

## **BILL ANALYSIS**

Senate Research Center  
83R6903 EAH-F

S.B. 511  
By: Whitmire  
Criminal Justice  
3/7/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 511 creates an alternative sentencing system for juvenile offenders that is controlled by local county juvenile authorities and diverts such offenders from the Texas Juvenile Justice Department (TJJD). This new sentencing alternative is an expansion of the county juvenile authorities' previously implemented diversion programs, with state funding following the youth for local treatment and rehabilitation. With this sentencing option the affected youth is ineligible to be transferred to the TJJD system.

This bill provides the legal authority for juvenile courts to commit and confine a youthful felony offender to a local post-adjudication secure correctional facility operated by or under contract with local juvenile authorities. It also provides the ability to parole a youth to a local juvenile authority.

Only local juvenile authorities in a county with a population of at least 335,000 are authorized to operate a local post-adjudication secure correctional facility.

This bill is based on the philosophy that it is much more effective to provide treatment and rehabilitative services and to supervise a youthful offender in the community from which they reside. Such a system envisions the ability to maintain the youthful offender's family participation with the rehabilitative services.

As proposed, S.B. 511 amends current law relating to the commitment of certain juveniles to local post-adjudication secure correctional facilities in certain counties and to the release under supervision of those juveniles.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 51.13(d), Family Code, as follows:

(d) Provides that an adjudication under Section 54.03 (Adjudication Hearing) that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to the Texas Juvenile Justice Department (TJJD), rather than the Texas Youth Commission (TYC), under Section 54.04(d)(2), (d)(3), or (m) (relating to procedure by which a court or jury is authorized to sentence a child) or 54.05(f) or commitment to a post-adjudication secure correctional facility under Section 54.04011 is a final felony conviction only for the purposes of Sections 12.42(a) (relating to conditions requiring a defendant to be punished for a felony of the second degree during the trial of a felony of the third degree), (b) (relating to conditions requiring a defendant to be punished for a felony of the first degree during the trial of a felony of the second degree), and (c)(1) (relating to conditions requiring a defendant to be punished by a certain term of imprisonment during the trial of a felony of the first degree) or Section 12.425 (Penalties for Repeat and Habitual Felony Offenders on Trial for State Jail Felony), Penal Code, rather than Sections 12.42(a), (b), (c)(1) and (e) (relating to

prohibiting a previous conviction for a state jail felony punished under Section 12.35(a) from being used for enhancement purposes in certain cases).

SECTION 2. Amends Section 54.04, Family Code, by amending Subsections (d) and (q) and adding Subsection (z), as follows:

(d) Provides that if the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury is authorized, in addition to any order required or authorized under Section 54.041 (Orders Affecting Parents and Others) or 54.042 (License Suspension), to place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) (relating to conditions regarding disposition of a child) on the placement of the child outside the child's home, in:

(i) a suitable foster home;

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by TJJD, rather than TYC; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125 (Post-Adjudication Correctional Facilities), except a facility operated by TJJD, rather than TYC;

(2) 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 and if the petition was not approved by the grand jury under Section 53.045 (Violent or Habitual Offenders), the court is authorized to commit the child to TJJD, rather than TYC, without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) (relating to authorizing the prosecuting attorney to refer the petition to the grand jury of the county under certain conditions) and if the petition was approved by the grand jury under Section 53.045, the court or jury is authorized to sentence the child to commitment in TJJD or a post-adjudication secure correctional facility under Section 54.04011(c)(2), rather than TYC, with a possible transfer to the Texas Department of Criminal Justice (TDCJ) for a term of not more than a certain number of years in certain violations of conduct.

(4) the court is authorized to assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003 (Sanction Level Assignment Model); or

(5) if applicable, the court or jury is authorized to make a disposition under Subsection (m).

(q) Authorizes the court or jury to place the child on probation under Subsection (d)(1) as an alternative to making the disposition under Subsection (d)(3), if a court or jury

sentences a child to commitment in TJJD or a post-adjudication secure correctional facility, rather than TYC, under Subsection (d)(3) for a term of not more than 10 years.

(z) Provides that nothing in this section may be construed to prohibit a juvenile court or jury to which Section 54.04011 applies from committing a child to a post-adjudication secure correctional facility in accordance with that section after a disposition hearing held in accordance with this section.

SECTION 3. Amends Chapter 54, Family Code, by adding Section 54.04011, as follows:

Sec. 54.04011. COMMITMENT TO POST-ADJUDICATION SECURE CORRECTIONAL FACILITY. (a) Provides that this section applies only to a county that has a population of at least 335,000.

