

BILL ANALYSIS

Senate Research Center

H.B. 3517
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Jurisprudence
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Engrossed

DIGEST

Juvenile justice practitioners and officials who contributed to the development of the juvenile justice reforms of the previous two legislative sessions met over several months prior to this session to identify problem areas for possible legislation. The main area of concern lies with the procedures relating to children who are mentally ill or mentally retarded. H.B. 3517 includes a number of substantive amendments to statutes governing mentally ill and mentally retarded children in the juvenile justice system including detention practices, the authority of juvenile court referees, release of juvenile information, and the reporting of alleged abuse or neglect in juvenile justice programs. This bill also makes technical modifications.

PURPOSE

As proposed, H.B. 3517 sets forth guidelines for the detention, adjudication, and disposition of certain persons within the justice juvenile system.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Youth Commission in SECTION 25 (Section 261.105, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.095, Family Code, by adding Subsection (d), to authorize a juvenile law referee or master to perform the duties imposed on a magistrate under this section (Admissibility of Statement of a Child) without the approval of the juvenile court if the juvenile board of the county in which a statement of a child is made has authorized a referee or master to perform the duties.

SECTION 2. Amends Section 51.12(h), Family Code, to provide that this section (Place and Conditions of Detention) does not apply to a person under 17, rather than 18, years of age who has been taken into custody after having escaped from a juvenile facility operated or under contract with the Texas Youth Commission (TYC) or who has violated a condition of release under supervision of TYC. Makes a conforming change.

SECTION 3. Amends Section 51.17(c), Family Code, to provide that except as otherwise provided by this title (Juvenile Justice Code), the Texas Rules of Evidence, rather than the Texas Rules of Criminal Evidence, applicable to criminal cases in Chapter 38, Code of Criminal Procedure (Evidence in Criminal Actions), apply in a judicial proceeding under this title.

SECTION 4. Amends Chapter 51, Family Code, by adding Section 51.20, as follows:

Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION. Authorizes a juvenile court at any point in a proceeding under this title to order a child who is referred to the juvenile court to be examined by an appropriate expert if the child is alleged by a petition or is found to have engaged in delinquent conduct or conduct indicating a need for supervision. Requires the probation department to refer the child to the local mental health and mental retardation authority for evaluation and services if there is reason to believe that the child has a mental illness or mental retardation, unless the prosecuting attorney has filed a petition under Section 53.04(Court Petition; Answer).

SECTION 5. Amends Section 52.02(c), Family Code, to make a nonsubstantive change.

SECTION 6. Amends Chapter 53, Family Code, by adding Section 53.035, as follows:

Sec. 53.035. GRAND JURY REFERRAL. Authorizes a prosecuting attorney, before filing a petition under Section 53.04, to refer an offense to a grand jury in the county in which the offense is alleged to have been committed. Authorizes the grand jury referral if the preliminary investigation required results in a determination that further proceedings are authorized and warranted. Provides that the grand jury has the same jurisdiction and powers to investigate an offense under this section as it has to investigate other criminal activity. Prohibits the prosecuting attorney from filing a petition if the grand jury votes to take no action, unless the same or a successor grand jury approves the filing of a petition. Authorizes the prosecuting attorney to file the petition on the approval of the prosecution of an offense referred to the grand jury. Specifies that the grand jury approval of the prosecution does not constitute approval of a petition by a grand jury.

SECTION 7. Amends Section 54.01, Family Code, by adding Subsection (p), to require a court to order a child to be released from detention if the child has not been released under Section 53.02 (Release from Detention) or this section (Detention Hearing) and a petition has not been filed. Sets forth the date by which the court must order the child released.

