

## **BILL ANALYSIS**

C.S.H.B. 2616  
By: Dutton  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A workgroup of experienced juvenile justice practitioners recently convened a series of meetings to conduct a comprehensive examination aimed at identifying statutory revisions that would facilitate juvenile justice proceedings and the administration of the juvenile justice system at the state and county levels. C.S.H.B. 2616 seeks to implement selected recommendations of the workgroup for clarification of the law and to make substantive amendments to the law in order to increase the efficiency of the juvenile justice system for Texas juveniles.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2616 amends the Code of Criminal Procedure to limit the required conditions of a child's detention under the juvenile justice code that are applicable to the detention of a person under the age of 17 who has been certified to stand trial as an adult and who is transferred to an adult facility to the requirement that the person be separated by sight and sound from adults detained in the same building.

C.S.H.B. 2616 amends the Family Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to raise from 18 years of age to 19 years of age the maximum age at which a person who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age is considered a child for purposes of the juvenile justice code. The bill redefines "nonsecure correctional facility" for those purposes as any public or private residential facility, other than a secure detention or correctional facility, that only accepts juveniles who are on probation, who have been detained in compliance with applicable requirements, or who have been placed at the facility as a condition of court-ordered deferred adjudication or prosecution.

C.S.H.B. 2616 makes the prohibition against contact between a child detained in a building that contains a jail or lockup and certain staff members who have contact with adults detained in the same building inapplicable to a person under 17 years of age who has been certified to stand trial as an adult and transferred to a criminal court for prosecution and who is detained in an adult jail or lockup pending trial. The bill restricts the authority of a juvenile court to order that a witness who is at least 17 years of age be detained without bond in an appropriate county facility for the detention of adults accused of criminal offenses to a witness who is in the custody of the Texas

Juvenile Justice Department (TJJD) or certain post-adjudication secure correctional facilities. The bill limits the amount of time that a witness may be so detained in a county facility to a period of 30 days, which may be extended in 30-day increments. The bill requires a witness detained in a certified juvenile detention facility or in a county facility to be returned to the placement from which the witness was released on the expiration of the 30-day period if that period is not extended and removes a provision authorizing a witness to be returned to the witness's original placement.

C.S.H.B. 2616 expands the delinquent conduct for which a juvenile is eligible for a determinate sentence to include conduct that constitutes the first degree felony offense of burglary if the actor engaged in the conduct with intent to commit indecency with a child, sexual assault, aggravated sexual assault, or aggravated assault. The bill removes a statutory provision authorizing a juvenile court, in a disposition hearing, to place a child in a suitable nonsecure correctional facility that meets applicable requirements and instead authorizes a juvenile court or jury, in a disposition hearing, to place a child on probation outside the child's home in a suitable public or private nonsecure correctional facility that meets the applicable requirements, other than a nonsecure facility operated by TJJD.

C.S.H.B. 2616 limits the prohibition against a juvenile court ordering the records of a person who has received a determinate sentence to be sealed to the records of a person who has received a determinate sentence and has been transferred to a district court for probation purposes or transferred to the Texas Department of Criminal Justice. The bill establishes that the limitation on the destruction of the physical records and files of a juvenile case based on the age of the respondent in the case applies to the destruction of physical records and files in a juvenile case, without regard to whether the physical records or files were created before, on, or after September 1, 2001. The bill removes the requirement that a juvenile court, on certification by the Department of Public Safety (DPS) to the applicable juvenile probation department that records relating to a person's juvenile case are subject to automatic restriction of access, order that records relating to the case maintained by specified entities are subject to such a restriction and that the juvenile probation department make a reasonable effort to notify the person who is the subject of the records. The bill instead requires the applicable juvenile probation department, on receipt of such a certification from DPS, to notify all appropriate entities that the records relating to the case maintained by the entities are subject to that restriction and to make a reasonable effort to notify the person who is the subject of the records. The bill clarifies the manner in which military personnel are authorized to access juvenile records subject to automatic restriction. The bill's provisions relating to juvenile justice records apply to any records or files relating to any offense committed or conduct that occurred before, on, or after the bill's effective date.

