

SUBJECT: Continuing the TYC, TJPC, TYC Office of Independent Ombudsman

COMMITTEE: Corrections — committee substitute recommended

VOTE: 10 ayes — McReynolds, Madden, England, Hodge, Kolkhorst, Marquez,
Martinez, S. Miller, Ortiz, Sheffield

0 nays

1 absent — Dutton

WITNESSES: (*On original bill:*)

For — I William R Cox, Lighthouse Family Network; Toby Goodman, Juvenile Justice Association of Texas; Riley Shaw, Tarrant County District Attorney's Office; Jodie Smith, Texans Care for Children; Randy Turner, Tarrant County Juvenile Services

Against — (*Registered, but did not testify:* Cindy Segovia, Bexar County Commissioners Court)

On — Jim Allison, County Judges and Commissioners Association of Texas; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Vicki Spriggs, Texas Juvenile Probation Commission; Cheryl Townsend, Texas Youth Commission; (*Registered, but did not testify:* Ross Robinson, Department of State Health Services)

(*On committee substitute:*)

For — Joella Brooks, Southwest Key Program; Isela Gutierrez, Texas Criminal Justice Coalition; Clifford Gay; (*Registered, but did not testify:* Katrina Daniels, Bexar County Criminal District Attorney Susan D. Reed; Juan Sanchez, Southwest Key Programs; Cindy Segovia, Bexar County Commissioners Court)

Against — None

On — Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify:* Laura Nicholes, Texas Association of Counties; Derrick Osobase, Texas State Employees Union)

BACKGROUND: The Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) together are responsible for juvenile offenders in the state. Both agencies will be abolished September 1, 2009, unless continued by the Legislature.

About 95 percent of the youths in Texas' juvenile justice system are overseen by local probation departments, and about 5 percent are overseen by TYC. In fiscal 2008, 69,760 juveniles were referred to the local juvenile justice system for a total of 97,753 offenses, and 1,689 of these were committed to TYC.

TEXAS YOUTH COMMISSION

The Texas Youth Commission (TYC) operates the state's juvenile corrections agency. The agency provides secure confinement for youths committed to it by courts, operates education and treatment programs for youths in its custody, and supervises youths on parole. Youths age 17 or older at the time of a criminal offense are considered adults, and offenders younger than age 10 are referred through law enforcement agencies to another state agency.

Age limit, youth sentences. In 2007 the 80th Legislature enacted SB 103 by Hinojosa, which made numerous changes in the agency's operations. It limited commitments to TYC to youths who commit felony offenses and lowered the maximum age of TYC supervision from 21 to 19.

Sentences to the TYC usually are indeterminate, meaning that TYC determines the length of commitment based on a number of factors. SB 103 required TYC to establish minimum lengths of stay for offenses. After youths have completed the minimum length of stay, TYC must discharge the child, release the child on parole, or extend the child's stay. Juveniles found guilty of certain serious or violent crimes may be sentenced to a determinate (fixed) term of up to 40 years, starting in a TYC facility, with possible release on parole or future transfer to the adult prison system or the adult parole system.

Facilities. TYC currently operates 12 secure institutional facilities. In fiscal 2008, these institutions housed 46 percent of TYC's youths. About 4 percent of the youths were in agency halfway houses, about 5 percent were cared for by contract providers, and the remaining 45 percent were on

parole. In fiscal 2008, TYC's offender population decreased from 3,400 to 2,425 at the end of the fiscal year, according to the Sunset Commission.

Governing structure. SB 103 temporarily changed the governing structure of TYC from a seven-member commission appointed by the governor. Instead, it is being governed until September 1, 2009, by an executive commissioner appointed for a two-year term by the governor, with the consent of the Senate. From March 2007 until October 2008, the agency was under conservatorship. In October 2008, the governor appointed an executive commissioner, and the conservatorship was removed. SB 103 also established a nine-member advisory board to advise and assist the executive commissioner.

The sections of SB 103 that established the executive commissioner and the advisory board will expire September 1, 2009, and as of that date, TYC will be governed by a seven-member board, appointed by the governor with the advice and consent of the Senate.

