

SUBJECT: Appointment of counsel to a qualifying child before first detention hearing

COMMITTEE: Corrections —committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Riddle, J.D. Sheffield, Toth

0 nays

1 absent — Rose

WITNESSES: For — Doots Dufour, Diocese of Austin; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Cindy Eigler, Texas Interfaith Center for Public Policy; Lauren Johnson; Benet Magnuson, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Lauren Rose, Texans Care For Children; Matt Simpson, ACLU of Texas; Gyl Switzer, Mental Health America of Texas; Michael Vitris, Texas Appleseed)

Against — (*Registered, but did not testify*: Mark Mendez, Tarrant County Commissioners Court)

On — Kameron Johnson, Juvenile Public Defender; (*Registered, but did not testify*: Ray Allen, Texas Probation Association; Brett Bray, Texas Juvenile Justice Department)

BACKGROUND: Family Code, ch. 51 requires a court to appoint an attorney to qualifying children in juvenile justice proceedings, though not necessarily before the first detention hearing, where the court decides if the child is to remain in detention. A child is defined as:

- a person 10 years of age or older and under 17 years of age; or
- a person 17 years of age or older and under 18 years of age who is alleged or found to have engaged in conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

DIGEST: CSHB 1318 would require the court to appoint counsel to a qualifying child within a reasonable time before the first detention hearing to represent the child at that hearing.

**SUPPORTERS
SAY:**

CSHB 1318 would encourage efficiency and promote justice by requiring an attorney to be appointed for qualifying children before the first detention hearing. Having proper counsel increases the likelihood that the child will be released at the at the first detention hearing. Because pre-adjudication detention costs more than \$200 per day, reducing the amount of time the child is in detention could save millions of dollars statewide. Because attorneys must inevitably be appointed, this bill would not create any additional costs. Additionally, time spent in a secure detention facility does not reduce recidivism for most children, and may worsen recidivism for low-risk youth. Ensuring that every child has proper counsel at the first detention hearing would better serve the child and could save money.

**OPPONENTS
SAY:**

Because many children are released at the first hearing, requiring the court to appoint an attorney before the first hearing adds an unnecessary expense and obstacle to the system. Appointing an attorney and tracking payments to the attorney can be costly and time-consuming. If the child is not released and stays in the juvenile justice system, the child will be appointed an attorney following the initial detention hearing. Because the child could be released at the first detention hearing, requiring the court to appoint an attorney in all instances is an unnecessary expense and complication.

NOTES:

Representative Sylvester Turner intends to offer an amendment that would require the appointment of an attorney before the initial hearing unless the court determined that the appointment of counsel was not feasible due to exigent circumstances.