C.S.H.B. 2616 changes the exception to the requirement that the juvenile court to which a juvenile court order applicable to a parent or other eligible person is transferred require the parent or other eligible person to appear from an exception based on a waiver of the permanent supervision hearing of a child subject to juvenile probation to an exception based on a waiver of the right to appear made by the parent or other eligible person in writing. The bill defines "child," for purposes of an investigation conducted by TJJD regarding a report of child abuse, neglect, or exploitation in a TJJD facility, as an individual who is 10 years of age or older and younger than 19 years of age and who is committed to TJJD. The bill defines "child," for purposes of an investigation of a report of child abuse, neglect, or exploitation in a juvenile justice program or facility, as a person who is 10 years of age or older and younger than 19 years of age and who is under the jurisdiction of a juvenile court.

C.S.H.B. 2616 amends the Human Resources Code to require a juvenile board or local juvenile probation department and the Department of Family and Protective Services (DFPS) to plan and coordinate services for a child who is in DFPS conservatorship and subject to a juvenile justice proceeding. The bill raises from 18 years of age to 19 years of age the maximum age at which an individual under the jurisdiction of a juvenile court is considered to be a child for purposes of

statutory provisions governing juvenile justice services and facilities.

C.S.H.B. 2616 repeals Section 58.002(b), Family Code, relating to the certification that certain photographs and fingerprints of children have been destroyed as required.

**EFFECTIVE DATE**

September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2616 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate differences relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Article 4.19(a), Code of Criminal Procedure, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Sections 51.02(2) and (8-a), Family Code, are amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 51.12, Family Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Sections 52.0151(b) and (c), Family Code, are amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 53.045(a), Family Code, is amended.	SECTION 5. Same as introduced version.
SECTION 6. Section 54.04(d), Family Code, is amended.	SECTION 6. Same as introduced version.
SECTION 7. Section 58.003(b), Family Code, is amended.	SECTION 7. Same as introduced version.
SECTION 8. Section 58.0071, Family Code, is amended.	SECTION 8. Same as introduced version.
SECTION 9. Section 58.204(b), Family Code, as amended by Chapters 871 (H.B. 694) and 1299 (H.B. 2862, Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended.	SECTION 9. Same as introduced version.
SECTION 10. Section 58.207, Family Code, is amended to read as follows: Sec. 58.207. <u>NOTICE OF [JUVENILE COURT ORDERS ON]</u> CERTIFICATION. (a) On <u>receipt of a</u> certification of records in a case under Section 58.203, the juvenile	SECTION 10. Section 58.207, Family Code, is amended to read as follows: Sec. 58.207. <u>NOTICE OF [JUVENILE COURT ORDERS ON]</u> CERTIFICATION. (a) On <u>receipt of a</u> certification of records in a case under Section 58.203, the juvenile

probation department [court] shall notify all appropriate entities [order:

~~(1)~~ that the following records relating to the case may be accessed only as provided by Section 58.204(b):

~~(1)~~ ~~(A)~~ if the respondent was committed to the Texas Juvenile Justice Department, records maintained by the department;

~~(2)~~ ~~(B)~~ records maintained by the juvenile probation department;

~~(3)~~ ~~(C)~~ records maintained by the clerk of the court;

~~(4)~~ ~~(D)~~ records maintained by the prosecutor's office; and

~~(5)~~ ~~(E)~~ records maintained by a law enforcement agency. [~~;~~and]

~~(a-1)~~ ~~The~~ ~~(2)~~ ~~the~~ juvenile probation department shall ~~[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, but only if the person has requested the notification in writing and has provided the juvenile probation department with a current address.

