

BILL ANALYSIS

Senate Research Center
81R3502 JSC-F

H.B. 558
By: Hernandez (Ellis)
Criminal Justice
5/8/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a child can be prosecuted in justice and municipal courts for purchasing, possessing, or consuming an alcoholic beverage. A child can also be prosecuted for operating a motor vehicle while having any detectable amount of alcohol in his or her system. But, a child cannot be prosecuted in those courts for appearing in a public place while intoxicated. State statutes do not give these courts jurisdiction over such cases. Instead, children taken into custody for public intoxication are referred to the juvenile court system. Unfortunately, due to heavy juvenile dockets in many counties, many juveniles are never charged with a crime and thus suffer no consequences for committing a public intoxication offense.

In recent years, justice and municipal courts have increasingly been given more authority over juveniles charged with committing offenses. This includes crimes that are punishable by fines. Additionally, these courts have the authority to employ juvenile case managers to assist the courts in supervising court orders in juvenile cases. As a result, the justice and municipal courts are able, as a part of their sentencing practices, to require assessment and attendance at alcohol and drug abuse programs and other rehabilitative programs. If a public intoxication offense is included in the jurisdiction of these courts, then it would increase the likelihood that children committing these offenses would be subject to rehabilitation services.

H.B. 558 amends current law relating to law enforcement and judicial procedures for, and the prosecution of, children who engage in conduct constituting public intoxication.

[**Note:** While the statutory reference in this bill is to the Texas Commission on Alcohol and Drug Abuse (TCADA), the following amendments affect the Department of State Health Services as the successor agency to TCADA.]

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 Articles 14.031(a) and (b), Code of Criminal Procedure, as follows:

(a) Authorizes a peace officer, in lieu of arresting an individual who is not a child, as defined by Section 51.02 (Definitions), Family Code, and who commits an offense under Section 49.02 (Public Intoxication), Penal Code, to release the individual if the officer believes detention in a penal facility is unnecessary for the protection of the individual or others and the individual is released to the care of an adult who agrees to assume responsibility for the individual or verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse (TCADA), and the program admits the individual for treatment.

(b) Authorizes a magistrate to release from custody an individual who is not a child, as defined by Section 51.02, Family Code, and who is arrested under Section 49.02, Penal Code, if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (a) of this article.

SECTION 2. Amends Article 45.058, Code of Criminal Procedure, by amending Subsections (a), (f), and (g), and adding Subsection (g-1), as follows:

(a) Authorizes that a child be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1) (relating to requirements of a person taking a child into custody, without unnecessary delay), Family Code, if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 (Jurisdiction of Justice Courts) or 4.14 (Jurisdiction of Municipal Court), rather than if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, other than public intoxication.

(f) Makes a conforming change.

(g) Authorizes a law enforcement officer, except as provided by Subsection (g-1), to issue a field release citation as provided by Article 14.06 (Must Take Offender Before Magistrate) in place of taking a child into custody for a traffic offense or an offense punishable by fine only. Makes a conforming change.

(g-1) Authorizes a law enforcement officer to issue a field release citation as provided by Article 14.06 in place of taking a child into custody for conduct constituting a violation of Section 49.02, Penal Code, only if the officer releases the child to the child's parent, guardian, custodian, or other responsible adult.

SECTION 3. Amends Section 51.03(f), Family Code, as follows:

(f) Provides that except as provided by Subsection (g) (relating to conduct indicating a need for supervision), conduct described under Subsection (b)(1) (relating to defining conduct indicating a need for supervision), rather than other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication, does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b) (relating to a pending complaint against a child alleging a violation or misdemeanor).

SECTION 4. Amends Sections 51.08(a), (b), and (c), Family Code, as follows:

(a) Requires the court exercising criminal jurisdiction, if the defendant in a criminal proceeding is a child who is charged with an offense other than perjury, a traffic offense, a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, unless the child, rather than he, has been transferred to criminal court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court), rather than Section 54.02 of this code, to transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case, and to order that the child be taken to the place of detention designated by the juvenile court, or to release the child to the custody of the child's parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court. Makes conforming changes.

(b) Requires a court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense, rather than other than a traffic offense or public intoxication, or a violation of a penal ordinance of a political subdivision other than a traffic offense except as provided by Subsection (d) (relating to a court that has implemented a juvenile case manager program), to waive its original jurisdiction and refer the child to juvenile court if the child has previously been convicted of one or more of each of the types of misdemeanors described in Paragraph (A) or (B), rather than Paragraph (A) or (B) of this subdivision. Makes conforming changes.

(c) Makes conforming changes.

SECTION 5. Amends Section 8.07(a), Penal Code, to make a conforming change.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2009.