SECTION 8. Amends Section 54.02, Family Code, by amending Subsections (h) and (j) and adding Subsections (o)-(r), to require a juvenile court to cause the results of a diagnostic study of the circumstances of a person, including psychological information, to be transferred to the appropriate criminal prosecutor if the juvenile court waives jurisdiction. Authorizes a juvenile court to waive its exclusive original jurisdiction and transfer a person to the appropriate district or criminal district court for criminal proceedings if the person was between the ages of 10 and 17 at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code (Murder). Redesignates Paragraph B to C. Makes conforming and nonsubstantive changes. Requires a juvenile court to hold a detention hearing in the same manner as provided by Section 54.01 on the filing of a discretionary transfer petition or a motion concerning a respondent who has been taken into custody for possible discretionary transfer proceedings under Subsection (j), with an exception. Requires the court to order the release of the respondent unless it finds that the respondent is likely to abscond or be removed from the court's jurisdiction, that the respondent may be dangerous to himself or herself or may be a danger to public safety, or that the respondent has previously been found to be a delinquent child and is likely to commit an offense if released. Requires a juvenile court to order a respondent to be detained in an appropriate facility if the juvenile court does not order the respondent released under Subsection (o). Provides that the detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, with an exception. Requires the person to be kept separately from children detained in the same facility to the extent practicable. Requires the county sheriff to take custody of a respondent for detention in a county facility under the order of the juvenile court. Requires the juvenile court to set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

SECTION 9. Amends Sections 54.03(d) and (f), Family Code, to authorize a child to be adjudicated as having engaged in conduct constituting a lesser included offense as provided by Articles 37.08 and 37.09, Code of Criminal Procedure (regarding a lesser included offense). Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 54.04, Family Code, by amending Subsection (l) and adding Subsection (q), to authorize a court to place a child on probation under Subsection (d)(1), rather than of this section, for any period, except as provided by Subsection (q). Sets forth provisions and requirements regarding children sentenced to commitment in TYC under Subsection (d)(3). Makes conforming changes.

SECTION 11. Amends Section 54.05, Family Code, by amending Subsections (f) - (h) and adding Subsection (j), to authorize a disposition based on a finding that a child engaged in delinquent conduct to be modified, except as provided by Subsection (j). Authorizes that such a disposition to be modified after a hearing to modify the disposition of the court, rather than jury, finds that the child violated a lawful order of the court. Authorizes the court to modify the disposition to commit the child to the TYC under Section 54.04(d)(3) for a term that does not exceed the original sentence assessed by the court or jury, if the court determines that the child violated a lawful condition of probation ordered under Section 54.04(q).

SECTION 12. Amends Chapter 54, Family Code, by adding Section 54.051, as follows:

Sec. 54.051. TRANSFER OF DETERMINATE SENTENCE PROBATION TO APPROPRIATE DISTRICT COURT. Requires a juvenile court, on motion of the state concerning a child who is placed on probation under Section 54.04(q) for a period that will continue after the child's 18th birthday, to hold a hearing to determine whether to transfer the child to an appropriate district court or discharge the child from the sentence of probation. Sets forth procedures regarding action required to be taken following the making of such a determination. Authorizes a juvenile court to transfer a child to an appropriate district court without a showing that the child violated a condition of probation ordered under Section 54.04(q).

SECTION 13. Amends Section 54.10(a), Family Code, to authorize a hearing under Section 54.03 (Adjudication Hearing), 54.04 (Disposition Hearing), or 54.05 (Hearing to Modify Disposition), including a jury trial, a hearing under chapter 55 (Proceedings Concerning Children with Mental Illness or Mental Retardation), or a hearing under Chapter 60 (Uniform Interstate Compact on Juveniles) to be held by an appointed referee or master provided that the parties have been informed by the referee or master that they are entitled to have the hearing before the juvenile court judge and provided that no party objects to the holding of the hearing before the referee or master. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Chapter 55, Family Code, as follows:

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS OR MENTAL RETARDATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.01. New title: MEANING OF "HAVING A MENTAL ILLNESS." Provides that, for the purposes of this chapter, a child who is described as having a mental illness means a child who suffers from mental illness as defined by Section 571.003, Health and Safety Code (Definitions). Deletes existing text regarding a physical or mental examination.

