

SUBJECT: Juvenile justice system revision

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Goodman, Brady, H. Cuellar, De La Garza, Naishtat, Puente,
Van de Putte

0 nays

1 present, not voting — Cook

1 absent — Williamson

WITNESSES: (*On original bill*)

For — Clarice Kubala, Mental Health Association of Texas, Texans Care for Children; Mary Blackstock, League of Women Voters; Chuck Brawner, Texas Municipal Police Association; S.C. Van Vlech, Fort Worth Police Department; Ken Yarbrough, Texas Police Chiefs Association; Kimbra Ogg, City of Houston.

Against — Shannon Noble, Texas Network of Youth Services.

On — Donald Lee, Conference of Urban Counties; Vicki Wright, Bob Logan, Texas Juvenile Probation Commission, Barbara Miller, Texas Department of Mental Health and Mental Retardation; Steve Robinson, Texas Youth Commission; Robert Dawson, professor of law, the University of Texas at Austin; Jack Tucker, Texas Fathers for Equal Rights, Texas Fathers Alliance.

BACKGROUND: Family Code Title 3 sets up a civil-court system to adjudicate accusations against persons age 17 or younger for offenses committed while they were ages 10 through age 16 and to attempt to rehabilitate juvenile offenders. Youths 17 or older at the time of a criminal offense are considered to be adults, and offenders younger than 10 are referred through law enforcement agencies to the Department of Protective and Regulatory Services (PRS).

Juveniles suspected of crimes are referred to local juvenile probation departments, generally by law enforcement officers. A total of 77,363 youths were referred in 1993 in 117,834 separate referrals.

Responsibility for juvenile justice is shared by local police, county sheriffs, prosecutors, county juvenile probation boards, county juvenile courts, the Texas Juvenile Probation Commission and the Texas Youth Commission. About 98 percent of all juvenile cases are resolved locally, through counseling, probation, dismissal or diversion to other programs. Only 2 percent of the cases involve commitment to a state facility. County juvenile boards and county juvenile probation departments take juveniles into custody, provide local probation services, run detention facilities and designate juvenile courts. Juvenile probation departments implement the policies of juvenile boards, process and provide services for juveniles referred to the juvenile justice system, supervise youths on probation and run juvenile detention facilities.

The Texas Juvenile Probation Commission assists counties with juvenile probation and detention services. Duties of the commission include distributing state funds to local juvenile probation agencies and setting uniform program and fiscal standards for local agencies and training.

The Texas Youth Commission (TYC) oversees children adjudged delinquent and committed to it by courts and provides parole supervision for children until TYC authority ends. The agency operates residential facilities or contracts for placements for about 2,500 youths and supervises about 2,000 paroled youths.

Terminology in a juvenile case differs from that in a criminal case. For instance, in the juvenile system "adjudication" and "disposition" describe what in criminal proceedings are called "trial" and "punishment." The Family Code defines two kinds of offenses that can bring a child into the juvenile justice system: *delinquent conduct* (including violations of a Texas or federal penal law that is punishable by a prison or jail term and violations of a lawful order of a juvenile court) and the less serious *conduct indicating a need for supervision (CINS)* (including misdemeanors punishable by a fine only; violations of a penal law of a political subdivision of the state; inhalant abuse and public intoxication; truancy; and

being a runaway). Neither category includes traffic offenses, which are under the jurisdiction of criminal courts.

More information on juvenile justice and additional debate on many of the proposals included on CSHB 327 can be found in *Juvenile Crime and Justice*, House Research Organization, Special Legislative Report Number 191, September 2, 1994; *Safeguarding our Future, Children & Families First*, the Texas Commission on Children and Youth, December 1994, and *A Comprehensive Review of the Texas Family Code*, the Joint Interim Committee on the Family Code, November 1994.

POINT-BY-
POINT
ANALYSIS:

CSHB 327 would revise the juvenile justice system to expand the offenses that can be punished by a determinate (fixed-term) sentence, lower the age at which juveniles can be tried as adults, establish a statewide juvenile records system and establish guidelines for a progressive sanctions model for juvenile offenses. CSHB also would replace some of the civil rules of procedure that govern juvenile cases with criminal procedure and evidence rules. CSHB 327 would take effect September 1, 1995.

Supporters say the juvenile justice system was designed to deal with truants, runaways and offenders who committed petty crimes, not the often-violent offenders of today. The system must be reformed to address the surge in juvenile crime, ensure meaningful consequences for juvenile offenders and help protect public safety.

Opponents say many proposals in the bill would make the system more like the adult criminal system and replace the local system with a statewide system. Such changes as progressive sanctions model, are meaningless unless they are fully funded by the state.

