

BILL ANALYSIS

Senate Research Center

H.B. 1118
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Jurisprudence
5/10/2001
Committee Report (Amended)

DIGEST AND PURPOSE

In preparation for the 77th Legislature, many juvenile justice practitioners and officials met in workgroups to identify areas of concern relating to the adjudication and disposition of juvenile conduct and the administration of the juvenile justice system. H.B. 1118 sets forth provisions and modifications to the juvenile justice system based on recommendations that were the product of these workgroup meetings.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Juvenile Probation Commission and the Texas Youth Commission in SECTION 40 (Section 58.209, Family Code) of this bill.

Rulemaking authority previously granted to the Texas Juvenile Probation Commission and the Texas Youth Commission is removed in SECTION 58 (Section 141.0471, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the Texas Juvenile Probation Commission in SECTION 59 (Section 141.061, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.02(12), Family Code, to redefine “referral to juvenile court.”

SECTION 2. Amends Section 51.03(a), Family Code, to redefine “delinquent conduct.”

SECTION 3. Amends Section 51.04(g), Family Code, to delete existing text regarding the juvenile court.

SECTION 4. Amends Section 51.041, Family Code, is amended to read as follows:

Sec. 51.041. JURISDICTION AFTER APPEAL. (a) Provides that the court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person under Chapter 56 or under Article 44.47 (Appeal of Transfer from Juvenile Court), Code of Criminal Procedure, of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.

(b) Requires a juvenile court, if the respondent is at least 18 years of age when the order of remand from the appellate court is received by the juvenile court, to proceed as provided by Sections 54.02(o)-(r) for the detention of a person at least 18 years of age in discretionary transfer proceedings. Authorizes the juvenile court, pending retrial of the adjudication or transfer proceeding, to take one of certain enumerated actions.

SECTION 5. Amends Chapter 51, Family Code, by adding Section 51.0412, as follows:

Sec. 51.0412. JURISDICTION OVER INCOMPLETE PROCEEDINGS. Provides that the court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, or a proceeding to modify disposition if certain conditions are met.

SECTION 6. Amends Section 51.08, Family Code, by amending Subsection (b) and adding Subsection (d), to authorize, as an exception to Subsection (b), a court that has implemented a juvenile case manager program under Article 45.054, Code of Criminal Procedure, to waive its original jurisdiction under Subsection (b)(1), but provides that the court is not required to do so.

SECTION 7. Amends Section 51.095(a), Family Code, to provide that notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if the statement is made orally and the child makes a statement of facts or circumstances that are found to be true and tend, rather than which conduct tends, to establish the child's guilt, such as the finding of secreted or stolen property, or the instrument with which the child states the offense was committed.

SECTION 8. Amends Section 51.10(e), Family Code, to authorize the court to enforce orders under Subsection (d), rather than Subsection (c), by proceedings under Section 54.07 or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court.

SECTION 9. Amends Chapter 51, Family Code, by adding Section 51.101, as follows:

Sec. 51.101. APPOINTMENT OF ATTORNEY AND CONTINUATION OF REPRESENTATION. (a) Requires an attorney, if the attorney is appointed at the initial detention hearing and the child is detained, to continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Provides that release of the child from detention does not terminate the attorney's representation.

(b) Requires the attorney appointed under Section 51.10(c), if there is an initial detention hearing without an attorney and the child is detained, to continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Provides that release of the child from detention does not terminate the attorney's representation.

(c) Requires the juvenile court to determine, on the filing of a petition, whether the child's family is indigent if certain conditions are present.

(d) Requires a juvenile court that makes a finding of indigence under Subsection (c) to appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child. Requires an attorney appointed under this subsection to continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

(e) Requires the juvenile court to determine whether the child's family is indigent if a motion or petition is filed under Section 54.05 seeking to modify disposition by committing the child to the Texas Youth Commission (TYC) or placing the child in a secure correctional facility. Requires a court that makes a finding of indigence to appoint an attorney to represent the child on or before the fifth working day after the date the petition or motion has been filed. Requires an attorney appointed under this subsection to continue to represent the child until the court rules on the motion or petition, the family retains an attorney, or a new attorney is appointed.

SECTION 10. Amends Sections 51.12(b), (c), and (l), Family Code, to require the juvenile board, rather than court, to control the conditions and terms of detention and detention supervision and to permit visitation with the child at all reasonable times. Requires, in each county, each judge of the juvenile court and a majority of the members of the juvenile board to personally inspect the juvenile pre-adjudication secure detention facilities and any public or private juvenile secure correctional facilities used for post-adjudication confinement that are located in the county and operated under authority of the juvenile board at least annually and to certify in writing to the authorities responsible for operating and giving financial support to the facilities and to the Texas Juvenile Probation Commission (TJPC) that they are suitable or unsuitable for the detention of children in accordance with certain requirements and standards. Makes a conforming change.

SECTION 11. Amends Sections 52.01(c) and (d), Family Code, to make conforming and nonsubstantive changes.

