

- SUBJECT:** Reconsidering transfer of juvenile to adult court in certain situations
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 8 ayes — Madden, Allen, Cain, Hunter, Parker, Perry, White, Workman
0 nay
1 absent — Marquez
- SENATE VOTE:** On final passage, April 18 — 30-1 (West)
- WITNESSES:** For — Darrell Dávila, Tarrant County District Attorney; Doots Dufour, Diocese of Austin; (*Registered, but did not testify:* Michael Gutierrez)
Against — None
- BACKGROUND:** Under Family Code sec. 54.02, juvenile courts can waive their jurisdiction and transfer a child to an adult criminal court under certain circumstances. This can occur if the child was at least 14 years old at the time the offense was alleged to have been committed and the alleged offense was a capital felony, an aggravated controlled substance felony, or a first-degree felony. Children who were 15, 16, or 17 years old also can be transferred to an adult court for a second-degree felony, a third-degree felony, or a state jail felony. Courts must find that because of the seriousness of the alleged offense or the background of the child, the welfare of the community requires criminal proceedings.

If a petition alleges multiple offenses that constitute more than one criminal transaction, courts must either retain or transfer all offenses relating to a single transaction. Children are not subject to criminal prosecution for any offense out of a criminal transaction for which the juvenile court retained jurisdiction.
- DIGEST:** SB 1617 would revise the laws on transferring certain juveniles to be tried in adult courts so that children could be subject to criminal prosecution in adult court for certain offenses if:

- the offense came out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses related to the transaction; and
- on or before the date the juvenile court retained its jurisdiction, one or more of the elements of the offense had not occurred.

This option would be available if the second prosecution was for murder, capital murder, manslaughter, criminally negligent homicide, or intoxication manslaughter.

The bill would take effect September 1, 2011, and would apply only to conduct that occurred on or after that date.

**SUPPORTERS
SAY:**

SB 1617 is needed to allow courts to reconsider a decision not to transfer a juvenile to adult court in certain situations. Under current law, once a decision has been made to keep a juvenile in juvenile court for a charge stemming from one criminal transaction, this cannot be changed, even if circumstances change – such as a victim dies – and an additional, different crime is now alleged. The bill would address this situation by allowing courts to reconsider certifying a juvenile as an adult under limited circumstances involving serious crimes.

This change could have been used in situations like the one in which a 15 year old attacked and robbed a pizza delivery man, hitting him over the head with a baseball bat. While the man was still alive, the juvenile pled guilty to robbery. Several months later, the man died from injuries relating to the crime. Prosecutors could not go back to the juvenile court to get authorization to try the 15 year old as an adult for murder because of the restrictions in current law. SB 1617 would make a reasonable exception to current law because the second charge could not have been known at the time of the original charges. The second charge would have to be for a serious crime for which the juvenile should be held accountable.

The bill would allow certifications to be revisited only in limited circumstances. A juvenile would have to be subject to prosecution for murder, capital murder, manslaughter, criminally negligent homicide, or intoxication manslaughter. The bill would apply only if one element of the second crime had not occurred – such as a victim dying – when the first offense was adjudicated.

The bill would not violate any prohibitions against double jeopardy. The certification would have to be for a different crime that could not have been charged at the time the juvenile was charged with another crime.

**OPPONENTS
SAY:**

It would be inappropriate to allow prosecutors a second bite at the apple to certify a juvenile to stand trial in an adult court on charges stemming from a criminal transaction that led to other charges handled in juvenile court. Prosecutors would be aware of a condition of a victim at the time of certification, and any decision made at that time should be final. If a victim were in critical condition, a prosecutor could wait to file charges. This would be the best use of resources rather than revisiting a case with new charges.