



## Cost Estimate for Raising the Age of Criminal Responsibility in Texas

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In 2015, an effort was made to raise the age of criminal responsibility in Texas, with four house bills and one senate bill being filed.<sup>1</sup> By *sine die*, no bill had advanced to the floor of its respective chamber. One common criticism of legislation was the expected costs to state and local governments of implementation, a rebuttal heard more keenly in a challenging fiscal environment. However, it is not uncommon for government agencies to overestimate the fiscal impact of similar legislation. In the two most recent states to pass “raise the age” legislation – Illinois and Connecticut – these increases were far less than expected. In Connecticut, funding was appropriated anticipating a 40 percent growth in juvenile caseloads as 16 and 17 year-old offenders, though the overall caseload only grew by 22 percent. Following the Illinois reforms, the state was able to close three juvenile detention facilities due to low occupancy.<sup>2</sup>

Texas’s Legislative Budget Board (LBB) has evaluated HB 1205, estimating the legislation would cost the state \$169,415,289 over a 5-year timeframe, with an average yearly cost of \$42,353,822.<sup>3</sup> The question again studied by the LBB in the 2017 Staff Reports, estimating a \$63.8 million cost to the state with significant ongoing cost beyond that time horizon.<sup>4</sup> These estimates do not take into account the expected burden on local governments, with both reports anticipating those costs to be significant.

The LBB is constrained in using their estimated uniform cost report for each relevant system. These estimates are helpful in determining the impact of broad system-wide policy changes, though unfortunately contain a great deal of fixed costs not germane to every policy proposal. This memo provides an alternate cost estimate for consideration by the legislature.

### **Direct Cost to the State (Secure Confinement): \$7,051.80 per year.**

At present, TJJD has an operating capacity of 1,082 beds for secure placement.<sup>5</sup> As of December, 2016, approximately 95 percent of these beds were occupied as the institutionalized youth population dropped for the second straight month to 1,029.<sup>6</sup> Concurrently, a House Research Organization (HRO) report stated that TDCJ held 46 17-year-old inmates as of August

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<sup>1</sup> HB 53, HB 330, HB 1205, HB 1240, & SB 104.

<sup>2</sup> MacIver Institute (2013), Mandatory Sentencing 17 year-olds in Adult Court: Is There a Better Alternative for Wisconsin's Youth and Taxpayers?"

<sup>3</sup> Legislative Budget Board (2015), “Fiscal Note, 84<sup>th</sup> Legislative Regular Session: HB 1205.”

<sup>4</sup> Legislative Budget Board (2017), “Legislative Budget Board Staff Reports.”

<sup>5</sup> Texas Juvenile Justice Department (2014), “TJJD Strategic Plan 2015-2019.”

<sup>6</sup> Legislative Budget Board (2017), “Adult and Juvenile Correctional Populations: Monthly Report (January 2017).”

31, 2016.<sup>7</sup> Assuming legislation raising the age of criminal responsibility would see the 46 teenagers transferred directly from TDCJ to TJJD secure confinement (versus other commitment types such as halfway houses or contract care), TJJD would be able to absorb the population with the cost to the state being null.

However, much like the LBB's methodology does not separate fixed costs of the proposed legislation, a null estimate would fail to account for the marginal expenses of housing additional prisoners, even if sufficient capacity already exists. The closest estimate that one can generate for these marginal expenses would be to analyze how the uniform system costs respond to fluctuations in population. This may seem counterintuitive, as reductions in the secure population beget increases in the per-capita uniform cost. As denominator in the LBB's calculation decreases while numerator still contains much of the system's fixed costs, the per-day cost per inmate will increase.