SECTION 12. Amends Sections 52.02(a) and (b), Family Code, to make conforming and nonsubstantive changes.

SECTION 13. Amends Section 52.025(a), Family Code, to make conforming and nonsubstantive changes.

SECTION 14. Amends Sections 52.027(f) and (i), Family Code, to redefine “child” in this section. Makes conforming changes.

SECTION 15. Amends Section 52.03(d), Family Code, to make a conforming change.

SECTION 16. Amends Sections 52.04(a) and (b), Family Code, to make conforming and nonsubstantive changes.

SECTION 17. Amends Sections 52.041(c) and (d), Family Code, to make conforming changes.

SECTION 18. Amends Sections 53.01(a) and (c), Family Code, to make conforming and nonsubstantive changes.

SECTION 19. Amends Section 54.01(l), Family Code, to make conforming and nonsubstantive changes.

SECTION 20. Amends Chapter 54, Family Code, by adding Section 54.023, as follows:

Sec. 54.023. JUSTICE OR MUNICIPAL COURT: ENFORCEMENT. (a) Authorizes the justice or municipal court, if a child intentionally or knowingly fails to obey a lawful order of disposition after an adjudication of guilt of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14 (Jurisdiction of justice courts or Jurisdiction of municipal court), Code of Criminal Procedure, to take certain enumerated action.

(b) Requires a court that orders suspension or denial of a child’s driver’s license or permit to notify the Department of Public Safety (department) on receiving proof that the child has fully complied with the orders of the court.

(c) Authorizes a justice or municipal court to hold a person in contempt and impose a remedy authorized by Subsection (a)(2) under certain conditions.

(d) Authorizes a justice or municipal court to hold a person in contempt and impose a remedy authorized by Subsection (a)(2) if the person, while younger than 17 years of age, engaged in conduct in contempt of an order of the justice or municipal court but

contempt proceedings could not be held before the child's 17th birthday.

(e) Prohibits a justice or municipal court from ordering a child to a term of confinement or imprisonment for contempt of a justice or municipal court order under this section.

(f) Prohibits a justice or municipal court from referring a child who violates a court order while 17 years of age or older to a juvenile court for delinquency proceedings for contempt of court.

SECTION 21. Amends Section 54.03(c), Family Code, to require the jury, if the hearing is on a petition that has been approved by the grand jury under Section 53.045, to consist of 12 persons and be selected in accordance with the requirements in criminal cases.

SECTION 22. Reenacts Section 54.04, Family Code, as amended by Chapters 1193, 1415, 1448, and 1477, Acts of the 76th Legislature, Regular Session, 1999, with the following changes:

Sec. 54.04. DISPOSITION HEARING. (a) Makes a nonsubstantive change.

(b) Makes a nonsubstantive change.

(d) Authorizes the court, if the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case and if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony or, if the requirements of Subsection (s) or (t), rather than Subsection (q), are met, of the grade of misdemeanor, and if the petition was not approved by the grand jury under Section 53.045, to commit the child to TYC without a determinate sentence.

(g) Makes a nonsubstantive change.

(h) Makes a nonsubstantive change.

(i) Authorizes the court, if the court places the child on probation outside the child's home or commits the child to TYC, to approve an administrative body to conduct permanency hearings pursuant to 42 U.S.C. Section 675 if required during the placement or commitment of the child.

(j) Requires the court to require that the child's thumbprint be affixed to the order and authorizes the court to require that a photograph of the child be attached to the order, if the court or jury found that the child engaged in delinquent conduct that included a violation of a penal law of the grade of felony or jailable misdemeanor.

(k) Makes a nonsubstantive change.

(o) Prohibits a status offender from being committed, under any circumstances, to TYC for engaging in conduct that would not, under state or local law, be a crime if committed by an adult. Prohibits a status offender from being placed, under any circumstances other than as provided under Subsection (n), in a post-adjudication secure correctional facility in a disposition under this title. Prohibits a child adjudicated for contempt of a justice or municipal court order from being placed, under any circumstances, in a post-adjudication secure correctional facility or committed to TYC for that conduct.

(s) Reletters existing text of Subsection (q) as Subsection (s). Deletes existing text regarding a felony offense.

(t) Authorizes the court to make a disposition under Subsection (d)(2) for delinquent conduct that violates a penal law of the grade of misdemeanor under certain conditions.

(u) Provides that for the purposes of disposition under Subsection (d)(2), delinquent conduct that violates a penal law of this state of the grade of felony or misdemeanor does not include conduct that violates a lawful order of a municipal, justice, or juvenile court under circumstances that would constitute contempt of that court.

SECTION 23. Amends Section 54.041, Family Code, by amending Subsection (b) and adding Subsection (h), to provide an exception to certain provisions of Subsection (b). Requires the district court, if the juvenile court places the child on probation in a determinate sentence proceeding initiated under Section 53.045 and transfers supervision on the child's 18th birthday to a district court for placement on community supervision, to require the payment of any unpaid restitution as a condition of the community supervision. Prohibits the liability of the child's parent for restitution from being extended by transfer to a district court for supervision.

