

By: Hernandez

H.B. No. 558

A BILL TO BE ENTITLED

AN ACT

1
2 relating to law enforcement and judicial procedures for, and the
3 prosecution of, children who engage in conduct constituting public
4 intoxication.

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

6 SECTION 1. Articles 14.031(a) and (b), Code of Criminal
7 Procedure, are amended to read as follows:

8 (a) In lieu of arresting an individual who is not a child, as
9 defined by Section 51.02, Family Code, and who commits an offense
10 under Section 49.02, Penal Code, a peace officer may release the
11 ~~an~~ individual if:

12 (1) the officer believes detention in a penal facility
13 is unnecessary for the protection of the individual or others; and

14 (2) the individual:

15 (A) is released to the care of an adult who agrees
16 to assume responsibility for the individual; or

17 (B) verbally consents to voluntary treatment for
18 chemical dependency in a program in a treatment facility licensed
19 and approved by the Texas Commission on Alcohol and Drug Abuse, and
20 the program admits the individual for treatment.

21 (b) A magistrate may release from custody an individual who
22 is not a child, as defined by Section 51.02, Family Code, and who is
23 arrested under Section 49.02, Penal Code, if the magistrate
24 determines the individual meets the conditions required for release

1 in lieu of arrest under Subsection (a) of this article.

2 SECTION 2. Article 45.058, Code of Criminal Procedure, is
3 amended by amending Subsections (a), (f), and (g) and adding
4 Subsection (g-1) to read as follows:

5 (a) A child may be released to the child's parent, guardian,
6 custodian, or other responsible adult as provided by Section
7 52.02(a)(1), Family Code, if the child is taken into custody for an
8 offense that a justice or municipal court has jurisdiction of under
9 Article 4.11 or 4.14 [~~other than public intoxication~~].

10 (f) A child taken into custody for an offense that a justice
11 or municipal court has jurisdiction of under Article 4.11 or 4.14 [~~other than public intoxication~~],
12 may be presented or detained in a
13 detention facility designated by the juvenile court under Section
14 52.02(a)(3), Family Code, only if:

15 (1) the child's non-traffic case is transferred to the
16 juvenile court by a justice or municipal court under Section
17 51.08(b), Family Code; or

18 (2) the child is referred to the juvenile court by a
19 justice or municipal court for contempt of court under Article
20 45.050.

21 (g) Except as provided by Subsection (g-1), a [A] law
22 enforcement officer may issue a field release citation as provided
23 by Article 14.06 in place of taking a child into custody for a
24 traffic offense or an offense [~~other than public intoxication~~]
25 punishable by fine only.

26 (g-1) A law enforcement officer may issue a field release
27 citation as provided by Article 14.06 in place of taking a child

1 into custody for conduct constituting a violation of Section 49.02,
2 Penal Code, only if the officer releases the child to the child's
3 parent, guardian, custodian, or other responsible adult.

4 SECTION 3. Section 51.03(f), Family Code, is amended to
5 read as follows:

6 (f) Except as provided by Subsection (g), conduct described
7 under Subsection (b)(1) [~~other than conduct that violates Section~~
8 ~~49.02, Penal Code, prohibiting public intoxication,~~] does not
9 constitute conduct indicating a need for supervision unless the
10 child has been referred to the juvenile court under Section
11 51.08(b).

12 SECTION 4. Sections 51.08(a), (b), and (c), Family Code,
13 are amended to read as follows:

14 (a) If the defendant in a criminal proceeding is a child who
15 is charged with an offense other than perjury, a traffic offense, a
16 misdemeanor punishable by fine only [~~other than public~~
17 ~~intoxication~~], or a violation of a penal ordinance of a political
18 subdivision, unless the child [~~he~~] has been transferred to criminal
19 court under Section 54.02 [~~of this code~~], the court exercising
20 criminal jurisdiction shall transfer the case to the juvenile
21 court, together with a copy of the accusatory pleading and other
22 papers, documents, and transcripts of testimony relating to the
23 case, and shall order that the child be taken to the place of
24 detention designated by the juvenile court, or shall release the
25 child [~~him~~] to the custody of the child's [~~his~~] parent, guardian, or
26 custodian, to be brought before the juvenile court at a time
27 designated by that court.

