

Effective Pre-Adjudication Juvenile Detention

Bill Analysis: House Bill 529

by Jeanette Moll, Juvenile Justice Policy Analyst

Under current law, children (defined as youths ages 10 to 17, or 17 to 18 but alleged to have engaged in delinquent conduct prior to turning 17) may only be placed in an adult jail or prison under the following conditions:

- Temporary detention pending a hearing, provided that the facility meets certain statutory requirements;
- After transfer for prosecution in criminal court; and
- After a court order for the continuation of a determinative sentence in an adult facility, following the initial term in the juvenile facility, due to the welfare of the community.¹

Findings

- Juveniles in adult jails prior to adjudication face increased risks of assault and sexual violence, isolation, and reduced educational opportunities.
- Making juvenile facilities the default pre-adjudication detention facility for youths under 17 would reduce these risks.
- Including a judicial override for youths who pose a danger to staff or other youth in a juvenile facility ensures that facility safety remains paramount.

Placement of a youth under the age of 17 in adult facilities in Texas raises significant concerns. The research has universally shown an increase in recidivism and a lack of deterrence when youths are placed in adult facilities after sentencing.² But prior to sentencing, concerns include the increased risk in sexual violence, the lack of age-appropriate education and programming, and the isolation that is necessary to satisfy federal requirements for separating minors from adults.³

House Bill 529 seeks to amend the times and reasons why a child is placed into an adult facility. First, it requires that transfer to an adult facility due to prosecution in criminal court occur *after* conviction in criminal court, rather than pending trial.

Second, it creates a separate transfer authority for youths certified to stand trial as adults prior to trial, upon an order by the criminal court. The procedure for this order, under House Bill 529, is as follows:

The juvenile court, upon waiver of jurisdiction and transfer to criminal court, shall order the child to be detained in a certified juvenile detention facility pending trial or until the criminal court orders transfer to an adult facility.

The certified juvenile detention facility is permitted to petition the criminal court to transfer custody of the child to an adult facility. If the juvenile facility does so, the court must hold a hearing within 20 days. The child remains in the juvenile facility pending the hearing, unless there is an imminent danger to other children or staff, in which case the facility may ask for an immediate hearing to transfer the child.

The criminal court must hold a hearing and consider:

- the age of the child;
- potential deprivation of contact, recreation, or education due to physical separation mandated in adult facilities;
- the child's current emotional state, intelligence, and developmental maturity, including any emotional and psy-

chological trauma, and the risk to the child caused by placement in an adult facility, proven by mental health or psychological assessments or screenings;

- the need for community protection;
- the impact on the functioning of the facility by compromising the goals of detention to maintain a safe, positive, and secure environment;
- the relative ability of the available adult and certified juvenile detention facilities to meet the needs of the child, including mental health care and education services;
- whether the child presents an imminent risk of harm to the child's self or others within a certified juvenile detention facility;
- the physical maturity of the child; and
- any other relevant factors.

If the criminal court does indeed order the transfer of the child to an adult facility, the child may petition the court for a review hearing no sooner than 31 days after the initial order. If the child is able to include facts or circumstances in the petition that, if true, would warrant reconsideration, the court may set the matter for a rehearing.

This legislation would ensure that transfer to adult facilities prior to a finding of guilt in a criminal court is undertaken only when deemed necessary by a criminal court judge. By providing that the default detention facility for offenders under the age of 17 is a juvenile facility, House Bill 529 would aid in decreasing pressures on county jails and would reduce the risk of assaults or sexual violence for juveniles prior to adjudication. ★

¹ [Tex. Family Code § 51.13\(c\)](#).

² Marc Levin and Jeanette Moll, "Improving Juvenile Justice: Finding More Effective Options for North Carolina's Young Offenders," John Locke Foundation (May 2012).

³ Michele Deitch et al, "Conditions for Certified Juveniles in Texas County Jails," Lyndon B. Johnson School of Public Affairs (May 2012).

