

SUBJECT: Revising juvenile court proceedings for certain children

COMMITTEE: Juvenile Justice & Family Issues — favorable, without amendment

VOTE: 9 ayes — Dutton, Lujan, Cook, Leo-Wilson, J. Lopez, Martinez Fischer, Smithee, Talarico, Wu

0 nays

WITNESSES: For — Jeannie Von Stultz, Bexar County Juvenile Probation; Uche Chibueze, Harris County Juvenile Probation; Tressa Surratt, Harris County Public Defender’s Office, Juvenile Division; Marc Bittner, Juvenile Probation Department, serving the counties of Blanco, Burnet, Gillespie, Llano, and San Saba; Claudia Ikonomopoulos, Nueces County Juvenile Department; William Carter; (*Registered, but did not testify:* Jennifer Balido, Dallas County Criminal District Attorney John Creuzot; Hannah Gill, NAMI Texas; Shannon Doyle, National Association of Social Workers Texas; Alycia Castillo, Texas Center for Justice and Equity; Leela Rice, Texas Council of Community Centers; Ikenna Okoro, Texas Psychological Association; Ashley Ford, The Arc of Texas)

Against — None

On — (*Registered, but did not testify:* Anne McGonigle, Health and Human Services Commission; Reilly Webb, Health and Human Services Commission; Amanda Britton, Texas Juvenile Justice Department; Susan Palacios, Texas Juvenile Justice Department)

DIGEST: HB 2730 would add, revise, and update certain provisions relating to juvenile court referrals and proceedings for children with mental illness or an intellectual disability. The bill also would revise the organization of the Family Code chap. 55.

Rather than reference criteria for commitment under the Health and Safety Code or refer to requirements for mental examinations under the Code of Criminal Procedure, the bill would provide criteria and processes related

to court-ordered mental health services for juveniles with mental illness and or an intellectual disability and amend language referencing “commitment” to mean court-ordered placement in a state juvenile justice facility. The bill would replace the terms “commitment” and “committed” with “ordered”, “court-ordered mental health services”, “court-ordered residential intellectual disability services”, and other relevant, applicable terms depending on the section.

Examination of a child with mental illness or an intellectual disability.

HB 2037 would establish the conditions under which a juvenile court could order a forensic mental examination and the qualifications required to be appointed as an examiner.

A juvenile court would be authorized to order a forensic mental examination if the court determined that probable cause existed to believe that a child who was alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision met the following conditions:

- was a child with mental illness;
- was unfit to proceed in juvenile court due to mental illness or an intellectual disability; or
- lacked responsibility for conduct due to mental illness or intellectual disability.

To qualify for appointment as an expert authorized to conduct a forensic mental examination, an individual would have to be a physician licensed in Texas or a psychologist licensed in Texas who had a doctoral degree in psychology. A licensed physician or psychologist would have to, as appropriate, meet the following criteria:

- have certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry or the American Board of Professional Psychology in forensic psychology; or
- have training consisting of at least 24 hours of specialized forensic

training relating to certain topics and at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months before the date of the appointment.

Additionally, a physician or psychologist would be required to complete six hours of continuing education in courses in forensic psychiatry or psychology, respectively, in the 24 months before the appointment. A court could appoint as an expert a physician or psychologist who did not meet these specified requirements only if the court determined that exigent circumstances required the court to appoint an expert with specialized expertise to examine the child.

Criteria for court-ordered mental health services. HB 2037 would authorize a juvenile court to order a child to receive temporary inpatient mental health services only if the court found, from clear and convincing evidence, that the child was a child with mental illness and as a result of the illness, was:

- likely to cause serious harm to the child's self or others; or
- suffering severe and abnormal mental, emotional, or physical distress, experiencing substantial mental or physical deterioration of the child's ability to function independently, and unable to make a rational and informed decision as to whether to submit to treatment or unwilling to submit to treatment.

A juvenile court could order a child to receive extended inpatient mental health services only if the court found, from clear and convincing evidence, that, in addition to the specified requirements, the child's condition was expected to continue for more than 90 days and the child had received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months.

HB 2037 would authorize a court to order a child to receive temporary outpatient mental health services only if the court found that appropriate mental health services were available to the child and clear and convincing evidence was found that:

- the child was a child with severe and persistent mental illness;
- as a result of the mental illness, the child would, if not treated, experience deterioration of the ability to function independently to the extent that the child would be unable to live safely in the community;
- outpatient mental health services were needed to prevent a relapse that likely would have resulted in serious harm to the child or others; and
- the child could not effectively and voluntarily participate in outpatient treatment services, demonstrated either by the child's actions within the two-year period prior to the hearing dates or specific characteristics of the child's condition that significantly impaired the child's ability to make a rational and informed decision as to whether to submit to outpatient treatment.

