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**TEXAS CRIMINAL  
JUSTICE COALITION**

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**WRITTEN TESTIMONY**

**SUBMITTED BY**

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TEXAS CRIMINAL JUSTICE COALITION**

**IN SUPPORT OF**

**HB 4371**

**To**

**THE HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY ISSUES**

**APRIL 19, 2021**

Dear Chair Neave and Members of the Juvenile Justice & Family Issues Committee,

We appreciate this opportunity to provide written testimony in support of HB 4371, omnibus legislation that would **raise the floor for juvenile jurisdiction, raise the age of adult criminal jurisdiction**, and make key **juvenile probation changes that will help make “raise the age” feasible for Texas**.

For years, the Texas Criminal Justice Coalition has been closely monitoring the state’s juvenile justice system. As an organization, we analyze systems that intersect with youth justice and promote strategies that reduce justice system involvement while addressing root causes of crime, increasing public safety, and saving taxpayers money. We believe in the power of rehabilitation over punishment, and we understand that criminalizing children between the ages of 10 and 12, as well as charging children aged 17 as adults, is traumatizing, unfair, and ineffective.

It is crucial for Texas to undertake the broad, holistic reform needed to ensure that the juvenile justice system works as effectively as possible, and to reform the juvenile probation system and limit the number of children coming into contact with the Texas Juvenile Justice Department (TJJD) altogether.

HB 4371 by Rep. Allen would make three major shifts:

- Raise the age of adult criminal jurisdiction from 17 to 18.
- Raise the floor of juvenile jurisdiction from 10 to at least 12.
- Update probation practices to align with the “Texas Model.”<sup>1</sup>

### **RAISE THE AGE OF ADULT CRIMINAL JURISDICTION FROM 17 TO 18**

**Raising the automatic age of adult criminal jurisdiction will start kids off in the juvenile system but give judges the discretion to transfer kids with the most serious offenses to the adult system on a case-by-case basis.**

***This is centered on rehabilitation.*** Successfully implementing this reform would enable 17-year-olds to receive rehabilitative services in juvenile facilities that are more suitable and better designed to meet their individualized needs, rather than exposing them to the traumas in adult correctional facilities. Juveniles housed in adult facilities are five times more likely to become victims of sexual assault and are 50 percent more likely than their adult counterparts to be attacked with a weapon. Juveniles are also 36 times more likely to commit suicide in an adult jail.<sup>2</sup>

***This will reduce re-offending.*** This reform would prevent 17-year-olds – for whom 95 percent of arrests are for nonviolent and misdemeanor offenses<sup>3</sup> – from receiving an adult criminal record, which could create further trauma and other hardships, including challenges finding employment and housing, accessing education, and maintaining financial stability; these are risk factors that increase the chance of re-offending and prolong justice system involvement.<sup>4</sup> In fact, treating 17-year-olds as children is predicted to lower their likelihood of re-offending by 34 percent.<sup>5</sup>

***This will save taxpayers money.*** Per one study, a “raise the age” reform would result in a net benefit of \$88.9 million for each cohort of 17-year-olds moved to the juvenile justice system.<sup>6</sup>

***This will bring Texas in line with 47 other states.*** Texas is one of just three states left that automatically charges 17-year-olds as adults for criminal purposes,<sup>7</sup> while the vast majority have already implemented policies that treat juveniles in a fair and effective manner, enabling kids to be treated as kids. Now is a timely point at which to consider a “raise the age” reform: Since 2007, the number of youth detained in the five remaining facilities decreased from 5,000 to less than 1,000.<sup>8</sup> And, crucially, reports from other states that have recently raised the age have not shown evidence that such a policy change has overwhelmed their juvenile systems.<sup>9</sup>

