

CHAPTER 385

H.B. No. 682

AN ACT

relating to the sentencing and commitment of certain delinquent children to the Texas Youth Commission, the transfer of those children to the Texas Department of Corrections, and the admissibility of certain juvenile court adjudication records in the penalty phase of criminal trials.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 51.04(b) and (c), Family Code, are amended to read as follows:

(b) In *each* [a] county [~~having a juvenile board~~], the *county's juvenile* board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to *Subsections (c) and* [Subsection] (d) of this section.

(c) *If the county court is designated as a juvenile court, at least one other court shall be designated as the juvenile court. A county court does not have jurisdiction of a proceeding involving a petition approved by a grand jury under Section 53.045 of this code.* [~~In a county not having a juvenile board, the judges of the district, criminal district, domestic relations, juvenile, and county courts and county courts at law shall designate one or more of their courts as the juvenile court, subject to Subsection (d) of this section.~~]

SECTION 2. Chapter 51, Family Code, is amended by adding Section 51.045 to read as follows:

Sec. 51.045. JURIES IN COUNTY COURTS AT LAW. If a provision of this title requires a jury of 12 persons, that provision prevails over any other law that limits the number of members of a jury in a particular county court at law. The state and the defense are entitled to the same number of peremptory challenges allowed in a district court.

SECTION 3. Section 51.13(c), Family Code, is amended to read as follows:

(c) A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

(1) for temporary detention in a jail or lockup pending juvenile court hearing or disposition under conditions meeting the requirements of Section 51.12 of this code; [or]

(2) after transfer for prosecution in criminal court under Section 54.02 of this code;
or

(3) *on or after the 18th birthday of the child, after transfer from the Texas Youth Commission under Section 61.084, Human Resources Code.*

SECTION 4. Section 51.14, Family Code, is amended by amending Subsections (a) and (c) and adding Subsection (e) to read as follows:

(a) *Except as provided by Subsection (e) of this section, all [All] files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:*

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) an attorney for a party to the proceeding;
- (3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository. *However, the law-enforcement files and records of a person who is transferred from the Texas Youth Commission to the Texas Department of Corrections under a determinate sentence may be transferred to a central state or federal depository for adult records on or after the date of transfer.*

(e) *For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court. If the court has a record to which the prosecuting attorney is entitled under this section, the court shall certify a copy of the record and issue it to the prosecuting attorney. Otherwise, the court shall notify the prosecuting attorney that it does not have a record to which the attorney is entitled under this section.*

SECTION 5. Sections 51.15(a), (b), (c), and (e), Family Code, are amended to read as follows:

(a) No child may be fingerprinted without the consent of the juvenile court except as provided by this subsection or by ~~in~~ Subsection (f) of this section. ~~A child's [However, if a child 15 years of age or older is referred to the juvenile court for a felony, his]~~ fingerprints may be taken and filed by a law-enforcement officer investigating a ~~the~~ case if:

- (1) *the child is 15 years of age or older and is referred to the juvenile court for any felony; or*
- (2) *the child is under 15 years of age and is referred to the juvenile court for a felony listed in Section 53.045(a) of this code.*

(b) Except as provided in Subsection (h) of this section, no child taken into custody may be photographed without the consent of the juvenile court unless:

- (1) *the child is 15 years of age or older and is referred to the juvenile court for a felony; or*
- (2) *the child is under 15 years of age and is referred to the juvenile court for a felony listed in Section 53.045(a) of this code [the child is transferred to criminal court for prosecution under Section 54.02 of this code].*

(c) Fingerprint and photograph files or records of children shall be kept separate from those of adults, and fingerprints or photographs known to be those of a child shall be maintained on a local basis only and not sent to a central state or federal depository. *However, fingerprint and photograph files or records of a person who is transferred from the Texas Youth Commission to the Texas Department of Corrections under a determinate sentence may be transferred to adult records on or after the date of transfer.*

(e) *A child's fingerprints [Fingerprints] and photographs that are not transferred under Subsection (c) of this section [of a child]* shall be removed from files or records and destroyed if:

(1) a petition alleging that the child engaged in delinquent conduct or conduct indicating a need for supervision is not filed, or the proceedings are dismissed after a petition is filed, or the child is found not to have engaged in the alleged conduct; ~~or~~

(2) the person reaches 18 years of age, *is not subject to commitment to the Texas Youth Commission or to transfer under a determinate sentence to the Texas Department of Corrections*, and there is no record that he committed a criminal offense after reaching 17 years of age; *or*

(3) *the person is older than 18 years, at least three years have elapsed after the person's release from commitment, and there is no evidence that he committed a criminal offense after the release.*

