

1-1 By: Hernandez (Senate Sponsor - Ellis) H.B. No. 558
1-2 (In the Senate - Received from the House April 16, 2009;
1-3 April 27, 2009, read first time and referred to Committee on
1-4 Criminal Justice; May 14, 2009, reported favorably by the
1-5 following vote: Yeas 7, Nays 0; May 14, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to law enforcement and judicial procedures for, and the
1-9 prosecution of, children who engage in conduct constituting public
1-10 intoxication.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Articles 14.031(a) and (b), Code of Criminal
1-13 Procedure, are amended to read as follows:

1-14 (a) In lieu of arresting an individual who is not a child, as
1-15 defined by Section 51.02, Family Code, and who commits an offense
1-16 under Section 49.02, Penal Code, a peace officer may release the
1-17 [an] individual if:

1-18 (1) the officer believes detention in a penal facility
1-19 is unnecessary for the protection of the individual or others; and

1-20 (2) the individual:

1-21 (A) is released to the care of an adult who agrees
1-22 to assume responsibility for the individual; or

1-23 (B) verbally consents to voluntary treatment for
1-24 chemical dependency in a program in a treatment facility licensed
1-25 and approved by the Texas Commission on Alcohol and Drug Abuse, and
1-26 the program admits the individual for treatment.

1-27 (b) A magistrate may release from custody an individual who
1-28 is not a child, as defined by Section 51.02, Family Code, and who is
1-29 arrested under Section 49.02, Penal Code, if the magistrate
1-30 determines the individual meets the conditions required for release
1-31 in lieu of arrest under Subsection (a) of this article.

1-32 SECTION 2. Article 45.058, Code of Criminal Procedure, is
1-33 amended by amending Subsections (a), (f), and (g) and adding
1-34 Subsection (g-1) to read as follows:

1-35 (a) A child may be released to the child's parent, guardian,
1-36 custodian, or other responsible adult as provided by Section
1-37 52.02(a)(1), Family Code, if the child is taken into custody for an
1-38 offense that a justice or municipal court has jurisdiction of under
1-39 Article 4.11 or 4.14 [~~other than public intoxication~~].

1-40 (f) A child taken into custody for an offense that a justice
1-41 or municipal court has jurisdiction of under Article 4.11 or 4.14 [~~other than public intoxication~~,] may be presented or detained in a
1-42 detention facility designated by the juvenile court under Section
1-43 52.02(a)(3), Family Code, only if:

1-44 (1) the child's non-traffic case is transferred to the
1-45 juvenile court by a justice or municipal court under Section
1-46 51.08(b), Family Code; or

1-47 (2) the child is referred to the juvenile court by a
1-48 justice or municipal court for contempt of court under Article
1-49 45.050.

1-50 (g) Except as provided by Subsection (g-1), a [A] law
1-51 enforcement officer may issue a field release citation as provided
1-52 by Article 14.06 in place of taking a child into custody for a
1-53 traffic offense or an offense [~~other than public intoxication~~]
1-54 punishable by fine only.

1-55 (g-1) A law enforcement officer may issue a field release
1-56 citation as provided by Article 14.06 in place of taking a child
1-57 into custody for conduct constituting a violation of Section 49.02,
1-58 Penal Code, only if the officer releases the child to the child's
1-59 parent, guardian, custodian, or other responsible adult.

1-60 SECTION 3. Section 51.03(f), Family Code, is amended to
1-61 read as follows:

1-62 (f) Except as provided by Subsection (g), conduct described
1-63 under Subsection (b)(1) [~~other than conduct that violates Section~~

2-1 ~~49.02, Penal Code, prohibiting public intoxication,~~ does not
 2-2 constitute conduct indicating a need for supervision unless the
 2-3 child has been referred to the juvenile court under Section
 2-4 51.08(b).

2-5 SECTION 4. Sections 51.08(a), (b), and (c), Family Code,
 2-6 are amended to read as follows:

2-7 (a) If the defendant in a criminal proceeding is a child who
 2-8 is charged with an offense other than perjury, a traffic offense, a
 2-9 misdemeanor punishable by fine only [~~other than public~~
 2-10 ~~intoxication~~], or a violation of a penal ordinance of a political
 2-11 subdivision, unless the child [~~he~~] has been transferred to criminal
 2-12 court under Section 54.02 [~~of this code~~], the court exercising
 2-13 criminal jurisdiction shall transfer the case to the juvenile
 2-14 court, together with a copy of the accusatory pleading and other
 2-15 papers, documents, and transcripts of testimony relating to the
 2-16 case, and shall order that the child be taken to the place of
 2-17 detention designated by the juvenile court, or shall release the
 2-18 child [~~him~~] to the custody of the child's [~~his~~] parent, guardian, or
 2-19 custodian, to be brought before the juvenile court at a time
 2-20 designated by that court.

