

**SUBJECT:** Revising juvenile justice statutes

**COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended

**VOTE:** 6 ayes — Dutton, Goodman, Castro, Dunnam, Nixon, Strama  
0 nays  
1 present not voting — Thompson  
2 absent — Y. Davis, J. Moreno

**WITNESSES:** For — Deanie King, City of Corpus Christi  
Against — None  
On — Angie Klein, Texas Department of Public Safety

**BACKGROUND:** Family Code, Title 3 sets up a civil court system to adjudicate allegations against people younger than age 17 and to attempt to rehabilitate juvenile offenders. Youths age 17 or older at the time of a criminal offense are considered adults, and offenders younger than age 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, which includes violations of Texas law that are punishable by terms in prison or jail; and less serious conduct indicating a need for supervision (CINS), which includes misdemeanors punishable by a fine only. Neither category of offense includes traffic offenses.

Two state agencies, the Texas Juvenile Probation Commission (TJPC), and the Texas Youth Commission (TYC) deal with children involved in the criminal justice system. About 96 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.

TYC oversees delinquent children committed to it by courts and provides parole supervision for children until TYC authority ends. Sentences to the TYC usually are indeterminate, meaning that 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 1575 would establish statewide procedures and criteria for transferring probation supervision of children. It would authorize justice and county courts to employ juvenile case managers and establish a funding mechanism for them, and would establish procedures for assessments and referrals of children on probation with mental illness or mental retardation to local mental health authorities.

The bill would make numerous other changes, including:

- allowing TYC to grant parole without court approval to some youths serving a determinate sentence;
- specifying that juvenile courts would have jurisdiction over any traffic violation that could result in jail time for an adult;
- giving school districts a deadline for filing complaints on truants; and
- applying to juvenile detention and correctional facilities and TYC property the current offense of providing prohibited substances and items to adult prison inmates.

The bill would take effect September 1, 2005, and would apply only to conduct that occurred on or after that date. Changes to court and administrative proceedings would apply to actions and decisions made on or after the bill's effective date.

**Transfers of juvenile cases and juvenile probation supervision.** The transfer of a case from a court where an offense took place to the juvenile court in the county where the child resided no longer would require the

consent of the child, the appropriate adult, or the court in the county where the child resided.

The bill would establish new procedures and criteria for the transfer of probation supervision of children between counties. It would establish detailed procedures for counties to provide interim and permanent supervision upon the transfer of probation.

CSHB 1575 would establish procedures for one county to request that another county provide interim supervision of a child on probation, requirements for what information would be included in the request, and requirements for what documents would have to be sent to the receiving county upon an agreement to provide interim supervision. When a child on probation moved or intended to move from one county to another and intended to remain in the second county for at least 60 days, the juvenile probation department of the sending county would be required to request that the juvenile probation department of the receiving county provide interim supervision of the child. The receiving county could refuse the request only if the child was going to reside in a residential placement facility per an arrangement by the sending county or in a foster care placement per an arrangement by the Department of Family and Protective Services. Courts would be able to transfer interim supervision, but not permanent supervision, if a child had been given deferred adjudication.

In most cases, periods of interim supervision could not exceed 180 days, and receiving counties could request permanent supervision status any time before the end of the 180-day period. Permanent supervision automatically would transfer to the juvenile probation department of the receiving county when the interim supervision period ended.

However, in cases in which a child was on probation after receiving probation for a determinate sentence, interim supervision would not expire until the child had completed one-third of their probation term. At that time, permanent supervision automatically would transfer and could be transferred earlier if ordered by the sending court.

Juvenile probation departments in receiving counties would have to supervise the child under the same conditions that the child was under in the sending county unless modified by the court in the receiving county. Sending counties would be financially responsible for special treatment

programs required by the court in a sending county if the child's family could not pay.

The bill would establish the circumstances under which the sending county could revoke a child's probation; the procedures for apprehending, detaining, and transporting a child; and procedures for the receiving county to respond to probation violations.

CSHB 1575 also would establish the procedures for transferring permanent supervision, including what paperwork would follow the child. The bill would require that the child be brought before the juvenile court of the receiving county so the court could impose conditions of probation. The child would have to be represented by a lawyer.

A juvenile court would be authorized to transfer an order that it entered against a parent or other adult to the county which had interim or permanent supervision if the adult lived in the same county as the child. The court would have to notify the adult of the transfer, and the adult would be ordered to appear before the new court to notify them about the order.

Juvenile courts and probation departments would be prohibited from engaging in the practice of "courtesy supervision" of children but could be enter into collaborative supervision agreements if a child on probation in one county spent substantial time in an adjoining county for things such as school or work. Although a probation department could authorize an officer in adjoining county to supervise a child, the court in the county in which the child was placed on probation would retain sole authority over the probation.

