

## **BILL ANALYSIS**

H.B. 491  
By: Wu  
Juvenile Justice & Family Issues  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Concerns have been raised over the age of a child at which a juvenile court may exercise jurisdiction over the child, given that children as young as 10 years old who are arrested for minor offenses are included in this jurisdiction. It has been suggested that a very small number of 10-year-olds are arrested in Texas and that these few cases are better dealt with by their parents outside the criminal justice system. Entering the juvenile justice system at such a young age creates unnecessary trauma for these youth, the overwhelming majority of whom are arrested for nonviolent misdemeanors and do not possess the mental capacity to navigate the system. H.B. 491 seeks to address these concerns by raising the age of a child for purposes of certain juvenile court matters and criminal responsibility.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 491 amends provisions of the Code of Criminal Procedure, Education Code, and Penal Code relating to the minimum age of criminal responsibility and relating to the age of a child at which a juvenile court exercises jurisdiction over the child. The bill does the following:

- raises the age at which a person is considered a child for purposes of statutory provisions relating to a child taken into custody for an offense over which a justice or municipal court has jurisdiction from at least 10 to at least 12;
- raises the age at which a student is considered a child for purposes of the criminal procedure applicable to a school offense from at least 10 to at least 12;
- raises the age at which a person commits a fine-only misdemeanor offense or a violation of a political subdivision's penal ordinance that triggers a prohibition against prosecuting or convicting the person from younger than 10 to younger than 12; and
- raises the age at which a person younger than 15 is presumed incapable of committing such an offense or violation, other than an offense under a juvenile curfew ordinance or order, from at least 10 to at least 12.

H.B. 491 amends the Family Code to revise the definition of "child" under the juvenile justice code as follows:

- raises the age at which a person is considered a child from under 17 to under 18 if the person is 10 or older and is alleged or found to have engaged in conduct that violates a

penal law of the grade of felony as a result of acts committed before becoming 12 years of age; and

- lowers the minimum age at which a person is considered a child from 17 or older to 12 or older if the person is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed after becoming 12 and before becoming 17.

H.B. 491 requires a child younger than 12 to be released from court custody to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court unless the child poses an immediate threat to public safety or to the child's own safety.

H.B. 491 replaces the requirement for a person conducting a preliminary investigation of a child younger than 12 who is referred to juvenile court to refer the child's case, after making certain determinations, to a community resource coordination group, a local-level interagency staffing group, or other community juvenile services provider with an authorization to do so. The bill revises the determinations that must be made for that referral by requiring a determination that the child is not subject to the jurisdiction of a juvenile court because the child is not alleged to have engaged in conduct that violates a penal law of the grade of felony as a result of acts committed before becoming 12 years of age.

H.B. 491 requires a court to hold a jurisdictional hearing without a jury to determine whether to retain jurisdiction over a child younger than 12 on request of any party, establishes the time at which the hearing must be held, and sets out factors the court must consider at the hearing in making its determination. The bill authorizes the court to proceed with a detention hearing or an adjudication hearing, as applicable, if it retains jurisdiction over the child and, if it waives jurisdiction, requires the court to do the following:

- immediately dismiss the child and the charges against the child; and
- notify the person who conducted the child's preliminary investigation of the waiver.

The bill establishes that this waiver is a waiver of jurisdiction over the child only for the dismissed charges. The bill authorizes the notified person, as appropriate, to refer the child's case to a community resource coordination group, local-level interagency staffing group, or other community juvenile services provider for the appropriate services for the child and the child's family.

H.B. 491 applies only to an offense committed or conduct that occurs on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense or conduct, or any element thereof, that was committed or occurred before that date.

H.B. 491 repeals the following provisions:

- Article 45.058(j), Code of Criminal Procedure;
- Sections 37.124(d) and 37.126(c), Education Code;
- Section 53.011(d), Family Code; and
- Section 42.01(f), Penal Code.

### **EFFECTIVE DATE**

September 1, 2023.