Office of the Independent Ombudsman (OIO). In 2007, the Legislature in SB 103 created the Office of Independent Ombudsman for TYC.

The office is independent of TYC, and its duties include: reviewing TYC's procedures; evaluating the delivery of services to youths; reviewing certain complaints; investigating certain complaints, other than those alleging crimes; reviewing agency facilities and procedures; providing assistance to children and their families; and recommending agency changes. The office is required to be under Sunset review, but it is not subject to a specific termination date.

The OIO is required to report quarterly to the governor, the lieutenant governor, the state auditor, and the Legislature on its work. It also is required to immediately report certain things to the governor, the lieutenant governor, the state auditor, the Legislature, and the office of the inspector general, including particularly serious or flagrant cases of abuse or injury to a child.

TEXAS JUVENILE PROBATION COMMISSION

The Texas Juvenile Probation Commission (TJPC) supports and oversees 166 local juvenile probation departments, which serve the state's 254 counties.

The agency's functions include distributing state and federal funding to help counties supervise juvenile offenders and to divert them from TYC. In fiscal 2008, TJPC provided funding to local departments to supervise 108,575 youths.

TJPC also monitors and oversees local juvenile probation departments and local detention and correction facilities to ensure compliance with minimum standards. It assists counties with training, legal matters, and research and statistical issues. TJPC certifies juvenile probation and detention officers and investigates complaints alleging abuse, neglect, or exploitation of juveniles in juvenile programs. It also provides funding and oversight for juvenile justice alternative education programs and supports mental health initiatives for juvenile offenders.

Governing board. The TJPC is governed by a nine-member commission appointed by the governor to six-year terms. It includes two district court judges who sit as juvenile court judges, two county judges or commissioners, and five public members.

The commission has an advisory council whose duties include determining the needs and problems of county juvenile boards and departments and assisting in long-range planning. The advisory council is composed of:

- two juvenile court judges;
- three juvenile probation officers;
- two citizens;
- the executive commissioner of TYC;
- the commissioner of education; and
- the commissioner of human services.

Distributing state funding. The TJPC funds local juvenile probation departments using formula, competitive, and nonformula grants. Five types of basic probation grants fund basic supervision services. Eleven community corrections grants pay for community-based programs that act as alternatives to TYC commitment. The remaining three are special program grants for departments that run Juvenile Justice Alternative Education Programs or to cover the cost of placing in facilities children who meet federal foster care criteria.

DIGEST:

CSHB 3689 would continue the Texas Youth Commission and the Texas Juvenile Probation Commission as separate agencies. TYC would be continued until 2011, and TJPC until 2021. The bill also would continue the TYC's Office of the Independent Ombudsman and require that it undergo Sunset review whenever TYC was reviewed.

The bill would create a new Juvenile Justice Policy Coordinating Council to develop and adopt a five-year comprehensive juvenile justice improvement plan and to make recommendations about improving services and programs for juveniles on probation or in TYC and about improving coordination of the services and programs.

The bill would make several changes to the laws governing the agencies, including: requiring TYC and TJPC to establish guidelines for community corrections pilot programs for juvenile courts to divert certain youths from TYC; requiring TYC to develop a reentry and reintegration plan for juveniles returning to the community; changing TJPC's governing board and advisory council; requiring TJPC to establish funding formulas by rule; and requiring some TJPC oversight of nonsecure facilities for youths on probation.

The bill would apply standard Sunset language to TYC and TJPC in several areas, including restrictions on board members' employment, the removal of board members, board member training, use of technology; rulemaking and alternative dispute resolution, and complaints.

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, 2009.

Juvenile Justice Policy Coordinating Council, Juvenile Justice Improvement Plan

CSHB 3689 would establish the Juvenile Justice Policy Coordinating Council and require it to adopt a five-year comprehensive juvenile justice improvement plan. The council also would have to evaluate the juvenile justice agencies and make recommendations for improving services and programs for juveniles on probation or in TYC and for improving coordination of the services and programs between the juvenile justice agencies.

The council would operate using the staff and resources of the TYC and TJPC, in proportion to each agency's operating budget. The council would be subject to the Texas Sunset Act and would be abolished on September 1, 2021, unless continued by the Legislature.