(b) Defines "post-adjudication secure correctional facility" in this section.

(c) Authorizes a juvenile court of a county to which this section applies, after a disposition hearing held in accordance with Section 54.04, to commit a child who is found to have engaged in delinquent conduct that constitutes a felony to a post-adjudication secure correctional facility:

(1) without a determinate sentence, if the child is found to have engaged in conduct that violates a penal law of the grade of felony and the petition was not approved by the grand jury under Section 53.045, the child is found to have engaged in conduct that violates a penal law of the grade of felony and the petition was approved by the grand jury under Section 53.045 but the court or jury does not make the finding described by Section 54.04(m)(2) (relating to authorizing a court or jury to sentence a child adjudicated for habitual felony conduct to a certain term if the court or jury finds beyond a reasonable doubt that the allegation of habitual felony conduct in the grand jury petition is true), or the disposition is modified under Section 54.05(f); or

(2) with a determinate sentence, if the child is found to have engaged in conduct that included a violation of a penal law listed in Section 53.045 or that is considered habitual felony conduct as described by Section 51.031 (Habitual Felony Conduct), the petition was approved by the grand jury under Section 53.045, and, if applicable, the court or jury makes the finding described by Section 54.04(m)(2), or the disposition is modified under Section 54.05(f).

(d) Provides that nothing in this section may be construed to prohibit:

(1) a juvenile court or jury from making a disposition under Section 54.04, including placing a child on probation on such reasonable and lawful terms as the court may determine, including placement in a public or private post-adjudication secure correctional facility under Section 54.04(d)(1)(B)(iii), or placing a child adjudicated under Section 54.04(d)(3) or (m) on probation for a term of not more than 10 years, as provided in Section 54.04(q); or

(2) the attorney representing the state from filing a motion concerning a child who has been placed on probation under Section 54.04(q) or the juvenile court from holding a hearing under Section 54.051(a) (requiring the juvenile court to hold a hearing to determine whether to transfer or discharge the child on motion of the state).

SECTION 4. Amends Sections 54.05(b), (f), (j), and (m), Family Code, as follows:

(b) Provides that all dispositions automatically terminate when the child reaches the child's 18th birthday except for a commitment to TJJD or to a post-adjudication secure correctional facility under Section 54.04011, rather than TYC, a disposition under Section 54.0402 (Dispositional Order for Failure to Attend School), or a placement on determinate sentence probation under Section 54.04(q).

(f) Authorizes, except as provided by Subsection (j), a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony to be modified so as to commit the child to TJJD or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, rather than TYC, if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. Authorizes a disposition based on a finding that the child engaged in habitual felony conduct as described by Section 51.031 or in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) to be modified so as to commit the child to TJJD or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, rather than TYC, with a possible transfer to TDCJ for a definite term prescribed by, as applicable, Section 54.04(d)(3) or Section 152.0016(g), Human Resources Code, if the original petition was approved by the grand jury under Section 53.045 and if after a hearing to modify the disposition the court finds that the child violated a reasonable and lawful order of the court.

(j) Authorizes the court, if the court finds by a preponderance of the evidence that a child violated a reasonable and lawful condition of probation ordered under Section 54.04(q) after conducting a hearing to modify disposition without a jury, to modify the disposition to commit the child to TJJD, rather than TYC, under Section 54.04(d)(3) or, if applicable, a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, for a term that does not exceed the original sentence assessed by the court or jury.

(m) Requires the court, if the court places the child on probation outside the child's home or commits the child to TJJD or to a post-adjudication secure correctional facility operated under Section 152.0016, Human Resources Code, rather than TYC, to include in the court's order certain determinations.

SECTION 5. Amends Sections 54.052(a), (b), and (d), Family Code, as follows:

(a) Provides that this section applies only to a child who is committed to TJJD, rather than TYC, under a determinate sentence under Section 54.04(d)(3) or (m) or Section 54.05(f) or a post-adjudication secure correctional facility under a determinate sentence under Section 54.04011(c)(2).

(b) Requires the judge of the court in which a child is adjudicated to give the child credit on the child's sentence for the time spent by the child, in connection with the conduct for which the child was adjudicated, in a secure detention facility before the child's transfer to a TJJD facility, rather than a TYC facility, or a post-adjudication secure correctional facility, as applicable.

(d) Requires TJJD, the juvenile board, or the local juvenile probation department operating or contracting for the operation of the post-adjudication secure correctional facility under Section 152.0016, Human Resources Code, as applicable, rather than requires TYC, to grant any credit under this section in computing the child's eligibility for parole and discharge.