To disentangle the fixed costs, I have calculated the elasticity in the uniform cost-per-day in both secure juvenile and adult confinement. To do so, I contrasted the uniform costs estimates for both systems for both secure and adult sanctions. The question this method answers is – holding all else equal – how does the change in population alter the uniform cost in each group? This question is addressed using the two most recent uniform cost reports: 2013 and 2015.<sup>8</sup> Further, the cost-per-day for juvenile incarceration was calculated using a weighted average to include the additional cost of assessment and orientation housing.

Only juvenile secure confinement produced a measurable estimate: \$0.42 per inmate, per day. Adult secure confinement produced a \$0.01 estimate, and both adult and juvenile probation produced an undetectable estimate, likely because of the relatively higher caseloads and lower cost-per-day. As the focus of this analysis is estimating the direct cost to the state for incarcerating an additional cohort of juveniles, the \$0.42 estimate is central.

Assuming other constants, the \$0.42 per added youth per day would annualize to a total of \$7,051.80 per year for the addition of 46 17-year-olds.

### **Estimated Local Cost: \$33,335,164.80 per year.**

While shifting 46 incarcerated 17-year-olds from TDCJ to TJJD makes for a relatively innocuous fiscal burden, the same cannot be said for the local impact on jails and on juvenile probation. No fiscal estimate was calculated for the effect on local jails, as shifting the 17-year-old cohort would not alter the government entity responsible for the youths' incarceration, given that counties also operate juvenile detention facilities. Some structural changes could be expected in some counties and not in others. Further, uniform data pertaining to cost and population of the 17-year-old cohort is not readily available.

The larger cost driver is juvenile probation. While only a fraction of the cost-per-day of juvenile incarceration, structural differences such as lower caseloads, therapeutic orientation, and

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<sup>7</sup> House Research Organization (2016), "Should Texas Raise the Age of Adult Criminal Responsibility?"

<sup>8</sup> Legislative Budget Board (2015), "Criminal and Juvenile Justice Uniform Cost Report;" Legislative Budget Board (2013), "Criminal and Juvenile Justice Uniform Cost Report."

a lower economy-of-scale produce a cost-per-day roughly five times greater than adult probation. Further, since juvenile probation is administered at the local level, it is impossible to generate a similar elasticity estimate as there is no accounting for changes assumed to remain constant with the state secure population.

According to HRO's research, 8,066 youth were placed on adult probation for crimes committed while the offender was 17. The LBB's most recent uniform cost estimate for juvenile probation is \$14.52 per youth, per day. Currently, this cost is shared between local and state government, contributing \$7.85 and \$6.67 per youth, per day, respectively. For the purposes of this calculation, the cost-per-day of adult probation (\$3.20) is deducted for each youth, for a total local cost of \$4.65 per youth, per day.

Assuming the 8,066 youth in the eligible cohort were similarly placed on juvenile probation and at least 365 days of supervision, the total shared cost would annualize to \$33,335,164.80 to raise the age of criminal responsibility. This burden is the sum total of the local contribution of \$13,690,018.50 and the state contribution of \$19,637,080.30, assuming a similar funding structure. Absent a similar funding structure and in a model similar to adult probation, local governments would bear the full burden of \$33,335,164.80, with the state experiencing a savings of \$19,637,080.30.

## Conclusion

Under the current appropriation structure, the direct cost of raising the age of criminal responsibility would cost the state of Texas \$19,644,132.10 per year; \$7,051.80 in secure confinement costs and \$19,637,080.30 in assistance to local juvenile probation departments. Additionally, local governments could expect a shared cost increase of \$13,690,018.50 per year. In total, the cost of raising the age of criminal responsibility in Texas would cost an additional \$33,342,216.60 across all levels of government.

It must be noted that this analysis does not include the expected savings derived from significantly lower projected revocation rates under juvenile probation, roughly one-fifth of that of adult probation.<sup>9</sup> However, cohort-specific revocation rates in the juvenile and adult systems were unavailable, so further analysis is being undertaken to determine if there is a methodologically sound way to quantify these savings.

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<sup>9</sup> Legislative Budget Board (2015), "Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates."