

SUBJECT: Increasing the age limit for criminal responsibility to 18 years old

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Riddle, Peña, Rose, J. White

0 nays

2 absent — Hughes, Sanford

WITNESSES: For — Lynne Wilkerson, Bexar County Juvenile Probation Department; Lauren Rose, Texans Care for Children; Morgan Craven, Texas Appleseed; Patricia Cummings, Texas Criminal Defense Lawyers Association; Elizabeth Henneke, Texas Criminal Justice Coalition; Kyle Ward, Texas PTA; Derek Cohen, Texas Public Policy Foundation; Demetrius Greer; Miguel Moll; Jesse Taylor; Charleston White; (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Patrick Bresette, Children's Defense Fund - Texas; Kathryn Lewis, Disability Rights Texas; Traci Berry, Goodwill Central Texas; Thomas Ratliff, Harris/Ft. Bend County Criminal Lawyers Association; Celina Moreno, MALDEF; Cate Graziani, Mental Health America of Texas; Will Francis, National Association of Social Workers - Texas Chapter; Katherine Barillas, One Voice Texas; Jeffery Patterson, Texas Catholic Conference of Bishops; Chris Kaiser, Texas Association Against Sexual Assault; Lori Henning, Texas Association of Goodwills; Sarah Crockett, Texas CASA; Amanda Marzullo, Texas Defender Service; Rebecca Bernhardt, Texas Fair Defense Project; Steve Bresnen, Texas Family Law Foundation; Yannis Banks, Texas NAACP; Kym Olson, Texas Network of Youth Services; and five individuals)

Against — Ron Quiros, Guadalupe County Juvenile Services; Ray Allen, Texas Probation Association; Lisa Tomlinson, Texas Probation Association; (*Registered, but did not testify:* Norman Moore, Hockley County Juvenile Justice)

On — Michele Deitch; (*Registered, but did not testify:* Marc Bittner, 33rd

and 424th Judicial District Juvenile Probation Department; Charles Reed, Dallas County; Nichole Bunker-Henderson, Texas Education Agency; Michael Meyer and Jill Mata, Texas Juvenile Justice Department)

DIGEST:

CSHB 1205 would raise the age of criminal responsibility in Texas from age 17 to 18. The bill would make various conforming changes in law to reflect this change, including changing offenses with age as an element, altering certain criminal procedures, and amending juvenile court procedures. For example, the juvenile court would have jurisdiction over youth who committed crimes before their 18th birthday until they turned 19 years old.

The bill would permit courts to seal records for delinquent conduct constituting a felony if the person had not been convicted of a felony-grade offense since turning 18, as long as other conditions were met. CSHB 1205 also would allow individuals to apply to have certain juvenile conviction records in justice of the peace and municipal courts expunged on or after their 18th birthday under certain circumstances.

The bill would require the Texas Juvenile Justice Board to appoint an advisory committee to monitor and implement the bill's provisions. The committee would determine the issues facing county juvenile boards and probation departments in implementing the bill and would offer recommendations on how to address these issues.

The board would be required to appoint certain stakeholders to the committee, including the executive director of TJJD or a designee, two juvenile court judges, juvenile law attorneys, and chief probation officers from each regional chiefs association. The committee also would include a member from the House of Representatives, who would be appointed by the speaker of the House, and a member of the Senate, appointed by the lieutenant governor. The advisory council would not be subject to the requirements of Government Code, ch. 2110, which applies to state agency advisory councils.

The bill would take effect January 1, 2017, except the provisions

regarding the expunction and sealing of records and the creation of the advisory committee, which would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 1205 would amend Texas law to better conform with national trends in juvenile justice, scientific knowledge about juveniles, federal law, and the overall goals of the juvenile justice system.

