

SUBJECT: Establishing office of inspector general at the Texas Youth Commission

COMMITTEE: Corrections — committee substitute recommended

VOTE: 4 ayes — Madden, Hochberg, Haggerty, Jones
0 nays
3 absent — McReynolds, Dunnam, Oliveira

WITNESSES: For — Doots Dufour, Diocese of Austin, Texas Catholic Correctional Ministries; Isela Gutierrez, Texas Criminal Justice Coalition; Will Harrell, ACLU, TCAjj, NAACP, LULAC; Kevin Acker, Ward County Attorney; David E. Cervantes, 349th Judicial District Attorney; Ronald Earle, Travis County District Attorney's Office; Clifford C. Herberg, Bexar County District Attorney's Office; Susan Reed, Bexar County District Attorney; Ramon Rodriguez, for Tom Marress, Criminal District Attorney, Jefferson County, Texas; Riley Shaw, Tarrant County District Attorney's Office; Genger Galloway; Frank D. Brown; Laurie K. English; Jody Gilliam; Staley Heatly; Barry Macha; Michael B. Murray; Sam Oatman; Ken Sparks; David M. Williams; (*Registered, but did not testify:* Caroline O'Connor, Texas State Employees Union; Jodie Smith, Texans Care for Children)

Against — None

On — Gina DeBottis, Special Prosecution Unit, Tish Elliott-Wilkins, TYC; Robert Kepple, Texas District and County Attorneys Association; John Moriarty, TDCJ-OIG; John Segrest

DIGEST: CSHB 914 would require the Texas Youth Commission (TYC) to establish an office of inspector general (OIG) to investigate crimes committed at TYC facilities and fraud committed by TYC employees. The TYC board would have to appoint a commissioned peace officer as chief inspector general.

The OIG would be authorized to employ and commission inspectors general as peace officers to carry out the duties of the office. An inspector general would have all the duties and powers given to peace officers and

would have to be certified by the Texas Commission on Law Enforcement Officer Standards and Education.

The office of the OIG would be required to report the results of its investigations to the TYC board, the standing committees of the Senate and the House of Representatives with primary jurisdiction over correctional facilities, and the special prosecution unit, which is a state-funded office that investigates and prosecutes criminal offenses committed in adult correctional facilities.

The chief inspector general would have to give the TYC board a quarterly report on the operations of the office. The report would be public information and would have to be published on the TYC website. It would have to be both aggregated and disaggregated by individual facility and include information about:

- the types of investigations done by the office, such as whether they included alleged incidents of sex abuse or narcotics;
- the relationship of the victim to perpetrator; and
- the number of investigations concerning suicides, deaths, and hospitalization of children in TYC custody.

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. The TYC would have to establish the office as soon as practicable after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 914 is necessary to address a problem that played a significant role in the recent allegations of sexual abuse and other crimes in Texas Youth Commission facilities. Many of the alleged crimes were not prosecuted because the allegations were not properly investigated or forwarded to law enforcement officers and prosecutors. CSHB 914 would address this problem by requiring TYC to establish an office of inspector general that would be staffed with peace officers and would require information about the office's investigations and operations to be passed along to the TYC board, the special prosecution unit, public officials, and the public. These changes would help protect TYC staff and youth and ensure justice was done when a crime occurred in an agency facility.

Under TYC's current system, initial investigations into alleged incidents at facilities most often have been handled by civilian personnel employed by

the agency's office of inspector general. This office has undergone two recent name changes, originally being called the office of inspector general, having its name changed in July 2006 to the office of youth care investigations, then having its name changed back to the office of inspector general in February 2007. Throughout these name changes, the staff of the office have remained trained in child protection issues and agency policies, not law enforcement. While some alleged crimes may have been investigated by local law enforcement officers, in many other cases the initial and only investigations were done by TYC staff who were untrained and unqualified to do criminal investigations and whose focus was on whether the agency should take administrative actions.

Another problem has occurred when these staff finished their investigations and filed reports with the agency and sometimes with local law enforcement authorities. In many cases, reports were faxed or sent to local law enforcement offices, but they often contained little information other than noting that a case was closed or could not be confirmed. Some reports were sent to the records division of a police department, not to criminal investigators. This effectively ended the investigation into most of these alleged crimes and resulted in no case being forwarded to local prosecutors.

