

BILL ANALYSIS

C.S.S.B. 103
By: Hinojosa
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Although the most notorious cases of abuse have been at the West Texas facility of the Texas Youth Commission (TYC), the rape, abuse, and mistreatment of inmates at facilities across the state has been prevalent for many years. The abuse of many of these youth has recently come to lawmakers' attention and has warranted immediate legislative action to remedy the long-term and extensive problems at TYC.

CSSB 103 adds TYC inspectors general to the list of persons considered peace officers and requires the TYC to establish an office of inspector general. The bill also requires the state to reimburse counties for expenses related to the prosecution of crimes committed on property owned or operated by or under contract with the TYC, gives counties the authority to request that the Special Prosecution Unit prosecute offenses that are committed on TYC property, and establishes an Office of Independent Ombudsman to make available third party, confidential reporting for TYC youth and employees. This bill also aims to reduce the number of youth committed to the TYC by prohibiting placement of misdemeanants in the TYC and reducing the age limitation from 21 to 19 years of age.

This bill provides that Juvenile Correctional Officers shall receive 300 hours of training before they undertake guarding duties and will face more rigorous criminal background checks before employment. The TYC will have one guard supervising every 12 youths, and age will be a significant factor when assigning officers to supervise youths.

Under CSSB 103, courts will no longer send children to the TYC for misdemeanors. A minimum length of stay shall be given to each youth admitted to the TYC with an indeterminate sentence. Long-term rehabilitation plans, reviewed at least every six months, will be created for each youth and a quarterly report will be sent to the youths' parents or guardians. For the first time, the TYC will be required to create a Parent's Bill of Rights.

Independent of this bill, the TYC is scheduled to be under review by the Sunset Advisory Commission in 2009.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Youth Commission in SECTION 23, 30, 34, of this bill.

ANALYSIS

Office of Inspector General (OIG)

CSSB 103 amends the Human Resources Code, to establish an Office of Inspector General (OIG) at the Texas Youth Commission (TYC) for the purpose of investigating crimes committed at a facility operated by the TYC or at a residential facility operated by another entity under a contract with the TYC and fraud committed by TYC employees, including parole officers employed by or under a contract with the TYC. The bill provides that the OIG shall prepare and deliver a report concerning the results of these investigations, outlines what the report must include, and requires the OIG to deliver the report to certain individuals and agencies. Such reports are public information under Chapter 552, Government Code.

CSSB 103 amends the Code of Criminal Procedure by adding inspectors general commissioned by the TYC as officers to the list of those that are peace officers under Article 2.12, Code of Criminal Procedure. The bill also amends the Government Code to provide that, for retirement C.S.S.B. 103 80(R)

purposes, these commissioned peace officers are considered law enforcement officers and are eligible to retire and receive a service retirement annuity. This bill provides for the associated certification of names to the retirement system.

CSSB 103 allows the OIG to employ and commission inspectors general as peace officers, and outlines their certification and continuing education requirements. The bill also requires the TYC board to select a commissioned peace officer as chief inspector general, who may only be discharged for cause. The Chief Inspector General is required to submit a quarterly report concerning the operations of the OIG to entities enumerated in the bill. The quarterly reports are considered public information under Chapter 552, Government Code, and shall be published on the TYC's website. The bill requires that the reports be both aggregated and disaggregated by individual facility and describes the type of information that must be included in the reports.

The bill lays out further OIG reporting requirements regarding any serious problem concerning the administration of a TYC program or operation, or any interference by the board or an employee of the TYC with an investigation conducted by the office. Additionally, the TYC is required to establish and maintain a permanent, prominently displayed toll-free number at each facility that can be accessed by the children in the TYC's custody and by TYC employees for the purpose of reporting abuse, neglect, or exploitation of children in the custody of the TYC.

CSSB 103 provides that the state auditor, upon OIG request, may provide assistance, share information, and plan an investigation with the OIG. Additionally, the state auditor has the authority to access all information maintained by the OIG and the information obtained by the state auditor is confidential and is not subject to disclosure. The bill also provides that any provision of Chapter 61, Human Resources Code, relating to the operations of the OIG does not supersede the authority of nor prohibit the auditor from conducting an audit, investigation, or other review or from having full access to information concerning the TYC.

Current law provides that the financial transactions of the TYC are subject to audit by the state auditor. This bill omits language specifying "financial transactions", and simply provides that the TYC is subject to audit by the state auditor.