SECTION 6. Amends Sections 54.11(a), (h), (i), (j), and (k), Family Code, as follows:

(a) Requires a court to set a time and place for a hearing on the release of the person on receipt of a referral under Section 244.014(a) (relating to procedure for referral of violent and habitual offenders for transfer), Human Resources Code, for the transfer to TDCJ of

a person committed to TJJD under Section 54.04(d)(3), 54.04(m), or 54.05(f), on receipt of a request by TJJD under Section 245.051(d) (authorizing TJJD to request the approval of the court under this section at any time), Human Resources Code, for approval of the release under supervision of a person committed to TJJD under Section 54.04(d)(3), 54.04(m), or 54.05(f), or on receipt of a referral under Section 152.0016(i), Human Resources Code.

(h) Requires that the hearing on a person who is referred for transfer under Section 152.0016(i) or 244.014(a), Human Resources Code, be held not later than the 60th day after the date the court receives the referral.

(i) Authorizes the court, on conclusion of the hearing on a person who is referred for transfer under Section 152.0016(i) or 244.014(a), Human Resources Code, to, as applicable, order the return of the person to TJJD or post-adjudication secure correctional facility or the transfer of the person to the custody of TDCJ for the completion of the person's sentence.

(j) Authorizes the court, on conclusion of the hearing on a person who is referred for release under supervision under Section 152.0016(i) or 245.051(c) (prohibiting the release of a child under supervision without approval of the juvenile court that entered the order of commitment unless the child has served at least a certain number of years), Human Resources Code, to, as applicable, order the return of the person to TJJD or post-adjudication secure correctional facility with or without approval for the release of the person under supervision.

(k) Authorizes the court, in making a determination under this section, to consider the experiences and character of the person before and after commitment to TJJD or post-adjudication secure correctional facility, rather than TYC, the recommendations of TJJD, county juvenile board, local juvenile probation department, rather than the recommendations of TYC, and prosecuting attorney, and other certain factors relevant to the issue to be decided.

**SECTION 7. Amends Section 59.009, Family Code, as follows:**

Sec. 59.009. SANCTION LEVEL SIX. (a) Authorizes the juvenile court, for a child at sanction level six, to commit the child to the custody of TJJD or a post-adjudication secure correctional facility under Section 54.04011, rather than TYC. Authorizes TJJD, juvenile board, or local juvenile probation department, as applicable, to require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than nine months or more than 24 months unless TJJD, board, or probation department, rather than TYC, extends the period and the reason for an extension is documented and impose other certain requirements of the child and the child's parents or guardians.

(b) Authorizes TJJD parole programs, rather than TYC parole programs, or the juvenile board or local juvenile probation department operating programs under Section 152.0016(c)(2), Human Resources Code, on release of the child under supervision, to impose other certain conditions of supervision.

(c) Authorizes TJJD, juvenile board, or local juvenile probation department to discharge the child from the custody of TJJD, board, or probation department, as applicable, rather than authorizing TYC to discharge the child from TYC's custody, on the date the provisions of this section are met or on the child's 19th birthday, whichever is earlier.

**SECTION 8. Amends Section 59.010, Family Code, as follows:**

Sec. 59.010. SANCTION LEVEL SEVEN. (a) Authorizes a juvenile court, for a child at sanction level seven, to certify and transfer the child under Section 54.02 or sentence the child to commitment to TJJD, rather than TYC, under Section 54.04(d)(3), 54.04(m), or

54.05(f) or to a post-adjudication secure correctional facility under Section 54.04011. Authorizes TJJD, juvenile board, or local juvenile probation department, as applicable, rather than authorizing TYC, to require the child to participate in a highly structured residential program that emphasizes discipline, accountability, fitness, training, and productive work for not less than 12 months or more than 10 years unless TJJD, board, or probation department, rather than TYC, extends the period and the reason for the extension is documented, among other certain sanctions.

(b) Authorizes TJJD parole programs, rather than TYC parole programs, or the juvenile board or local juvenile probation department parole programs under Section 152.0016(c)(2), Human Resources Code, on release of the child under supervision, to impose certain conditions of supervision.

SECTION 9. Amends Section 841.003(b), Health and Safety Code, as follows:

(b) Provides that a person is a repeat sexually violent offender for the purposes of this chapter (Civil Commitment of Sexually Violent Predators) if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if the person is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to TJJD, rather than TYC, under Section 54.04(d)(3) or (m), Family Code, or to a post-adjudication secure correctional facility under Section 54.04011(c)(2), Family Code.