Establishing an independent office of inspector general at TYC and requiring it to be staffed with peace officers who have a duty to investigate and report crimes would ensure that investigations into all crimes were handled properly. Peace officers are trained in what constitutes a crime and when criminal investigations should go forward. They know how to handle evidence, take information from and interrogate witnesses, protect the rights of defendants, and ensure that evidence can be admitted at trial.

Peace officers also know where to send information once an investigation is completed and are obligated to follow up on their investigations. Prosecutors have said that they are more than willing to prosecute crimes occurring in TYC facilities, but first the crimes have to be investigated and passed along to them. CSHB 914 would ensure that, whoever eventually was tasked with prosecuting crimes in TYC, the investigations into those crimes were done properly.

Without having licensed peace officers on staff at TYC to investigate crimes, these investigations would fall to local law enforcement officers who have many other duties and most often do not have the expertise to do

the best job investigating crimes in correctional facilities. TYC units are state facilities, and the state should take responsibility for investigating crimes that occur on their premises.

The system established by CSHB 914 would be modeled on one that works well in the adult criminal justice system. Texas Department of Criminal Justice's office of inspector general operates independent of the agency and responds to all allegations of crimes inside the adult facilities. Its inspectors are peace officers who conduct a criminal investigation and then give the results directly to prosecutors who proceed with the cases. The office reports directly to TDCJ's board. This relationship has worked well, and there have been no problems with this structure that would warrant creating an OIG appointed by an entity other than the TYC board.

Several provisions in CSHB 914 would ensure the independence of the office and proper oversight of its investigations and operations. For example, the OIG would report on its investigations directly to the TYC board – not agency staff – and to the Legislature and the special prosecution unit, a state entity that can be called in to prosecute crimes in adult correctional facilities and that may be the subject of other legislation concerning the prosecution of crimes occurring in TYC facilities. In addition, the chief inspector general would have to make quarterly reports on its operations public and post them on the Internet, allowing additional outside scrutiny.

It would be appropriate to limit the OIG to the investigation of alleged crimes so that it can have a singular focus and develop expertise in criminal investigations in youth facilities. Other legislation dealing with the structure of the agency would be a better place to create an office for routine monitoring or auditing of the agency. It would be best to allow the agency and the OIG itself the flexibility to define the type of training necessary for OIG staff, instead of placing this in statute.

**OPPONENTS
SAY:**

The office of inspector general that would be established by CSHB 914 would not be far enough removed from TYC to ensure its independent and objective investigation of alleged crimes. The bill would require the TYC board, which resigned in March 2007, to appoint the inspector general and would require the OIG to report to the board. This could result in a conflict of interest in which the office felt pressure not to raise issues that could present the board or agency in a bad light. Although this system may

be working in the adult correctional system, it is dependent on the strength of character of the person appointed as OIG.

It would be better to insulate the OIG from potential agency pressure in a structural way. The OIG should be appointed by an outside entity, such as the governor, with Senate confirmation, and the appointment should be for a set term with removal only for specified reasons. This would help ensure the true independence of the OIG and its investigations into crimes.

OTHER
OPPONENTS
SAY:

The OIG also should be given broad enough authority to do more than react to crimes. For example, it should be charged with preventive, routine monitoring and auditing of the agency.

Because of complexity of the laws governing juveniles, including the interaction among the Penal Code, child protection statutes, and juvenile law, CSHB 914 should require that the staff of the OIG receive either very specialized training or include attorneys with this type of expertise.

NOTES:

The committee substitute added provisions requiring the OIG to report to legislative committees and the special prosecution unit. The original bill would have required the OIG to report to the board on the operations of the office upon board request, while the committee substitute would require a quarterly report to the board, make the report public information, and require publication of the report on the agency's website. The committee substitute also would require certain types of information be in the report and make the bill effective immediately if it receives the necessary vote.

The fiscal note estimates that CSHB 914 would cost the state \$546,210 in fiscal 2008-09 and similar amounts after that.

Several other bills would establish an OIG for the Texas Youth Commission staffed by peace officers who report to the agency board, including, HB 2807 by Madden, which is scheduled for a hearing on April 16 by the House Corrections Committee; SB 103 by Hinojosa, which is pending in the Senate Criminal Justice Committee, and HB 2335 by Castro, which has been referred to the House Corrections Committee.

HB 3639 by Turner, which would create an independent Office of Inspector General, appointed by the governor for two-year terms, to conduct audits of policies and procedures and investigate allegations of

sexual, physical, and psychological abuse within TYC facilities as well as other investigations, has been scheduled for an April 16 hearing by the House Corrections Committee.