SECTION 24. Amends Section 54.044(a), Family Code, to require the court, if the court places a child on probation under Section 54.04(d), to require as a condition of probation that the child work a specified number of hours at a community service project approved by the court and designated by the juvenile probation department, rather than board, as provided by Subsection (e), unless the court determines and enters a finding on the order placing the child on probation that certain conditions exist.

SECTION 25. Amends Chapter 54, Family Code, by adding Section 54.048, as follows:

Sec. 54.048. RESTITUTION. Authorizes a juvenile court, in a disposition hearing under Section 54.04, to order restitution to be made by the child and the child's parents. Provides that this section applies without regard to whether the petition in the case contains a plea for restitution.

SECTION 26. Amends Sections 54.05(d) and (h), Family Code, to delete existing text regarding an adjudication hearing on a petition to modify disposition. Requires a hearing to be held prior to placement in a post-adjudication secure correctional facility for a period longer than 30 days or commitment to TYC as a modified disposition.

SECTION 27. Redesignates Section 54.05(j), Family Code, as added by Chapter 1448, Acts of the 76th Legislature, Regular Session, 1999, as Section 54.05(k), Family Code, with the following changes:

(k) Authorizes the court to modify a disposition under Subsection (f) that is based on a finding that the child engaged in delinquent conduct that violates a penal law of the grade of misdemeanor if certain conditions exist.

SECTION 28. Amends Section 54.11(d), Family Code, to authorize the court, at a hearing under this section, to consider written reports from probation officers, professional court employees, professional consultants, or employees of TYC, in addition to the testimony of witnesses.

SECTION 29. Amends Section 55.41, Family Code, by adding Subsection (c), to require the Texas Department of Mental Health and Mental Retardation (TDMHMR) or the appropriate community center, on receipt of the court's order, to admit the child to a residential care facility.

SECTION 30. Amends Chapter 55C, Family Code, by adding Section 55.45, as follows:

Sec. 55.45. STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH. (a) Requires the child, if the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, to be cared for, treated, and

released in accordance with Title 7C (Texas Mental Health Code), Health and Safety Code, except that the administrator of a mental health facility is required to notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) Requires the child, if the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the commitment of the child to a residential care facility, to be cared for, treated, and released in accordance with Title 7D (Persons with Mental Retardation Act), Health and Safety Code, except that the administrator of the residential care facility is required to notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child of the intent to discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

SECTION 31. Amends Section 55.60, Family Code, by adding Subsection (c), to require TDMHMR or the appropriate community center, on receipt of the court's order, to admit the child to a residential care facility.

SECTION 32. Amends Section 56.01, Family Code, by adding Subsection (o), to provide that this section does not limit a child's right to obtain a writ of habeas corpus.

SECTION 33. Amends Section 58.002, Family Code, by amending Subsections (a) and (b) and adding Subsection (e), to prohibit a child, except as provided by Chapter 63 (Missing Children and Missing Persons), Code of Criminal Procedure, rather than Chapter 79, Human Resources Code, from being photographed or fingerprinted without the consent of the juvenile court unless the child is taken into custody or referred to the juvenile court for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail. Requires the juvenile board to conduct or cause to be conducted an audit of the records of the law enforcement agency to verify the destruction of the photographs and fingerprints and the law enforcement agency is required to make its records available for this purpose. Provides that this section does not prohibit a law enforcement officer from fingerprinting or photographing a child as provided by Section 58.0021.

SECTION 34. Amends Chapter 58A, Family Code, by adding Section 58.0021, as follows:

Sec. 58.0021. FINGERPRINTS OR PHOTOGRAPHS FOR COMPARISON IN INVESTIGATION. (a) Authorizes a law enforcement officer to take temporary custody of a child to take the child's fingerprints under certain conditions.

(b) Authorizes a law enforcement officer to take temporary custody of a child to take the child's photograph under certain conditions.

(c) Provides that temporary custody for the purpose described by Subsection (a) or (b) is not a taking into custody under Section 52.01 and is prohibited from being reported to the juvenile justice information system under Subchapter B.

(d) Requires the child, if a law enforcement officer does not take the child into custody under Section 52.01, to be released from temporary custody authorized under this section as soon as the fingerprints or photographs are obtained.

(e) Requires a law enforcement officer who under this section obtains fingerprints or photographs from a child to take certain enumerated actions under certain conditions.

(f) Authorizes a law enforcement officer to obtain, under this section, fingerprints or photographs from a child at certain locations.

SECTION 35. Amends Chapter 58A, Family Code, by adding Section 58.0022, as follows:

Sec. 58.0022. FINGERPRINTS OR PHOTOGRAPHS TO IDENTIFY RUNAWAYS. Authorizes a law enforcement officer who takes a child into custody with probable cause to believe that the child has engaged in conduct indicating a need for supervision as described by Section 51.03(b)(3) and who after reasonable effort is unable to determine the identity of the child, to fingerprint or photograph the child to establish the child's identity. Requires the law enforcement officer, on determination of the child's identity or that the child cannot be identified by the fingerprints or photographs, to immediately destroy all copies of the fingerprint records or photographs of the child.