(b) Except as provided by Subsection (c), on receipt of a notice [~~an order~~] under Subsection (a) [~~(a)(1)~~], the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

~~[(c) Notwithstanding Subsection (b) of this section and Section 58.206(b), with the written permission of the subject of the records, an agency under Subsection (a)(1) may allow military personnel, including a recruiter, of this state or the United States to access juvenile records in the same manner authorized by law for records to which access has not been restricted under this section.]~~

(c) Subsection (b) does not apply if:

(1) the subject of the records [~~an order issued under Subsection (a)(1)~~] is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department; or

(2) the agency has received notice that the records are not subject to restricted access under Section 58.211.

(d) Notwithstanding Subsection (b) and Section 58.206(b), with the permission of

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~~(1)~~ ~~(A)~~ if the respondent was committed to the Texas Juvenile Justice Department, records maintained by the department;

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~~(5)~~ ~~(E)~~ records maintained by a law enforcement agency. [~~;~~and]

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(b) Except as provided by Subsection (c), on receipt of a notice [~~an order~~] under Subsection (a) [~~(a)(1)~~], the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

~~[(c) Notwithstanding Subsection (b) of this section and Section 58.206(b), with the written permission of the subject of the records, an agency under Subsection (a)(1) may allow military personnel, including a recruiter, of this state or the United States to access juvenile records in the same manner authorized by law for records to which access has not been restricted under this section.]~~

(c) Subsection (b) does not apply if:

(1) the subject of the records [~~an order issued under Subsection (a)(1)~~] is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department; or

(2) the agency has received notice that the records are not subject to restricted access under Section 58.211.

(d) Notwithstanding Subsection (b) and Section 58.206(b), with the permission of

the subject of the records, an agency listed in Subsection (a) [(a)(1)] may permit the state military forces or the United States military forces to have access to juvenile records held by that agency. On receipt of a request from the state military forces or the United States military forces, an agency may provide access to juvenile records held by that agency in the same manner authorized by law for records that have not been restricted under a court order [Subsection (a)].

SECTION 11. Section 61.0031(d), Family Code, is amended.

SECTION 12. Section 261.401, Family Code, is amended.

SECTION 13. Sections 261.405(a), (b), (c), and (e), Family Code, are amended.

SECTION 14. Subchapter A, Chapter 152, Human Resources Code, is amended.

SECTION 15. Section 201.001(a)(2), Human Resources Code, is amended.

SECTION 16. Section 58.002(b), Family Code, is repealed.

SECTION 17. The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act. An offense committed or conduct that occurs before the effective date of this Act is governed by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed or conduct occurs before the effective date of this Act if any element of the offense or conduct occurs before the effective date.

No equivalent provision.

the subject of the records, an agency listed in Subsection (a) [(a)(1)] may permit the state military forces or the United States military forces to have access to juvenile records held by that agency. On receipt of a request from the state military forces or the United States military forces, an agency may provide access to juvenile records held by that agency in the same manner authorized by law for records that have not been restricted under Subsection (a).

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Substantially the same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Section 53.045(a), Family Code, as amended by this Act, applies only to conduct violating a penal law that occurs on or after the effective date of this Act. Conduct violating a penal law that occurs before the effective date of this Act is governed by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, conduct occurs before the effective date of this Act if any element of the conduct occurs before the effective date.

SECTION 18. The changes in law made by the following provisions of the Family Code apply to any records or files relating to any offense committed or conduct that occurred before, on, or after the effective date of this Act:

- (1) Section 58.003(b), as amended by this Act;
- (2) Section 58.0071(g), as added by this

Act;

(3) Section 58.204(b), as amended by Chapters 871 (H.B. 694) and 1299 (H.B. 2862), Acts of the 83rd Legislature, Regular Session, 2013, as reenacted and amended by this Act; and

(4) Section 58.207, as amended by this Act.

SECTION 18. To the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19. This Act takes effect September 1, 2015.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.