## RAISE THE FLOOR OF JUVENILE JURISDICTION FROM 10 TO AT LEAST 12

**Raising the minimum age of delinquency will keep very young children out of corrections facilities.**

***This will reduce re-offending and target funding toward higher-needs youth.*** According to a study conducted by an MIT economist, 40 percent of youth who are detained under 12 are re-arrested before the age of 25,<sup>10</sup> pointing to the need for alternatives. State leaders must expand on the “Texas Model”: keeping kids in the shallowest end of the system, keeping them closer to home, and diverting them from system involvement whenever possible. Implementing a “raise the floor” reform would allow TJJD and local probation departments to save valuable resources otherwise associated with detaining and supervising very young children, and instead would allow them to focus their time and funding on meeting the needs of older youth with more severe offenses. When pre-adolescent children exhibit law-breaking behavior, there are often family dysfunction or behavioral health issues that are better addressed outside of the justice system.<sup>11</sup>

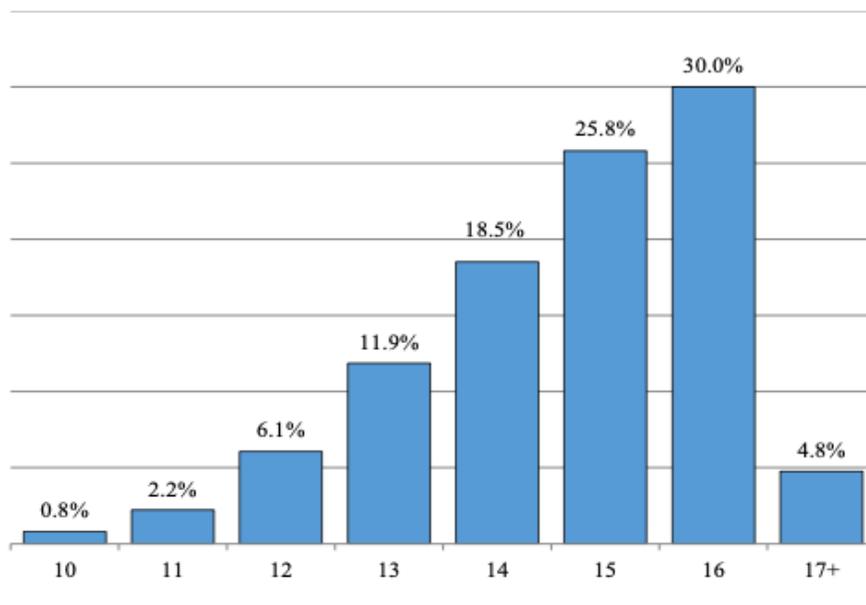
One alternative to system involvement is FAYS (Family and Youth Services),<sup>12</sup> a prevention program available in all 254 Texas counties that provides counseling and parenting classes; anyone can refer a child to FAYS, including school officials, which can provide much-needed help to young people without criminalizing them. Another alternative to incarcerating 10-, 11-, and 12-year-olds would involve educational institutions playing a larger role. Every school district in Texas has federal funding and mandates for childhood intervention; school-based referrals to behavioral or mental health services can significantly help young Texans. For instance, referrals to such services are required by the Individuals with Disabilities Education Act (IDEA). Yet in the 2017-2018 school year, the largest number of disciplinary removals per child or student with a disability were due to emotional disturbance, one of the disabilities specified in IDEA.<sup>13</sup> Utilizing localized alternatives would better enable young children to proceed through developmental stages with tailored assistance, and would reduce the severity of traumas experienced from school discipline and system involvement.

The earlier a person is exposed to trauma, the more serious the consequences are, and the more likely they are to engage in criminal behavior. According to the *Council for Exceptional Children*, youth arrested before the age of 14 are two to three times more likely to become chronically involved in the adult system. – “*Adolescents with Disabilities in the Juvenile Justice System: Patterns of Recidivism*,” *Exceptional Children* (2011).

***This will impact a small population of youth whose needs could be met in the community.*** As it is, kids aged 10-11 make up a small percentage of young people referred to Texas’ juvenile justice system, and most are referred for misdemeanors.<sup>14</sup> Furthermore, the number of youth aged 10 to 12 who are committed to TJJD has been steadily decreasing. In both 2017 and 2018, there were no placements of 10-

year-olds, three of 11-year-olds, and only six of 12-year-olds. Just last year, less than 1 percent of commitments to TJJD were of youth aged 10 to 12.<sup>15</sup>

**Figure 8: Age at Referral – Calendar Year 2019**



With this data in mind, increasing the age of delinquency will mean that a relatively small population of youth will instead have their needs met in their communities, which can keep them on a more stable, successful path. Referrals to probation only increase the likelihood that youth will be involved in the justice system later in life.<sup>16</sup> Texas must take steps to keep young children out of the system altogether.

