

## **BILL ANALYSIS**

Senate Research Center

S.B. 1149  
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Criminal Justice  
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Enrolled

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

The 83rd Legislature enacted S.B. 511, which authorized Travis County to commit its juvenile offenders in a local post-adjudication secure correctional facility, instead of a facility operated by the Texas Juvenile Justice Department (TJJD). Pursuant to this bill and a policy adopted by the Travis County Juvenile Board, the Travis County Juvenile Probation Department (TCJPD) began its local commitment program (LCP) on December 1, 2013. The Travis County LCP allows juvenile offenders to remain closer to home and family, which researchers suggest leads to better outcomes.

During the course of implementing the LCP, TCJPD identified various gaps in the enabling statute. These gaps are making it difficult for TCJPD to manage local youth in the same manner as TJJD. S.B. 1149 seeks to address these gaps, bringing parity between Travis County's LCP and TJJD in various areas including: Internet reporting requirements, discharge provisions, parole revocation, youth transfers from the LCP to the Texas Department of Criminal Justice, and caring for youth with a mental illness or intellectual disability.

Importantly, S.B. 1149 does not revise the sunset date that the legislature included in S.B. 511. Therefore, the legislature will have a chance to thoroughly review Travis County's LCP before deciding if the program should continue beyond 2018.

S.B. 1149 amends current law relating to the commitment of certain juveniles to local post-adjudication secure correctional facilities in certain counties and to the release under supervision of those juveniles.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 51.13(c) and (d), Family Code, as follows:

(c) Prohibits a child from being committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except under certain circumstances, including except after transfer from a post-adjudication secure correctional facility, as that term is defined by Section 54.04011 (Trafficked Persons Program).

(d) Adds a reference to conduct that occurred on or after December 1, 2013, relating to a final felony conviction and a commitment to a post-adjudication secure correctional facility.

SECTION 2. Amends Section 53.045(d), Family Code, to provide that, for the purpose of the transfer of a child to the Texas Department of Criminal Justice (TDCJ) as provided by Section 152.00161(c) or 245.151(c) (relating to the transfer of a person who is the subject of a certain order to TDCJ), Human Resources Code, as applicable, a juvenile court petition approved by a grand jury under this section is an indictment presented by the grand jury.

SECTION 3. Amends Sections 54.11, Family Code, by amending Subsections (a), (b), and (d) and adding Subsection (o), as follows:

(a) Adds a reference to Section 152.0016(j) (authorizing the juvenile board or local juvenile probation department operating or contracting for the operation of the facility to refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to TDCJ for confinement if the child has not completed the sentence and meets certain criteria), Human Resources Code, to existing text in this subsection requiring the court to set a time and place for a hearing on the possible transfer or release of a person, as applicable.

(b) Requires the court to notify certain persons, including the Texas Department of Juvenile Justice (TJJD) or a juvenile board or local juvenile probation department if the child is committed to a post-adjudication secure correctional facility.

(d) Authorizes the court, at a hearing under this section, to consider written reports and supporting documents from probation officers, professional court employees, professional consultants, employees of TJJD, or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses.

(o) Defines "post-adjudication secure correctional facility."

SECTION 4. Amends Section 58.352(a), Family Code, as follows:

(a) Requires that the report posted on the Internet website of the county in which the court is located include:

(1) the total number of children committed by the juvenile court judge to a correctional facility operated by TJJD, rather than the Texas Youth Commission (TYC), or a post-adjudication secure correctional facility as that term is defined by Section 54.04011; and

(2) Makes no change to this subdivision.

SECTION 5. Amends Section 499.053, Government Code, as follows:

Sec. 499.053. New heading: TRANSFERS FROM TEXAS JUVENILE JUSTICE DEPARTMENT OR POST-ADJUDICATION SECURE CORRECTIONAL FACILITY.

(a) Defines "post-adjudication secure correctional facility."

(a-1) Requires TDCJ to accept persons transferred to TDCJ from TJJD under Section 245.151 (Termination of Control), Human Resources Code, or from a post-adjudication secure correctional facility under Section 152.00161, Human Resources Code.

(b) Entitles a person transferred to TDCJ from TJJD or from a post-adjudication secure correctional facility to credit on the person's sentence for the time served in the custody of TJJD or the juvenile board or local juvenile probation department, as applicable.