CSSB 103 amends the Human Resources Code to require the OIG to prepare and deliver a quarterly report concerning any alleged criminal offense or delinquent conduct concerning the TYC and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding quarter, as well as the disposition of any case involving a criminal offense or delinquent conduct concerning the TYC that occurred in the preceding quarter, and deliver it to the board of directors of the special prosecution unit. Notwithstanding the OIG's basic quarterly reporting obligations, the OIG shall immediately provide the special prosecution unit (SPU) with a report concerning an alleged criminal offense or delinquent conduct concerning the TYC and described by Article 104.003(a), Code of Criminal Procedure, if the chief inspector general reasonably believes the conduct or offense is particularly serious or egregious.

CSSB 103 lays out under what circumstances the chief inspector general, under the direction of the board of directors of the SPU, shall notify the foreman of the appropriate grand jury. The bill also requires the TYC executive director to immediately file a complaint with the appropriate law enforcement agency if the executive director has reasonable cause to believe that a child in the TYC's custody is the victim of a crime committed at a TYC facility.

Office of Independent Ombudsman

CSSB 103 establishes an Office of Independent Ombudsman of the Texas Youth Commission ("office") by adding Chapter 64 to Subtitle A, Title 3, Human Resources Code. Chapter 64 lays out definitions of terms and provides that the office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the TYC, including a child released under supervision before final discharge. Chapter 64 also establishes the independence of the ombudsman from the TYC, and provides that funding for the independent ombudsman is appropriated separately from funding of the TYC.

This bill provides that the governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years,

and that the independent ombudsman may not serve more than three terms in that capacity. Additionally, the independent ombudsman may hire assistants to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman. The bill also lays out what situations constitute a conflict of interest, which would prevent an individual from serving as independent ombudsman or assistant to the independent ombudsman.

The bill provides that the office of independent ombudsman is subject to review under the Texas Sunset Act, but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2009 and every 12th year after 2009 are reviewed.

CSSB 103 describes what must be included in the quarterly report that the ombudsman shall submit to the governor, lieutenant governor, and each member of the legislature, and describes what serious or flagrant instances must be immediately reported to the governor, lieutenant governor, speaker of the house of representatives, state auditor, and TYC OIG.

TYC is required to allow any child committed to it to communicate with the independent ombudsman or an assistant to the ombudsman. Communication may be made in person, by mail, or by any other means, and is confidential and privileged. The bill notes that the records of the independent ombudsman are confidential, except that the independent ombudsman shall share a communication with a child that may involve the child's abuse or neglect to the OIG and disclose its nonprivileged records if required by a court order on a showing of good cause. The independent ombudsman may also make reports relating to an investigation public after the investigation is complete, and after redacting certain personally-identifying information.

The bill provides that certain information filed with the office of independent ombudsman, obtained by the office of independent ombudsman, or generated in the course of investigations is confidential and not subject to disclosure under Chapter 552, Government Code. However, certain information and records may be disclosed to the appropriate person if the office determines that disclosure is in the general public interest, necessary to enable the office to perform the responsibilities provided in law, or necessary to identify, prevent, or treat the abuse or neglect of a child.

CSSB 103 provides that the independent ombudsman shall promote awareness among the public and the children committed to the commission regarding how the office may be contacted, the purpose of the office, and the services the office provides. CSSB 103 also grants rulemaking authority to the office of independent ombudsman and provides that the office is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

The bill lays out the specific duties of the independent ombudsman, emphasizes that the independent ombudsman shall not investigate alleged criminal behavior, provides requirements related to training curriculum, and notes that the TYC may not discharge, discriminate, or retaliate against an employee who in good faith makes a complaint or cooperates in an investigation with the office of the independent ombudsman. To assess if a child's rights have been violated, the independent ombudsman may, in any manner that does not involve alleged criminal behavior, contact or consult with an administrator, employee, child, parent, expert, or any other individual in the course of its investigation or to secure information. Additionally, the independent ombudsman may apprise persons who are interested in a child's welfare of the rights of the child.

CSSB 103 requires that the TYC and local law enforcement agencies allow the independent ombudsman to access records related to children committed to the TYC, and requires that DPS allow the independent ombudsman access to the juvenile justice information system established under Subchapter B, Chapter 58, Family Code. The independent ombudsman shall also have access to the records of a private entity that relate to a child committed to the TYC. The bill amends the list of entities that may have access to information contained in the juvenile justice information system by omitting the Criminal Justice Policy Council and adding the office of independent ombudsman of the TYC.

