

SUBJECT: Raising the age of adult criminal responsibility to 18 years old

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Biedermann, Cain, Moody, Thierry
2 nays — Dale, Schofield

WITNESSES: For — Daphne Previti Austin, 289th District Court; Candace Aylor and Chas Moore, Austin Justice Coalition; Brandy Mueller, judge criminal court; Lauren Rose, Texans Care for Children; Brett Merfish, Texas Appleseed; Sarah Turowski, Texas Association of School Resource Officers; Kathryn Freeman, Texas Baptist Christian Life Commission; Lindsey Linder, Texas Criminal Justice Coalition; Yannis Banks, Texas NAACP; Stephanie Haug, Texas PTA; Haley Holik, Texas Public Policy Foundation; Christopher Calderon; Elizabeth Kooy; Stacey Mathews; Lexus'Kiyra Newhouse; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Kathryn Bedecarre, Hetty Borinstein, Margaret "Peggy" Cook, Joey Gidseg, Sukyi McMahon, and Lori Privitera, Austin Justice Coalition; Patrick Bresette, Children's Defense Fund - Texas; Dennis Borel, Coalition of Texans with Disabilities; Kathryn Lewis, Disability Rights Texas; Holly Kirby, Grassroots Leadership; Gyl Switzer, Mental Health America of Texas; Celina Moreno, Mexican American Legal Defense and Educational Fund (MALDEF); Greg Hansch and Deborah Rosales-Elkins, National Alliance on Mental Illness (NAMI) Texas; Will Francis, National Association of Social Workers - Texas Chapter; Katherine Barillas, One Voice Texas; Chris Kaiser, Texas Association Against Sexual Assault; Cathy Dewitt, Texas Association of Business; Sarah Crockett, Texas CASA; Nathan Fennell, Texas Fair Defense Project; Kym Olson, Texas Network of Youth Services; Clayton Travis, Texas Pediatric Society; Mark Hanna, Texas Society For Clinical Social Work; Pamela McPeters, TexProtects (Texas Association for the Protection of Children); Jennifer Allmon, The Texas Catholic Conference of Bishops; Knox Kimberly, Upbring; and 14 individuals)

Against — (*Registered, but did not testify*: Jim Baxa)

On — Ron Quiros, Texas Probation Association, Guadalupe County Juvenile Services; (*Registered, but did not testify*: Mike Meyer and Kaci Singer, Texas Juvenile Justice Department; Michele Deitch)

DIGEST:

CSHB 122 would raise the age of adult criminal responsibility in Texas from 17 to 18 years old, placing 17-year-olds accused of crimes in the juvenile rather than the adult justice system. Juvenile courts would have jurisdiction over youths who committed offenses before their 18th birthday, and adult courts would have jurisdiction over those who committed offenses on or after their 18th birthday.

The bill also would make conforming changes to reflect this, including changing offenses in which the age of the person committing the offense was a factor, amending juvenile court procedures to adjust for the change in age, and altering certain criminal procedures. The bill also would extend the amount of time that prosecutors and juvenile probation departments could retain some abbreviated records of juveniles involved in certain offenses so that all such records could be retained until a youth turned 19 years old.

CSHB 122 would require the Texas Juvenile Justice Board to appoint by December 1, 2018, an advisory committee to monitor and evaluate the bill's provisions. The committee would have to include several specified members, including a representative from the Texas Juvenile Justice Department (TJJD), a representative from TJJD's probation services, a representative from the Health and Human Services Commission, a representative of county commissioners courts, two juvenile court judges, chief juvenile probation officers from each regional chiefs association, juvenile prosecutors and defense attorneys, juvenile justice advocates, and individuals who had gone through the juvenile justice system or their family members. The advisory committee would be abolished June 1, 2020.

The bill would take effect September 1, 2019, and would apply only to

offenses and conduct committed on or after that date. The requirement to appoint the advisory committee would take effect September 1, 2017. To the extent of any conflict, CSHB 122 would prevail over other bills enacted by the 85th Legislature.

SUPPORTERS
SAY:

By raising the age of adult criminal responsibility to 18 years old, CSHB 122 would improve public safety, create better outcomes for youths, have long-term economic benefits, and better conform Texas law with national trends in juvenile justice and other state laws. Under current law, the state holds 17-year-olds accountable for criminal actions as if they were adults, while not allowing them to vote, serve on a jury, or buy tobacco, alcohol, or lottery tickets.

CSHB 122 would put Texas in line with other states' laws, federal law on sentencing and correctional practices for those under 18, and U.S. Supreme Court rulings that have recognized differences between children and mature adults. Forty-four other states have set their age of adult criminal responsibility at 18 years old, according to the National Conference of State Legislatures. Raising the age also would resolve inconsistencies in how state and federal law treat 17-year-olds.