(c) Provides that all laws relating to good conduct time and eligibility for release on parole or mandatory supervision apply to a person transferred to TDCJ by TJJD or by a juvenile board or local juvenile probation department that operates the post-adjudication secure correctional facility as if the time the person was detained in a detention facility and the time the person served in the custody of TJJD or the juvenile board or local juvenile probation department was time served in the custody of TDCJ.

(d) Requires a person transferred from TJJD or a post-adjudication secure correctional facility for the offense of capital murder to become eligible for parole as provided in Section 508.145(d) (providing that certain offenses are not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years) for an offense listed in Section 3g (Limitation on Judge Ordered Community Supervision), Article 42.12, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made.

SECTION 6. Amends Section 508.003(c), Government Code, to provide that the provisions of this chapter not in conflict with Section 508.156 (Determinate Sentence Parole) apply to parole of a person from TJJD or from a post-adjudication secure correctional facility operated by or under contract with a juvenile board or local juvenile probation department, rather than a person from TYC, under that section.

SECTION 7. Amends Sections 508.156(a), (d), (e), and (f), Government Code, as follows:

(a) Requires a parole panel, before the release of a person who is transferred under certain sections, including Sections 152.0016(g) and 152.00161(e), Human Resources Code, to TDCJ for release on parole, to review the person's records. Authorizes the parole panel to interview the person or any other person the panel considers necessary to determine the conditions of parole.

(d) Provides that the period of parole for a person released on parole under this section is the term for which the person was sentenced less calendar time served at TJJD or in the custody of a juvenile board or local juvenile probation department following a commitment under Section 54.04011(c)(2) (authorizing the juvenile court of a county after a disposition hearing to commit a child who is found to have engaged in delinquent conduct that constitutes a felony to a post-adjudication secure correctional facility with a determinate sentence if certain conditions are met), Family Code, rather than less calendar time served at TYC, and in a juvenile detention facility in connection with the conduct for which the person was adjudicated.

(e) Prohibits a parole panel from recommitting the person to TJJD or to the custody of a juvenile board or local juvenile probation department, rather than to TYC.

(f) Provides that, for purposes of this chapter, a person released from TJJD or the custody of a juvenile board or local juvenile probation department, rather than from TYC, on parole under this section is considered to have been convicted of the offense for which the person has been adjudicated.

SECTION 8. Amends Subchapter A, Chapter 152, Human Resources Code, by adding Section 152.00011, as follows:

Sec. 152.00011. DEFINITION. Defines "post-adjudication secure correctional facility."

SECTION 9. Amends Section 152.0016, Human Resources Code, as added by Chapter 1323 (S.B. 511), Acts of the 83rd Legislature, Regular Session, 2013, by adding Subsections (f-1), (f-2), and (g-1) and amending Subsections (h) and (i), as follows:

(f-1) Requires the juvenile board or local juvenile probation department, after a child has completed the minimum length of stay established under Subsection (f) (requiring a juvenile board or a local juvenile probation department to establish a minimum length of stay for each child committed without a certain determinate sentence), to:

(1) discharge the child from the custody of the juvenile board or local juvenile probation department;

(2) release the child under supervision as provided by Subsection (c)(2) (relating to a policy established by the juvenile board that specifies whether the juvenile board or a local juvenile probation department may operate a program through which a child committed to a post-adjudication secure correctional facility may be released under supervision and place the child as approved by the juvenile board or local juvenile probation department); or

(3) extend the child's length of stay in the custody of the juvenile board or local juvenile probation department.

(f-2) Provides that a child's length of stay may only be extended under Subsection (f-1)(3) on the basis of clear and convincing evidence that:

(1) the child is in need of additional rehabilitation from the juvenile board or local juvenile probation department; and

(2) the post-adjudication secure correctional facility will provide the most suitable environment for that rehabilitation.

(g-1) Authorizes the juvenile board or local juvenile probation department to request the approval of the court under Subsection (g) (relating to the conditions under which the local juvenile probation department may release a child committed to a post-adjudication secure correctional facility under supervision without approval by the juvenile court that entered the order of commitment) at any time.

(h) Changes a reference to Section 245.051(g) to Section 152.00161(b).