SECTION 6. Section 51.16, Family Code, is amended by amending Subsections (a) and (i) and adding Subsection (j) to read as follows:

(a) *Except as provided by Subsection (j) of this section, on [On] the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether he engaged in delinquent conduct or conduct indicating a need for supervision, or on the juvenile court's own motion, the court, after hearing, shall order the sealing of the files and records in the case, including those specified in Sections 51.14 and 51.15 of this code, if the court finds that:*

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

(i) *Except as provided by Subsection (j) of this section, on [On] the motion of a person in whose name files and records are kept or on the court's own motion, the court may order the destruction of all files and records concerning a person who has been adjudicated to be a child in need of supervision or a delinquent child if:*

(1) seven years have elapsed since the child's 16th birthday; and

(2) the person has not been convicted of a felony.

(j) *A court may not order under this section the sealing or destruction of files and records concerning an adjudication of delinquency based on the violation of a penal law of the grade of felony.*

SECTION 7. Chapter 53, Family Code, is amended by adding Section 53.045 to read as follows:

Sec. 53.045. REFERRAL TO GRAND JURY. (a) The prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that included the violation of any of the following provisions of the Penal Code:

(1) *Section 19.02 (murder);*

(2) *Section 19.03 (capital murder);*

(3) *Section 20.04 (aggravated kidnapping);*

(4) *Section 22.021 (aggravated sexual assault);*

(5) *Section 22.03 (deadly assault on a law enforcement officer, corrections officer, or court participant); or*

- (6) *Section 15.01 (criminal attempt), if the offense attempted was an offense under Section 19.03 (capital murder).*
- (b) *A grand jury may approve a petition submitted to it under this section by a vote of nine members of the grand jury in the same manner that the grand jury votes on the presentment of an indictment.*
- (c) *The grand jury has all the powers to investigate the facts and circumstances relating to a petition submitted under this section as it has to investigate other criminal activity but may not issue an indictment unless the child is transferred to a criminal court as provided by Section 54.02 of this code.*
- (d) *If the grand jury approves of the petition, the fact of approval shall be certified to the juvenile court, and the certification shall be entered in the record of the case. For the purpose of the transfer of a child to the Texas Department of Corrections as provided by Section 61.084(c), Human Resources Code, a juvenile court petition approved by a grand jury under this section is an indictment presented by the grand jury.*

SECTION 8. Sections 54.03(b) and (c), Family Code, are amended to read as follows:

- (b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:
- (1) the allegations made against the child;
 - (2) the nature and possible consequences of the proceedings, *including the law relating to the admissibility of the record of a juvenile court adjudication in a criminal proceeding;*
 - (3) the child's privilege against self-incrimination;
 - (4) the child's right to trial and to confrontation of witnesses;
 - (5) the child's right to representation by an attorney if he is not already represented;
- and
- (6) the child's right to trial by jury.
- (c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code. *If the hearing is on a petition that has been approved by the grand jury under Section 53.045 of this code, the jury must consist of 12 persons. Jury verdicts under this title must be unanimous.*

SECTION 9. Section 54.04, Family Code, is amended by amending Subsections (a), (b), (c), and (d) and by adding Subsection (g) to read as follows:

- (a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing *unless the child is in jeopardy of a determinate sentence under Subsection (d)(3) of this section, in which case, the child is entitled to a jury of 12 persons to determine the sentence.*
- (b) At the disposition hearing, the juvenile court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the disposition hearing, the court shall provide the attorney for the child with access to all written matter to be considered ~~[by the court]~~ in disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.
- (c) No disposition may be made under this section unless ~~[the court finds that]~~ the child is in need of rehabilitation or ~~[that]~~ the protection of the public or the child requires that disposition be made. If the court *or jury* does not so find, *the court* ~~[it]~~ shall dismiss the child and enter a final judgment without any disposition.
- (d) If the court *or jury* makes the finding specified in Subsection (c) of this section~~[-it may]:~~
- (1) *the court or jury may, in addition to any order under Section 54.041 of this code, place the child on probation on such reasonable and lawful terms as the court may*

determine for a period not to exceed one year, subject to extensions not to exceed one year each:

- (A) in his own home or in the custody of a relative or other fit person;
- (B) in a suitable foster home; or
- (C) in a suitable public or private institution or agency, except the Texas Youth Commission; ~~and~~

~~[(D) the juvenile court, on notice to the child and on hearing, may order the child to make full or partial restitution to the victim of the offense according to the provisions of Subsection (b), Section 54.041, Family Code.]~~

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct *and if the petition was not approved by the grand jury under Section 53.045 of this code*, the court may commit the child to the Texas Youth Commission *without a determinate sentence; or*

(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) of this code and if the petition was approved by the grand jury under Section 53.045 of this code, the court or jury may sentence the child to commitment in the Texas Youth Commission with a transfer to the Texas Department of Corrections for any term of years not to exceed 30 years.

