

SUBJECT: Defining child in the Juvenile Justice Code

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Goodman, Staples, McClendon, McReynolds, Naishtat, A. Reyna
0 nays
3 absent — J. Jones, Smith, Williams

WITNESSES: For — M. L. O’Neal, Texas Municipal Courts Association
Against — None
On — David A. Shelton, Texas Fathers Alliance; James D. Bethke, Robert Dawson, Stella Ortiz Kyle

BACKGROUND
: “Status offender” means a child who is accused, adjudicated or convicted for conduct that would not, under state law, be a crime if committed by an adult. This includes truancy, running away from home, or violating a juvenile curfew. “Nonoffender” means a child subject to the jurisdiction of the court under abuse or neglect statutes rather than for legally prohibited conduct of the child.

Juvenile Justice Code of the Family Code allows children to be taken into custody for certain traffic offenses, for other offenses penalized by fines, or as a status offender. Sect. 52.027 of the code makes these provisions applicable to persons at least 10 years old and younger than 18 who are:

- charged with or convicted of a traffic offense or an offense, other than public intoxication, punishable by fine only as a result of an act committed before becoming 17 years old; or
- status offenders and were taken into custody for conduct engaged in before becoming 17 years old.

The Penal Code classifies as an adult a person who has reached the age of 17.

DIGEST: CSHB 1292 would amend the Family Code to define child offenders eligible for custody under sec. 52.027 as persons between the ages of 10 and 17 years. The bill would define the age range for children who were nonoffenders as at least 10 and younger than 18.

The bill would take effect September 1, 1997.

SUPPORTERS SAY: CSHB 1292 would resolve for municipal courts some practical and procedural confusion that has resulted from an apparent conflict between certain provisions of the Family Code and the Penal Code. Under the Family Code, 17-year-olds who committed certain fine-only misdemeanors before turning 17 are defined as children until they reach 18 years of age, and therefore must be kept in a place of nonsecure custody. However, the Penal Code provision that provides municipal courts with criminal jurisdiction classifies persons who have reached the age of 17 as adults for purposes of criminal liability and allows them to be processed in a secure facility. The result has been inconsistent processing of 17-year-olds taken into custody.

CSHB 1292 would resolve this conflict by changing the Family Code definition of “child” relating to fine-only misdemeanors to include only persons between the ages of 10 and 17, deleting the reference about whether an act was committed before or after the actor turned 17.

OPPONENTS SAY: CSHB 1292 would remove important protections from juveniles who commit a fine-only offense before turning 17. If the Family Code no longer differentiated treatment of 17-year-olds based on whether they committed an act before or after they turned 17, law enforcement officers could wait to charge persons until they became 17. Under the provisions of the bill, a 17-year-old could be liable for an adult offense when the act was committed. The current provision in the Family Code was put there precisely to guard against this possibility. Removing this protection would leave these Family Code provisions open to abuse by law enforcement officers and make juveniles subject to gamesmanship by some law enforcement officers.

NOTES: The committee substitute included status offenders under the definition of “child” with the new age bracket of 10 to 17 years old.