Membership. The council would have 18 members. Non-voting members of the council would be representatives of the Texas Education Agency, the Health and Human Services Commission, the Department of Family and Protective Services, the Department of State Health Services, the Department of Aging and Disability Services, the Texas Workforce Commission, and the Texas Department of Criminal Justice.

The council would have 11 voting members who would serve six-year terms. Two would be the presiding officers of TJPC and the board of TYC. The governor, with advice and consent of the Senate, would appoint another nine voting members, who would have to be:

- a juvenile court judge;
- a prosecutor in a juvenile court;
- a defense attorney who represented juveniles;
- a chief juvenile probation officer;
- a mental health treatment professional;
- an educator;
- a representative of an organization that advocated for juvenile offenders or victims;
- a member of the Texas Juvenile Probation Commission who was not the presiding officer; and
- a member of TYC's board who was not the presiding officer.

The governor would have to make the appointments as soon as possible after the bill's effective date and would designate the chair of the council.

Council members would have to have documented expertise or educational training in their profession. Members would not be compensated for their service but would be entitled to reimbursement for expenses.

Juvenile justice improvement plan. The council would be required to develop and adopt a five-year comprehensive juvenile justice improvement plan that would have to be updated annually.

CSHB 3689 would require that the plan include a component on the operation of juvenile justice facilities. Goals for this part of the plan would include reserving state facilities for higher-risk youths, increasing reliance on alternatives to secure placement, and serving juveniles close to their homes. The plan would have to have other components, including data-sharing by juvenile justice agencies and other state agencies that serve youth; programs, services, and reentry planning; and performance measures for the entire juvenile justice system.

The council would have to prepare an annual implementation report on the progress of TYC and TJPC in implementing the plan.

The bill would state that the joint strategic plan currently required of TJPC and TYC would guide, but not substitute for, the Juvenile Justice Improvement Plan. The strategic plan would have to include procedures for communication between the agencies and for determining opportunities to coordinate practices for youths.

Continuity of care for juveniles with mental impairments

The bill would require the juvenile justice agencies, other specified state agencies, and local juvenile probation departments to adopt a memorandum of understanding for the continuity of care for juveniles with mental impairments, with the Texas Correctional Office on Offenders with Medical and Mental Impairment (TCOOMMI) coordinating the memo. Data would be collected on the implementation of the continuity of care programs.

TEXAS YOUTH COMMISSION

CSHB 3689 would continue the Texas Youth Commission until 2011 but limit the Sunset Commission's review of the agency for the 82nd Legislature to its compliance with legislation enacted in 2007, SB 103 by Hinojosa, that made numerous revisions to the agency.

As scheduled under current law, on September 1, 2009, the governance of the agency would change so that it would be governed by a seven-member board appointed by the governor. CSHB 3689 would require the governor to designate the presiding officer of the board.

Reentry and reintegration plan. TYC would be required to develop a plan to reduce recidivism and ensure successful reentry and reintegration into the community of juveniles released from the agency.

CSHB 3689 would require that the plan for each child have certain components, including an assessment of the skills the child needs to develop to be successful in the community and a network of transition programs to address the child's needs. Reentry programs would have to be implemented by highly skilled staff and include individualized case management, life skills training, education, employment training, and more. The plan would have to coordinate with other plans made for the youths, and TYC would have to report to the Legislature on whether the plan reduced recidivism rates.

Other TYC provisions. CSHB 3689 would make other changes to the laws governing TYC, including:

- requiring TYC to send courts updates on a youth's progress, if requested by the court; and
- allowing the Special Prosecution Unit to assist local prosecutors in the prosecution of certain offenses relating to TYC in addition to its current authority to prosecute those cases; and
- allowing certain offenses committed by TYC employees or officers against a youth in TYC to be prosecuted in any county in which an element of the offense occurred or in Travis County.

Office of the Independent Ombudsman for the Texas Youth Commission (OIO)

CSHB 3689 would remove the individual Sunset review date in the statute for the OIO and require that it be reviewed when TYC was reviewed.