Lowering the age for trial as adult

A juvenile who was at least 15 at the time of an alleged felony currently may be certified and tried as an adult if a juvenile court finds that probable cause exists to believe the juvenile committed the offense and that the welfare of the community requires criminal proceedings. Punishment is in

the adult criminal justice system, except that capital punishment is prohibited.

CSHB 327 would lower from 15 to 14 the age at which juveniles could be tried as adults and would make trial as an adult mandatory for juveniles who are accused of felonies and were previously tried and convicted as adults.

Supporters say younger juveniles are committing serious violent crimes, and more of them should be processed through the adult criminal system. Limiting certification as adults to juveniles 15 and older is arbitrary and outdated. The number of violent crimes by 14-year-olds rose 19 percent from 1992 to 1993, to 1,588, according to the Texas Juvenile Probation Commission. Lowering the certification age would give the juvenile justice system flexibility to appropriately deal with some young offenders who are already hard-core criminals but would not mandate adult trial of all 14-year-olds.

Opponents say lowering the age for trying juveniles as adults would erode the separation between the juvenile and adult justice systems. No 14-year-old should be held responsible as an adult or punished in the same system with adults. The rehabilitative programs for 14-year-olds, who will almost surely return to the free world, are virtually nonexistent in a prison. Allowing 14-year-olds to be certified as adults would create a slippery slope toward trying even younger children as adults, and possibly toward demands for capital punishment of juveniles.

Determinate sentencing and transfer to prison

A court sentence to TYC is usually indeterminate; TYC determines the length of the commitment. However, juveniles found guilty of certain violent crimes may be sentenced in juvenile court to a determinate term under TYC supervision, including a possible transfer to the adult prison system at age 18. A determinate sentence of up to 40 years may be imposed by a court on juveniles convicted of capital murder, murder, aggravated kidnapping, aggravated sexual assault, attempted capital murder or deadly assault on a law enforcement or corrections officer or court participant.

CSHB 327 would add the following offenses to the determinate sentencing statute: aggravated robbery; deadly conduct if a firearm is discharged at a person or building; manslaughter; intoxication manslaughter; some Controlled Substance Act violations (first-degree felony and aggravated felony); aggravated assault against a public servant or while using or exhibiting a deadly weapon; indecency with a child, second-degree felony; injury to a child, elderly or disabled person, felony but not state jail felony; criminal solicitation of a minor; attempt to commit murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault and aggravated robbery.

The bill also would allow a determinate sentence for habitual juvenile offenders accused of committing a felony, other than a state jail felony, who had at least two previous felony convictions. The bill would delete from the determinate-sentencing list the offense of deadly assault on a law enforcement officer, corrections officer or court participant, which was deleted from the Penal Code in 1993.

CSHB 327 would retain the maximum determinate sentence term of 40 years for capital murder, first degree felonies and aggravated control substance felonies, and impose a 20-year maximum for second degree felonies and a 10-year maximum for third-degree felonies.

CSHB 327 would set the following *minimum* terms before a juvenile could be paroled without court approval:

- 10 years for capital murder;
- three years for first degree felonies
- two years for second degree felonies
- one year for third degree felonies

After serving a minimum term a juvenile could finish a sentence on parole, without court approval. If the paroled juvenile reached 21 before completing the sentence, the juvenile would be transferred to adult parole. Juveniles convicted of capital murder who had not served their minimum 10-year term and had not been placed on court-ordered parole or previously sent to the adult prison system would have to be transferred to the adult prison system when they reached 21 years old. Juveniles given determinate

sentences for other offenses who reached 21 years old without being released or sent to the adult system would have to be placed on adult parole for the remainder of their sentence. If the parole of persons released from TYC to adult parole was revoked, the offenders could serve their sentence in the adult prison system.

CSHB 327 would allow transfer hearings for juveniles committed to TYC on determinate sentences to be held at any time the juvenile is between 16 and 21 years old, instead of the current requirement that the hearings be held just before the youth's 18th birthday. Courts would have to order a juvenile sent to the adult system or returned to TYC to finish their terms at TYC or on parole and could no longer order a juvenile discharged after a hearing.

Supporters say expanding determinate sentencing would assure juveniles of harsh punishment for violent offenses, yet still allow for a second chance, since under CSHB 327 courts must hold a hearing before deciding whether the juvenile should be transferred to the adult prison system or returned to TYC and later released on parole. The minimum and maximum terms established in CSHB 327 would ensure that violent offenders are dealt with appropriately through confinement and require TYC to keep the juvenile long enough to ensure meaningful rehabilitation. Those given a determinate sentence would serve it at TYC, the adult prison system or on parole.

Opponents say expanding the determinate sentencing laws would unwisely make the juvenile justice system more like the adult system. Most children who break the law should be dealt with in the juvenile system, and only the most violent and serious offenders should be treated like adults. Expanding determinate sentencing would result in more juveniles being moved into the adult prison system where their chances of being rehabilitated are small.