SECTION 36. Amends Section 58.007, Family Code, by adding Subsection (i), to authorize a juvenile probation department, in addition to the authority to release information under Subsection (b)(5), to release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

SECTION 37. Amends Chapter 58A, Family Code, by adding Section 58.0071, as follows:

Sec. 58.0071. DESTRUCTION OF CERTAIN PHYSICAL RECORDS AND FILES. (a) Defines "juvenile case" and "physical records and files."

(b) Authorizes the custodian of physical records and files in a juvenile case to destroy the records and files if the custodian duplicates the information in the records and files in a computer file or information on microfilm, microfiche, or any other electronic storage media.

(c) Authorizes certain persons to authorize, subject to Subsections (d) and (e) and any other restriction the person may impose, the destruction of the physical records and files relating to a closed juvenile case.

(d) Authorizes the physical records and files of a juvenile case to only be destroyed if the child who is the respondent in the case meets certain criteria.

(e) Authorizes, if a record or file contains information relating to more than one juvenile case, information relating to each case to only be destroyed under certain conditions.

(f) Provides that this section does not affect the destruction of physical records and files authorized by the Texas State Library Records Retention Schedule.

SECTION 38. Amends Section 58.101(4), Family Code, to make a conforming change.

SECTION 39. Amends Section 58.112, Family Code, to require TJPC, rather than the Criminal Justice Policy Council, not later than August 15, rather than January 15, of each year, to submit to the lieutenant governor, the speaker of the house of representatives, and the governor a report that contains certain statistical information relating to children referred to a juvenile court during the preceding year.

SECTION 40. Amends Chapter 58, Family Code, by adding Subchapter C, as follows:

SUBCHAPTER C. AUTOMATIC RESTRICTION OF ACCESS TO RECORDS

Sec. 58.201. DEFINITION. Defines "department."

Sec. 58.202. EXEMPTED RECORDS. Sets forth certain records that are exempt from this subchapter.

Sec. 58.203. CERTIFICATION. Requires the department to certify to the juvenile court or the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access under certain conditions.

Sec. 58.204. RESTRICTED ACCESS ON CERTIFICATION. (a) Prohibits the department, on certification of records in a case under Section 58.203, except as provided by Subsection (b) from disclosing the existence of the records or any information from the records in response to an inquiry from certain entities or persons and is required to respond to a request for information about the records by stating that the records do not exist.

(b) Authorizes the department, on certification of records in a case under Section 58.203, to permit access to the information in the juvenile justice information system relating to the case of an individual only under certain conditions.

Sec. 58.205. REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION ON CERTIFICATION. Requires the department, on certification of records in a case under Section 58.203, to request the Federal Bureau of Investigation to take certain enumerated action.

Sec. 58.206. EFFECT OF CERTIFICATION IN RELATION TO THE PROTECTED PERSON. (a) Provides that the person who is the subject of records in a case under Section 58.203, on certification of the records, is not required to state in any proceeding, except as otherwise authorized by law in a criminal proceeding in which the person is testifying as a defendant, or in any application for employment, licensing, or other public or private benefit that the person has been a respondent in a case under this title and is prohibited from being punished, by perjury prosecution or otherwise, for denying certain information. Prohibits information from records in a case under Section 58.203, on certification of the records, from being admitted against the person who is the subject of the records in a civil or criminal proceeding except a proceeding in which a juvenile adjudication was admitted under certain specific provisions.

(b) Prohibits a person who is the subject of records certified under this subchapter from waiving the restricted status of the records or the consequences of the restricted status.

Sec. 58.207. JUVENILE COURT ORDERS ON CERTIFICATION. (a) Requires the juvenile court, on certification of records in a case under Section 58.203, to order that certain specific records relating to the case may be accessed only as provided by Section 58.204(b) and to order the juvenile probation department to make a reasonable effort to notify the person who is the subject of records for which access has been restricted of the action restricting access and the legal significance of the action for the person.

(b) Authorizes the agency maintaining the records, on receipt of an order under Subsection (a)(1), to allow access only as provided by Section 58.204(b) and requires the agency to respond to a request for information about the records by stating that the records do not exist.

Sec. 58.208. INFORMATION TO CHILD ON DISCHARGE. Requires the appropriate juvenile justice official, on the final discharge of a child from the juvenile system or on the last official action in the case, if there is no adjudication, to provide to the child a written explanation of how automatic restricted access under this subchapter works and a copy of this subchapter.

Sec. 58.209. INFORMATION TO CHILD BY PROBATION OFFICER OR TEXAS YOUTH COMMISSION. (a) Requires a probation officer or an official at TYC reception

center, when a child is placed on probation for an offense that may be eligible for automatic restricted access at age 21 or when a child is received by TYC on an indeterminate commitment, as soon as practicable, to explain certain specific information to the child.

