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## *Should Texas raise the age of adult criminal responsibility?*

Texas is one of seven states in which 17-year-olds accused of committing crimes automatically enter the adult criminal justice system, rather than the juvenile system. The age at which young offenders enter the adult system is referred to as the age of adult criminal responsibility. Six states have raised this age to 18 in the past seven years, with two making the change this year, according to the National Conference of State Legislatures (NCSL).

Legislation to raise the age of adult criminal responsibility to 18 years old in Texas failed in the 2015 legislative session but could emerge again in 2017 during the 85th Legislature. Making such a change would raise related issues, such as when it should be implemented and how funding for the adult and juvenile criminal justice systems would be adjusted. Other changes that might accompany raise-the-age legislation could include revising court procedures and offenses for which the age of the person committing the offense is a factor.

Debate on raising the age in Texas centers on the effect it would have on public safety, the outcomes for youths in each system, and the cost of moving 17-year-olds to the juvenile justice system. The ability of each system to provide appropriate sanctions and to rehabilitate 17-year-olds is part of the discussion on public safety outcomes. The safety of offenders 17 and younger in each system and the long-term consequences for these youths also are part of the ongoing debate. Concerns about cost center on the price tag for both the state and counties to impose sanctions on 17-year-olds and to provide them with treatment, education, and other programs. The long-term economic benefits of raising the age also are part of the discussion on cost. Another facet of the debate is how Texas should respond to U.S. Supreme Court decisions, federal correctional standards for those under 18 years old, state and national trends, and research on teenage brain development.

*This report outlines how older youths enter the Texas criminal justice system and summarizes the debate on proposals to raise the age of adult criminal responsibility to 18.*

### Adult criminal justice system

Those accused of committing crimes in Texas when they were 17 years old are subject to the procedures and sanctions of the adult criminal justice system. Because 17-year-olds generally are treated the same as other adult offenders, parents do not have to be notified after an arrest and are not necessarily involved in the case.

Sanctions in the adult criminal justice system include deferred adjudication, probation, fines, and either jail or prison terms. Probation is common for 17-year-olds in the adult system. About 8,000 offenders from 17 to 20 years old were placed on adult probation in 2015 for crimes they committed when they were 17 (see *Seventeen-year-olds*, below). Some of these 17-year-old offenders completed probation or turned 18 during the year, leaving local community supervision departments across Texas supervising 1,239 probationers who were 17 at the end of fiscal 2015.

The Texas Department of Criminal Justice (TDCJ), which operates the state’s adult criminal justice system, at the end of August held 46 inmates who were 17 years old and supervised no 17-year-olds on adult parole. About 1,949 offenders who were 17 years old at the time of their offense were received in TDCJ facilities in fiscal 2015. This includes those directly sentenced to prisons, state jails, and substance abuse treatment facilities and those incarcerated after revocation of their parole or probation.

#### Seventeen-year-olds in Texas adult criminal system

22,065

*Number of 17-year-olds arrested in 2015*

8,066

*Number of 17- to 20-year-olds placed on adult probation in fiscal 2015 for crimes committed when 17*

46

*Number of 17-year-old inmates held by TDCJ as of Aug. 31, 2016*

Sources of data: Texas Department of Public Safety, Texas Department of Criminal Justice

The federal Prison Rape Elimination Act (PREA) standards require individuals under 18 who are incarcerated in adult facilities to be housed apart from adult inmates with sight and sound separation between them. TDCJ is in compliance with this requirement, according to the agency.

While 17-year-olds are sentenced to state prisons or state jails like older inmates, once at state facilities they are housed separately and placed in a specially designed youthful offender program. These offenders may receive academic, cognitive, and substance abuse education. When they turn 18, they transfer out of the program and may remain at their unit with other offenders who are 18 and older or be moved to other TDCJ facilities. These 18-year-olds primarily are housed with other offenders near their age and have access to TDCJ’s education and treatment programs. Seventeen-year-olds with medical or mental health issues or physical handicaps may be assigned to a different facility.