(i) Authorizes the juvenile board or local juvenile probation department to resume the care and custody of any child released under supervision at any time before the final discharge of the child in accordance with the rules governing TJJD regarding resumption of care. Provides that Sections 243.051 and 245.051(f) apply only to a child who has been committed to a post-adjudication secure correctional facility under Section 54.04011(c), Family Code, and who has either escaped or violated the conditions of release under supervision. Provides that a hearing examiner who conducts a revocation under this subsection has the same subpoena authority as a hearing officer at TJJD, as provided under Section 203.008 (Authority to Issue Subpoena, Administer Oath, Receive Evidence, and Gather Information).

SECTION 10. Amends Subchapter A, Chapter 152, Human Resources Code, by adding Sections 152.00161, 152.00162, 152.00163, 152.00164, and 152.00165, as follows:

Section 152.00161. TERMINATION OF CONTROL. (a) Prohibits the juvenile board or local juvenile probation department, except as provided by Subsections (b) and (c), if a person is committed to a post-adjudication secure correctional facility under a determinate sentence as provided by Section 54.04011(c)(2), Family Code, from discharging the person from its custody.

(b) Requires the juvenile board or local juvenile probation department to discharge without a court hearing a person committed to the juvenile probation department for a determinate sentence under Section 54.04011(c)(2), Family Code, who has not been transferred to TDCJ under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent in the custody of the juvenile board or local juvenile probation department under the order of commitment equals the period of the sentence.

(c) Requires the juvenile board or local juvenile probation department to transfer to TDCJ a person who is the subject of an order under Section 152.0016(j) (providing that after a child committed to a post-adjudication secure correctional facility with a determinate sentence becomes 16 years of age but before the child becomes 19 years of age, the juvenile board or local juvenile probation

department may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to TDCJ for confinement if the child has not completed the sentence and meets certain criteria) transferring the person to the custody of TDCJ for the completion of the person's sentence.

(d) Requires the juvenile board or local juvenile probation department, except as provided by Subsection (e), to discharge from its custody a person not already discharged on the person's 19th birthday.

(e) Requires the juvenile board or local juvenile probation department to transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04011(c)(2), Family Code, or who has been returned to the juvenile board or local juvenile probation department under Section 54.11(i)(1) (authorizing the court, on conclusion of the hearing on a person who is referred for transfer, to order the return of the person to TJJD or post-adjudication secure correctional facility), Family Code, to the custody of TDCJ on the person's 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

Sec. 152.00162. DETERMINATE SENTENCE PAROLE. (a) Requires the juvenile board or local juvenile probation department, not later than the 90th day before the date the juvenile board or local juvenile probation department transfers a person to the custody of TDCJ for release on parole supervision under Section 152.0016(g) or 152.00161(e), to submit to TDCJ all pertinent information relating to the person, including:

- (1) the juvenile court judgment;
- (2) the circumstances of the person's offense;
- (3) the person's previous social history and juvenile court records;
- (4) the person's physical and mental health record;
- (5) a record of the person's conduct, employment history, and attitude while committed to the department;
- (6) a record of the sentence time served by the person at the juvenile board or local juvenile probation department as a result of a commitment under Section 54.04011(c)(2), Family Code, and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and
- (7) any written comments or information provided by the juvenile board or local juvenile probation department, local officials, family members of the person, victims of the offense, or the general public.

(b) Requires the juvenile board or local juvenile probation department to provide instruction for parole officers of TDCJ relating to juvenile programs provided by the juvenile board or local juvenile probation department. Requires the juvenile boards and local juvenile probation departments and TDCJ to enter into a memorandum of understanding relating to the administration of this subsection.

(c) Requires TDCJ to grant credit for sentence time served by a person in the custody of a juvenile board or local juvenile probation department and in a juvenile detention facility, as recorded by the board or department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from TDCJ.

Sec. 152.00163. CHILD WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) Requires a juvenile board or local juvenile probation department to

accept a child with a mental illness or an intellectual disability who is committed to the custody of the board or department.

(b) Requires the juvenile board or local juvenile probation department, unless a child is committed to the custody of a juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code, to discharge a child with a mental illness or an intellectual disability from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the juvenile board or local juvenile probation department determines that the child is unable to progress in the rehabilitation programs provided by the juvenile board or local juvenile probation department because of the child's mental illness or intellectual disability.

(c) Provides that, if a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 152.00164(b); or

(2) the 30th day after the date the application is filed.