***This will save taxpayers money.*** Placing young people in therapeutic facilities and community-based diversion programs instead of incarcerating them has the potential to lower the cost of care from \$523 to \$86 per day. This would create potential savings of \$159,505 per youth each year.<sup>17</sup>

#### **UPDATE PROBATION PRACTICES TO ALIGN WITH THE TEXAS MODEL**

**Enabling probation departments to work with local service providers will get more kids the help they need, while limiting their placement into juvenile facilities will reduce trauma. And collectively, these provisions will help make “raise the age” more feasible for Texas.**

Juvenile probation is often referred to as a gateway into TJJD, because youth who do not successfully meet all probation conditions can find themselves more deeply involved in the justice system. Indeed, studies show that long probation sentences often lead to further supervision or incarceration because of violations for minor slip ups, flawed procedures, and disproportionately harsh sentences.<sup>18</sup> In Texas, this certainly is the case: Approximately 60 percent of youth on probation following an adjudication were re-arrested within three years of release, and about 25 percent of the same youth were re-convicted in the juvenile justice system or convicted as an adult within the same time period.<sup>19</sup> This problem largely stems from the lack of adequate community support.

***This will give kids the tools to remain successful in the community.*** Local probation departments that are seeking to keep children from deeper system involvement must be empowered to do so. State leaders should support community reinvestment funds, wherein local service providers work in partnership with probation departments to offer supports and services; HB 4371 specifies that such a fund can help provide mentoring, behavioral and mental health services, financial or housing assistance, job training, educational services, and after-school activities. These community reinvestment funds can be financed by surplus funds of the probation department, by the county, or through gifts, grants, and donations. This is something Harris County has begun doing, as the first county in Texas to implement a community reinvestment fund. From preliminary reports, and given the significantly low re-arrest rate among kids who have been accessing community-based services, it seems to be an effective, rehabilitative model.<sup>20</sup>

***This will keep more kids out of facilities unnecessarily.*** Probation reform separately requires a change in approach to violations that do occur. Per this bill, if a court finds that a child violated a probation condition through conduct that does not constitute a criminal offense, the court cannot order the child's placement into a juvenile facility unless that conduct indicates that the child may be dangerous to themselves or others. This is a strong step towards keeping kids out of facilities and providing opportunities for care in the community, while still maintaining accountability and protecting public safety.

### RACIAL IMPLICATIONS OF CHILDHOOD INCARCERATION IN TEXAS

Black youth are two times more likely to have an interaction with TJJJ in comparison to white youth, based on their representation in Texas.<sup>21</sup> HB 4371, through its various provisions, will help reduce involvement with the youth justice system and, correspondingly, may help reduce racial disparities in that system. This is critical to providing opportunities for people of color to have hope and achieve success.

### CONCLUSION

HB 4371 is vital to the wellbeing of Texas youth and the safety of Texas communities, foregrounding approaches that reduce recidivism through rehabilitation while saving taxpayer dollars. HB 4371 can reverse the effects of the incarceration cycle, and we strongly urge the Committee's support.

*For questions, contact Alycia Castillo at [acastillo@TexasCJC.org](mailto:acastillo@TexasCJC.org) or at (512) 441-8123 ext. 107.*

### Citations

<sup>1</sup> Texas Juvenile Justice Department, *What Is the Texas Model?*, <https://www.tjjd.texas.gov/index.php/what-is-the-texas-model>.

<sup>2</sup> Texas Criminal Justice Coalition (TCJC), *Seventeen in the Adult Justice System: Profiles of People Directly Impacted by Texas' Failure to Raise the Age*, October 2019, <http://www.texascjc.org/system/files/publications/Seventeen%20in%20the%20Adult%20Justice%20System%20Report.pdf>.

<sup>3</sup> Texas Department of Public Safety, *Crime in Texas: 2019*, p. 22, 24, <https://www.dps.texas.gov/sites/default/files/documents/crimereports/19/cit2019.pdf>.