Sec. 55.02. MENTAL HEALTH AND MENTAL RETARDATION JURISDICTION. Provides that a juvenile court has jurisdiction of proceedings under Subtitle C (Texas Mental Health Code) or Subtitle D (Persons with Mental Retardation Act), Title 7, Health and Safety Code, for the purposes of initiating proceedings to order mental health or mental retardation services for a child for commitment of a child.

Sec. 55.03. STANDARDS OF CARE. Requires a child to be cared for as provided by Subtitle C, Title 7, Health and Safety Code (Texas Mental Health Code) if the child is ordered to have inpatient mental health services, except as provided by this chapter. Requires a child to be care for as provided by Subtitle D, Title 7, Health and Safety Code, if the child is committed by a court to a residential care facility for mental retardation, except as provided by this chapter.

SUBCHAPTER B. CHILD WITH MENTAL ILLNESS

Sec. 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION. Requires a juvenile court, on a motion by a party, to determine whether probable cause exists to believe that a child has a mental illness if the child is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision. Authorizes the court to consider the motion, supporting documents, professional statements of counsel, witness testimony, and to make its own observation of the child in making its determination. Requires a court to temporarily stay the juvenile court proceedings and immediately order a child to be examined if the court determines that probable cause exists to believe that the child has a mental illness. Provides that the information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets specific criteria. Establishes that the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings if ordered by the court. Requires a court, after obtaining all relevant information, to proceed under Section 55.12 if the court determines that evidence exists to support a finding that the child has a mental illness and meets the commitment criteria. Requires the court to dissolve the stay and continue the juvenile court proceedings if the court does not find such evidence.

Sec. 55.12. New heading: INITIATION OF COMMITMENT PROCEEDINGS. Requires the court to initiate proceedings as provided by Section 55.13 for the purpose of ordering mental

health services or to refer the child's case to the appropriate court for the initiation of proceedings in that court for the commitment of the child if the juvenile court determines that evidence exists to support a finding that a child has a mental illness and meets the commitment criteria. Makes conforming changes.

Sec. 55.13. COMMITMENT OF PROCEEDINGS IN JUVENILE COURT. Authorizes a prosecuting attorney or a child's attorney to file an application for court-ordered mental health services if the juvenile court initiates proceedings for mental health services. Requires the juvenile court to set a date for a hearing, provide notice, and conduct the hearing. Establishes that the party who files the application bears the burden of proof. Requires the juvenile court to appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness. Requires the juvenile court, after conducting a hearing on application, to order temporary or extended mental health services for the child, depending on which criteria are satisfied.

Sec. 55.14. REFERRAL FOR COMMITMENT PROCEEDINGS. Requires a court to order the probation department to send copies of any information in the possession of the department and relevant to the issue of a child's mental illness to the clerk of the court to which the case is referred and to the appropriate county attorney or, if a county attorney is unavailable, to the appropriate district attorney, if the juvenile court issues places the child in the facility or center. Requires the public or private facility or outpatient center to submit a report within a specific time frame to the court that describes the treatment the child receives and states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed. Requires the court to provide a copy of the report to the prosecuting attorney and the child's attorney

Sec. 55.15. STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES. Requires the administrator of a mental health facility to notify the juvenile court, in writing by certified mail return receipt requested, that referred the case to a court that ordered the mental health services of the intent to discharge the child at least 10 days prior to discharge. Makes conforming and nonsubstantive changes.

Sec. 55.16. ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS. Requires a court to which a child's case is referred to immediately notify the referring juvenile court in writing of the court's order for mental health services. Requires the proceedings pending in juvenile court to be stayed if the juvenile court orders temporary or extended mental health services for the child or if the juvenile court receives notice of the order for mental health services. Redesignates Subsection (d) to (b).

Sec. 55.17. MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY. Requires a court to which a juvenile case is referred to immediately notify in writing the referring juvenile court of the court's decision not to order inpatient mental health services. Requires the juvenile court to dissolve the stay and continue the proceedings if the juvenile court receives such notice or does not itself order mental health services for the child.