(b) Requires the probation officer or TYC official to give the child a written copy of the explanation provided and communicate the same information to at least one of the child's parents or, if none can be found, to the child's guardian or custodian.

(c) Requires TJPC and TYC to adopt rules to implement this section and to facilitate the effective explanation of the information required to be communicated by this section.

Sec. 58.210. SEALING OR DESTRUCTION OF RECORDS NOT AFFECTED. (a) Provides that this subchapter does not prevent or restrict the sealing or destruction of juvenile records as authorized by law.

(b) Provides that restricted access provided under this subchapter is in addition to sealing or destruction of juvenile records.

(c) Provides that a person who is the subject of records certified under this subchapter is entitled to access to the records for the purpose of preparing and presenting a motion to seal or destroy the records.

SUBCHAPTER D. LOCAL JUVENILE JUSTICE INFORMATION SYSTEM

Sec. 58.301. DEFINITIONS. Defines “county juvenile board,” “governmental placement facility,” “governmental services provider,” “local juvenile justice information system,” “partner agency,” and “regional juvenile board committee.”

Sec. 58.302. PURPOSE OF SYSTEM. Sets forth the purposes of a local juvenile justice information system (LJIS).

Sec. 58.303. LOCAL JUVENILE JUSTICE INFORMATION SYSTEM. Sets forth provisions regarding the establishment, contents, and membership of a LJIS.

Sec. 58.304. TYPES OF INFORMATION CONTAINED IN A LOCAL JUVENILE INFORMATION SYSTEM. Sets forth certain information a LJIS is required to contain.

Sec. 58.305. PARTNER AGENCIES. Sets forth partner agencies required to be included in a LJIS in both a single county and multi-county system.

Sec. 58.306. ACCESS TO INFORMATION; LEVELS. Sets forth provisions regarding the varying access privileges of certain partner agencies to a LJIS.

Sec. 58.307. CONFIDENTIALITY OF INFORMATION. Sets forth provisions regarding the confidentiality of information contained in a LJIS.

SECTION 41. Amends Sections 59.003(a), (c), and (e), Family Code, as follows:

(a) Deletes existing statutory reference.

(c) Authorizes the juvenile court, subject to Subsection (e), if the child's subsequent commission of delinquent conduct or conduct indicating a need for supervision involves a violation of a penal law of a classification that is the same as or greater than the classification of the child's previous conduct, to assign the child a sanction level authorized by law that is one level higher than the previously assigned sanction level. Deletes existing text regarding a child's

assigned sanction level.

(e) Requires a juvenile court or probation department that deviates from the guidelines under this section, except as otherwise provided by this subsection, to state in writing its reasons for the deviation and submit the statement to the juvenile board regardless of whether a progressive sanctions program has been adopted by the juvenile board. Provides that a juvenile court that makes a disposition required by this title that deviates from the guidelines under this section is not required to report the disposition as a deviation.

SECTION 42. Amends Section 59.007(a), Family Code, to authorize the juvenile court, for a child at sanction level four, to require the child to participate as a condition of probation for not less than three months or more than 12 months in an intensive services probation program, rather than a highly intensive and regimented program, that emphasizes frequent contact and reporting with a probation officer, discipline, intensive supervision services, social responsibility, and productive work. Deletes existing text regarding physical therapy.

SECTION 43. Amends Section 59.011, Family Code, to require a juvenile board to require the juvenile probation department to report, rather than to prepare a report, progressive sanction data electronically to TJPC in the format and time frames specified by the commission. Deletes existing text regarding the frequency and forms for reporting.

SECTION 44. Amends Section 59.012, Family Code, to delete the existing text of Subsections (a) and (b) regarding the compilation of certain information. Reletters existing text of Subsection (c) as Subsection (a) to require the Criminal Justice Policy Council to analyze trends related to juvenile referrals, compliance with the progressive sanctions guidelines, and the impact of the guidelines and related reforms on recidivism rates using standard scientific sampling or appropriate scientific methodologies to represent statewide patterns. Requires the council to compile other policy studies as determined by the executive director of the council or as requested by the governor, lieutenant governor, or speaker of the house of representatives to assist in policy development. Requires the Criminal Justice Policy Council to report its findings and related recommendations to improve juvenile justice policies to the governor and the members of the legislature on or before January 15 of each odd-numbered year. Authorizes the Criminal Justice Policy Council to incorporate its findings and recommendations under this section into its report required under Section 413.013 (Criminal Justice Plan; Biennial Report), Government Code. Deletes existing text regarding the submission of certain compiled information.

SECTION 45. Amends Section 261.103(a), Family Code, to require a report, except as provided by Subsection (b) and Section 261.405, to be made to certain entities.

SECTION 46. Amends Section 261.405, Family Code, to define “juvenile justice facility” and “juvenile justice program.” Requires a report of alleged abuse or neglect in any juvenile justice program or facility, rather than a public or private juvenile pre adjudication secure detention facility, to be made to TJPC and a local law enforcement agency for investigation. Deletes existing text regarding certain specific facilities. Deletes existing text regarding the notification of a report the agency receives. Makes a conforming change.