Prosecution of Certain Offenses and Delinquent Conduct

CSSB 103 amends Chapter 41 of the Government Code, codifying the Special Prosecution Unit (SPU) as an independent unit that cooperates with and supports prosecuting attorneys in prosecuting criminal offenses or delinquent conduct committed on property owned or operated by or under contract with the TYC or Texas Department of Criminal Justice (TDCJ), or those committed by or against a person in the custody of the TYC or TDCJ while the person is performing a duty away from TYC or TDCJ property. The bill defines "unit" to mean the special prosecution unit, "board of directors" to mean the board of directors of the unit, "executive board" to mean the executive board governing the board of directors of the unit, and "prosecuting attorney" to mean a district attorney, a criminal district attorney, or a county attorney representing the state in criminal matters before the district or inferior courts of the county.

CSSB 103 describes, as appropriate, the composition, eligibility requirements, reporting requirements, duties, procedures, and terms relevant to the board of directors and executive board for the SPU, as well as for the board's presiding officer and assistant presiding officer, the chief of the unit, and elected counsellor. It also states that membership on either the board of directors or executive board may not be construed to be a civil office of emolument for any purpose, and provides that while board members are not entitled to compensation, they are entitled to reimbursement for necessary expenses incurred in carrying out their duties as provided by the General Appropriations Act, if applicable.

In addition, the bill requires the inspector general of the TYC to deliver on a quarterly basis to the board of directors of the SPU a report concerning any alleged criminal offense or delinquent conduct concerning TYC and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding quarter, including the disposition of the cases. The bill also requires the inspector general of the TDCJ to a report to the board of directors of the SPU concerning any alleged criminal offense or delinquent conduct concerning TDCJ and described by Article 104.003(a) that occurred during the preceding quarter.

Currently, the state is required to reimburse counties for expenses incurred as a result of prosecution of a felony committed while the actor was a prisoner in the custody of TDCJ or the prosecution of other specific offenses committed in TDCJ which relate to controlled substances and contraband. CSSB 103 amends this provision to require the state to reimburse counties for certain expenses related to the prosecution of criminal offenses or delinquent conduct committed on property owned or operated by or under contract with the TDCJ or TYC, or those committed by or against a person in the custody of the TDCJ or TYC while the person is performing a duty away from TDCJ or TYC property.

The bill amends the Human Resources Code by providing that the district attorney, criminal district attorney, or county attorney representing the state in criminal matters before the district or inferior courts of the county who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, may request that the special prosecution unit prosecute the offense or delinquent conduct.

CSSB 103 amends the Government Code to provide that the attorney general may offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning the TYC.

TYC Facilities

CSSB 103 amends the Human Resources Code by providing that not later than September 1, 2007, the TYC shall adopt a plan for and begin the process of receiving accreditation by the American Correctional Association for each correctional facility operated by or under contract with the TYC.

The bill amends Chapter 325 of the Government Code by adding a section that requires the sunset advisory commission (commission), in consultation with the TYC, Texas juvenile probation commission, governor, lieutenant governor, and speaker of the house of representatives, to appoint a nine-member advisory committee to develop a practicable plan to move the TYC toward a regionalized structure of smaller facilities and more diversified treatment and placement options, taking into consideration the likely effects on recidivism, juvenile and family access to services, and costs to this state and counties. The commission shall

take these results into consideration when it submits its review of the TYC, which is set for review this interim.

The nine members of the advisory committee must include at least three nationally recognized juvenile justice experts, and at least one recognized child advocate, as well as a presiding officer designated by the commission chairman. The bill provides that the advisory committee convenes at the call of the presiding officer, and that a member of the advisory committee may not receive compensation, but may receive reimbursement for certain expenses. The commission must appoint an advisory committee not later than December 1, 2007, and the advisory committee must report its findings and recommendations to the commission not later than December 1, 2008. The section of this bill relating to the advisory committee on regionally-based TYC facilities expires September 1, 2009.

CSSB 103 also amends the Human Resources Code by requiring the TYC to regularly conduct internal audits of correctional facilities operated by and under contract with the TYC and medical services provided to children in its custody. The bill also requires the TYC to submit a quarterly report of the audits to the committees of the senate and house of representative with primary jurisdiction over matters concerning correctional facilities as well as to the state auditor, and requires that reports concerning the progress of the TYC in complying with the requirements of the bill, be provided to the joint select committee on the operation and management of the TYC. The TYC shall prepare and deliver the first report to the joint select committee on December 1, 2007, the second report on June 1, 2008 and the final report on December 1, 2008. This section of the bill regarding internal audits and reports expires January 1, 2009.