**Juvenile case managers.** CSHB 1575 would give justice and county courts the same authority given to other courts and entities to employ juvenile case managers. Case mangers employed by these courts would have to work primarily on truancy cases

Cities and counties would be authorized to create a juvenile case managers' fund upon passage of an ordinance by a city or an order by a county commissioners court. Cities and counties could require defendants convicted of fine-only misdemeanors in municipal, justice, county, or county courts at law to pay a fee of up to \$5 into the fund. Judges would

be required to waive the fee in cases of financial hardship. The fund could be used only to finance the salary and benefits of juvenile case managers.

**Mental health screening and referrals.** CSHB 1575 would establish requirements that juvenile justice entities make mental health screenings and referrals to community resources in some probation cases and gather data on these cases.

If a qualified health professional determined that a child on deferred prosecution supervision or probation had a mental illness or mental retardation and the child was not receiving services, probation departments would be required to refer the child to local mental health or mental retardation authorities and to report each referral to the Texas Juvenile Probation Commission. Courts could order children who were alleged or guilty of delinquent conduct or CINS to be examined by a physician.

Probation departments that administered a mental health screening instrument would be required to refer a child to the local mental health authority if the child's score indicated a need for further assessment and the department and child did not have access to another mental health professional. Departments also would have to report these referrals to the TJPC.

Probation departments would be required to refer a child on probation who had a mental illness or mental retardation to the local mental health or mental retardation authority within three months of the end of the child's probation term, unless the child already was receiving services.

The bill would authorize the use of a clinical assessment by a licensed mental health professional to be substituted for the required mental health screening instrument selected by TJPC for the initial screening of children.

**Detention officers.** CSHB 1575 would establish minimum standards for juvenile detention officers that would apply to anyone hired on or after September 1, 2005. They would have to be of good moral character, be at least 21 years old, have a high school diploma or equivalent, have completed pre-service training or instruction required by TJPC, have passed tests required by TJPC, and possess the certification required by TJPC.

The bill would extend current prohibitions on certain type of persons working as juvenile probation and detention officers to persons working as chief administrative officers of juvenile probation departments.

**Truancy.** School districts would be given a deadline of two school days to meet the current law requirement that they file complaints against truant students or refer them to juvenile court. Courts would be required to dismiss complaints or referrals that were not made within the deadline.

CSHB 1575 would make the affirmative defense for excused or involuntary absences in truancy cases apply only if the child had an insufficient number of unexcused or voluntary absences remaining to constitute a violation of the law

**TYC parole.** TYC would be authorized to release on parole, without approval of the juvenile court, children who were committed to the agency under a determinate sentence if there were nine months or less before the child's scheduled discharge.

CSHB 1575 would include juvenile court adjudications that a child engaged in felony conduct and criminal court convictions for felony offenses as reasons why a child on parole as part of a determinate sentence could be referred to a juvenile court for a hearing to consider transferring the child to the adult system.

**Serious traffic offenses.** CSHB 1575 would define traffic offense so that juvenile courts would have jurisdiction over any traffic violation that if committed by an adult could result in jail time. The bill would eliminate a current list of serious traffic offenses carrying jail time that are in the jurisdiction of juvenile courts.

**Restricted access to juvenile records.** CSHB 1575 would eliminate a requirement that the Department of Public Safety (DPS) send to juvenile courts its certification that a record was eligible for sealing. DPS would be required to issue certifications that certain juveniles' records were subject to restrictions on their access to each juvenile probation department that served a court with multicounty jurisdiction.

Juvenile probation departments would have to notify persons who were the subject of records that access to their records was being restricted only

if the person requested notification. Children would have to be given notice that they had to request notification of restricted access.

DPS would be required to notify local juvenile probation departments if DPS received information that a person's juvenile records no longer were subject to restricted access because the person was convicted of another offense. Juvenile probation departments would have to notify other agencies that had the juvenile's records.

The bill would remove a current requirement that records maintained by any agency that provides care or custody for a child be included when a court ordered restricted access to a youth's records.

The bill would list what must be in an application for the sealing of a youth's records, and would make TJPC records, including statistical data, exempt from court orders to seal youth's records.

**Juvenile justice information.** CSHB 1575 would make optional the inclusion of certain items that now are mandatory elements in a local juvenile justice information system. Other current required elements of a local juvenile justice information system would be required under the bill only to the extent possible.

CSHB 1575 would, with some exceptions, make juvenile justice information collected by the TJPC for statistical and research purposes confidential and would prohibit its dissemination. TJPC would be able to grant access to the information for research and statistical purposes or another purpose approved by the commission to criminal justice agencies, the Texas Education Agency, agencies under the Health and Human Services Commission, and universities. The bill also lists entities that could have access to the information only by the commission's approval, including persons working on projects funded by the state and governmental entities that agreed to certain security and confidentiality provisions. The commission would be required to grant access to the information for certain legislative purposes described in the Government Code. TJPC would be prohibited from releasing information in an identifiable form unless the release met one of the exceptions in the bill.