SECTION 47. Amends Articles 15.27(a) and (g), Code of Criminal Procedure, to make conforming changes.

SECTION 48. Reenacts Article 15.27(h), Code of Criminal Procedure, as amended by Chapters 1015 and 1233, Acts of the 75th Legislature, Regular Session, 1997, and amends as follows:

(h) This article applies to any felony offense and certain specific misdemeanor offenses.

SECTION 49. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.0216, as

follows:

Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS OF CHILDREN. (a) Defines “child” in this article.

(b) Authorizes a person convicted of not more than one offense described by Section 8.07(a)(4) or (5) (relating to age affecting criminal responsibility), Penal Code, while the person was a child to apply, on or after the person’s 17th birthday, to the court in which the child was convicted to have the conviction expunged as provided by this article.

(c) Requires the person to make a written request to have the records expunged. Requires the request to be under oath.

(d) Requires the request to contain the person’s statement that the person was not convicted while the person was a child of any offense described by Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged.

(e) Requires the judge to inform the person and any parent in open court of the person’s expunction rights and provide them with a copy of this article.

(f) Requires the court, if the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, to order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person’s record. Provides that after entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

(g) Provides that this article does not apply to any offense otherwise covered by certain specific provisions.

(h) Authorizes records of a person under 17 years of age relating to a complaint dismissed as provided by Article 45.051 or 45.052 to be expunged under this article.

(i) Prohibits the justice or municipal court from requiring a person who requests expungement under this article to pay any fee or court costs.

(j) Provides that the procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.

SECTION 50. Amends Article 45.050(b), Code of Criminal Procedure, to provide that if a person who is a child under Section 51.02, Family Code, fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court has jurisdiction to hold the child in contempt of the justice or municipal court order as provided by Section 54.023, rather than Section 52.027(h), Family Code, or refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order.

SECTION 51. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.054, as follows:

Art. 45.054. AUTHORITY TO EMPLOY CASE MANAGERS FOR JUVENILE CASES.

(a) Authorizes a justice or municipal court, with the written consent of the city council or the commissioners court, as appropriate, to employ a case manager to provide services in cases before the court dealing with juvenile offenders consistent with the court’s statutory powers.

(b) Authorizes one or more justice or municipal courts, with the written consent of the city council or the commissioners court, as appropriate, to agree under Chapter 791 (Interlocal Cooperation Contracts), Government Code, to jointly employ a case manager.

SECTION 52. Amends Article 62.12(a), Code of Criminal Procedure, to provide that the duty to register for a person with a reportable conviction, rather than a reportable conviction or adjudication, for a sexually violent offense or for an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code, ends when the person dies. Provides that this subsection does not apply to an adjudication by a juvenile court under Title 3 (Juvenile Justice Code), Family Code.

SECTION 53. Amends Chapter 62, Code of Criminal Procedure, by adding Article 62.13, as follows:

Art. 62.13. HEARING TO DETERMINE NEED FOR REGISTRATION OF A JUVENILE. (a) Provides that a person who has an adjudication of delinquent conduct that would otherwise be reportable under Article 62.01(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this article excusing compliance by the person with the registration requirements of this chapter.

(b) Requires the juvenile court on motion of the respondent, after disposition of a case under Section 54.04 (Disposition Hearing), Family Code, for adjudication of an offense for which registration is required under this chapter, to conduct a hearing to determine whether the interests of the public require registration under this chapter.

(c) Provides that the hearing is without a jury and the burden of persuasion is on the respondent to show by a preponderance of evidence that the criteria of Subsection (e) have been met. Authorizes the court at the hearing to make its determination based on certain material and information.

(d) Requires all written matter considered by the court to be disclosed to all parties as provided by Section 54.04(b), Family Code.

(e) Requires the court to enter an order excusing compliance with the registration requirements of this chapter if the court makes certain determinations.

(f) Authorizes the prosecuting attorney to waive the state's right to a hearing under this article and agree that registration under this chapter is not required. Requires the court, if the waiver is entered under a plea agreement, to enter, without a hearing, an order excusing compliance with the registration requirements of this chapter or, under Section 54.03(j) (relating to an adjudication hearing), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to withdraw the respondent's plea of guilty, nolo contendere, or true or to affirm the respondent's plea and participate in the hearing. Requires the court, if the waiver is entered other than under a plea agreement, to without a hearing enter an order excusing compliance with the registration requirements of this chapter. Requires the waiver to state whether or not it is entered under a plea agreement. Authorizes the respondent to as part of a plea agreement promise not to file a motion seeking an order excusing registration, in which case the court may not recognize the motion.