Seventeen-year-olds in TDCJ’s youthful offender program may receive some substance abuse education but are not eligible for the two main treatment programs the agency offers, Substance Abuse Felony Punishment Facilities and In-Prison Therapeutic Communities. They may receive treatment from these programs after turning 18 years old, if other conditions are met.

Statewide statistics are not collected for the number of 17-year-olds in local jails but are maintained locally. Local jails also fall under the federal PREA rules requiring facilities to house those under 18 years separately from older individuals, and compliance varies. At a March 2014 hearing of the House Criminal Jurisprudence Committee, the Office of Court Administration reported the estimated number of 17-year-olds in local jails on a typical day was 2,868 to 3,119. Most were in jail for misdemeanors.

Like all adult criminal records, those of 17-year-olds are generally public. Under certain circumstances, adult records can be sealed or expunged with court approval.

### Juvenile criminal justice system

While those accused of committing crimes when they were 17 are automatically subject to the adult criminal justice system, a different, civil court system addresses accusations against those who allegedly committed offenses when they were 10 through 16 years old.

Individuals accused of committing crimes when they were under the age of 17 may be referred to local juvenile probation departments. They may have their cases addressed informally and be released with a caution or may be referred to a juvenile court. Juvenile courts may defer adjudication, put the youth on probation, or sentence the individual to state custody in a secure juvenile facility.

In most cases, juveniles receive probation and are supervised by the county's juvenile probation department. In fiscal 2015, 44,060 juveniles were referred to these local juvenile probation departments. They were referred a total of 62,535 times, a 2 percent decrease from fiscal 2014. About 98.7 percent of dispositions in fiscal 2015 resulted in youths being placed on probation.

Juvenile probation departments generally use a progressive sanctions model that starts with the minimum sanctions and least serious interventions and progresses to more serious interventions, which may include placement in a secure or non-secure facility. Supervision by local probation departments may extend until a youth turns 18 and until 19 for those given determinate (fixed) sentences.

Youths accused of felony offenses may be committed to custody of the Texas Juvenile Justice Department (TJJD) and sent to a secure or non-secure facility. Commitments to TJJD usually are indeterminate, meaning that after a minimum length of stay, release is based on several factors, including success in programs. For offenses occurring after September 1, 2017, courts must find that a child has needs that cannot be met in the community before sending a child to TJJD with an indeterminate sentence. Youths may remain in TJJD's custody until age 19. About 1.3 percent of dispositions in fiscal 2015 resulted in commitment to TJJD, representing 825 youths.

Juveniles found guilty of certain serious or violent crimes may receive a determinate sentence of up to 40 years. They start their term of confinement in a TJJD facility, with possible release on juvenile parole or transfer to the adult prison system or the adult parole system. TJJD may retain custody of these youths until they turn 19. A process called certification allows youths 14 through 16 years old who are accused of certain serious crimes and who meet specific criteria to be tried and sanctioned in the adult system (see *Certification as an adult*, at right).

Records in the juvenile justice system generally are sealed and not available to the public. Exceptions include

information about youths who must register with the state's sex offender registry and youths who start their sentence in the juvenile system but complete it in the adult system.

## Other states

Forty-three states set the age of adult criminal responsibility at 18, which means those accused of committing crimes when they were 17 or younger enter the juvenile justice system, according to a report by NCSL.

Texas is one of seven states in which the age of adult criminal responsibility is under 18 years old (see *Age of adult criminal jurisdiction*, page 4). In five states – Georgia, Michigan, Missouri, Texas, and Wisconsin – those 17 years old and older enter the adult criminal justice system. New York and North Carolina set the age for adult court jurisdiction at 16 years old.

Six states have increased to 18 their age for adult court jurisdiction during the past seven years, with Louisiana and South Carolina making the change in 2016, according to NCSL. Other states are considering similar proposals, some of which would set the age of adult court jurisdiction at 21 years old.

## Certification as an adult

Under Family Code, sec. 54.02, juvenile courts may waive jurisdiction and transfer a child to 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 or older at the time of the alleged offense also may be certified as adults and transferred to adult court for a second-degree felony, a third-degree felony, or a state jail felony. In all cases, 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.