**Prohibited substances in juvenile facilities.** CSHB 1575 would apply to juvenile detention and correctional facilities and TYC property the current offense of providing prohibited substances and items to adult prison

inmates, which includes taking prohibited substances into correctional facilities, possessing prohibited substances and items on correctional facility property or in correctional facilities, and possession of a cell phone by inmates.

**Alcoholic beverage offenses.** CSHB 1575 would repeal a requirement that parents or guardians be present when a person under age 18 was convicted for certain alcohol offenses.

CSHB 1575 specifically would prohibit deferred adjudication for minors who were convicted of driving under the influence of alcohol or other alcohol-related offenses and who had two or more previous offenses.

**Other provisions.** CSHB 1575 would make numerous other changes to the laws dealing with the juvenile justice system including:

- requiring that the parents of a child in a juvenile justice facility or program be provided with information about the reporting of suspected abuse, neglect, or exploitation of children;
- authorizing magistrates giving juveniles information about their rights for a videotaped statement to view the videotape alone or with the child to determine whether the statement was voluntary;
- creating an affirmative defense to prosecution under the Penal Code crime of injury to a child if the defendant was not more than three years older than the victim;
- requiring courts placing children on probation outside of their homes or sending them to TYC as a modification of their original disposition to make the same findings that are required in the original disposition hearings including that it was in the child's best interest;
- authorizing probation officers to take a child into custody if there was probable cause that the child violated a condition of release from initial custody;
- authorizing and establishing procedures for youth witnesses who were in TYC facilities or other juvenile facilities to be subject to a warrant, transported to court, and held before and after court. Persons who were at least 17 years old could be held in adult facilities while those younger would be held in juvenile facilities;
- authorizing juvenile boards to impose earlier filing deadlines for petitions in detention hearings being held if a child was not released after the initial detention hearing;



- removing a current prohibition on video hearings for the first detention hearings so that they would be allowed for all detention hearings;
- applying to juvenile proceedings Code of Criminal Procedure provisions dealing with adults failing to use their true names;
- allowing the use of electronic notification, instead of the current oral notification requirement, to schools when a student was alleged to have committed an offense; and
- requiring that money possessed by a child in a TYC facility that is determined to be contraband be deposited in the student benefit fund rather than to the child's own TYC trust fund and requiring that TYC notify children of this policy.

**SUPPORTERS  
SAY:**

Many of the changes in CSHB 1575 simply would clarify current law or put into statute existing practices so that juvenile justice entities were aware of them. The numerous entities involved in the juvenile justice system, including courts, counties, and state agencies, have studied and worked on these changes throughout the interim.

**Transfers of juvenile's cases and juvenile probation supervision.**

CSHB 1575 would formalize and standardize practices for moving children's probation supervision from one county to another when a child moved. Currently, there are no statewide procedures or criteria for these cases. CSHB 1575 would establish these to ensure that all participants in the probation process understood their responsibilities and that all children remained under supervision. The bill would ensure that children and their parents were made aware of the transfer of jurisdiction so that they would understand which entity was overseeing the child. The bill would allow counties to enter into less formal, "collaborative supervision agreements" if a child was on probation in one county but worked or went to school in another county.

**Juvenile case managers.** CSHB 1575 would recognize the large amount of work with juveniles that justice and municipal courts perform by giving these courts the same authority as other courts to employ juvenile case managers. The fee that would be authorized by the bill would not be mandatory, but could be levied if approved by a city ordinance or a county commissioners court. The bill would give these jurisdictions the flexibility to set the fee, up to \$5, so that local areas could charge what they needed for their case managers. The statutes work together so that the fee would have to be collected by courts only if authorized by the local governing

body and only at the amount set by that body. By requiring judges to waive the fee in cases of financial hardship, CSHB 1575 would ensure that the fee was imposed on a defendant for whom it would be a burden.

**Mental health screening and referrals.** CSHB 1575 would ensure that children in the probation system were assessed and referred for community mental health and mental retardation services, if appropriate. Many of the procedures in CSHB 1575 already are being done, but the bill would ensure that all entities were aware of their responsibilities. The bill also would require that referrals to community resources be reported so that statewide data could be collected.

**Detention officers.** CSHB 1575 would establish minimum statutory qualifications for detention officers statewide to ensure that they had adequate education and training. The qualifications are similar to those required of probation officers. The bill would grandfather in existing officers.

**Truancy.** CSHB 1575 would give school districts a deadline for filing truancy complaints to ensure that courts were notified about a truant in a timely manner. Sometimes a school district may wait so long to file one of these complaints that appropriate action cannot be taken before a school year ends, by which time the child would have no hope of making up a semester's worth of work. Filing these complaints within two days should not be burdensome on school districts, and the issue of truancy is sufficiently important to warrant this requirement.