The bill would make other changes to the statutes governing the office, including:

- requiring the OIO to accept comments from TYC on certain reports;
- requiring the OIO and TYC to adopt a memorandum of understanding concerning the sharing of information and procedures for handling overlapping responsibilities; and

- applying to the OIO standard Sunset language concerning complaints, modified to relate to the operations or staff of the office.

TEXAS JUVENILE PROBATION COMMISSION

CSHB 3689 would continue the Texas Juvenile Probation Commission until 2021, make changes to the composition of its governing board and its advisory council, require the agency to establish by rule funding formulas for money sent to local juvenile boards, and require the agency to coordinate with TYC to establish guidelines for community corrections pilot programs to divert certain non-violent youths from TYC.

Governing board. CSHB 3689 would reduce the number of public members on the TJPC from five to two and would add as members a juvenile court prosecutor, a defense attorney certified in juvenile law, and one member representing an organization that advocates for juvenile offenders or victims of crime.

Advisory Council on Juvenile Services. CSHB 3689 would change the membership of the commission's juvenile service advisory council from a mixture of judges, probation officers, citizens, and state agency heads so that it was composed of only chief probation officers and would require that they represent counties with specified populations.

Distributing state funding. The TJPC would be required by September 1, 2010, to establish funding formulas by rule for basic probation services and community corrections funding.

Community corrections pilot programs. TJPC, in coordination with TYC, would be required to establish guidelines for community corrections pilot programs for juvenile courts to use to divert certain youths from TYC. The programs would be only for youths whose offense did not involve the use of force or threat of force, and courts could retain jurisdiction over these youths until they were 19 years old. TJPC would have to implement the program only to the extent that it was appropriated money for it.

The TJPC would have to establish a competitive grant process for the programs and, by rule, a funding formula for the program. The conditions

to receive a grant would have to include specific performance measures and reduced commitment targets for juveniles being sent to TYC.

Juvenile boards receiving funds could not use them to supplant existing expenditures on similar programs and would have to report to the TJPC on the program. The TJPC would have to report to the governor and the Legislature on the programs.

Nonsecure, other facilities. CSHB 3689 would require juvenile court judges and juvenile boards to annually inspect all nonsecure correctional facilities in their jurisdiction and certify to local authorities and the TJPC whether they were suitable to confine children.

TJPC would be required to regulate, inspect, and report on public and private nonsecure facilities for youths on probation operated by or under the authority of a governmental unit. The agency also would have to adopt certification standards for persons who work in nonsecure correctional facilities that accept only juveniles on probation. The standards would have to be similar to those required of detention officers.

The bill would set specifications for the minimum standards that the TJPC adopts for public and private pre-adjudication- and post-adjudication facilities.

Other TJPC provisions. The bill would make other changes to the laws governing the TJPC, including:

- authorizing TJPC to require certified juvenile probation and detention officers to obtain continuing education;
- allowing TJPC to revoke or suspend a probation or detention officers certification if it determined that the continued certification threatened juveniles in the juvenile justice system and allowing TJPC to place suspended officers on probation; and
- requiring TJPC to collect certain types of data and requiring quarterly reports on the outcome of abuse, neglect, and exploitation complaints about probation services and facilities.

SUPPORTERS
SAY:

The TYC and TJPC should be continued as separate agencies because they have distinct mandates and responsibilities that can best be accomplished as independent entities. While TJPC focuses on the front end of the juvenile justice system by ensuring there are core probation services

throughout the state and by providing alternatives to state commitment, TYC focuses on youths in correctional facilities and on parole.

These different points in the juvenile justice system deserve the focus of the individual agencies without the competition for resources and attention that would come with unification. It is appropriate to have the current seam between the two agencies since the youth are moving from county to state supervision when they move from probation to TYC. A larger bureaucracy could cost the state more, not less.

Consolidating the two agencies would not solve current problems, especially those identified by the Sunset Commission at the TYC. The TYC should be allowed to continue to implement the reforms enacted by the Legislature in 2007 before any wholesale changes are made in the agency's structure. Consolidation would divert the agency's resources and attention, which would be better focused on implementing the 2007 reforms. The House-passed version of the fiscal 2010-11 budget would allow TYC to continue to move toward smaller, regional facilities with more specialized treatment, which would address some of the problems identified by the Sunset Commission.