Under other guidelines, juvenile courts also may transfer to adult court the cases of those 18 or older accused of specified felonies committed when they were 14 to 16 if the cases were not tried for certain reasons when the youths were under 18. In fiscal 2015, 115 youths were certified as adults, according to TJJD.



approach for both the public and 17-year-olds. They say the cost might be prohibitive and that the needs of 17-year-olds can be met with the current Texas model.

### Public safety

Whether the public safety is better served by 17-year-old offenders entering the juvenile justice system or the adult system is part of the raise-the-age discussion. The debate includes how the sanctions a juvenile receives affect public safety and reduce recidivism.

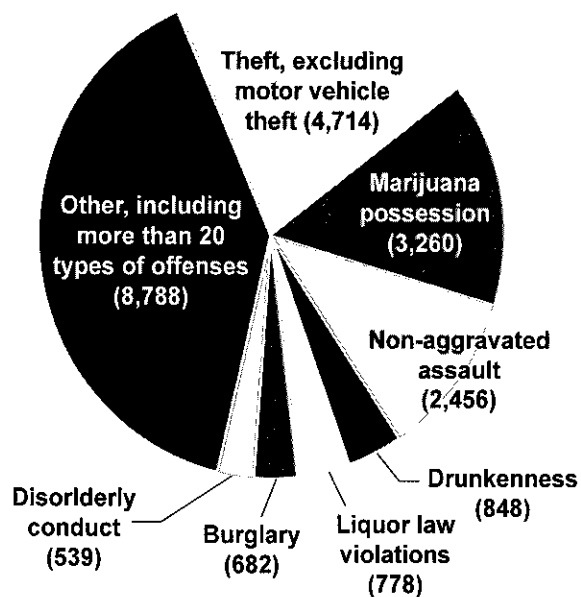
**Supporters of raising the age say:** Moving 17-year-olds to the juvenile system from the adult justice system would enhance public safety in the long run because youths are more likely to be rehabilitated in the juvenile system. Most offenses by 17-year-olds are non-violent, low-level crimes that do not warrant the adult system's severe sanctions. In 2015, about 44 percent of arrests of 17-year-olds were for theft, marijuana possession, drunkenness, and liquor law violations. The offenses and needs of 17-year-olds are similar to those of other teenagers in the juvenile system, supporters say.

Education, treatment, and services in the juvenile system focus on rehabilitation, take into account adolescent development, and involve the family, supporters say, while the adult system lacks this emphasis and often focuses on punishment. Focusing on rehabilitation in the juvenile system reduces recidivism, meaning fewer future crimes by those who go through that system. The U.S. Centers for Disease Control and Prevention (CDC) in 2007 reported that youths under age 18 who were transferred to the adult system from the juvenile system reoffended at a higher rate than youths retained in the juvenile justice system. The CDC analyzed several studies and reported that transferred juveniles were about 34 percent more likely than retained juveniles to be involved in subsequent crimes.

The juvenile system is equipped to handle all types of young offenders. It has a range of sanctions available, from pre-trial diversion to probation, which can include a stay in a secure or non-secure facility, to confinement in a state facility. State-run juvenile facilities even offer intensive specialized treatment, including programs for youths who commit murder or other violent offenses.

Supporters of raising the age say public safety would be maintained if Texas raised the age of criminal responsibility because, under certain conditions, 17-year-

### Most frequent arrests of 17-year-olds in 2015 by offense



Source of data: Texas Crime Report for 2015, Texas Department of Public Safety

olds accused of serious crimes still could move to the adult system. Certification allows older youths accused of certain crimes to be tried and sentenced as adults. Courts could continue transferring to the adult system youths with determinate (fixed) sentences that had begun in the juvenile system. An increase in certifications or determinate sentences after raising the age would not indicate a problem but instead would show the system had the flexibility to handle 17-year-olds who commit the most violent crimes.

**Critics of raising the age say:** 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, critics say, 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.

These diverse sanctions allow 17-year-olds who are first-time offenders or involved in less serious crimes to receive probation or be diverted from the courts before a trial. Other avenues are available for those involved in more serious or violent offenses. In some cases, courts may deem incarceration or adult probation to be appropriate for a 17-year-old who committed a serious offense. In these

situations, critics say, the adult system may provide more appropriate supervision than the juvenile system, which is focused on younger individuals involved in lesser crimes.