1 (b) A court in which there is pending a complaint against a
2 child alleging a violation of a misdemeanor offense punishable by
3 fine only other than a traffic offense [~~or public intoxication~~] or a
4 violation of a penal ordinance of a political subdivision other
5 than a traffic offense:

6 (1) except as provided by Subsection (d), shall waive
7 its original jurisdiction and refer the [a] child to juvenile court
8 if the child has previously been convicted of:

9 (A) two or more misdemeanors punishable by fine
10 only other than a traffic offense [~~or public intoxication~~];

11 (B) two or more violations of a penal ordinance
12 of a political subdivision other than a traffic offense; or

13 (C) one or more of each of the types of
14 misdemeanors described in Paragraph (A) or (B) [~~of this~~
15 ~~subdivision~~]; and

16 (2) may waive its original jurisdiction and refer the
17 [a] child to juvenile court if the child:

18 (A) has not previously been convicted of a
19 misdemeanor punishable by fine only other than a traffic offense
20 [~~or public intoxication~~] or a violation of a penal ordinance of a
21 political subdivision other than a traffic offense; or

22 (B) has previously been convicted of fewer than
23 two misdemeanors punishable by fine only other than a traffic
24 offense [~~or public intoxication~~] or two violations of a penal
25 ordinance of a political subdivision other than a traffic offense.

26 (c) A court in which there is pending a complaint against a
27 child alleging a violation of a misdemeanor offense punishable by

1 fine only other than a traffic offense [~~or public intoxication~~] or a
2 violation of a penal ordinance of a political subdivision other
3 than a traffic offense shall notify the juvenile court of the county
4 in which the court is located of the pending complaint and shall
5 furnish to the juvenile court a copy of the final disposition of any
6 matter for which the court does not waive its original jurisdiction
7 under Subsection (b) [~~of this section~~].

8 SECTION 5. Section 8.07(a), Penal Code, is amended to read
9 as follows:

10 (a) A person may not be prosecuted for or convicted of any
11 offense that the person committed when younger than 15 years of age
12 except:

13 (1) perjury and aggravated perjury when it appears by
14 proof that the person had sufficient discretion to understand the
15 nature and obligation of an oath;

16 (2) a violation of a penal statute cognizable under
17 Chapter 729, Transportation Code, except for conduct for which the
18 person convicted may be sentenced to imprisonment or confinement in
19 jail;

20 (3) a violation of a motor vehicle traffic ordinance
21 of an incorporated city or town in this state;

22 (4) a misdemeanor punishable by fine only [~~other than~~
23 ~~public intoxication~~];

24 (5) a violation of a penal ordinance of a political
25 subdivision;

26 (6) a violation of a penal statute that is, or is a
27 lesser included offense of, a capital felony, an aggravated

1 controlled substance felony, or a felony of the first degree for
2 which the person is transferred to the court under Section 54.02,
3 Family Code, for prosecution if the person committed the offense
4 when 14 years of age or older; or

5 (7) a capital felony or an offense under Section 19.02
6 for which the person is transferred to the court under Section
7 54.02(j)(2)(A), Family Code.

8 SECTION 6. The change in law made by this Act applies only
9 to conduct that occurs on or after the effective date of this Act.
10 Conduct that occurs before the effective date of this Act is covered
11 by the law in effect at the time the conduct occurred, and the
12 former law is continued in effect for that purpose. For the
13 purposes of this section, conduct violating a penal law of this
14 state occurs before the effective date of this Act if any element of
15 the violation occurred before that date.

16 SECTION 7. This Act takes effect September 1, 2009.