Texas is one of a shrinking number of states that automatically prosecute all 17-year-olds in the adult system. Federal law and recent Supreme Court rulings indicate that laws and policies should reflect recognized differences between children and adults. Studies on brain development have shown that 17-year-olds are still maturing, making them more susceptible to poor decision-making but also more amenable to rehabilitation. Keeping 17-year-olds in the juvenile justice system appropriately would allow youth to be held less culpable for their behavior than fully developed adults. It also would enable them to receive services and supports that are not available in the adult system.

CSHB 1205 would resolve some inconsistencies in the law with how the state treats 17-year-olds. While these youth are not able to vote, join the military without parental permission, or buy a lottery ticket, state law holds them accountable for their actions as if they were adults. Charging 17-year-olds as adults subjects them to adult courts, adult punishment, and adult detention. It leaves youth with an adult criminal record that can have severe consequences. Treating 17-year-olds as adults has been shown to increase risk of abuse or suicide and the likelihood of re-offending. This can be a lost opportunity to help reform a young person and can be costly to the state if these youth become lifetime criminals.

The costs of not making this change could be greater than the cost of serving an additional age group in the juvenile system. For example, compliance with the Prison Rape Elimination Act (PREA) passed by Congress in 2003, which requires 17-year-olds to be separated from older prisoners, has led to extreme and costly measures for some adult facilities. On the other hand, facilities in noncompliance also face potential loss of federal funding for failing to comply with PREA beginning in 2017.

The change under the bill would be gradual, and its January 2017 effective date would allow the advisory committee time to plan implementation. The Legislature would be in session at the start of implementation, allowing the state to make any necessary course correction at the outset of the change. Juvenile correctional population projections indicate that juvenile detention admissions will decrease and juvenile probation supervision and that the population in juvenile detention will be below available beds. These projections indicate resources would be available to serve incoming juveniles.

In other states, previous fears about unmanageable increases in cost and administration have not been realized. Upfront costs would be offset by preventing youth from becoming costly habitual adult offenders and instead helping them become contributing taxpayers.

The bill would not change a court's ability to certify 17-year-olds as adults when transfer to adult court was warranted, keeping younger offenders in the juvenile system safe and reserving the adult system only for the most serious 17-year-old offenders. The bill would not lead to a surge in certification, as juvenile courts transferring youth to adult court still would require certain specific findings. TJJD and most county detention facilities already must separate youth by age. The addition of 17-year-olds to the juvenile system would not mean 13- and 14-year-olds would be detained in the same areas as 17-year-olds.

**OPPONENTS
SAY:**

CSHB 1205 would be a major policy change that could have a significant negative impact on the juvenile justice system. The bill could initiate the flow of thousands of 17-year-olds into an already struggling juvenile system, which has seen a number of upheavals and incidents over the past few years.

The bill could result in other unintended consequences, such as an increased number of juveniles being certified as adults to the criminal system or an increased number in determinate sentences. A 17-year-old in an adult detention setting would have access to the better oversight and

protection of such a facility, while 13- or 14-year-olds in juvenile settings, which are more informal, could be endangered by the introduction of older youth. Individuals who are 17 are old enough to appreciate their actions, and the current system handles them appropriately.

Unlike other juvenile justice reforms that are fiscally responsible as well as beneficial to youth, CSHB 1205 would carry a significant fiscal cost. The current fiscal note reflects a cost of only about \$6 million through fiscal 2016-17, but because of the January 1, 2017, implementation date, the actual two-year cost for implementing this bill would be substantially higher.

CSHB 1205 also could derail or impede several other juvenile justice-related efforts this session, including decriminalizing truancy and encouraging juvenile placement in local facilities and programs. Adding 17-year-olds to the population of youth to be served locally would place an unmanageable strain on juvenile courts, juvenile probation, and local juvenile programs and facilities. This influx of youth could push more young people out to remote state facilities, create lengthy juvenile court dockets, and prevent youth from getting needed services.

NOTES:

The Legislative Budget Board estimates that CSHB 1205, with an implementation date of January 1, 2017, would have a negative fiscal impact to general revenue of \$6.7 million through fiscal 2016-17.