(g) If the court orders a disposition under Subsection (d)(3) of this section and there is an affirmative finding that the defendant used or exhibited a deadly weapon during the commission of the conduct or during immediate flight from commission of the conduct, the court shall enter the finding in the order. If there is an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in the order.

SECTION 10. Sections 54.05(f) and (h), Family Code, are amended to read as follows:

(f) A disposition based on a finding that the child engaged in delinquent conduct may be modified so as to commit the child to the Texas Youth Commission if the court after a hearing to modify disposition finds beyond a reasonable doubt that the child violated a reasonable and lawful order of the court. *A disposition based on a finding that the child engaged in a delinquent conduct that included a violation of a penal law listed in Section 53.045(a) of this code may be modified to commit the child to the Texas Youth Commission with a transfer to the Texas Department of Corrections for a definite term not to exceed 30 years if the original petition was approved by the grand jury under Section 53.045 of this code and if after a hearing to modify the disposition the court or jury finds that the child violated a reasonable and lawful order of the court.*

(h) A hearing shall be held prior to commitment to the Texas Youth Commission as a modified disposition. In other disposition modifications, the child and his parent, guardian, guardian ad litem, or attorney may waive hearing in accordance with Section 51.09 of this code. *A child in jeopardy of a sentence for a determinate term is entitled to a jury of 12 persons on the issues of the violation of the court's orders and the sentence.*

SECTION 11. Section 54.08, Family Code, is amended to read as follows:

Sec. 54.08. PUBLIC ACCESS TO COURT HEARINGS. *Except for any hearing on a petition that has been approved by the grand jury under Section 53.045 of this code and in which the child is subject to a determinate sentence, the [The] general public may be excluded from hearings under this title. The court in its discretion may admit such members of the general public as it deems proper.*

SECTION 12. Section 54.10, Family Code, is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) *Except as provided by Subsection (c) of this section, the [The] hearing provided in Sections 54.01, 54.03, and 54.04 of Title 3 of this code and the hearing provided in Article IV, Article V, and Article VI of the Uniform Interstate Compact on Juveniles (Chapter 25 of this code) may be held by a referee appointed in accordance with Section 51.04(g) of this code provided:*

(1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code; or

(2) the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge.

(c) *The hearings provided by Sections 54.03 and 54.04 of this code may not be held before a referee if the grand jury has approved of the petition and the child is subject to a determinate sentence.*

SECTION 13. Chapter 54, Family Code, is amended by adding Section 54.11 to read as follows:

Sec. 54.11. RELEASE HEARING. (a) On receipt of a notice required under Section 61.079(a), Human Resources Code, of the transfer to the Texas Department of Corrections of a person committed to the Texas Youth Commission under a determinate sentence, or on receipt of a request by the commission under Section 61.081(f), Human Resources Code, for approval of the release under supervision of a person committed to the commission under a determinate sentence, the court shall set a time and place for a hearing on the release of the person.

(b) *The court shall notify the following of the time and place of the hearing:*

(1) *the person to be transferred or released under supervision;*

(2) *the parents of the person;*

(3) *any legal custodian of the person, including the Texas Youth Commission;*

(4) *the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings;*

(5) *the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family; and*

(6) *any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.*

(c) *Except for the person to be transferred or released under supervision and the prosecuting attorney, the failure to notify a person listed in Subsection (b) of this section does not affect the validity of a release hearing or a release determination if the record in the case reflects that the whereabouts of the persons who did not receive notice were unknown to the court and a reasonable effort was made by the court to locate those persons.*

(d) *At a release hearing the court may consider written reports from probation officers, professional court employees, or professional consultants, in addition to the testimony of witnesses. At least one day before the release hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court.*

(e) *At any release hearing the person to be transferred or released under supervision is entitled to an attorney, to examine all witnesses against him, to present evidence and oral argument, and to previous examination of all reports on and evaluations and examinations of or relating to him that may be used in the hearing.*

(f) *A release hearing is open to the public unless the person to be transferred or released under supervision waives a public hearing with the consent of his attorney and the court.*

(g) *A release hearing must be recorded by a court reporter or by audio or video tape recording, and the record of the hearing must be retained by the court for at least two years after the date of the final determination on the release of the person by the court.*

(h) *The release hearing on a person who is the subject of a notice of transfer must be held before 30 days before the person's 18th birthday.*

(i) *On conclusion of the hearing, the court may order:*

(1) *the release of the person under the supervision of the Texas Youth Commission; or*

