

SUBJECT: Allowing certain appeals in of judicial decisions in all juvenile cases

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield
0 nays
1 absent — Toth

WITNESSES: For — Riley Shaw, Tarrant County Criminal District Attorney's Office;
(*Registered, but did not testify:* Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify:* Benet Magnuson , Texas Criminal Justice Coalition)

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Family Code, 56.03 limits the ability of the state to appeal court orders in juvenile matters to specific types of orders relating to violent or habitual felonies. In these cases the state can appeal orders that dismiss petitions; arrests or modifies judgments; grants a new trial; sustains a claim of former jeopardy; and certain grants of motions to suppress evidence, confessions, and admissions.

DIGEST: CSHB 3743 would extend the state's rights to appeal certain court orders in juvenile cases so that it covered all juvenile cases, not just those dealing with certain violent or habitual felonies. The bill also would add to the list of types of orders that could be appealed to allow the state to appeal a disposition in juvenile cases on the grounds that the disposition was illegal. The bill would apply the current rules for prosecutors about deadlines, stays, and docket preferences for appeals of other orders to appeals about illegal dispositions.

The bill would take effect September 1, 2013, and would apply only to conduct that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 3743 is needed to ensure that prosecutors have an adequate and appropriate right to appeal in juvenile cases.

The limit in current law on the type of cases in which the state can appeal can harm both juveniles and the state. Because the restriction allows appeals only in cases involving violent and habitual felonies, there is no remedy for the state to orders in cases that may be serious, but not among those allowed. For example, if there were a procedural problem in an order in a felony sex offense case in which appeals are prohibited, the case might not move forward and the juvenile might not get treatment.

Another restriction in current law prohibits appeals of erroneous rulings, and in some cases this type of appeal may be needed to further the interest of justice. For example, in one case the state could do nothing in response to a court ruling dealing with certifying as an adult a defendant accused of a 40-year old cold-case murder, and it is possible that a murderer avoid prosecution.

CSHB 3743 would address this situation by extending a prosecutor's right to appeal certain court orders to all juvenile cases and to dispositions on the grounds that it was illegal. This would give the state the same right to appeal in juvenile cases as it has in adult cases.

The state has had these rights to appeal in adult cases for decades without abuses, and there is no reason to think these rights would be abused in juvenile cases. The right to appeal has been used judiciously in adult cases, and it would be the same in juvenile cases. Prosecutors most likely would not appeal orders in misdemeanor cases, but reserve appeals for times in which they were important. If abuse did occur, safeguards in the system could address them. For example, elected prosecutors have to file sworn pleadings concerning the appeals, and these could be enforced by contempt or even perjury charges.

**OPPONENTS
SAY:**

The right to appeal in CSHB 3743 would be too broadly worded. The language could be interpreted so broadly that it would allow a prosecutors to appeal almost any disposition with which they disagreed by framing it as judges acting outside of their scope.