

Cover Sheet

Pursuant to Section VIII of the State Bar Board Policy Manual, the Juvenile Law Section has asked that the State Bar of Texas staff to forward the attached information to you for your review.

The Juvenile Law Section is asking that these proposals be incorporated as part of the State Bar of Texas' legislative package. Please review this information on behalf of your section. Any comments or suggested changes should be made directly to Patrick Gendron at (979) 775-9500 or emailed to: gendron@suddenlinkmail.com.

MEMORANDUM

To: SBOT Legislative Policy Committee

From: Patrick Gendron, Chair of the Juvenile Law Section of the State Bar of Texas

Re: Proposed amendment to Texas Government Code Section 74.054

Date: June 19, 2020

Bill Description and Juvenile Law Section Request

The SBOT Juvenile Law Section asks that the SBOT Legislative Policy Subcommittee consider and approve the draft bill attached as Exhibit A (the “Proposed Bill”) as part of the State Bar of Texas legislative package for the 2021 session of the Texas Legislature.

The Proposed Bill has been approved by the Council of the Juvenile Law Section and is believed to be non-controversial. It would amend Section 74.054 of the Texas Government Code by creating a new subsection (e) which would give the presiding judge of the administrative region the option to appoint a colleague of the county judge on the commissioners court to serve as the presiding juvenile judge in those counties in which the juvenile court is presided over by the county judge. The Proposed Bill would require that the county commissioner be a licensed attorney in the state of Texas in order to be appointed.

Summary of proposed legislative action:

Some jurisdictions in Texas have juvenile courts that are not presided over by a judge that is a lawyer. In those counties, the county judge hears juvenile matters as the presiding judge of the juvenile court. Usually, the county judge (the head of the county’s commissioners court) is not a licensed attorney.

In an effort to provide for the best administration of justice in juvenile matters which have become and are becoming more complex, the goal of this legislation is to give counties that do not have attorney judges presiding over juvenile courts the option to have a licensed attorney appointed to serve as the juvenile court judge in place of the county judge. In this legislative proposal, the substitution would be limited to a fellow member of the county commissioners court who is a licensed attorney.

State Bar Information Requirements

Identification of, reference to, or copies of similar legislation, if any, being considered in the same legislative or administrative body.

The Juvenile Law Section is not aware of any similar legislation being considered for the 2021 Legislative Session.

A statement indicating whether the proposed legislation has been introduced in either the House or the Senate during prior legislative sessions, as well as a statement of any amendments to the proposed legislation during the prior legislative sessions and the status of the proposed legislation.

The Juvenile Law Section is not aware of any similar legislation being considered during prior legislative sessions in either the House or the Senate.

A statement of the known position on the legislative proposal taken by any section or committee of the State Bar that has considered the same proposal, including the principal reasons for support of our opposition to the proposal.

The Juvenile Law Section is not aware of any other State Bar section or committee taking a position in favor of or opposed to the Proposed Bill.

Provision of proposed legislation to all SBOT sections and committees.

On June 19, 2020, the Juvenile Law Section provided a copy of this Memorandum to the SBOT staff for distribution to all SBOT sections and committees.

Narrative Statutory Background and Explanation of the Legislation

The goal of the Proposed Bill is to have an attorney judge presiding over juvenile court so that children are given the opportunity to have all aspects of their cases heard by a trained legal professional – an attorney licensed in the state of Texas.

The Texas Legislature granted jurisdiction of juvenile matters to constitutional county courts via Texas Government Code Sections 26.042 and 23.001 along with Texas Family Code Section 51.04. Chapter 26 (Constitutional County Courts) of the Texas Government Code – specifically Section 26.042 provides for the county court to have juvenile jurisdiction as provided by Government Code Section 23.001. Government Code Section 23.001 (Juvenile Jurisdiction) provides that the county court has jurisdiction over juvenile matters and may be designated a juvenile court. Texas Family Code Section 51.04 (Jurisdiction) grants the county’s juvenile board the authority to designate the [constitutional] county court as the juvenile court – Family Code Section 51.04(b).

Family Code Section 51.04(d) provides for the designation of an alternate court presided over by an attorney judge. However, that provision does not fix the problem because that alternate court is not generally the juvenile court that handles the day to day affairs regarding juvenile matters. Additionally, the jurisdiction of that alternate court requires the respondent child to make that selection – Family Code Section 51.18(c). Also, under Family Code Section 51.18(b) the respondent child can only request an attorney judge in matters that are appealable and there are many matters that come before the juvenile court that are not appealable. Criminal law practitioners, not juvenile law specialists, generally handle juvenile cases before courts presided over by a constitutional county judge who is not an attorney and are generally unfamiliar with the ability to invoke the provision under Section 51.18.

The Proposed Bill expands the options of a presiding judge of the administrative region to appoint a county commissioner who is a licensed attorney to sit for the constitutional county judge in juvenile matters. Currently, in some counties, the constitutional county judge acts as the regular juvenile judge in most hearings under the Juvenile Justice Code (Title 3 of the Texas Family Code). Juvenile law has become more complex over the years with expanded legislation and expanded extension of criminal law rights to juveniles. In an effort to provide the option to a county to have an attorney administer the law in juvenile court hearings, this change to Government Code Section 74.054 would allow for a county commissioner who is a licensed attorney in the state to sit in the place of the constitutional county judge. Family Code Section 51.18 provides that a child in the juvenile case may object (only in appealable matters) to the constitutional county judge on the grounds that the juvenile judge is not an attorney and the designated alternate juvenile judge who is an attorney would hear the case. Such an election is a

party initiated solution to have an attorney judge hear the case. This proposed legislative change would not depend on being invoked by a child respondent.

This proposed legislation would allow for presiding judge of the administrative region, presumably at the request of the constitutional county judge, to appoint a colleague of the county judge on the commissioners court who is a licensed attorney to serve as the juvenile court judge. Most constitutional county court judges who are serving as the presiding juvenile court judge do most, if not all, of the juvenile hearings in the jurisdiction. This proposed change simply allows for the appointment of a lawyer judge to handle those juvenile hearings in the event the constitutional county judge does not.

This Proposed Bill is not a mandate on any county and is an option should the county judge and the presiding judge of the administrative region so choose to invoke it. This provision is totally discretionary and allows an attorney judge with legal experience to serve the interests of the county's juvenile court.