The TYC and TJPC have been working together and collaborating in a productive and increasing way and this would continue under CSHB 3689. For example, the agencies already are working on sharing data through the Juvenile Justice Case Management System, which received funding in the House-passed version of the fiscal 2010-11 budget.

Juvenile Justice Policy Coordinating Council, Juvenile Justice Improvement Plan

CSHB 3689 would address the Sunset Commission's concerns about coordination between the agencies by establishing a new Juvenile Justice Policy Coordinating Council. The council would be a formal way to ensure ongoing coordination and evaluation of the agencies and evolving recommendations about improving their programs and the coordination of their services. The council would have a broad, comprehensive membership, including state agencies and a judge, prosecutor, defense attorney, mental health professional, educator, and advocate for juveniles, so that the system would be examined from all points of view.

This oversight, along with the establishment of the five-year Juvenile Justice Improvement Plan, would keep the state's juvenile justice agencies working in the same direction. The five-year plan would be updated annually and would be a benchmark that could be used to evaluate the progress of the agencies.

TEXAS YOUTH COMMISSION

Reentry and reintegration plan. Requiring TYC to develop a reentry plan for youths leaving the agency would help ensure that they received the assistance and support they needed to successfully reintegrate into the community and to reduce recidivism. The bill would require that the reentry plans be tailored to youths' needs and that they included transition programs to address those needs. This holistic approach would help put youths in the best position to not reoffend. The plans would dovetail with current TYC efforts for reentry.

Office of the Independent Ombudsman. The OIO was created by the 80th Legislature as an independent entity to focus on and advocate for the youth in TYC, and it should be continued because these things are still needed. The OIO has played a vital role in the reforms at TYC and continues to do so.

CSHB 3689 would improve communication between the OIO and the TYC by establishing formal procedures for the agency to review and comment on the OIO's report. The current process in which TYC informally comments on the OIO's reports does not ensure timely, predictable input by TYC and can result in no response, which makes the agency's position unclear. Creating a formal procedure for receiving feedback would make the OIO more like other oversight agencies, such as the state auditor and the Sunset Commission, that have formal procedures for soliciting agency responses.

CSHB 3689 also would place the OIO on the same Sunset review schedule as TYC to ensure efficient, timely review of the office.

TEXAS JUVENILE PROBATION COMMISSION

Governing board. CSHB 3689 would restructure the TJPC so that it had the formal input that it currently is lacking from a juvenile court

prosecutor, defense attorney, and juvenile offender advocate. Two public members would remain on the board, enough to provide adequate representation.

It would be inappropriate to have juvenile probation chiefs on the TJPC board because of the potential for conflicts of interest. TJPC members vote on funding, standards, and other issues that could present a conflict if a voting member also was running a local probation department. Probation chiefs would be able to formally give their input to TJPC through the revamped Advisory Council on Juvenile Services.

Advisory Council on Juvenile Services. CSHB 3689 would facilitate formal input by probation chiefs into TJPC by restructuring the membership of the TJPC's Advisory Council on Juvenile Services. The council would be composed of probation chiefs from different sized departments who could have a role with the TJPC. The chiefs would be able to revive this council and play a role in statewide juvenile probation issues.

Distributing state funding. CSHB 3689 would help better target state funding for juvenile probation services and make them more accountable. Problems with the current funding system include poor accountability measures for state grants, grants that are too restrictive, and insufficient formal input on funding formulas. CSHB 3689 would address these problems by requiring TJPC to consider past performance when awarding grants and to require recipients to report on those targets. Requiring TJPC to establish by rule basic funding formulas would allow for public comment to be made on the formulas while giving the agency the flexibility to make changes when necessary.

Community corrections pilot programs. The community corrections pilot programs that, upon state funding, would be established by CSHB 3689 would help shift in the state's juvenile justice system so that it kept more youths on the local level. It would encourage counties to serve lower-risk youth locally, which often is more successful and less expensive than state services. Serving youths locally would keep them closer to their families, something that is important to successful rehabilitation.