Other opponents say TYC should not be allowed to release from TYC confinement offenders who have served less than their determined sentence, unless a court approves.

Juvenile records

Juveniles' court, agency and law enforcement records generally are not public documents. Juveniles' records are open to inspection only under exceptions provided in the Family Code to persons such as to court and agency officials. Juveniles' law enforcement records must be kept separate from adults' records and must be kept only locally; they may not be sent to a state or federal central depository, except in the case of juveniles who are transferred to the adult prison system.

Generally, juvenile suspects and offenders may not be *fingerprinted or photographed* unless a juvenile court approves or if a juvenile is at least 15 years old and accused of a felony or under 15 but accused of one of six specified violent felonies that may result in a determinate sentence.

Juvenile courts may exclude the public from most juvenile proceedings, unlike most adult criminal proceedings, which are public.

CSHB 327 would establish a statewide computerized juvenile justice information system to be maintained by the Department of Public Safety (DPS) to record information about offenses that would be a crime if committed by an adult, except for fine-only offenses. The system would include offenders names, description, an identification number, fingerprints, the offense for which the juvenile was taken into custody, detained or referred, the disposition of the case and commitment or release by TYC. Local juvenile justice agencies and juvenile courts would be required to compile and transmit the records to DPS. The system would have to be in operation by January 1, 1996.

Access to juvenile records. Access to juvenile crime records would be restricted to persons or agencies with access to adult criminal history records (such as criminal justice agencies and researchers), the Criminal Justice Policy Council and, with the juvenile's permission, military personnel.

Photographing and fingerprinting. CSHB 327 would expand the limited fingerprinting and photographing of juveniles currently allowed so that fingerprints and photographs could be taken of juveniles of all ages without

court consent, if they were accused of a felony or misdemeanor punishable by a jail term.

Sealing records. CSHB 327 would allow most juvenile records to be sealed under certain circumstances but would prohibit the sealing of records of juveniles who commit offenses eligible for a determinate sentence and would allow the sealing of other felony records only after the person reached age 23 and maintains a clean record. Prosecutors would be allowed to ask courts to reopen sealed records of juvenile felony offenders to enhance the punishment for a felony offense.

Juvenile courts. A juvenile court would have to be open to the public, including victims, unless good cause was shown why it should be closed.

Supporters say establishing a statewide record of juvenile offenses and fingerprints would allow law enforcement officials and the courts to know about a juvenile's prior offenses, help track juvenile offenders throughout the state and help identify juveniles who could benefit from early intervention and prevention efforts. Because there is no statewide records system, juveniles can commit offenses in different areas without local law enforcement being aware of the juvenile's record, resulting in juvenile offenders receiving services or punishments inappropriate to their past history. CSHB 327 would protect juveniles' privacy by restricting access to offense records to law enforcement officials, juvenile and criminal justice agencies and some social service agencies and by allowing the sealing and expunging of many records.

Restrictions on fingerprinting and photographing need to be loosened to assure identification of children younger than 15 — who are responsible for an increasing amount of serious crime — and those who commit misdemeanors as well as felonies. The adult criminal records data base uses fingerprints at its core, and it is only logical that a juvenile data base do likewise.

Opponents say creating a statewide juvenile record depository would blur the distinction between the juvenile and adult justice systems. One reason for existing confidentiality protections is to reduce any stigma from juvenile offenses and to allow juvenile offenders to make a fresh start after a

youthful brush with the law. CSHB 327 would go too far by allowing the fingerprinting and photographing of youths referred for some misdemeanors as well as felonies.

Progressive sanctions model

CSHB 327 would authorize juvenile boards to adopt a progressive sanctions model using the guidelines in the bill. CSHB 327 outlines sanctions that could be used against juvenile offenders, and would require that in most cases, deviations from the model be documented.

The model would establish *seven sanction levels* for the disposition of juvenile cases. The sanctions include minimum probation terms, required restitution or community service, required participation in programs, monitoring by probation officers, commitment to residential programs, commitment to TYC and parole requirements. Additional sanctions or parole restrictions could be imposed.

Offenses would be assigned sanction levels moving from CINS (conduct indicating a need for supervision) offenses other than misdemeanors; misdemeanors; misdemeanors involving the use or possession of a firearm; state jail felonies; first-, second- and third- degree felonies; felonies involving firearms; aggravated controlled substance felonies; and capital felonies. Juveniles who commit subsequent offenses of equal or greater severity than the previous ones or who commit felonies and have a previous sanction of level four or five could be assigned a sanction level that is one level higher.