Juvenile Corrections Officers and TYC Staff

CSSB 103 amends the Human Resources Code, to provide for at-will employment of TYC employees as well as to require the TYC to establish procedures and practices governing employment-related grievances submitted by TYC employees and disciplinary actions within the TYC. This includes a procedure allowing a TYC employee who is recommended for dismissal to elect to participate in an independent dismissal mediation.

CSSB 103 amends the Human Resources Code by establishing training and other guidelines related to juvenile correctional officers. The bill requires the TYC to provide at least 300 hours of training, which must include on the job training, before an officer independently commences duties at the facility. The training must provide information and instruction related to the officer's duties, and this bill specifically lists the topics that the training must cover. CSSB 103 also allows for part-time employment of juvenile correction officers and subjects them to the same training requirements listed above.

The bill requires that in each correctional facility operated by the TYC that has a dormitory, including open-bay dormitories, the TYC must maintain a ratio of no less than one juvenile correctional officer performing direct supervisory duties for every 12 committed persons. The TYC shall also, to the extent practicable, place juvenile correctional officers in a facility where they are no more than three years older than a child they are supervising. The TYC shall also rotate the assignment of each juvenile correctional officer at an interval determined by the TYC so that a juvenile correctional officer is not assigned to the same station for an extended period of time, and shall ensure that at least one juvenile correctional officer is assigned to supervise in or near a classroom or other location while children receive education or training. The TYC shall adopt necessary rules to administer section 61.0356, Human Resources Code, the above provisions related to juvenile corrections officers .

The bill amends Chapter 110 of the Occupations Code to prohibit the TYC from exempting any of its employees from a licensing requirement imposed by Section 110.302, Occupations Code (Council on Sex Offender Treatment licensure requirements) for any reason.

CSSB 103 amends the Human Resources Code to require the TYC executive director (or designee) to review the national criminal history record and state criminal history record information maintained by the Department of Public Safety (DPS), and previous and current employment references of each person who is an employee, contractor, volunteer, ombudsman, or advocate working for the TYC or working in a TYC facility or a facility under contract with the TYC, a person who directly delivers services to children in TYC custody, or a person with

access to records in TYC facilities or offices. TYC is also required to adopt rules requiring these persons to electronically provide DPS a complete set of fingerprints in a form and of a quality acceptable to the DPS and the Federal Bureau of Investigation (FBI). The TYC by rule may require these people to pay a fee related to the national criminal history record information review, but the fee may not exceed the administrative costs incurred by the TYC in conducting the review, including the costs of obtaining the person's fingerprints. Additionally, the executive director (or designee) is required to annually review the above mentioned person's national criminal history record information.

CSSB 103 amends the list of persons established in the Government Code that the TYC is authorized to obtain criminal history record information on. The current list is omitted and replaced with persons described by Section 61.0357(b), Human Resources Code: an employee, contractor, volunteer, ombudsman, or advocate working for the TYC or working in a TYC facility or a facility under contract with the TYC, a person who directly delivers services to children in TYC custody, or a person with access to records in TYC facilities or offices.

This bill requires TYC to ensure that the system used to check state criminal history record information maintained by the DPS is capable of providing real time arrest information. The bill also provides a definition for "national criminal history record information" to mean criminal history record information obtained from DPS under Subchapter F, Chapter 411, Government Code, and from the FBI under Section 411.087, Government Code, and provides that TYC shall adopt rules necessary to administer Section 61.0357, Human Resources Code (Required Background and Criminal History Checks).

TYC Youth: Safety, Placement, & Care

CSSB 103 amends the Human Resources Code to prohibit the TYC from assigning a child younger than 15 years of age to the same correctional facility dormitory as a person who is at least 17 years of age unless the TYC determines that the placement is necessary to ensure the safety of children in the custody of the TYC. This does not apply to a dormitory that is used exclusively for short-term assessment and orientation purposes. The bill provides that the TYC by rule shall adopt various procedures, which must address the age, physical condition, and treatment needs of a child as well as any other relevant factor, to protect vulnerable children in the custody of TYC. The TYC shall also consider the proximity of the child's family's residence in determining the appropriate commission facility in which to place a child.