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**

How the age of criminal responsibility affects outcomes for young offenders in both the juvenile and adult justice systems is part of the debate on raising the age. The discussion includes questions about the safety of offenders who are 17 and younger, how well each system's programs meet offender needs, and the long-term effects of being in each system.

**Supporters of raising the age say:** Moving 17-year-olds from the adult to the juvenile justice system would improve the lives of offenders and recognize scientific studies that show teenage brains are still developing. These offenders would continue to be held accountable for their actions but within a system designed to protect and rehabilitate them and to ensure they had help understanding legal proceedings and consequences. They could have access to education and substance abuse programs unavailable in the adult system, which would reduce recidivism and improve their futures. Outcomes for 17-year-olds also would improve if they were kept out of local 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.

Seventeen-year-olds would be better protected in the juvenile system and could be housed and treated without endangering younger offenders, supporters of raising the age say. State and local juvenile probation departments are experienced in dealing with offenders as old as 19 in a way that protects everyone. For example, the state currently houses youths up to age 13 at one state facility and older teens at other locations. The juvenile justice system has appropriate education, vocation, training, and career programs that could be adapted for 17-year-olds. By contrast, supporters say, youths in adult facilities are at high risk of physical assault, sexual abuse, and mental health problems.

Raising the age also would help older youths by allowing their records to remain private. 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. Records in the juvenile justice system are withheld from the public, giving rehabilitated youths a better chance of moving past their brush with the law.

**Critics of raising the age say:** Moving 17-year-olds to the juvenile system could have a negative impact on younger youths. This change could result in thousands of 17-year-olds entering a juvenile justice system that in recent years has dealt with scandals, reorganization, and implementing a regionalization plan. Younger youths kept in juvenile settings, which are more informal, could be endangered by the influx of 17-year-olds, some of whom would have been involved in serious crimes.

Critics of raising the age say 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**

Discussions of placing 17-year-old offenders in the juvenile justice system in Texas often include estimates of the short- and long-term monetary costs of such a change and the experiences of other states.

**Supporters of raising the age say:** While raising the age could shift some costs from the adult to the juvenile justice system and could initially increase costs for the state and counties, it would reduce other costs and result in long-term economic benefits.

A 2012 report from the University of Texas LBJ School of Public Affairs 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, supporters of raising the age say. This would mean fewer crimes, which would save the state and local governments money through reduced arrests, prosecutions, and supervision. While cost per day of supervision may be more in the juvenile system, lengths of stay would often be shorter, reducing costs. Those who might have been crime victims would benefit along with rehabilitated youths.

Costs of raising the age could be less than some estimates. Arrests of 17-year-olds have been dropping for years, with 46,173 arrested in 2008 and 22,065 arrested in 2015. The state and counties could absorb those who enter the juvenile system after raise-the-age legislation. Given the high portion of youths who receive probation in the juvenile system, some of the 17-year-olds currently sentenced to adult correctional facilities could instead be placed on probation, which costs less. Seventeen-year-olds often have problems raising bail in the adult system, resulting in them remaining in local jails and increasing costs to counties. The cases of some 17-year-olds could be addressed informally in the juvenile system without court time or through deferred adjudication, and some commonly used diversion options would cost less than having 17-year-olds in the adult system.

Developing and implementing age-appropriate programs and housing for 17-year-olds in the Texas juvenile justice system would not be prohibitively expensive, supporters say. In some cases, the juvenile system already supervises offenders as old as 19, and education, vocation, and career programs used for them could be modified or expanded. Expenses would not occur the first day a law raising the age became effective but would occur gradually as 17-year-olds entered the system.

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 to try to meet the sight and sound separation standards. They report dedicating entire floors to 17-year-olds, which means leaving beds empty on those floors and having to move older offenders around a jail to meet recreation or medical needs of 17-year-olds. Counties also could incur costs if noncompliance with PREA were raised in a lawsuit against them. One large county is considering moving 17-year-olds from its jail to a facility hours away to comply with PREA.