A juvenile court would be authorized to order a child to receive extended outpatient mental health services only if the court found, from clear and convincing evidence, that the child's condition was expected to continue for more than 90 days and the child had received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months or court-ordered outpatient mental health services during the preceding 60 days.

Criteria for court-ordered residential intellectual disability services.

HB 2037 would prohibit a court from ordering a child to receive services at a residential care facility unless the child was a child with a disability and:

- evidence was presented showing that the child represented a substantial risk of physical impairment or injury to the child's self or others or was unable to provide for the child's most basic personal physical needs;
- the child could not be adequately and appropriately habilitated in an available, less restrictive setting;
- the residential care facility provided habilitative services, care,

- training, and treatment appropriate for the child's needs; and
- an interdisciplinary team, meaning a group of intellectual disability professionals and paraprofessionals, recommended placement in the residential care facility.

Determination of mental illness. If a court determined that probable cause existed to believe that a child was a child with mental illness, the court would be required to temporarily stay the court proceedings and order a forensic mental exam. Information obtained from the examination would be required to include expert opinion as to whether the child was a child with mental illness and whether the child met the criteria for court-ordered mental health services, including, if applicable, what specific criteria the child met.

If a court determined that evidence did not support a finding that the child was a child with a mental illness or that the child met the criteria for court-ordered mental health services, the court would be required to dissolve the stay and continue the court proceedings.

Standards of care. The bill would add outpatient mental health services to provisions relating to mental health service standards of care.

HB 2307 would require court-ordered treatment for a child with mental illness to focus on stabilization of the child's mental illness and on meeting the child's psychiatric needs in the least restrictive appropriate setting.

A least restrictive appropriate setting would be defined as a treatment or service setting closest to the child's home that provided the child with the greatest probability of improvement and was no more restrictive of the child's physical or social liberties than was necessary to provide the child with the most effective treatment or services and to adequately protect against any danger the child posed to the child's self or others.

Discretionary transfer to criminal court. HB 2037 would revise certain provisions relating to the transfer of proceedings from a juvenile court to a

criminal court on the 18th birthday of a child for whom the court ordered inpatient mental health services or residential care. The bill would:

- authorize rather require the juvenile court to waive its original jurisdiction and transfer all pending proceedings to a criminal court;
- clarify that a waiver of jurisdiction and discretionary transfer may occur on or after the child's 18th birthday; and
- require that a court conducting a waiver of jurisdiction and discretionary transfer hearing conduct the hearing according to certain statutory provisions.

Unfit to proceed or lack of responsibility for conduct determination.
The bill would create certain requirement for fitness to proceed and lack of responsibility examinations and reports.

In a report based on a forensic mental exam, the qualified expert would be required to consider the following:

- whether the child, as supported by current indications and the child's personal history, was a child with mental illness or an intellectual disability;
- the child's capacity to appreciate the allegations against the child, appreciate the range and nature of allowable dispositions that could be imposed against the child, understand the roles of the participants and the nature of the legal process, display proper courtroom behavior, and testify relevantly; and
- the degree of impairment resulting from the child's mental illness or intellectual disability and the specific impact on the child's capacity to engage with counsel in a reasonable and rational manner.

HB 2037 would require an expert's report to the court to state an opinion on the child's fitness to proceed or an explanation of why the expert could not state such an opinion.

The bill would require information obtained from the examination to include expert opinion on whether the child was a child with mental illness or an intellectual disability, whether the child met the criteria for court-ordered mental health or intellectual disability services, and, if applicable the specific criteria the child met.

HB 2037 would establish the following provisions regarding a child that could be adequately treated in an alternative setting but who did not meet criteria for court-ordered inpatient services or residential intellectual disability services:

- the authority of the court to extend outpatient treatment services past 90 days; and
- the authority of juvenile probation departments to provide restoration classes in collaboration with the outpatient alternative setting.

Additionally, the bill would add provisions to reporting requirements for public and private facilities and alternative settings. The report to court would be required to include whether the child met the criteria for court-ordered mental health services or court-ordered intellectual disability services. An outpatient alternative setting collaborating with a juvenile probation department to provide restoration classes would also be required to include any information provided by the probation department regarding the child's assessment at the conclusion of such classes.

Restoration classes would be defined as curriculum-based educational sessions a child attended to assist in restoring the child's fitness to proceed, including the child's capacity to understand the proceedings in juvenile court and to assist in the child's own defense.