Public safety. Moving 17-year-olds to the juvenile system from the adult justice system would enhance public safety because youths are more likely to be rehabilitated in the juvenile system. Education, treatment, and services in the juvenile system focus on rehabilitation, take into account adolescent development, and involve the family, while the adult system lacks this emphasis and often focuses on punishment. Most offenses by 17-year-olds are non-violent, low-level, misdemeanor crimes that do not warrant the adult system's severe sanctions.

The juvenile system is equipped to handle all types of young offenders and could absorb 17-year-olds. It has a range of sanctions available, from pre-trial diversion to probation, and may include confinement in local or state facilities. State-run juvenile facilities offer intensive specialized treatment, including programs for youths who commit murder or other violent offenses.

Public safety would be maintained if Texas raised the age of criminal responsibility because, under certain conditions, 17-year-olds accused of serious crimes still could move to the adult system. The bill would not change the laws that allow certification of older youths accused of certain crimes to be tried and sentenced as adults. Seventeen-year-olds who committed serious and violent crimes could be handled this way while still protecting public safety. In addition, courts could continue transferring to the adult system certain youths with sentences that began in the juvenile system.

Outcomes for youth. By moving 17-year-olds from the adult to the juvenile justice system, CSHB 122 would improve the lives of offenders and recognize scientific studies that show teenage brains are still maturing and that teenagers can exhibit increased risk taking and poor decision making and impulse control. However, teenagers are malleable and have potential for rehabilitation, making it appropriate for them to be in the juvenile system, which includes services and support specifically designed for them.

These offenders would continue to be held accountable for their actions but in a system designed to protect and rehabilitate them and to ensure they had help understanding legal proceedings and consequences. CSHB 122 also would ensure that, unlike in the adult system, youths' parents were involved. Most 17-year-olds are still in high school and could continue their education in the juvenile system, which has appropriate education, vocation, training, and career programs that could be adapted for 17-year-olds.

Seventeen-year-olds would be better protected in the juvenile system, and those sent to local or state facilities could be housed and treated without endangering younger offenders. Local juvenile probation departments and the state are experienced in dealing with offenders as old as 19 in a way that protects everyone. By contrast, youths in adult facilities are at high risk of physical assault, sexual abuse, and mental health problems. Outcomes for 17-year-olds also would improve if they were kept out of

local adult jails, which lack appropriate programs and often struggle to meet federal standards under the Prison Rape Elimination Act (PREA) to separate 17-year-olds from older offenders without isolating them.

Raising the age also would help older youths by allowing their records to remain private, giving them a better chance of moving past their brush with the law. The adult criminal justice system leaves 17-year-olds with an adult criminal record that generally is public information and can have long-lasting consequences for education, jobs, housing, and more.

Costs of implementation. While raising the age could shift some costs from the adult to the juvenile justice system, it would reduce other costs, might be less costly than predicted, and could result in long-term economic benefits. One 2012 study estimated that raising the age of jurisdiction of the juvenile justice system in Texas would result in \$88.9 million in net benefits for each cohort of 17-year-olds. This takes into account costs and savings to taxpayers and the fiscal benefits resulting from better outcomes for youths and reduced victimization.

Long-term savings and other benefits could result because the juvenile system has a better record of reducing recidivism than the adult system, meaning fewer crimes and lower costs for the correctional system. While cost per day of supervision may be more in the juvenile system, lengths of stay often would be shorter, reducing overall costs. Those who might have been crime victims would benefit along with rehabilitated youths.

The costs of raising the age could be less than some estimates. Arrests of 17-year-olds have been dropping for years, and counties could absorb those who entered the juvenile system. Given the frequency with which youths receive probation in the juvenile system, some of the 17-year-olds currently sentenced to adult correctional facilities instead could be placed on probation and kept locally, which would cost less. Some commonly used diversion options in the juvenile system would be cheaper than having 17-year-olds in the adult system.

Other states that have raised the age of criminal responsibility have found

it less costly than predicted, with no spike in juvenile corrections costs, and Texas could have the same experience. For example, after a Connecticut law raised the age in 2010, not only were increases in cost not realized, but spending on juvenile justice was lower in 2011-12 than it had been 10 years earlier. Some of the estimated costs for implementing CSHB 122 reflect costs such as new facilities that may occur regardless of the bill. Not all 17-year-olds would enter the juvenile justice system on the bill's effective date but would enter gradually, so the local juvenile probation systems and the state were not overburdened.

