

## DIGEST

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SB 418 Reengrossed

2022 Regular Session

Cathey

Present law (Ch.C. Art. 305(A)) provides that a child who is 15 years of age or older at the time of the commission of first degree murder, second degree murder, aggravated or first degree rape, or aggravated kidnapping is subject to the exclusive jurisdiction of the juvenile court until either of the following occur:

- (1) An indictment charging one of these offenses is returned.
- (2) The juvenile court holds a continued custody hearing pursuant to present law and finds probable cause that he committed one of these offenses, whichever occurs first.

Present law (Ch.C. Art. 305(B)) provides that a child who is 15 years of age or older at the time of the commission of any one of certain enumerated offenses in present law (Ch.C. Art. 305(B)(2)) is subject to the exclusive jurisdiction of the juvenile court until whichever of the following occurs first:

- (1) An indictment charging one of the enumerated offenses is returned.
- (2) The juvenile court holds a continued custody hearing and finds probable cause that the child has committed any of the offenses listed present law and a bill of information is filed.

Present law (Ch.C. Art. 305(B)(3)) grants a district attorney the discretion to file a petition alleging any of the offenses listed in present law (Ch.C. Art. 305(B)(2)) in the juvenile court or to obtain an indictment or file a bill of information. Provides that if an indictment is returned or a bill of information is filed, the child is subject to the exclusive jurisdiction of the appropriate court exercising criminal jurisdiction for all subsequent procedures, including the review of bail applications, and the district court may order that the child be transferred to the appropriate adult facility for detention prior to his trial as an adult.

Present law (Ch.C. Art. 306(B)) provides that if a detention facility for juveniles is not available, the juvenile may be held in an adult jail or lockup for identification or processing procedures or while awaiting transportation only as long as necessary to complete these activities for up to six hours. Provides that except in nonmetropolitan areas, the juvenile may be held for up to 24 hours if all of the following occur:

- (1) The child meets the age and offense criteria set out in present law (Ch.C. Art. 305).
- (2) A continued custody hearing in accordance with present laws (Ch.C. Art. 820 and 821) is held within 24 hours after his arrest.
- (3) There is no acceptable alternative placement to the jail or lockup in which he is being held.
- (4) The sheriff or the administrator of the adult jail or lockup has certified to the court that facilities exist that provide for sight and sound separation of the juvenile from adult offenders and that the juvenile can be given continuous visual supervision while placed in the jail or lockup.

Proposed law amends present law and provides that if a child who is 17 years of age at the time of the commission of an offense enumerated in present law (Ch.C. Art. 305) that is also defined as a crime of violence be held in an adult jail or lockup prior to the continued custody hearing for the offense if the child has a history of prior delinquent acts. The

continued custody hearing provided for in present law should be held within 24 hours after his arrest.

Present law (Ch.C. Art. 306(C)) provides that if an indictment has not been returned, a bill of information filed, or a continued custody hearing not held within 24 hours, the child held in an adult jail or lockup in a nonmetropolitan area shall be released or removed to a juvenile detention facility.

Present law (Ch.C. Art. 306(D)) provides that if, at the conclusion of the continued custody hearing, the court determines that the child meets the age requirements and that there is probable cause that the child has committed one of the offenses enumerated in present law, the court shall order him held for trial as an adult for the appropriate court of criminal jurisdiction.

Present law authorizes the appropriate court of criminal jurisdiction to order that the child be held in any facility used for the pretrial detention of accused adults and the child shall apply to the appropriate court for a preliminary hearing, bail, and for any other rights to which he may be entitled under the Code of Criminal Procedure.

Proposed law amends present law and provides that if the child is 17 years of age and the court determines at the continued custody hearing that there is both probable cause that the child has committed one of the offenses enumerated in present law (Ch.C. Art. 305) that is also a crime of violence and that it is in the interest of justice that the child be held in the appropriate adult facility for detention prior to his trial as an adult, then the court shall do one of the following:

- (1) If the child is being held in an adult jail or lockup, the child shall continue to be held in the adult facility for detention prior to his trial as an adult.
- (2) If the child has been detained in a juvenile detention facility prior to the finding of probable cause by the court, the court shall order the child transferred to the appropriate adult facility for detention prior to his trial as an adult.

