

HOUSE BILL 713

By Brooks H

AN ACT to amend Tennessee Code Annotated, Title 37,
Chapter 1, Part 1, relative to delinquent children in
juvenile court or transferred to criminal court.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Section 37-1-102(b), is amended by deleting subdivisions (14) and (17) in their entirety and by renumbering the remaining subdivisions accordingly.

SECTION 2. Tennessee Code Annotated Section 37-1-134(c), is amended by adding the following at the end of the subsection:

If a child is in the legal custody of the department at the time of transfer, such custody shall terminate at the transfer hearing, except that if a child is already committed to the department, the court may determine if it is in the best interest of the child to remain in the legal custody of the department until conviction occurs. In any case, legal custody by the department shall terminate upon any conviction in adult criminal court. If there is no conviction and charges so transferred are dismissed or acquittal occurs, the presiding trial judge shall notify the transferring juvenile court judge of such dismissal or acquittal so that the juvenile court may at its discretion set a hearing to ascertain status of the child as to the department's custody.

SECTION 3. Tennessee Code Annotated Section 37-1-134, is amended by deleting subsection (i) in its entirety and by substituting instead the following:

(i) When a child transferred under this section is detained, the juvenile court may, in its discretion, order confinement in a local juvenile detention facility, or a juvenile detention facility with which it contracts or an adult detention facility separate and

removed from adult detainees. The court having adult criminal jurisdiction may thereafter order detention in an adult detention facility separate and removed from adult detainees; however, during the period while such child is detained separately from adult detainees, such child shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult detainees who are charged with similar offenses. Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

SECTION 4. Tennessee Code Annotated Section 37-1-137, is amended by deleting subdivision (c)(1) in its entirety and by substituting instead the following:

(c)

(1)

(A) The commissioner or the commissioner's designee, with the assent of the committing court, may make a home placement of a child under the continuing supervision of the department.

(B) Notification of a home placement of a child shall be made in writing to the committing court at least fifteen (15) days prior to the proposed date of such placement. Unless the committing court makes an objection in writing to the commissioner or the commissioner's designee or sets a hearing within the fifteen-day period with such hearing to be held at the earliest possible date, the court shall be considered to have assented to the home placement and the child shall immediately be released to home placement supervision.

(C) The first thirty (30) days after the child's return to home placement supervision shall be a trial home pass with the department retaining legal custody of the child. If the child successfully completes the trial home pass, at the end of the thirty-day trial home pass the child shall automatically continue on home placement supervision status, unless the court has ordered that supervision status is not necessary, and the department's legal custody of the child shall terminate. Such home placement supervision by the department shall continue until the court orders a discharge of such supervision under subdivision (g)(1).

(D) If the committing court objects to the home placement supervision, such objections shall be made in writing to the commissioner or the commissioner's designee setting forth the reasons for such objections. A valid ground for such objection shall include, but not be limited to, consideration of the nature of the offense committed by the juvenile. No juvenile shall be released on home placement supervision if the committing court objects in the prescribed written manner. Upon receiving the objection from the committing court, the commissioner or the commissioner's designee shall review the child's file and consult with the committing judge regarding such denial in the form of a hearing set by either the court or by motion of the department or any attorney for the child.

(E) If no agreement is reached between the department and the committing judge, then the commissioner or the commissioner's designee shall request a hearing on the proposed placement by a three (3) judge panel to be appointed by the executive committee of the Tennessee

council of juvenile and family court judges. Such three (3) judge panel shall not include the committing judge. The panel will hear and resolve the controversy within thirty (30) days of receipt of the commissioner's or the commissioner's designee's request for a hearing by the executive secretary of the council and the decision of the panel shall be final.

SECTION 5. Tennessee Code Annotated Section 37-1-137, is amended by deleting subdivision (c)(2) in its entirety and by substituting instead the following:

(c)

(2) In the event the juvenile offender is a person described in subdivision (a)(1)(B) and is given a determinate commitment, and the commissioner or the commissioner's designee is of the opinion that the juvenile offender is a fit subject to return to home placement prior to the achievement of committal reduction credits as set out in subsection (h), the commissioner or the commissioner's designee shall request a hearing before the judge of the juvenile court in which the original commitment occurred. The request shall state the reasons for recommending the early release placement and shall make specific recommendations as to where the child will be placed. A copy of the request for a hearing shall be supplied to the district attorney general. If, on review of the record, the court is of the opinion that the request is well taken and the district attorney general has no objection, the judge may order the early release placement without a hearing. Otherwise, the court shall schedule a hearing within fifteen (15) days of the receipt of the request for hearing. At the hearing, the department, the juvenile offender, and the state shall be given an opportunity to be heard in support of or in opposition to the proposed early release placement and all of the parties may subpoena witnesses to testify on any issue raised by

the proposed placement. The court may make such orders pertaining to such placement as the court determines are justified under the proof produced at the hearing for such early release placement. The court's decision may be appealed under § 37-1-302.

SECTION 6. Tennessee Code Annotated Section 37-1-137, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d)

(1) If the designee of the department supervising a delinquent child on home placement supervision has reasonable cause to believe that such child has violated the conditions of home placement supervision in an important respect after the trial home pass has ended, the designee may file a petition alleging a violation of home placement supervision. Notwithstanding any other law to the contrary, the court may require that the child be placed in detention pending adjudication of the petition. The department is prohibited from taking the child into custody until the court finds that the child has violated conditions of the home placement supervision and the court terminates the home placement supervision. Nothing in this subdivision (d)(1) shall prevent the transfer of a juvenile under § 37-1-134.

(2) No such court permission is required during the trial home pass and the department is authorized to remove the child from the home at its discretion, except that a notice of such removal and disruption of the trial home pass shall be filed with the court within ten (10) days as a violation allegation or other appropriate petition or motion and the legal custody of the department is not terminated. A review hearing on such action shall be held within thirty (30) days

of such filing. Nothing in this subdivision (d)(2) shall prevent the transfer of a juvenile under § 37-1-134.

SECTION 7. Tennessee Code Annotated Section 37-1-137, is amended by deleting subdivisions (g)(1) and (2) in their entirety and by substituting instead the following:

(g)

(1) The commissioner or the commissioner's designee may discharge a child placed on state probation pursuant to § 37-1-131(a)(2)(A) or under home placement supervision status by the department after legal custody ends pursuant to § 37-1-137(c)(1)(C) and thereby terminate supervision of the child by the department. Notification of discharge of a child shall be made in writing to the committing court at least fifteen (15) days prior to the proposed discharge. Unless the committing court makes an objection in writing to the commissioner or the commissioner's designee or sets a hearing within the fifteen-day period with such hearing to be held at the earliest possible date, the court shall be considered to have assented to the discharge from home placement supervision status of the department or from state probation, and such supervision by the department shall terminate.

(2) Upon receiving the written objection from the committing court, the commissioner or the commissioner's designee shall review the child's file and within fifteen (15) days of receipt of such objection may file a motion for a hearing. The court shall hold such hearing within thirty (30) days of the motion filing. A written decision will be rendered within ten (10) days of that hearing. If the department does not concur with the hearing decision, it shall notify the executive committee of the Tennessee council of juvenile and family court judges which shall appoint a panel of three (3) juvenile or family court judges to review

the commissioner's final decision. Such three (3) judge panel will hear and resolve, by a majority vote, the controversy within thirty (30) days of the filing of the commissioner's request. The committing judge shall not be a member of the three (3) judge panel. The determination of the three (3) judge panel shall be final.

SECTION 8. This act shall take effect on July 1, 2011, the public welfare requiring it.