Sec. 55.18. DISCHARGE FROM MENTAL HEALTH FACILITY BEFORE REACHING 18 YEARS OF AGE. Creates section from existing text. Makes a conforming change.

Sec. 55.19. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY. Requires a juvenile court to transfer all pending proceedings to a criminal court on the 18th birthday of a child for whom mental health services have been ordered if no adjudication hearing has been conducted concerning the child's alleged delinquent conduct that included a violation of penal law listed in Section 53.045 (Violent or Habitual Offenders) and if the child is not discharged from the residential care facility before reaching that age. Makes conforming changes.

SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

Sec. 55.31. New heading: UNFITNESS TO PROCEED DETERMINATION; EXAMINATION. Makes conforming changes.

Sec. 55.32. HEARING ON ISSUE OF FITNESS TO PROCEED. Requires a court to determine

the issue of whether a child is unfit to proceed due to a finding of mental illness or mental retardation unless the child or the child's attorney demands a jury before the 10th day before the date of the hearing. Requires the court to stay juvenile proceedings for as long as incapacity endures and to proceed under Section 55.33 if the court or jury determined that the child is unfit to proceed. Makes conforming changes.

Sec. 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED. Requires the court to order the child placed with the Texas Department of Mental Health and Mental Retardation (MHMR) for a period of not more than 90 days, which order may not specify a shorter period, or with a private psychiatric inpatient facility for the same period on application by the child's parent, guardian, or guardian ad litem if the juvenile court or jury determines under Section 55.32 that the child is unfit to proceed with the juvenile court proceedings for delinquent conduct because of mental illness or mental retardation. Requires the court to order the child to receive treatment for mental illness on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period, if the court determines that the child may be treated in an alternative setting. Authorizes the state or a political subdivision of the state to be ordered to pay the costs for the child's placement in a private psychiatric facility.

Sec. 55.34. TRANSPORTATION TO AND FROM FACILITY. Requires the court to order the probation department or sheriff's department to transport a child to a designated psychiatric facility if a court so places the child. Requires the court to order the probation department or sheriff's department to transport the child from the facility to the court on receipt of a report from the facility. Requires an authorized representative of the facility to transport the child to from the facility to the court if the child is not transported before the 11th day after the court's order. Requires the county in which the juvenile court is located to reimburse the facility for the costs incurred in transporting the child.

Sec. 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT. REQUIRES a court to order the probation department to send copies of any information in the possession of the department and relevant to the issue of a child's mental health to the public or private facility or outpatient center, as appropriate, if the juvenile court issues places the child in the facility or center. Requires the public or private facility or outpatient center to submit a report within a specific time frame to the court that describes the treatment the child receives and states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed. Requires the court to provide a copy of the report to the prosecuting attorney and the child's attorney.

Sec. 55.36. REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION. Requires a juvenile court to find that the child is fit to proceed if the report states that the child is fit to proceed, unless the child's attorney objects within a specific time frame. Requires the juvenile court, on an objection by the child's attorney, to promptly hold a hearing within a specific time frame to determine whether the child is fit to proceed. Requires the court to determine the issue of the child's fitness to proceed unless the child or the child's attorney demands a jury in writing within a specific time frame. Requires the court to dissolve the stay and continue the juvenile court proceedings as though question had never been raised if the court or jury finds that the child is fit to proceed. Requires the court to proceed under Section 55.37 if the child is found unfit to proceed.

Sec. 55.37. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS. Requires the director of the public or private facility or outpatient center, as appropriate, to submit to the court two certificates of medical examination for mental illness if the report issued by the facility or center states that a child is unfit to proceed and that the child meets the commitment criteria for civil commitment. Requires the court, on receipt of the certificates, to initiate proceedings under Section 55.38 in the juvenile court for commitment of the child or to refer the child's case as provided by Section 55.39 to the appropriate court for commitment of the child.