(g) Authorizes the prosecuting attorney, notwithstanding Section 56.01 (Right to Appeal), Family Code, on entry by a juvenile court of an order under Subsection (e) excusing registration under this chapter, to appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. Provides that the appeal is civil and the standard of review in the appellate court is

whether the juvenile court committed procedural error or abused its discretion in excusing compliance with registration. Provides that the appeal is limited to review of the order excusing compliance with registration and prohibits the appeal from including any other issues in the case.

(h) Authorizes the respondent under Section 56.01, Family Code, to appeal the juvenile court's order requiring registration in the same manner as the appeal of any other legal issue in the case. Provides that the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in not excusing compliance with registration.

(i) Prohibits the respondent, if the juvenile court enters an order excusing registration, from being required to register in this or any other state for the offense for which registration was excused.

(j) Authorizes the juvenile court, after a hearing under Subsection (b) or under a plea agreement under Subsection (f), to enter an order deferring decision on requiring registration until the respondent has completed a sex offender treatment program as a condition of probation or while committed to TYC. Provides that the court retains discretion to require or to excuse registration at any time during the treatment program or on its successful or unsuccessful completion. Prohibits registration, during the period of deferral, from being required.

(k) Authorizes the juvenile court, after a hearing under Subsection (b) or under a plea agreement under Subsection (f), to enter an order requiring the respondent to register as a sex offender but provide that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies. Prohibits information obtained under this subsection from being posted on the Internet or released to the public.

(l) Authorizes a person who has registered as a sex offender for an adjudication of delinquent conduct, regardless of when the delinquent conduct or the adjudication for the conduct occurred, to file a motion in the adjudicating juvenile court for a hearing seeking excusal from registration as provided by Subsection (e) or seeking under Subsection (k) an order that the registration become nonpublic.

(m) Authorizes the person to file a motion under Subsection (l) in the original juvenile case regardless of whether the person is at the time of filing 18 years of age or older. Requires notice of the motion to be provided to the prosecuting attorney. Requires a hearing on the motion to be provided as in other cases under this article.

(n) Authorizes a motion to be filed under Subsection (l) only if a previous motion under this article has not been filed concerning that case.

(o) Requires the motion under Subsection (l), to the extent feasible, to identify those public and private agencies and organizations that possess sex offender registration information about the case.

(p) Authorizes the juvenile court, after a hearing, to take one of certain enumerated actions.

(q) Requires a copy of the court's order, if the court grants the motion, to be sent to each public and private agency or organization that the court determines may be in possession of sex offender registration information. Requires the order to require the recipient to conform its records to the court's orders either by deleting the information

or changing its status to nonpublic, as the order requires.

(r) Provides that a private agency or organization that possesses sex offender registration information it obtained from a state, county, or local governmental entity is required to conform its records to the court's order on or before the 30th day after the date of its entry. Provides that failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

SECTION 54. Amends Section 25.094(d), Education Code, to authorize the court, if the justice or municipal court believes, rather than finds, that a child has violated an order issued under Subsection (c), to proceed as authorized by Section 54.023, Family Code, by holding the child in contempt and imposing a fine not to exceed \$500 or by referring the child to juvenile court for delinquent conduct. Deletes existing text regarding the transference of the complaint against the child, together with all pleadings and orders, to a certain juvenile court. Deletes existing text regarding the adjudication hearing.

SECTION 55. Amends Chapter 411F, Government Code, by adding Sections 411.137 and 411.138, as follows:

Sec. 411.137. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS JUVENILE PROBATION COMMISSION. Provides that TJPC is entitled to obtain from the department criminal history record information maintained by the department that relates to certain persons.

Sec. 411.138. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: JUVENILE BOARD OR JUVENILE PROBATION DEPARTMENT. Provides that a juvenile board or juvenile probation department is entitled to obtain from the department criminal history record information maintained by the department that relates to certain persons.

SECTION 56. Amends Section 499.053, Government Code, by adding Subsection (d), to require a person transferred from TYC for the offense of capital murder to become eligible for parole as provided in Section 508.145(d) for an offense listed in Section 3g (Limitation on Judge Ordered Community Supervision), Article 42.12, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made.

SECTION 57. Amends Sections 141.042(e) and (g), Human Resources Code, to require juvenile probation departments to use the mental health screening instrument selected, rather than standard assessment tool developed, by the TJPC for the initial screening, rather than assessment, of children under the jurisdiction of probation departments who have been formally referred to the department. Deletes existing text regarding a similar assessment tool. Requires juvenile probation departments to report data, rather than the information relating to the results, from the use of the screening instrument to TJPC in a format and in the time, rather than manner, prescribed by TJPC. Deletes existing text regarding the assessment tool. Makes conforming changes. Provides that any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument under this section is not admissible against the child at any other hearing. Requires the person administering the mental health screening instrument to inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any other hearing.

SECTION 58. Amends Section 141.0471(c), Human Resources Code, to require the governing board of each agency, rather than each agency, to adopt, rather than by rule adopt, the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

SECTION 59. Amends Section 141.061, Human Resources Code, by adding Subsection (f), to authorize TJPC to waive the degree accreditation requirement in Subsection (a)(2) if the applicant possesses a foreign or other degree that the commission determines is the substantial equivalent of a bachelor's degree. Requires TJPC to adopt rules defining the procedures to be used to request a waiver of the accreditation requirement in Subsection (a)(2).