**TYC parole.** CSHB 1575 would give TYC more discretion in handling youths sent to TYC under a determinate (fixed) sentence. Currently, there is a three-year minimum stay requirement for some youths under a determinate sentence, and the provisions of this bill likely would apply in some of these cases. CSHB 1575 would allow TYC to release on parole offenders within the final nine months of their sentences without appearing before the juvenile court. This would give these youths an incentive to rehabilitate themselves and would allow TYC to supervise these youths as they eased their way back into society, instead of having them serve their entire sentence and then be released with no supervision. The current requirement that TYC go before a court for permission to release these youths on parole is burdensome and time consuming, especially considering that the youths will finish their sentences and be released soon.

**Jurisdiction over certain traffic offenses.** CSHB 1575 would not change jurisdiction over juvenile traffic offenses but would clarify and simplify the language that sets that jurisdiction. Currently, justice and municipal courts have jurisdiction over juvenile traffic offenses involving only fines, and juvenile courts have jurisdiction over the more serious offenses that can involve jail time. Because these more serious offenses are listed in the statute, the list must be updated any time another serious offense is created or a penalty is enhanced. CSHB 1575 would solve this problem by removing the list of individual offenses and making juvenile courts responsible for traffic offenses for which a person may be sentenced to imprisonment or confinement.

This could eliminate problems such as the one that came to light after the 78th Legislature established felony punishments for the offense of racing on the highway. A February 2004 attorney general's opinion (GA-0157) ruled that, considering the interplay of language in the Family Code and the Transportation Code, the offense should be considered a traffic offense that falls under the jurisdiction of justice and municipal courts even though it carries potential confinement as a penalty.

**Restricted access to juvenile records.** CSHB 1575 would ease some of the procedural burden on DPS involving notifications about sealing juvenile records and records that are subject to automatic restricted access. Many of the procedures no longer are necessary since the state implemented a system for automatically restricting access to records in some situations.

**Juvenile justice information.** By eliminating mandates for the inclusion of certain information in local juvenile justice information systems, CSHB 1575 would give counties more flexibility in designing a system to meet their local needs. The bill also would codify policies dealing with TJPC's sharing of information so that juvenile's information adequately would be protected, and everyone would know what could be shared and what was restricted.

**Prohibited substances in juvenile facilities.** CSHB 1575 would extend the current offense for providing certain items to adult prison inmates, such as alcohol, controlled substances, drugs, deadly weapons, and cell phones, to situations involving juvenile offenders in secure facilities. The same laws should apply to keep dangerous contraband out of all correctional facilities, whether adult or juvenile.

**Alcoholic beverage offenses.** By repealing a requirement in the Alcoholic Beverage Code requiring parents or guardians to be present when persons under age 18 were convicted, CSHB 1575 would make the Code of Criminal Procedure's requirement in sec. 45.0215 that parents or guardians of persons younger than 17 be summoned for court proceedings take precedence.

The bill also would clarify a current law practice concerning deferred adjudication for minors with previous offenses.

OPPONENTS  
SAY:

**Juvenile case managers.** Imposing yet another fee on criminal defendants would be counterproductive. Defendants already are assessed numerous fees and court costs and money for restitution. If a local juvenile probation department needs to employ juvenile case managers, cities and counties should fund them through their regular budget process using their general funds.

**Truancy.** Meeting a two-day deadline to file complaints on truants could be too burdensome for some school districts. If a deadline is to be imposed, it should be longer.

**TYC parole.** TYC should have to continue to go before a court if it wanted to grant early release on parole for a youth given a determinate sentence. This safeguard was set up to ensure that courts were aware of any early release of a youth who had committed a serious or violent offense. Any burden on TYC would be outweighed by the importance of court oversight in these cases.

OTHER  
OPPONENTS  
SAY:

**Juvenile case managers.** The language in CSHB 1575 could be interpreted to mean that clerks of justice and municipal courts would collect the \$5 juvenile case manager fee whether or not it had been authorized by a city or county.

NOTES:

The committee substitute made numerous changes to the original bill, including:

- specifying that interim supervision of a child on probation for a determinate sentence would not expire automatically at 180 days but would continue for at least one-third of a child's sentence;
- requiring probation departments to refer children for mental health services upon a finding by a qualified professional;

- adding the requirement that a court dismiss a truancy case if it was not reported within two days;
- eliminating a provision that would have made it a class C misdemeanor for a school official to refuse or fail to file a truancy complaint; and
- adding provisions making Code of Criminal Procedure provisions about adults using their true names apply in juvenile proceedings.

The fiscal note projects that the bill would gain the state approximately \$161,000 per fiscal year in general revenue-related savings due to the early release of youth on parole.