SECTION 10. Amends Subchapter A, Chapter 152, Human Resources Code, by adding Section 152.0016, as follows:

Sec. 152.0016. POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES; RELEASE UNDER SUPERVISION. (a) Provides that this section applies only to a county that has a population of at least 335,000.

(b) Defines "post-adjudication secure correctional facility" in this section.

(c) Authorizes a juvenile board or a local juvenile probation department that serves a county to which this section applies to:

(1) operate or contract for the operation of a post-adjudication secure correctional facility to confine children committed to the facility under Section 54.04011, Family Code; and

(2) operate a program through which a child committed to a post-adjudication secure correctional facility under Section 54.04011, Family Code, may be released under supervision and place the child in the child's home or in any situation or family approved by the juvenile board or local juvenile probation department.

(d) Requires the juvenile board or local juvenile probation department, before placing a child in the child's home under Subsection (c)(2), to evaluate the home setting to determine the level of supervision and quality of care that is available in the home.

(e) Requires a juvenile board or a local juvenile probation department to accept a person properly committed to it by a juvenile court under Section 54.04011, Family Code, in the same manner in which TJJD accepts a person under Section 54.04(e) (requiring TYC to accept a person properly committed to it by a juvenile court), Family Code, even though the person may be 17 years of age or older at the time of the commitment.

(f) Requires a juvenile board or a local juvenile probation department to establish a minimum length of stay for each child committed without a determinate sentence under Section 54.04011(c)(1), Family Code, in the same manner that

TJJJ determines a minimum length of stay for a child committed to TJJJ under Section 243.002 (Establishment of Minimum Length of Stay).

(g) Prohibits the local juvenile probation department, except as provided by Subsection (h), if a child is committed to a post-adjudication secure correctional facility under Section 54.04011(c)(2), Family Code, from releasing the child under supervision without approval by the juvenile court that entered the order of commitment under Section 54.04011, Family Code, unless the child has been confined not less than 10 years for capital murder, three years for an aggravated controlled substance felony or a felony of the first degree, two years for a felony of the second degree, and one year for a felony of the third degree.

(h) Authorizes the juvenile board or local juvenile probation department to release a child who has been committed to a post-adjudication secure correctional facility with a determinate sentence under Section 54.04011(c)(2), Family Code, under supervision without approval of the juvenile court that entered the order of commitment if not more than nine months remain before the child's discharge as provided by Section 245.051(g) (relating to certain conditions under which TJJJ is authorized to release the child under supervision without approval of the juvenile court).

(i) Authorizes the juvenile board or local juvenile probation department to resume the care and custody of any child released under supervision at any time before the final discharge of the child in accordance with the rules governing TJJJ regarding resumption of care.

(j) Authorizes the juvenile board or local juvenile probation department operating or contracting for the operation of a post-adjudication secure correctional facility, after a child committed to the facility with a determinate sentence under Section 54.04011(c)(2), Family Code, becomes 16 years of age but before the child becomes 19 years of age, to refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to TDCJ for confinement if the child has not completed the sentence and:

(1) the child's conduct, regardless of whether the child was released under supervision through a program established by the juvenile board or local juvenile probation department, indicates that the welfare of the community requires the transfer; or

(2) while the child was released under supervision, a juvenile court adjudicated the child as having engaged in delinquent conduct constituting a felony offense, a criminal court convicted the child of a felony offense; or the child's release under supervision was revoked.

(k) Requires the juvenile board or local juvenile probation department operating or contracting for the operation of a post-adjudication secure correctional facility under this section to develop a comprehensive plan for each child committed to the facility under Section 54.04011, Family Code, regardless of whether the child is committed with or without a determinate sentence, to reduce recidivism and ensure the successful reentry and reintegration of the child into the community following the child's release under supervision or final discharge from the facility, as applicable.

(l) Authorizes the juvenile board or local juvenile probation department operating or contracting for the operation of a post-adjudication secure correctional facility, notwithstanding any other law, to confine a child committed to the facility with or without a determinate sentence under Section 54.04011(c), Family Code, until the child's 19th birthday.

SECTION 11. Amends Section 12.42(f), Penal Code, as follows:

(f) Provides that for the purposes of Subsections (a), (b), and (c)(1), rather than for the purposes of Subsections (a), (b), (c)(1), and (e), an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to TJJD, rather than TYC, under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, or to a post-adjudication secure correctional facility under Section 54.04011, Family Code, is a final felony conviction.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: December 1, 2013.