SECTION 60. Amends Section 141.065, Human Resources Code, as follows:

Sec. 141.065. New heading: PERSONS WHO MAY NOT ACT AS JUVENILE PROBATION, DETENTION, OR CORRECTIONS OFFICERS. Prohibits a peace officer, prosecuting attorney, or other person who is employed by or who reports directly to a law enforcement or prosecution official from acting as a juvenile probation, detention, or corrections officer or from being made responsible for supervising a juvenile on probation.

SECTION 61. Amends Section 141.066, Human Resources Code, to provide that this section does not apply to an employee of TYC. Makes conforming changes.

SECTION 62. Amends Chapter 142, Human Resources Code, by adding Section 142.005, as follows:

Sec. 142.005. ADMINISTRATION OF MEDICATION; IMMUNITY FROM LIABILITY. (a) Provides that on the adoption of policies concerning the administration of medication to juveniles by authorized employees, the juvenile board and any authorized employee of a program or facility operated by the juvenile board are not liable for damages arising from the administration of medication to a juvenile under certain conditions.

(b) Sets forth exceptions to the application of this section.

SECTION 63. Amends Section 152.0007(a), Human Resources Code, to delete existing text regarding personnel employed to conduct probation services. Requires a juvenile board to adopt a budget and establish policies, including financial policies, for juvenile services within the jurisdiction of the board, rather than in the county and make recommendations as to the need for and purchase of services. Deletes existing text regarding operation and supervision.

SECTION 64. Amends Section 152.0008(a), Human Resources Code, to authorize the chief juvenile probation officer to, within the budget adopted by the board, employ certain personnel.

SECTION 65. Amends Sections 152.0010(a) and (b), Human Resources Code, to authorize, rather than require, a juvenile board to appoint an advisory council consisting of the number of, rather than not more than nine, citizen members determined appropriate by the board. Authorizes the advisory council, to the extent available in the county, to include certain types of personnel. Council members serve terms as specified by the board, rather than for staggered two year terms. Deletes existing text regarding the expiration of the members terms.

SECTION 66. Amends Chapter 152A, Human Resources Code, by adding Section 152.0013, as follows:

Sec. 152.0013. IMMUNITY FROM LIABILITY. Provides that a member of a juvenile board is not liable for damages arising from an act or omission committed while performing duties as a board member. Provides that this section does not apply if the act or omission meets certain criteria.

SECTION 67. Amends Section 8.07(a), Penal Code, to prohibit a person from being prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except certain offenses, including a capital felony or an offense under Section 19.02 for which the person is

transferred to the court under Section 54.02(j)(2)(A), Family Code.

SECTION 68. Amends Section 39.04(e)(2), Penal Code, to redefine “custody.”

SECTION 69. Repealer: (1) Sections 52.027(h) and (j) (relating to children taken into custody for traffic offenses, other fineable only offenses, or as a status offender), Family Code;

(2) Section 54.022(e) (relating to justice or municipal court: certain misdemeanors), Family Code;

(3) Article 58.01 (Sealing Files and Records of Children), Code of Criminal Procedure;

(4) Section 21.002(h) (relating to contempt of court), Government Code; and

(5) Section 53.001 (Memorandum of Understanding on Service Contracts for Dysfunctional Families), Human Resources Code.

SECTION 70. (a) Effective date: September 1, 2001.

(b) Makes application of this Act prospective, except as otherwise provided by this section.

(c) Provides that the change in law made by Section 54.04, Family Code, as amended by this Act, applies only to a disposition by a court made on or after the effective date of this Act without regard to whether previous adjudications of delinquent conduct on which the disposition is based occurred before, on, or after the effective date of this Act.

(d) Provides that the change in law made by Section 58.0071, Family Code, as added by this Act, applies to the destruction of records and files in a juvenile case on or after the effective date of this Act, without regard to whether the records or files destroyed were in existence before, on, or after the effective date of this Act.

(e) Provides that the change in law made by Chapter 58C, Family Code, as added by this Act, applies to records relating to a juvenile case without regard to whether those records existed or were maintained before, on, or after the effective date of this Act.

(f) Provides that the change in law made by Article 62.13, Code of Criminal Procedure, as added by this Act, applies to a juvenile adjudicated for an offense for which registration as a sex offender is required and applies without regard to whether the offense and adjudication occurred before, on, or after the effective date of this Act.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1.

Amends SECTION 40 by inserting a new Subchapter D to Chapter 58, Family Code, regarding local juvenile justice information systems.

Committee Amendment No. 2.

Amends SECTION 57, by inserting a new Subsection (g) to Section 141.042, Human Resources Code, regarding certain statements or data pertaining to a child.

Committee Amendment No. 4.

Amends SECTION 49, by amending page 57, line 1, to insert “must” in place of “is not required to.”