Sec. 55.38. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS. Authorizes a prosecuting attorney to file with a juvenile court an application for court-ordered mental health services if the juvenile court initiates commitment proceedings. Requires the juvenile court to set a date for hearing and provide notice as provided by Sections 574.005 (Setting

on Application) and 574.006 (Notice), Health and Safety Code. Requires the juvenile court to conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code (Proceedings for Court-Ordered Mental health Services). Requires the juvenile court, after conducting the hearing, to order temporary or extended mental health services according to specific criteria.

Sec. 55.39. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS. Requires a juvenile court to send to the clerk of the court to which a case is referred for the initiation of commitment proceedings and to the appropriate county attorney or, if a county attorney is unavailable, to the appropriate district attorney all papers relating the child's unfitness to proceed. Requires the juvenile court to order the child released from detention, order the child detained in an appropriate place other than a juvenile detention facility, or, if another place is not available, order the child to remain in the juvenile detention facility subject to further court orders. Provides that the papers sent relating to the child's unfitness to proceed constitute an application for mental health services.

Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL RETARDATION. Requires the director of the residential care facility to submit to a court an affidavit stating the conclusions reached as a result of the diagnosis of a child who, according to the report filed by the director, is unfit to proceed as a result of mental retardation and meets the commitment criteria for civil commitment. Requires the court, on receipt of the affidavit, to initiate proceedings under Section 55.41 in the juvenile court for commitment of the child or to refer the child's case to the appropriate court as provided by Section 55.42 for the initiation of proceedings in that court for the commitment of the child.

Sec. 55.41. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION. Authorizes a prosecuting attorney to file an application for placement under Section 593.041 (Application for Placement; Jurisdiction), Health and Safety Code, if a juvenile court initiates commitment proceedings. Requires the juvenile court to set a hearing date, provide notice, and conduct the hearing in accordance with Sections 593.049593.056, Health and Safety Code. Authorizes the juvenile court to order commitment of the child to a residential care facility if specific criteria are satisfied.

Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION. Requires a juvenile court to send all papers relating to the child's mental health to the clerk of the court to which the case is referred for the initiation of commitment proceedings and also to the office of the appropriate county attorney, or if unavailable, to the appropriate district attorney. Requires the court to order the child released from detention, order the child detained in an appropriate place other than a juvenile detention facility, or, if another place is not available, order the child to remain in the juvenile detention facility subject to further court orders. Provides that the papers sent relating to the child's unfitness to proceed constitute an application for mental health services.

Sec. 55.43. RESTORATION HEARING. Authorizes a prosecuting attorney to file with a juvenile court a motion for a restoration hearing concerning a child if the child is found unfit to proceed as a result of mental illness or mental retardation and the child is not ordered to receive inpatient or outpatient mental health services or is discharged from a mental health facility or outpatient center before the child reaches 18 years of age. Requires the court to determine the issue of whether the child is fit to proceed at the restoration hearing, which is conducted without a jury. Provides that the issue of fitness to proceed must be proved by a preponderance of evidence. Requires the court to continue the juvenile court proceedings if the court finds that the child is fit to proceed or to dismiss the motion for restoration if the court finds that the child is unfit to proceed.

Sec. 55.44. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD. Requires a juvenile court to transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care. Requires the transfer if the child is not discharged from the facility before reaching age 18 and if the child is alleged to have engaged in delinquent conduct that included a violation of penal law under Section 53.045 and no adjudication concerning the alleged conduct has been made. Requires a juvenile to send notification to the facility of the transfer of a child. Requires the criminal court to institute

proceedings under Article 46.02, Code of Criminal Procedure (Incompetency to Stand Trial), within a specific time frame. Prohibits the defendant, if found competent to stand trial, from receiving a punishment for the delinquent conduct for a period longer than the maximum sentence the defendant could have received if adjudicated for the conduct while still a child in the juvenile court.

SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

Sec. 55.51. New heading: LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION; EXAMINATION. Makes conforming and nonsubstantive changes.

