

CHAPTER 140

S.B. No. 218

AN ACT

relating to the transfer of a child from the juvenile court to a court having criminal jurisdiction and to examining trials in criminal cases.

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

SECTION 1. Subsection (a), Section 54.02, Family Code, is amended to read as follows:

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense; and
- (3) after full investigation and hearing the juvenile court determines that *there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.*

SECTION 2. Subsection (h), Section 54.02, Family Code, is amended to read as follows:

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and *shall* transfer the child to the appropriate court for criminal proceedings. On transfer of the child for criminal proceedings, he shall be dealt with as an adult and in accordance with the [Texas] Code of Criminal Procedure[, 1965]. The transfer of custody is an arrest. *The court to which the child is transferred shall determine if good cause exists for an examining trial. If there is no good cause for an examining trial, the court shall refer the case to the grand jury. If there is good cause for an examining trial, the court shall conduct an examining trial and [The examining trial shall be conducted by the court to which the case was transferred, which]* may remand the child to the jurisdiction of the juvenile court.

SECTION 3. Subsection (j), Section 54.02, Family Code, is amended to read as follows:

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

- (1) the person is 18 years of age or older;
- (2) the person was 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony;
- (3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; ~~and~~
- (4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:
 - (A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or
 - (B) the person could not be found; *and*
- (5) *the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.*

SECTION 4. Article 16.01, Code of Criminal Procedure, is amended to read as follows:

Art. 16.01. EXAMINING TRIAL. When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such

examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if a bailable case. *If the accused has been transferred for criminal prosecution after a hearing under Section 54.02, Family Code, the accused may be granted an examining trial at the discretion of the court.*

SECTION 5. This Act applies to a transfer to a district court under Section 54.02, Family Code, that occurs on or after the effective date of this Act. If a transfer to a district court occurred before the effective date of this Act, the provisions of Title 3, Family Code, and of Article 16.01, Code of Criminal Procedure, as they existed on the date of the transfer apply to the transfer and to the examining trial of the child transferred, and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. 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 the Senate on March 9, 1987, by a viva-voce vote. Passed the House on May 8, 1987, by a non-record vote.

Approved May 21, 1987.

Effective Sept. 1, 1987.