Proposed law provides that when the child is being held in an adult facility for detention prior to his trial, the appropriate court shall review no less than every 30 days prior to the child becoming 18 years of age whether the interest of justice continues to be served by the child being detained in an adult facility. Provides that the child shall not be held in an adult facility beyond 180 days unless the court determines there is good cause.

Proposed law provides that if the court determines there is probable cause that the child has committed one of the offenses enumerated in present law (Ch.C. Art. 305) and the child is not already being detained in an adult facility, the appropriate court may thereafter order that the child be held in any facility used for the pretrial detention of accused adults and the child shall apply to the appropriate court of criminal jurisdiction for a preliminary hearing, bail, and for any other rights to which he may be entitled under present law.

Present law (Ch.C. Art. 821(E)) provides that if probable cause has been demonstrated, the court may release the child. The court may also require bail or other security pursuant to present law if the court finds that such is necessary to secure the child's appearance for subsequent hearings.

Proposed law amends present law and provides that if probable cause has been demonstrated that a 17 year old child committed any offense enumerated in present law that is also defined as a crime of violence, the court shall determine whether it is in the interest of justice for the child to be transferred to the appropriate adult facility for detention prior to his trial as an adult. In making this determination, the court shall consider the following:

- (1) The age of the child.
- (2) The physical and mental maturity of the child.

- (3) The present mental state of the child, including whether the child presents an imminent risk of harm to himself.
- (4) The nature and circumstances of the alleged offense.
- (5) The child's history of prior delinquent acts.
- (6) The ability of the available adult and juvenile detention facilities to meet the specific needs of the child and to protect the safety of the public and other detained children.
- (7) Any relevant factors the court deems appropriate.

Present law (Ch.C. Art. 862) provides that in order for a motion to transfer a child to be granted, the burden shall be upon the state to prove all of the following:

- (1) Probable cause exists that the child meets the requirements of present law.
- (2) By clear and convincing proof, there is no substantial opportunity for the child's rehabilitation through facilities available to the court, based upon the following criteria:
  - (a) The age, maturity, both mental and physical, and sophistication of the child.
  - (b) The nature and seriousness of the alleged offense to the community and whether the protection of the community requires transfer.
  - (c) The child's prior acts of delinquency, if any, and their nature and seriousness.
  - (d) Past efforts at rehabilitation and treatment, if any, and the child's response.
  - (e) Whether the child's behavior might be related to physical or mental problems.
  - (f) Techniques, programs, personnel, and facilities available to the juvenile court which might be competent to deal with the child's particular problems.

Proposed law requires that if a transfer is granted for an offense enumerated in present law, the court also determine whether the interest of justice is served for the child to be transferred to the appropriate adult facility for detention prior to his trial as an adult. In making this determination, the court shall consider the following:

- (1) The age of the child.
- (2) The physical and mental maturity of the child.
- (3) The present mental state of the child, including whether the child presents an imminent risk of harm to himself.
- (4) The nature and circumstances of the alleged offense.
- (5) The child's history of prior delinquent acts.
- (6) The ability of the available adult and juvenile detention facilities to meet the specific needs of the child and to protect the safety of the public and other detained children.
- (7) Any other relevant factors the court deems appropriate.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends Ch.C. Art. 305(A)(2), and (B)(4), 306(B), (C), and (D), 821(E), 862(A), and 864(B))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Deleted provisions relative to the definition of a child for purposes of delinquency proceedings.
2. Adds provisions relative to divestiture of juvenile court jurisdiction for children between the ages of 15 and 18 under certain circumstances.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Make technical changes.
2. Add effectiveness upon signature of governor.