Nonsecure facilities. CSHB 3689 would bring state and local oversight to the small number of nonsecure facilities and their employees that are used

exclusively for youths on probation. These facilities should be subject to the same oversight given to other juvenile facilities.

OPPONENTS
SAY:

The TYC and the TJPC should be merged into one agency, as recommended by the Sunset Commission, to address the lack of an effective continuum of treatment and rehabilitation for juvenile offenders in Texas. Even after repeated attempts to force better collaboration, the agencies continue to operate with almost no coordinated strategic planning for the integration of state and local services, ineffective sharing of critical information, and limited means of evaluating outcomes or targeting resources. This results in inefficiencies and reduced effectiveness.

The timing of the Sunset review process affords an opportunity to better integrate state and local services by merging the two agencies. Merging the two agencies would result in increased cooperation and collaboration between state and local services and a more consistent approach to handling juvenile offenders. Juveniles who break the law should be seen as one population and not differentiated by frequency and severity of law broken.

TYC is still struggling to implement provisions of SB 103, enacted by the 80th Legislature, and it needs to improve youth services, such as education, treatment, and reentry efforts. Agency management has struggled with these tasks, and the best way to accomplish them would be with a new agency.

Juvenile Justice Policy Coordinating Council, Juvenile Justice Improvement Plan

Two boards already are overseeing the state's juvenile justice agencies and there is no need to create a third. The Juvenile Justice Policy Coordinating Council that would be created by CSHB 3689 would be too large and unwieldy and include too many entities without knowledge of the workings of the state's juvenile justice system to be useful. Many of the council members, especially state agencies, have numerous other responsibilities to focus on and would not be able to give the juvenile justice system the attention it deserves. The council would be a new layer of government bureaucracy, which would not necessarily result in any efficiencies.

TEXAS JUVENILE PROBATION COMMISSION

Governing board. The TJPC governing board should include representation from chief juvenile probation officers from small, medium, and large juvenile departments. Probation chiefs have the hands-on experience that is vital to good decision making by the TJPC. The chiefs understand the juveniles who are in the probation system as well as local probation services, programs, resources, community concerns, and other issues. Having them on the commission would ensure that the TJPC better understood and addressed the needs of local juvenile probation departments which, on average, provide about 70 percent of funding for the departments. Others on the commission do not have the hands-on, daily experience with juvenile services that probation chiefs represent. Numerous state boards include practitioners, and the TJPC should as well.

Concerns about conflicts of interest if chiefs are on the board are overblown. The vast majority of decisions by the commission would not present this problem, and board members could recuse themselves from any decision that did.

Advisory Council on Juvenile Services. Historically, the Advisory Council on Juvenile Services has had little actual influence on the TJPC. While placing probation chiefs on this board could give them some influence on TJPC, it would better for them to be on the actual commission where meaningful decisions are made.

OTHER
OPPONENTS
SAY:

A better option would be to maintain TYC and TJPC as separate agencies, but place them under a single governing board. This would allow the agencies to continue to perform their distinct roles in the juvenile justice system, but would ensure collaboration through unified governance.

Office of the Independent Ombudsman. The OIO should be given more resources to continue its efforts to protect youth.

NOTES:

The bill as filed would have abolished the Texas Youth Commission and the Texas Juvenile Probation Commission, transferred their powers and duties to a new agency, the Texas Juvenile Justice Department, with a new oversight board, the Texas Juvenile Justice Board. The Texas Juvenile Justice Board would have been composed of 13 members appointed by the governor with the advice and consent of the Senate.

The filed bill also would have created a juvenile justice improvement plan committee to develop a five-year comprehensive juvenile justice improvement plan, to be updated annually. The committee would have been composed of the executive director of TYC and the TJPC, members appointed by them, and representatives of juvenile probation departments, juvenile offenders, families of juvenile offenders, and an organization that advocates on behalf of juvenile offenders.

The companion bill, SB 1020 by Hinojosa, has been referred to the Senate Government Organization Committee. That bill would abolish TYC and TJPC and transfer their duties to a new state agency, the Texas Juvenile Justice Department.