Sec. 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT. Requires a court, if the court finds that a child is not responsible for the child's delinquent conduct, to order the child placed with MHMR or in a private psychiatric inpatient facility, on special application, for a period of not more than 90 days, which order may not specify a shorter period, if the lack of responsibility is a result of mental illness or mental retardation. Requires the court to order the child to receive treatment on an outpatient basis for the same period if the child's lack of responsibility is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting. Authorizes the state or a political subdivision of the state to be ordered to pay any costs associated with the child's placement in a private facility.

Sec. 55.53. TRANSPORTATION TO AND FROM FACILITY. Requires the court to order the probation department or sheriff's department to transport a child to a designated psychiatric facility if a court so places the child. Requires the court to order the probation department or sheriff's department to transport the child from the facility to the court on receipt of a report from the facility. Requires an authorized representative of the facility to transport the child to from the facility to the court if the child is not transported before the 11th day after the court's order. Requires the county in which the juvenile court is located to reimburse the facility for the costs incurred in transporting the child.

Sec. 55.54. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT. REQUIRES the court to order the probation department to send copies of any information in the possession of the department and relevant to the issue of a child's mental health to the public or private facility or outpatient center, as appropriate, if the juvenile court places the child in the facility or center. Requires the public or private facility or outpatient center to submit a report within a specific time frame to the court that describes the treatment the child receives and states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed. Requires the court to provide a copy of the report to the prosecuting attorney and the child's attorney.

Sec. 55.55. REPORTING THAT CHILD IS NOT MENTALLY ILL OR MENTALLY RETARDED; HEARING ON OBJECTION. Requires a juvenile court to discharge a child if a report submitted under Section 55.54 states that a child does not have a mental illness or mental retardation. Establishes that the child is required to be discharged unless an adjudication hearing was conducted concerning conduct that included a violation of penal law under Section 53.045, a petition was approved by a grand jury, and the prosecuting attorney objects in writing within a specific time frame. Requires the juvenile court, on objection by the prosecuting attorney, to hold a hearing without a jury to determine whether the child has a mental illness or mental retardation and whether the child meets the commitment criteria for civil commitment. Establishes the burden of proof with the state to prove that the child has a mental illness or mental retardation and that the child meets the commitment criteria for civil commitment. Requires the court to discharge the child if the court finds that the child does not meet the criteria or to issue an appropriate commitment order, depending on the finding of the court.

Sec. 55.56. REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS. Requires the director of the public or private facility or outpatient center, as appropriate, to submit to the court two certificates of medical examination for mental illness if the report issued by the facility or center states that a child has a mental illness or mental retardation and meets the commitment criteria for civil commitment. Requires the court,

on receipt of the certificates, to initiate proceedings under Section 55.57 in the juvenile court for commitment of the child or to refer the child's case as provided by Section 55.58 to the appropriate court for commitment of the child.

Sec. 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS. AUTHORIZES a prosecuting attorney to file with a juvenile court an application for court-ordered mental health services if the juvenile court initiates commitment proceedings. Requires the juvenile court to set a date for hearing and provide notice as provided by Sections 574.005 and 574.006, Health and Safety Code. Requires the juvenile court to conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code. Requires the juvenile court, after conducting the hearing, to order temporary or extended mental health services according to specific criteria.

Sec. 55.58. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS. Requires a juvenile court to send to the clerk of the court to which a case is referred for the initiation of commitment proceedings and to the appropriate county attorney or, if unavailable to the appropriate district attorney all papers relating the child's mental illness. Requires the juvenile court to order the child released from detention, order the child detained in an appropriate place other than a juvenile detention facility, or, if another place is not available, order the child to remain in the juvenile detention facility subject to further court orders. Provides that the papers sent relating to the child's unfitness to proceed constitute an application for mental health services.

