

SUBJECT: Retaliation for employee complaints at TYC, other TYC operations

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Madden, Hochberg, McReynolds, Dunnam, Jones
1 nay — Haggerty
1 absent — Oliveira

WITNESSES: For — Will Harrell, ACLU, NAACP, LULAC, TCAjj (Registered, but did not testify: Mary Blackstock, Texas League of Women Voters; Jill Johnson, Texans Care for Children
Against — None

DIGEST: CSHB 3521 would prohibit the Texas Youth Commission (TYC) from discharging or discriminating or retaliating against an employee who in good faith made a complaint to the commission or cooperated in an investigation. It also would authorize TYC to obtain the criminal history records of current employees.

The bill also would prohibit a single individual from having complete control, supervision, or oversight over the schedule and movements of youths. The bill would give TYC rulemaking authority to establish these provisions.

A sign would have to be posted in the eating area and other conspicuous, high traffic, high visibility locations at each TYC facility stating the child's rights while in the facility and the name, phone number, and e-mail address of the TYC employee with supervisory authority over the facility with whom the child could file a complaint or report abuse. The sign would be printed on letter-size paper in an easily readable font and type size.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 3521 would help address some of the problems that played a role in the recent scandal involving allegations of sexual abuse and other crimes in TYC facilities. Adults spending time alone with students, youths not knowing where to turn for help, and fears of retaliation were some of the issues that have come to light. CSHB 3521 would address these problems and increase the safety of the youths.

Prohibiting any one adult from having control over the schedule and movements of youths would help reduce the time adult supervisors had alone with children in an effort to prevent abuse from occurring. It would ensure that no one adult held complete control over a youth. By placing this in statute, both staff and youths would understand this and be empowered to raise the issue if violations occurred.

When the abuse was occurring, it is possible that some TYC employees did not speak up for fear of retaliation. CSHB 3521 would address this fear by making it state law that TYC could not fire or discriminate against employees who in good faith make complaints or cooperate with investigations. The current whistleblower statute does not protect all employees making complaints or cooperating with investigations because it requires that allegations of specific types of violations be made to certain authorities. The unique situation at TYC warrants special protection in the statutes.

Requiring a posted sign informing youths of their rights and how they could file complaints would remind children and staff alike that the commission does not tolerate abuse and that a process exists to report it. This could serve as a deterrent to abuse and crime.

**OPPONENTS
SAY:**

Prohibiting TYC from firing employees who make a complaint in good faith is ambiguous enough that it could be used to challenge any employment actions taken by TYC against an employee who at some time had made a complaint. This could subject the state to litigation.