2-21 (b) A court in which there is pending a complaint against a
 2-22 child alleging a violation of a misdemeanor offense punishable by
 2-23 fine only other than a traffic offense [~~or public intoxication~~] or a
 2-24 violation of a penal ordinance of a political subdivision other
 2-25 than a traffic offense:

2-26 (1) except as provided by Subsection (d), shall waive
 2-27 its original jurisdiction and refer the [~~a~~] child to juvenile court
 2-28 if the child has previously been convicted of:

2-29 (A) two or more misdemeanors punishable by fine
 2-30 only other than a traffic offense [~~or public intoxication~~];

2-31 (B) two or more violations of a penal ordinance
 2-32 of a political subdivision other than a traffic offense; or

2-33 (C) one or more of each of the types of
 2-34 misdemeanors described in Paragraph (A) or (B) [~~of this~~
 2-35 ~~subdivision~~]; and

2-36 (2) may waive its original jurisdiction and refer the
 2-37 [~~a~~] child to juvenile court if the child:

2-38 (A) has not previously been convicted of a
 2-39 misdemeanor punishable by fine only other than a traffic offense
 2-40 [~~or public intoxication~~] or a violation of a penal ordinance of a
 2-41 political subdivision other than a traffic offense; or

2-42 (B) has previously been convicted of fewer than
 2-43 two misdemeanors punishable by fine only other than a traffic
 2-44 offense [~~or public intoxication~~] or two violations of a penal
 2-45 ordinance of a political subdivision other than a traffic offense.

2-46 (c) A court in which there is pending a complaint against a
 2-47 child alleging a violation of a misdemeanor offense punishable by
 2-48 fine only other than a traffic offense [~~or public intoxication~~] or a
 2-49 violation of a penal ordinance of a political subdivision other
 2-50 than a traffic offense shall notify the juvenile court of the county
 2-51 in which the court is located of the pending complaint and shall
 2-52 furnish to the juvenile court a copy of the final disposition of any
 2-53 matter for which the court does not waive its original jurisdiction
 2-54 under Subsection (b) [~~of this section~~].

2-55 SECTION 5. Section 8.07(a), Penal Code, is amended to read
 2-56 as follows:

2-57 (a) A person may not be prosecuted for or convicted of any
 2-58 offense that the person committed when younger than 15 years of age
 2-59 except:

2-60 (1) perjury and aggravated perjury when it appears by
 2-61 proof that the person had sufficient discretion to understand the
 2-62 nature and obligation of an oath;

2-63 (2) a violation of a penal statute cognizable under
 2-64 Chapter 729, Transportation Code, except for conduct for which the
 2-65 person convicted may be sentenced to imprisonment or confinement in
 2-66 jail;

2-67 (3) a violation of a motor vehicle traffic ordinance
 2-68 of an incorporated city or town in this state;

2-69 (4) a misdemeanor punishable by fine only [~~other than~~

3-1 ~~public intoxication];~~

3-2 (5) a violation of a penal ordinance of a political
3-3 subdivision;

3-4 (6) a violation of a penal statute that is, or is a
3-5 lesser included offense of, a capital felony, an aggravated
3-6 controlled substance felony, or a felony of the first degree for
3-7 which the person is transferred to the court under Section 54.02,
3-8 Family Code, for prosecution if the person committed the offense
3-9 when 14 years of age or older; or

3-10 (7) a capital felony or an offense under Section 19.02
3-11 for which the person is transferred to the court under Section
3-12 54.02(j)(2)(A), Family Code.

3-13 SECTION 6. The change in law made by this Act applies only
3-14 to conduct that occurs on or after the effective date of this Act.
3-15 Conduct that occurs before the effective date of this Act is covered
3-16 by the law in effect at the time the conduct occurred, and the
3-17 former law is continued in effect for that purpose. For the
3-18 purposes of this section, conduct violating a penal law of this
3-19 state occurs before the effective date of this Act if any element of
3-20 the violation occurred before that date.

3-21 SECTION 7. This Act takes effect September 1, 2009.

3-22

* * * * *