Sec. 55.59. REPORT THAT CHILD HAS MENTAL RETARDATION; INITIATION OF COMMITMENT PROCEEDINGS. Requires the director of the residential care facility or outpatient center to submit to a court an affidavit stating the conclusions reached as a result of the diagnosis of a child who, according to the report filed by the director, has a mental retardation and meets the commitment criteria for civil commitment. Requires the court, on receipt of the affidavit, to initiate proceedings under Section 55.60 in the juvenile court for commitment of the child or to refer the child's case to the appropriate court as provided by Section 55.61 for the initiation of proceedings in that court for the commitment of the child.

Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION. Authorizes a prosecuting attorney to file an application for placement under Section 593.041, Health and Safety Code, if a juvenile court initiates commitment proceedings. Requires the juvenile court to set a hearing date, provide notice, and conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code. Authorizes the juvenile court to order commitment of the child to a residential care facility if specific criteria are satisfied.

Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION. Requires a juvenile court to send to the clerk of the court to which a case is referred for the initiation of commitment proceedings and to the appropriate county attorney or, if unavailable, to the appropriate district attorney all papers relating the child's mental retardation. Requires the juvenile court to order the child released from detention, order the child detained in an appropriate place other than a juvenile detention facility, or, if another place is not available, order the child to remain in the juvenile detention facility subject to further court orders. Provides that the papers sent relating to the child's unfitness to proceed constitute an application for mental health services.

SECTION 15. Amends Section 56.01(c), Family Code, to make conforming and nonsubstantive changes.

SECTION 16. Amends Section 58.001(c), Family Code, to require, rather than authorize, a law enforcement agency to forward information, including fingerprints, relating to a child who has been taken into custody under Section 52.01 (Taking Into Custody; Issuance of Warning Notice). Authorizes the law enforcement agency to forward the information only if the child is referred to the juvenile court within 10 days after being taken into custody under that section. Makes conforming and nonsubstantive changes.

SECTION 17. Amends Sections 58.002(a), Family Code, to prohibit a child 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 punishable by confinement, except as provided by Chapter 79, Human Resources Code (Missing Children and Missing Persons).

SECTION 18. Amends Section 58.007, Family Code, by adding Subsection (h), authorize a juvenile court to disseminate specific identifying information about a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located.

SECTION 19. Amends Section 58.106(c), Family Code, to authorize the dissemination to the public of identifying information relating to a juvenile, rather than a juvenile offender, who has escaped from a secure detention or correctional facility. Makes conforming changes.

SECTION 20. Amends Section 59.003(a), Family Code, to make conforming changes.

SECTION 21. Amends Section 59.005(a), Family Code, to delete an authorization that a juvenile court, prosecuting attorney, or probation department may place a child at sanction level two on court ordered probation.

SECTION 22. Amends Section 59.014, Family Code, to prohibit a child from bringing an appeal or a postconviction writ of habeas corpus based on the failure or inability of any person to provide a specific service, failure of a court or any person to make a sanction level assignment, or failure of a juvenile court or probation department to report a deviation from the guidelines as required by Section 59.003(e) (regarding deviation from sanction level assignment guidelines).

SECTION 23. Amends Section 232.002, Family Code, to provide that the Texas Juvenile Probation Commission is a licensing authority subject to this chapter (Suspension of License for Failure to Pay Child Support or Comply with Subpoena). Makes conforming changes.

SECTION 24. Amends Section 261.103, Family Code, to authorize a report to be made to TYC instead of another agency if the report is based on information provided by a child while under the supervision of TYC concerning the child's alleged abuse of another child. The other agencies referred to are any local or state law enforcement agency, the Department of Protective and Regulatory Services (DPRS), another state agency connected to the facility in which alleged abuse or neglect occurred, or the agency designated by the court to be responsible for the protection of children.

SECTION 25. Amends Section 261.105, Family Code, by adding Subsection (e), to require TYC, by rule and in conjunction with DPRS, to adopt guidelines for identifying a report made to TYC under Section 261.103(b) that is appropriate to refer to DPRS or a law enforcement agency for investigation. Provides that the guidelines must require TYC to consider the severity and immediacy of the alleged abuse or neglect of the child victim.