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<sup>4</sup> TCJC, *Seventeen in the Adult Justice System*.

<sup>5</sup> Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, MMWR 56 (2007), No. RR--9, <https://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

<sup>6</sup> Michele Y. Deitch, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *40 American Journal of Criminal Law*, 1 (2012) (with Rebecca Breeden & Ross Weingarten), <https://law.utexas.edu/faculty/publications/2013-Seventeen-Going-on-Eighteen-An-Operational-and-Fiscal-Analysis-of-a-Proposal-to-Raise-the->

<sup>7</sup> TCJC, *Raise The Age: Hold 17-Year-Olds Accountable in the Juvenile Justice System*, <https://www.texascjc.org/%E2%80%9Craise-age%E2%80%9D-hold-17-year-olds-accountable-juvenile-justice-system-0>.

<sup>8</sup> TCJC, *Spend your Values, Cut your Losses, 2021 Divestment Portfolio: Smart and Safe Justice System Solutions That Put Communities First*, November 2020, <https://www.texascjc.org/system/files/publications/Spend%20Your%20Values%20Cut%20Your%20Losses%20Portfolio.pdf>.

<sup>9</sup> Justice Policy Institute, *Raise the Age: Shifting to a Safer and More Effective Juvenile Justice System*, 2016, [http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheagesummary\\_final\\_3\\_6\\_16.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheagesummary_final_3_6_16.pdf).

<sup>10</sup> Kerry Jamieson, *ACEs and Juvenile Justice*, Center For Child Counseling, November 7, 2019, <https://www.centerforchildcounseling.org/aces-and-juvenile-justice/>.

<sup>11</sup> National Criminal Justice Reference Service, *Risk Factors for Delinquency: An Overview*, [https://www.ncjrs.gov/html/ojdp/jijournal\\_2003\\_2/page3.html](https://www.ncjrs.gov/html/ojdp/jijournal_2003_2/page3.html).

<sup>12</sup> Texas Department of Family and Protective Services, *Prevention and Early Intervention (PEI) Programs*, [https://www.dfps.state.tx.us/prevention\\_and\\_early\\_intervention/about\\_prevention\\_and\\_early\\_intervention/programs.asp](https://www.dfps.state.tx.us/prevention_and_early_intervention/about_prevention_and_early_intervention/programs.asp).

<sup>13</sup> U.S. Department of Education, *OSEP Fast Facts: Children Identified With Emotional Disturbance*, IDEA: Individuals with Disabilities Education Act, October 6, 2020, <https://sites.ed.gov/idea/osep-fast-facts-children-IDed-Emotional-Disturbance-20>.

<sup>14</sup> TCJC, *Seventeen in the Adult Justice System*.

<sup>15</sup> Texas Juvenile Justice Department (TJJD), *The State of Juvenile Probation Activity in Texas: Statistical and Other Data on the Juvenile Justice System in Texas*, 2019, <http://www.tjtd.texas.gov/index.php/doc-library/send/334-state-of-juvenile-probation-activity/2479-the-state-of-juvenile-probation-activity-in-texas-2019>.

<sup>16</sup> U.S. Department of Justice, Office of Justice Programs, *Juvenile Justice Statistics: National Report Series Bulletin*, June 2020, <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/254499.pdf>.

<sup>17</sup> Legislative Budget Board, *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2019 and 2020*, January 2021, p. 13, [https://www.lbb.state.tx.us/Documents/Publications/Policy\\_Report/6292\\_CJDA\\_Uniform\\_Cost.pdf](https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/6292_CJDA_Uniform_Cost.pdf).

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<sup>19</sup> TJJD, *The State of Juvenile Probation Activity in Texas*.

<sup>20</sup> Harris County Justice Administration Department, *Harris County Commissioners Approve First of Its Kind Community-Led Multi-Million Dollar Youth Justice Community Reinvestment Fund*, February 10, 2021, <https://jad.harriscountytexas.gov/Press-and-Media/Press-Room/harris-county-commissioners-approve-first-of-its-kind-community-led-multi-million-dollar-youth-justice-community-reinvestment-fund>.

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