Developing and implementing age-appropriate programs and housing for 17-year-olds in the Texas juvenile justice system would not be unaffordable. In some cases, the juvenile system already supervises offenders as old as 19, and current education, vocation, and career programs used for them could be modified or expanded.

Raising the age would help reduce costs to local jails and the state to comply with federal standards under PREA. Texas counties are incurring significant costs trying to meet the sight and sound separation standards. Counties also could incur costs if noncompliance with PREA were raised in a lawsuit against them.

OPPONENTS
SAY:

The current system is the best approach for both the public and 17-year-olds. The cost of CSHB 122 could be prohibitive, and many options are currently available for 17-year-olds to be treated appropriately in the Texas criminal justice system.

Most 17-year-olds receive probation in the adult system, and the adult prison system operates a youthful offender program designed for them. While 17-year-olds may need services for their age group, this can be done in the adult system, rather than altering Texas' juvenile justice system.

Public safety. Placing all 17-year-olds in the juvenile system could make it difficult to hold them appropriately accountable for their crimes. Seventeen-year-olds are old enough to understand the consequences of

their actions, and the adult criminal justice system provides a range of sanctions to handle them properly. Options include pre-trial diversion, deferred adjudication, probation, fines, and state jail or prison terms, which allow the punishment to fit the individual and crime

Simply shifting the age of court jurisdiction by one year would not necessarily result in less crime or fewer victims. Many things contribute to crime rates, including social, economic, and other factors, as well as decisions made by law enforcement officers, prosecutors, and courts.

Outcomes for youth. Moving 17-year-olds to the juvenile system could have a negative impact on younger youths. It could result in 17-year-olds entering a juvenile justice system that in recent years has dealt with scandals, reorganization, implementation of a regionalization plan, and allegations that some juvenile facilities are unsafe for youths and staff. Younger youths in juvenile settings, which are more informal, could be endangered or influenced by the influx of 17-year-olds, some of whom would have been involved in serious crimes. Many younger youths also have serious and complicated mental health and education needs that may not be helped by the addition of 17-year-olds to the juvenile system.

The rehabilitation needs of 17-year-olds may be more aligned with those in the adult system than with younger offenders in the juvenile system. Any other needs could be met by treating them as a unique group within the adult system, rather than moving them to the juvenile system, which may not provide the type of programs these offenders need.

Costs of implementation. Raising the age could be costly because thousands of 17-year-olds entering the juvenile system could strain juvenile courts, local juvenile probation systems, and juvenile facilities. Enacting CSHB 122 without adequate funding could stress these systems, which often operate under tight budgets.

Placing 17-year-olds in the juvenile system could require more resources for supervision, programs, and treatment. These offenders may have challenging mental health and behavioral issues and may need new

programs focused on job training and life skills to transition to adulthood. Costs of supervision and programs in the juvenile system, due to their intensiveness, are higher than those in the adult system, and providing services for these older youths while keeping probation caseloads low could be costly for the state and counties.

While the fiscal note for CSHB 122 estimates no state cost in fiscal 2018-19, costs would increase significantly after that when the bill's main provisions took effect. The first full biennium of implementation would cost \$45.6 million for fiscal 2020-21 and \$35.1 million in fiscal 2022. This estimate does not include potentially significant costs for probation, including mental health, substance abuse, or other specialized services, according to the fiscal note.

Raising the age could be costly for counties. The fiscal note for CSHB 122 reported that Tom Green County estimates it would have to expand its detention facilities and might no longer be able to provide detention services to other counties. El Paso County estimated a \$15.4 million cost in fiscal 2020-21, including the cost to build a 40-bed facility, and Jefferson County estimated an ongoing biennial cost of \$452,852. Tarrant County reported potentially being impacted by an additional 1,081 juveniles annually, costing \$9.8 million.

OTHER
OPPONENTS
SAY:

If the state raised the age of adult criminal responsibility to 18 years old, it would have an obligation to provide adequate funding for the state and local probation departments to provide programs and supervision.

NOTES:

CSHB 122 would have no fiscal impact during fiscal 2018-19, according to the Legislative Budget Board's fiscal note. Costs would be \$45.6 million in fiscal 2020-21 and \$35.1 million in fiscal 2022. The fiscal note also says that additional costs potentially associated with increased demand on juvenile probation programs were not included and could be significant.

A companion bill, SB 941 by Hughes, was referred to the Senate Committee on Criminal Justice on March 1.

The committee substitute differs from the filed bill in several ways, including that CSHB 122 would take effect September 1, 2019, instead of September 1, 2018, and would apply to offenses committed on after the revised effective date. It also eliminated a provision in the filed bill that would have expanded when prosecutors could appeal some orders relating to certifying a youth as an adult, as well as provisions that would have amended laws dealing with juvenile curfews.