

By: Turner of Harris

H.B. No. 529

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the detention of juveniles pending criminal trial.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 51.13(c), Family Code, is amended to
5 read as follows:

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

9 (1) for temporary detention in a jail or lockup pending
10 juvenile court hearing or disposition under conditions meeting the
11 requirements of Section 51.12;

12 (2) for detention in a jail or lockup pending criminal
13 court trial after transfer for prosecution under Section 54.02, if
14 the criminal court orders the transfer of the child to the jail or
15 lockup under Article 4.19, Code of Criminal Procedure;

16 (3) after conviction of a child transferred
17 ~~[transfer]~~ for prosecution in criminal court under Section 54.02~~[7~~
18 ~~unless the juvenile court orders the detention of the child in a~~
19 ~~certified juvenile detention facility under Section 54.02(h)]~~; or

20 (4) (4) ~~[(3)]~~ after transfer from the Texas Juvenile
21 Justice Department under Section 245.151(c), Human Resources Code.

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

24 (h) If the juvenile court waives jurisdiction, it shall

1 state specifically in the order its reasons for waiver and certify
2 its action, including the written order and findings of the court,
3 and shall transfer the person to the appropriate court for criminal
4 proceedings and cause the results of the diagnostic study of the
5 person ordered under Subsection (d), including psychological
6 information, to be transferred to the appropriate criminal
7 prosecutor. On transfer of the person for criminal proceedings,
8 the person shall be dealt with as an adult and in accordance with
9 the Code of Criminal Procedure, except that ~~[if detention in a~~
10 ~~certified juvenile detention facility is authorized under Section~~
11 ~~152.0015, Human Resources Code,~~ the juvenile court shall ~~[may]~~
12 order the person to be detained in a certified juvenile detention
13 ~~[the]~~ facility pending trial or until the criminal court enters an
14 order under Article 4.19, Code of Criminal Procedure. A transfer
15 of custody made under this subsection is an arrest.

16 SECTION 3. Article 4.19, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 4.19. TRANSFER OF CHILD PENDING TRIAL. (a)
19 Notwithstanding the order of a juvenile court to detain a child in a
20 certified juvenile detention facility under Section 54.02(h),
21 Family Code, the judge of the criminal court having jurisdiction
22 over the child may, after a hearing under this section, order the
23 child to be transferred to an adult ~~[another]~~ facility pending
24 criminal trial ~~[and treated as an adult as provided by this code].~~ A
25 child who is transferred to an adult facility must be detained under
26 conditions meeting the requirements of Section 51.12, Family Code,
27 while pending trial.

1 (b) The certified juvenile detention facility may petition
2 the criminal court having jurisdiction over the child to transfer
3 custody of the child to an adult facility. The criminal court shall
4 hold a hearing on the transfer of the child for pretrial detention
5 as soon as possible, but not later than the 20th day after the date
6 the petition to transfer is filed. The district attorney, sheriff,
7 or child may file a response to the petition and participate in the
8 hearing. The child shall remain in a certified juvenile detention
9 facility pending the hearing and decision by the criminal court.

10 (c) If the child's placement in a certified juvenile
11 detention facility presents an imminent danger to the other
12 children or to the staff at the facility, the facility may petition
13 the court for an immediate hearing to transfer the child to an adult
14 facility.

15 (d) In determining whether a child should be transferred
16 from a certified juvenile detention facility to an adult facility,
17 the criminal court having jurisdiction over the child shall
18 consider the following factors:

19 (1) the age of the child;

20 (2) whether, in order to provide physical separation
21 from adults, the child would be deprived of contact with other
22 people for a significant portion of the day or would not have access
23 to recreational facilities or age-appropriate educational
24 opportunities;

25 (3) the child's current emotional state, intelligence,

1 and developmental maturity, including any emotional and
2 psychological trauma, and the risk to the child caused by placement
3 in an adult facility, which risk may be evidenced by mental health
4 or psychological assessments or screenings made available to the
5 district attorney and to the defense counsel;

6 (4) whether detention in a certified juvenile
7 detention facility will adequately serve the need for community
8 protection pending the outcome of the criminal proceedings;

9 (5) whether detention in a certified juvenile
10 detention facility will negatively impact the functioning of the
11 facility by compromising the goals of detention to maintain a safe,
12 positive, and secure environment for all children within the
13 facility;

14 (6) the relative ability of the available adult and
15 certified juvenile detention facilities to meet the needs of the
16 child, including the child's need for mental health and education
17 services;

18 (7) whether the child presents an imminent risk of
19 harm to the child's self or others within a certified juvenile
20 detention facility;

21 (8) the physical maturity of the child; and

22 (9) any other relevant factors.

23 (e) If the criminal court orders the transfer of the child
24 to an adult facility, the child may petition the court for a review
25 hearing. The child may not petition for a review hearing before the
26 31st day after the date the initial transfer is ordered or before
27 the 31st day after the date of any subsequent review hearings. On

1 receipt of the petition, the court may set the matter for a hearing
2 if the juvenile has alleged facts or circumstances that, if true,
3 would warrant reconsideration of the child's placement in an adult
4 facility based on the factors listed in Subsection (d) and the
5 factors previously relied on by the court.

6 SECTION 4. Section 152.0015, Human Resources Code, is
7 repealed.

8 SECTION 5. (a) The change in law made by this Act applies
9 only to the detention of a child for conduct that occurs on or after
10 the effective date of this Act. Detention of a child for conduct
11 violating a penal law that occurs before the effective date of this
12 Act is governed by the law in effect when the conduct occurred, and
13 the former law is continued in effect for that purpose.

14 (b) For purposes of this section, conduct violating a penal
15 law occurred before the effective date of this Act if any element of
16 the violation occurred before that date.

17 SECTION 6. This Act takes effect September 1, 2013.