(d) Provides that, if a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge is effective immediately. Requires the juvenile board or local juvenile probation department, if the child is receiving mental health services outside the child's home county, to notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) Provides that, if a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the 30th day after the date that the referral is made under Section 152.00164(c).

(f) Provides that, if a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge is effective immediately.

(g) Provides that, if a child with a mental illness or an intellectual disability is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614 (Texas Correctional Office on Offenders with Medical or Mental Impairments), Health and Safety Code.

Sec. 152.00164. EXAMINATION BEFORE DISCHARGE. (a) Requires a juvenile board or local juvenile probation department to establish a system that identifies children with mental illnesses or intellectual disabilities who are in the custody of the juvenile board or local juvenile probation department.

(b) Requires the juvenile board or local juvenile probation department, before a child who is identified as having a mental illness is discharged from the custody of the juvenile board or local juvenile probation department under Section 152.00163(b), to arrange for a psychiatrist to examine the child. Requires the juvenile board or local juvenile probation department to refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. Requires the juvenile board or local juvenile probation department, for a child requiring inpatient psychiatric treatment, to file a sworn application for court-ordered mental health services, as provided in Subchapter C (Proceedings for Court-Ordered Mental Health Services), Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child has a mental illness and the child meets at least one of the criteria listed in Section 574.034 (Order for Temporary Mental Health Services), Health and Safety Code.

(c) Requires the juvenile probation department, before a child who is identified as having an intellectual disability under Chapter 593 (Admission and Commitment to Mental Retardation Services), Health and Safety Code, is discharged from the custody of a juvenile board or local juvenile probation department under Section 152.00163(b), to refer the child for intellectual disability services if the child is not receiving intellectual disability services.

Sec. 152.00165. TRANSFER OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES FOR MENTAL HEALTH SERVICES. (a) Authorizes a juvenile board or local juvenile probation department to petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code.

(b) Requires that a petition made by a juvenile board or local juvenile probation department be treated as a motion under Section 55.11 (Mental Illness Determination; Examination), Family Code. Requires the juvenile court to proceed in accordance with Subchapter B (Child With Mental Illness), Chapter 55, Family Code.

(c) Requires a juvenile board or local juvenile probation department to cooperate with the juvenile court in any proceeding under this section.

(d) Requires the juvenile court to credit to the term of the child's commitment to a juvenile board or local juvenile probation department any time the child is committed to an inpatient mental health facility.

(e) Prohibits a child committed to an inpatient mental health facility as a result of a petition filed under this section from being released from the facility on a pass or furlough.

(f) Requires the inpatient mental health facility, if the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, to notify the juvenile court that entered the order of commitment committing the child to a juvenile board or local juvenile probation department. Authorizes the juvenile court to transfer the child to the custody of the juvenile board or local juvenile probation department, transfer the child to TDCJ, or release the child under supervision, as appropriate.

SECTION 11. (a) Amends Section 261.101, Human Resources Code, by adding Subsections (a-1) and (f) and amending Subsection (e), as follows:

(a-1) Requires the independent ombudsman to perform the duties required under Subsection (a) with respect to children committed to TJJD and children committed to a post-adjudication secure correctional facility under Section 54.04011, Family Code.

(e) Provides that, notwithstanding any other provision of this chapter, the powers of the office of independent ombudsman (office) are limited to facilities operated and services provided by TJJD under Subtitle C (Secure Facilities) and post-adjudication correctional facilities under Section 152.0016.

(f) Provides that this subsection and Subsections (a-1) and (e) expire December 31, 2018.

(b) Amends Section 261.101, Human Resources Code, effective January 1, 2019, by adding Subsection (e) to provide that, notwithstanding any other provision of this chapter, the powers of the office are limited to facilities operated and services provided by TJJD under Subtitle C.

SECTION 12. Repealer: Section 152.0016(b) (relating to the requirements of a trafficked persons program established under this section), Human Resources Code, as added by Chapter 1323 (S.B. 511), Acts of the 83rd Legislature, Regular Session, 2013.

SECTION 13. Provides that the change in law made by this Act applies to a person committed to or serving a sentence in a post-adjudication secure correctional facility on or after the effective date of this Act, regardless of whether the underlying conduct giving rise to the commitment and sentence occurred before, on, or after that date.

SECTION 14. Effective date: September 1, 2015.