the subject was at least 31 years old and had been convicted of a felony. The records of such serious offenses should remain intact.

**Hearing to determine need to register juvenile as a sex offender.** CSHB 1118 could endanger the public by exempting certain juvenile sex offenders

from registering. Public safety and the integrity of the sex-offender registry depend on establishing a complete list of sex offenders.

**Responsibilities of juvenile boards, courts, and probation departments.** Juvenile boards set local juvenile justice policy, and input from the local community can be invaluable. CSHB 1118 would make the appointment of a local citizen advisory council by a juvenile board optional. Input from the community should be mandatory to help citizens remain informed and involved.

**Appointment of attorney and continuation of representation.** The time restraints set by CSHB 1118 regarding the appointment of an attorney in indigent cases could be burdensome to some counties, especially small or rural counties. Some of these smaller counties have few attorneys and would find it difficult to conform to these strict time restraints.

**Temporary custody for purpose of fingerprinting and photographing.** Taking a child into custody for the fingerprinting and photographing could violate the child's civil rights. Under Family Code, sec. 58.002, a law enforcement officer may fingerprint or photograph a child who is not in custody under sec. 52.01 if the officer has the consent of the child's parent or guardian. However, CSHB 1118 would allow an officer to take a child into temporary custody and then make a reasonable effort only to notify the parent, not to get express permission. Parental consent always should be required to fingerprint or photograph children who are not in custody under sec. 52.01, because children may not fully understand the repercussions of being photographed or fingerprinted.

OTHER  
OPPONENTS  
SAY:

The fiscal note says the bill would cost the state \$1.5 million for expenses of DPS and TYC. DPS would require close to \$200,000 for technology upgrades relating to restricted access to records and additional FTEs to process notifications to juvenile courts and to perform quality controls on restricted records. TYC would require more than \$1 million to handle the increased demand for capacity resulting from increased commitments. This money could be spent better on other juvenile justice programs, such as treatment or rehabilitation.

NOTES: Related bills in the 77th Legislature include:

- ! HB 545 by Nixon/SB 486 by Brown, relating to the indemnification of a juvenile board member;
- ! HB 697 by Goodman, relating to powers and duties of juvenile boards and to immunity from liability for juvenile board members;
- ! HB 2480 by G. Lewis, relating to an exemption from registration for certain sex offenders; and
- ! HB 2987 by Deshotel, Luna, Allen, et al., relating to an exemption from sex-offender registration for certain juvenile and adult offenders.

The substitute made many changes to the original, including:

- ! laying out additional provisions relating to a motion to excuse compliance with sex offender registration;
- ! adding the provisions relating to appointment of attorney and continuation of representation;
- ! deleting portions of Family Code, sec. 52.027 to define a child as younger than 17 rather than as 18;
- ! authorizing a justice or municipal court to retain jurisdiction, order a child to be held in nonsecure custody for up to six hours, and order DPS to suspend the child's driver's license or permit;
- ! removing the provision that a statement taken by a law enforcement officer, other than a designated peace officer, from a child in custody in another state would be admissible in any juvenile proceeding;
- ! authorizing a juvenile court to appoint an administrative body to conduct yearly permanency hearings in sentencing hearings;
- ! establishing that a hearing would have to be conducted if a child was to be confined for more than 30 days;
- ! authorizing DPS to permit access to juvenile records for a criminal justice agency for criminal justice purposes and requiring DPS to ask the FBI to place all information on restricted status;
- ! deleting all provisions relating to the local juvenile justice system;
- ! adding the provision that a justice or municipal court would have to obtain the written consent of the city council or commissioners court, as appropriate, when appointing a case manager;
- ! granting TJPC, juvenile boards, and juvenile probation departments access to criminal-history record information;

- ! requiring juvenile probation departments to use the mental-health screening instrument selected by TJPC; and
- ! adding additional exceptions to immunity from liability of a juvenile board or an authorized employee.