SECTION 26. Amends and reenacts Section 261.405, Family Code, as amended by Chapters 162 and 1374, Acts of the 75th Legislature, Regular Session, 1997, as follows:

Sec. 261.405. New heading: INVESTIGATIONS IN JUVENILE JUSTICE PROGRAMS AND FACILITIES. Requires the Texas Juvenile Probation Commission to conduct an investigation if it receives a report of alleged abuse or neglect in any program operated wholly or partly by a local juvenile probation department or a private vendor operating under the authority of a county juvenile board. Requires an investigating agency to have access to certain medical or mental health records as provided by Subchapter D.

SECTION 27. Amends the heading of Article 4.18, Code of Criminal Procedure, as follows:

Art. 4.18. New heading: CLAIM OF UNDERAGE.

SECTION 28. Amends Article 4.18, Code of Criminal Procedure, by adding Subsection (g), to provide that this article (Claim of Underage) does not apply to a claim of a defect or error in a discretionary transfer proceeding in juvenile court. Authorizes a defendant to appeal a defect or error only as provided by Article 44.47 (Appeal of Transfer from Juvenile Court).

SECTION 29. Amends Section 8(c), Article 42.09, Code of Criminal Procedure, to make a conforming change.

SECTION 30. Amends Chapter 25A, Education Code, by adding Section 25.0011, as follows:

Sec. 25.0011. CERTAIN INCARCERATED CHILDREN. Sets forth criteria for a person to be considered to reside in a school district, for the purposes of Section 25.001, Education Code. Authorizes a school district to provide educational services to a person described by Subsection (a) if the school district is fully compensated through the payment of tuition by the operator of the juvenile detention facility or other person having lawful control of the person in an amount equal to the actual cost of educating the person. Defines "juvenile detention facility."

SECTION 31. Amends Section 576.025, Health and Safety Code, to prohibit a person from administering a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless, among other reasons, the patient is receiving court-ordered mental health services authorized by an order issued under Chapter 55, Family Code.

SECTION 32. Amends Section 61.077, Human Resources Code, by adding Subsections (c)-(f), to set forth the effective date of a child's discharge from TYC if the child is discharged as a result of mental illness or mental retardation, depending upon whether the child is receiving court-ordered mental health services.

SECTION 33. Amends Sections 61.0772(b) and (c), Human Resources Code, to make conforming and nonsubstantive changes.

SECTION 34. Amends Section 61.093(b), Human Resources Code, to authorize a child who is 17 years or age or older to be detained in an adult jail facility until the child is returned to the custody of TYC or transported to a commission facility.

SECTION 35. Amends Section 729.001(c), Transportation Code, to provide that an offense under this section (Operation of Motor Vehicle by Minor in Violation of Traffic Laws; Offense) is punishable by the fine or other sanction, other than confinement or imprisonment, authorized by statute for violation of the traffic law that is the basis of prosecution, rather than a Class C misdemeanor.

SECTION 36. Amends Section 729.002(b), Transportation Code, to make conforming changes with respect to this section (Operation of Motor Vehicle by Minor Without License).

SECTION 37. Repealers: Sections 141.0475 (Memorandum of Understanding on Service Delivery for Runaways) and 141.0476 (Memorandum of Understanding on Certain Abused or Neglected Children), Human Resources Code.

SECTION 38. Makes application of this Act prospective except that the change in law made by Sections 13, 15, and 16 of this Act applies to the dissemination or inspection of information on or after the effective date of this Act without regard to whether the information was compiled before, on, or after that date. Provides that the change in the law made by SECTION 8 of this Act applies to discretionary transfer proceedings in which the discretionary transfer petition or motion was filed on after the effective date of this Act.

SECTION 39. Provides that the change in law made by Section 25.0011, Education Code, applies beginning with the 1999 - 2000 year.

SECTION 40. Effective date: September 1, 1999.

SECTION 41. Emergency clause.