(2) *if the person is the subject of a notice of transfer, the transfer of the person to the custody of the Texas Department of Corrections for the completion of the person's determinate sentence.*

(j) *In making a determination under this section, the court may consider the experiences and character of the person before and after commitment to the youth commission, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the youth commission and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.*

SECTION 14. Section 56.01(c), Family Code, is amended to read as follows:

(c) An appeal may be taken:

(1) by or on behalf of a [the] child from:

(A) [(1)] an order entered under Section 54.02 of this code respecting transfer of the child to criminal court for prosecution as an adult;

(B) [(2)] an order entered under Section 54.03 of this code with regard to delinquent conduct or conduct indicating a need for supervision;

(C) [(3)] an order entered under Section 54.04 of this code disposing of the case;

(D) [(4)] an order entered under Section 54.05 of this code respecting modification of a previous juvenile court disposition; or

(E) [(5)] an order entered under Chapter 55 of this code committing a child to a facility for the mentally ill or mentally retarded; or

(2) *by a person from an order entered under Section 54.11(i)(2) of this code transferring the person to the custody of the Texas Department of Corrections.*

SECTION 15. Section 61.081, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) *If a child under the age of 18 is committed to the commission under a determinate sentence under Section 54.04(d)(3) or Section 54.05(f), Family Code, the commission may not release the child under supervision without approval of the juvenile court that entered the order of commitment. The commission may request the approval of the court under this section at any time.*

SECTION 16. Section 61.084, Human Resources Code, is amended to read as follows:

Sec. 61.084. TERMINATION OF CONTROL. (a) *Except as provided by Subsection (b) of this section, if a person is committed to the commission under a determinate sentence under Section 54.04(d)(3) or Section 54.05(f), Family Code, the commission may not discharge the person from its custody before the person's 18th birthday without the approval of the juvenile court that entered the order of commitment, unless the person has completed the sentence.*

(b) *The commission shall transfer to the Texas Department of Corrections a person who is 18 years of age and who was committed to the commission under a determinate sentence issued under Section 54.04(d)(3) or Section 54.05(f), Family Code, if:*

(1) *the sentence has not been completed by the person before the 18th birthday of the person;*

(2) *the person has not been finally released by the commission with the approval of the juvenile court that entered the order of commitment; and*

(3) *the person has not been the subject of an order by the juvenile court that entered the order of commitment requiring the commission to release the person.*

(c) *The commission shall discharge from its custody a person not already discharged or transferred on his or her 21st birthday.*

SECTION 17. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Section 61.079 to read as follows:

Sec. 61.079. REFERRAL FOR REVIEW. (a) During the sixth month before the month in which a person committed to the commission under a determinate sentence becomes 18 years old, the commission shall send to the juvenile court that entered the order of commitment a notice of the person's transfer to the Texas Department of Corrections if:

(1) the person will not have completed the sentence before the person's 18th birthday; and

(2) the person has not been finally released by the commission with the approval of the juvenile court that entered the order of commitment.

(b) The commission shall cooperate with the court on any proceeding on the release of a person.

SECTION 18. Title 108, Revised Statutes, is amended by adding Article 6166z12 to read as follows:

Art. 6166z12. TRANSFERS FROM TEXAS YOUTH COMMISSION. (a) The Texas Department of Corrections shall accept persons 18 years old or older transferred to the department from the Texas Youth Commission.

(b) A person transferred to the department from the Texas Youth Commission is entitled to credit on his sentence for the time served in the custody of the youth commission.

(c) All laws relating to good conduct time and eligibility for release on parole or mandatory supervision apply to a person transferred to the department by the youth commission as if the time the person was detained in a detention facility and the time the person served in the custody of the youth commission was time served in the custody of the department.

SECTION 19. Subsection (a), Section 3, Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may, as permitted by the Rules of Evidence, be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged. Additionally, notwithstanding Rule 609(d), Texas Rules of Criminal Evidence, evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of felony unless:

(1) the adjudication is based on conduct committed more than five years before the commission of the offense for which the person is being tried; and

(2) in the five years preceding the date of the commission of the offense for which the person is being tried, the person did not engage in conduct for which the person has been adjudicated as a delinquent child or a child in need of supervision and did not commit an offense for which the person has been convicted.

SECTION 20. (a) This Act applies only to offenses and conduct occurring on or after its effective date. For the purposes of this section, an offense or delinquent conduct based on an offense occurs on or after the effective date if all the elements of the offense occur on or after the effective date.

(b) An offense or conduct that occurs before the effective date of this Act shall be prosecuted under the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose only.

SECTION 21. This Act takes effect September 1, 1987.

SECTION 22. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 15, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 682 on May 27, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 22, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.