Proceedings for mental health or residential intellectual disability services. HB 2037 would revise provisions relating to juvenile court referral and proceedings for a child with mental illness and for a child found unfit to proceed or lacking responsibility for conduct due to mental illness or an intellectual disability. The bill would require the court to:

- direct the local mental health authority to file, before the date set for the hearing, its recommendation for the child's proposed treatment;
- identify the person responsible for court-ordered outpatient mental health services at least three days before the date of a hearing that could result in the court ordering the child to receive court-ordered outpatient mental health services; and;
- give consideration, following the hearing, to the least restrictive appropriate setting for treatment of the child and to the parent's, managing conservator's, or guardian's availability and willingness to participate in the child's treatment or services.

The bill would require the Health and Human Services Commission, on receipt of the court's order for mental health services, to identify a facility and admit the child to that facility.

HB 2037 would require a court to take the following action if the child was currently detained in a juvenile detention facility:

- order the child released from detention to the child's home or another appropriate place;
- order the child detained or placed in an appropriate facility other than a juvenile detention facility; or
- conduct a detention hearing and, if the court made findings to support further detentions of the child, order the child to remain in the detention facility subject to further detention orders from the court.

If a juvenile court initiated proceedings for court-ordered treatment services for a child found unfit to proceed or lacking responsibility for conduct due to a mental illness or an intellectual disability, the court would be required to send to the court clerk all papers relating to the child's mental illness or intellectual disability, the child's unfitness to proceed, and the finding that the child was not responsible for the child's conduct, if applicable.

For proceedings in juvenile court for a child found to be unfit to proceed or lacking responsibility for conduct due to an intellectual disability, the prosecuting attorney would be allowed to file an application for an interdisciplinary team report and recommendation that the child was in need of long-term placement in a residential care facility.

Other provisions. HB 2037 would replace the term “mental retardation” with “intellectual disability” and make conforming changes.

The bill would take effect September 1, 2023, and would apply only to a juvenile court proceeding or hearing that commenced on or after that date.

**SUPPORTERS
SAY:**

HB 2037 would streamline the processes for juvenile court proceedings involving a child who may be unfit to proceed, clarifying key elements and steps for judges, attorneys, juvenile probation departments, and other parties involved. The bill would not necessarily introduce new processes but would organize, simplify, and update the current code, which can be difficult to understand and lacks clarity regarding key elements of the process, such as examinations and reports. Current code is not organized sequentially and often references provisions and definitions in other codes, creating confusion for judges, attorneys, and other parties involved in the process. These issues often result in duplicate or contradicting actions, which can create long delays in court proceedings. HB 2037 would clarify the process by outlining the steps in sequential order, incorporating certain provisions referenced in other codes, and providing specific information for critical elements. These revisions could help to improve the quality and coordination of the juvenile court proceedings, and result in more timely resolutions.

The bill could reduce long delays in juvenile court proceedings by creating clear pathways for courts to order mental health services. Currently, a child could be required to remain in a detention facility for extended periods as they await court proceedings or court-ordered mental health services. Such delays are difficult for children with mental illness or an intellectual disability and can strain county detention centers that

may not be fully equipped to support the needs of these children. The bill would clarify the mechanism by which a court could order mental health services, which could reduce costly delays and expediting adjudication.

HB 2037 would expand pathways for treatment for a child who is deemed unfit to proceed but did not fit the criteria for court-ordered mental health services. Currently, the code does not specify whether a judge could order mental health services for such children. HB 2037 would remedy this ambiguity by allowing a judge to initiate an order for appropriate mental health services. The bill also would expand pathways for treatment by allowing juvenile probation departments discretion to work with alternative outpatient programs and provide restoration classes for a child deemed unfit to proceed. This measure could help counties use community resources more effectively.

The bill would revise outdated and contradictory terms and language that are not specific to youth. Current code was written using language from codes that apply to adults. HB 2037 would revise the code to make it more appropriate and specific for youth.

HB 2037 would not require the Health and Human Services Commission to implement outpatient mental health services, so there would not be an additional cost to the state.

HB 2037 would not create new definitions but rather add existing definitions from various parts of code into one chapter. The bill would not alter current definitions stipulating that a child with mental illness or an intellectual disability be diagnosed by a licensed physician or psychologist. While an expert conducting a forensic mental examination would not be prohibited from taking into consideration the diagnosis of other professionals, their reported opinions would go beyond determining the existence of a mental illness or an intellectual disability.

CRITICS
SAY:

HB 2037 could limit who could diagnose children with a mental illness or an intellectual disability. Some school districts diagnose children's mental illnesses and HB 2037 should specify that educational diagnosticians

could diagnose children with a mental illness or an intellectual disability.