Some states that have raised their age of criminal responsibility have found it to be less costly than predicted. After a Connecticut law raised the age in 2010, spending

## U.S. Supreme Court rulings on offenders under 18

Over the past decade, the U.S. Supreme Court has drawn distinctions between punishments that are allowed for those under 18 and adult offenders. In 2005, the court ruled in *Roper v. Simmons* that the Eighth and Fourteenth amendments forbid the imposition of the death penalty for offenders who were younger than 18 when their crimes were committed. In 2010, the Supreme Court ruled in *Graham v. Florida* that juveniles could not be sentenced to life in prison without parole for non-homicide crimes. In 2012, the court said in *Miller v. Alabama* that mandatory life without parole for those 18 years old and younger who commit homicide was unconstitutional. A 2016 ruling, in *Montgomery v. Louisiana*, applied the ruling in the Miller case retroactively.

on juvenile justice was lower in 2011-12 than it had been 10 years earlier and less than estimated for the change.

**Critics of raising the age say:** 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.

Placing 17-year-olds in the juvenile system could require significantly more resources for supervision, programs, and treatment, critics say. These offenders 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 expensive for the state and counties.

While the fiscal note for the raise-the-age legislation considered in 2015, HB 1205 by Dutton, estimated a cost of \$6.7 million for the first biennium of implementation, costs would increase significantly after that. The first full biennium of implementation would cost \$108.8 million, and this estimate does not include potentially significant costs for probation, including mental health, substance abuse, or other services, according to the fiscal note. The fiscal note also reported the state's cost per day for an inmate in a TDCJ facility is \$54.89, much lower than the \$437.11 cost per day for a youth in a TJJD facility. The state's cost per day for community supervision (probation) for someone in the adult system is \$1.63, lower than the \$5.40 per day for juvenile probation supervision.

Raising the age could be costly for counties. The fiscal note for HB 1205 reported that while county costs would have varied, some estimates indicate the average first-year cost for eight counties would have been \$2.2 million. Bexar County estimated an annual cost of between \$8.2 million and \$8.5 million to implement the change. Harris County estimated \$50.1 million in the first full year of implementation and \$18.2 million to \$19.9 million annually thereafter. The Harris County costs included a new juvenile detention center.

Raising the age of adult criminal responsibility also could have unintended consequences, such as increasing the number of juveniles being certified as adults in the criminal justice system or the number of determinate (fixed) sentences. If these options were used for a large number of 17-year-olds accused of crimes, costs could rise due to more hearings, evaluations, and other procedures.

### **State and federal trends**

How much influence federal policies, laws in other states, and court decisions (see *U.S. Supreme Court Rulings*, page 7) should have on the age of criminal responsibility in Texas is part of the debate on amending the law. These discussions also include the treatment of 17-year-olds under other, non-criminal laws.

**Supporters of raising the age say:** Such a change would put Texas in line with other states' laws,

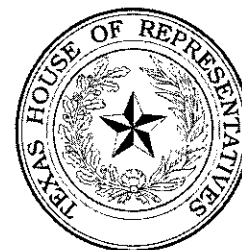
federal law on sentencing and correctional practices for those under 18, and U.S. Supreme Court rulings that have recognized differences between children and mature adults. Laws in these jurisdictions recognize that scientific studies show the brains of teenagers are still maturing and that they can exhibit increased risk taking and poor decision making and impulse control. However, teenagers are malleable and have the potential for rehabilitation, making it appropriate for them to be in the juvenile system, which includes services and support specifically designed for them.

Almost all other states – 43 – have set their age of adult criminal responsibility at 18 years old. The trend has continued in 2016 with discussions in some states about raising the age even higher than 18. Raising the age also would resolve inconsistencies in how state and federal law treats 17-year-olds. Under current law, the state holds 17-year-olds accountable for criminal actions as if they were adults, but they cannot vote, serve on a jury, or buy tobacco, alcohol, or lottery tickets.

**Critics of raising the age say:** Many options are available under the current model for 17-year-olds in the criminal justice system to be treated appropriately. Most 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 to follow a trend.

— by **Kellie A. Dworaczyk**

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