Felony offenses would have to be referred to the prosecuting attorney, who could file a court petition, dismiss the proceedings or refer the youth to a juvenile probation department for the appropriate sanction from the progressive sanctions model or other sanctions. Misdemeanor offenses and CINS offenses would have to be referred to the prosecuting attorney, assigned the appropriate sanction from the model or assigned for other sanctions. If a juvenile failed or refused to comply with a sanction, juvenile probation departments would be required to refer the youth to the prosecuting attorney.

CSHB 327 would authorize the prosecuting attorney (rather than probation officers) to defer prosecution of juveniles accused of offenses other than felonies. Deferred prosecution for felonies would not be allowed unless the prosecuting attorney gave written consent.

Supporters say the current juvenile justice system lacks swift, appropriate and consistent sanctions. The progressive sanctions model outlined in CSHB 327 would establish uniform guidelines for graduated, incrementally more serious sanctions against juvenile offenders. This would let juvenile offenders know there are more severe consequences for each offense — even minor offenses that often only receive warnings now — and could help prevent juveniles from becoming repeat offenders. The model would ensure that offenders are dealt with appropriately so that commitment to TYC can be reserved for serious, habitual and violent offenders.

The progressive sanctions model does not mandate that certain sanctions be applied but instead would establish guidelines. This flexibility would allow local juvenile boards to establish programs to fit their resources and situations.

Opponents say the progressive sanctions model could be the first step leading to mandatory sentencing for juvenile offenders and in reducing the discretion of juvenile courts. The juvenile justice system needs to keep the flexibility to deal with each juvenile's unique situation and the local juvenile departments' resources. Other opponents say CSHB 327 would not go far enough and should mandate that local juvenile boards adopt the progressive sanctions model so that all offenses would be dealt with swiftly and appropriately. Other argue that if the state is going to encourage a progressive sanctions model it should supply resources to the local probation departments and let them develop and operate their own programs.

Other provisions

Rules and procedures in juvenile cases. The discovery process in juvenile proceedings would be governed by the Code of Criminal Procedure; the Texas Rules of Criminal Evidence would apply in juvenile judicial

proceedings. (Civil procedure would govern other proceedings, and the burden of proof would remain with the prosecution.)

Evidence of all juvenile felonies and jailable misdemeanors adjudications could be used in criminal sentencing procedures. (Currently, only evidence concerning felonies occurring within the previous five years is allowed.)

Dispositions. Courts could order CINS offenders or their parents to make restitution to victims. (Currently restitution is only permitted for delinquent-conduct offenders.)

If a court determined that a juvenile had habitually used alcohol or drugs or that alcohol or drugs contributed to an offense, terms of probation could include mandatory participation in a treatment program.

Courts could suspend or deny drivers licenses for one year or until age 19 (up from age 17).

Mentally retarded juveniles. TYC would have to accept mentally retarded children who had been judged fit to proceed, adjudicated and committed to the commission.

New Penal Code offense. CSHB 327 would create a new Penal Code offense for soliciting a person younger than 17 years old to commit one of the offenses listed in Code of Criminal Procedure art. 42.12, sec. 3g(a)(1) — murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault and aggravated robbery). Punishment of solicitation of a minor would be one category lower than the solicited offense.

Status offenders. Status offenders (juveniles accused or adjudicated for offenses such as running away or truancy, which would not be a crime for an adult) could not be committed to TYC.

Courts could order that status offenders be placed in secure confinement for violating a court order if all other dispositions except for secure confinement had been exhausted or were inappropriate.

Miscellaneous. The bill would establish guidelines and standards for pre- and post-adjudication facilities that detain or confine juveniles and would allow juvenile offenders who are at least 18 years old and who escape from a juvenile facility or violate probation or parole to be placed in adult facilities.

The bill also would make expulsion for violating a school district's written rules a CINS offense and would make "referral to a juvenile court" part of the Education Code definition of expulsion.

CSHB 327 would allow child support orders issued for juvenile offenders placed outside of home to be enforced in the same way that regular child support orders are enforced and require courts to order that health insurance be provided for juvenile offenders placed outside the home.

NOTES:

The fiscal note on CSHB 327 estimates general revenue costs, mostly for additional operating revenue for TYC, would be \$3.2 million in fiscal 1996, \$26.3 million in 1997, \$46.3 million in 1998 and \$60.9 million in 1999. According to the fiscal note, CSHB 327 would require \$14.8 million in construction funds from general obligation bonds to expand TYC capacity.

SB 6 by Harris, also proposing a juvenile justice system revision, was scheduled for a hearing before the Senate Criminal Justice Committee on March 21.

The committee substitute makes numerous changes in the original bill, including addition of offenses to the determinate sentencing law, expanding the juvenile records provisions and making adoption of progressive sanctions model optional.