CSSB 103 amends the Human Resources Code to require an initial examination and study of each child committed to the TYC, which includes long-term planning for the child and consideration of the child's medical, substance abuse and treatment history, including the child's psychiatric and substance abuse history. The bill also lists a number of documents, in addition to those provided under Section 61.065, that a court committing a child to the TYC shall provide to the TYC. If the minimum length of stay is set for one year or longer, the initial exam must include a comprehensive psychiatric evaluation. Otherwise, the TYC must administer a comprehensive psychological assessment to a child as part of the initial examination and if the results indicate the need, conduct a psychiatric evaluation as soon as practicable. CSSB 103 also establishes a reexamination process to determine whether a child's rehabilitation plan should be modified or continued. The examination must include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination. These assessments must occur at least every 6 months. The bill also requires the TYC to integrate the provision of medical care, behavioral care, and rehabilitative services in an integrated comprehensive delivery system, and lists what medical, behavioral health, or rehabilitative services may be provided to a child in the TYC through this delivery system.

CSSB 103 amends the Human Resources Code to require the TYC to allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and the victims of sexual assault to provide on-site information, support, and other services for children confined in TYC facilities. The bill requires the TYC to adopt security and privacy procedures for these groups, but explicitly notes that these security policies may not be designed to deny an advocacy or support group access to the children in TYC facilities. The TYC shall also adopt standards consistent with those adopted by the TDCJ regarding confidential correspondence of children confined in TYC facilities with external entities,

including advocacy and support groups. The bill also requires the TYC to ensure that a chaplain is employed or formally designated for each TYC correctional facility that is an institution.

CSSB 103 amends the Human Resources Code by providing that the TYC, in consultation with advocacy and support groups, shall develop a parent's bill of rights for distribution to a parent or guardian of a child under 18 years of age committed to the TYC. The provision describes what must be included in the parent's bill of rights, and requires that not later than 48 hours after a child is admitted to a TYC facility, the TYC must mail the child's parent or guardian the parent's bill of rights and the contact information of the TYC caseworker assigned to the child. The bill also provides that the TYC shall, on a quarterly basis, provide a progress report to the parent, guardian, or designated advocate of a child committed to the TYC. The bill outlines what must be in the progress report and requires the TYC to ensure that the written information provided to a parent or guardian regarding the rights of a child in custody of the TYC, or the rights of the parent or guardian, is clear and easy to understand.

CSSB 103 requires TYC to assign a caseworker to each youth and lays out the duties and responsibilities of the caseworker assigned to a child committed to the TYC, including guidelines for contacting and communicating with the child's parent or guardian by phone. Additionally, the bill amends the Human Resources Code to require the TYC to develop and adopt a statement regarding the role and mission of the TYC.

CSSB 103 amends the Human Resources Code, by adding a subsection allowing the TYC to disclose to a peace officer or law enforcement agency images of children recorded by an electronic recording device and incident reporting and investigation documents containing the names of children if the information is relevant to the investigation of an alleged criminal offense at a TYC facility.

Sentencing Youth to TYC

CSSB 103 amends the Human Resources Code to require the TYC to establish a minimum length of stay for each child committed to the TYC without a determinate sentence, taking into consideration the nature and seriousness of the child's conduct and the danger the child poses to the community.

By amending Chapter 54 of the Family Code, the bill also provides that the judge of the court in which a child under a determinate sentence is adjudicated shall give credit on a child's sentence for the time spent in a secure detention facility before the child's transfer to the TYC, and for time spent in a secure detention facility pending disposition of the child's appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the child, and the TYC shall grant any credit under Section 54.052, Family Code, in computing the child's eligibility for parole and discharge. The bill also amends the Human Resources Code to require TDCJ to grant credit for sentence time served by a person at the TYC and in a juvenile detention facility in computing the person's eligibility for parole and discharge from the department.

The bill amends Section 54.04, Family Code by deleting the existing provision authorizing the court to commit a child to TYC without a determinate sentence if the court or jury found that the child engaged in delinquent conduct, if the requirements of Subsection (s) or (t) are met, of the grade of misdemeanor. This bill also provides that delinquent conduct that violates a penal law of this state of the grade of felony, rather than the grade of felony or misdemeanor, does not include conduct that violates a lawful order of a county, municipal, justice, or juvenile court under circumstance that would constitute contempt of that court, for the purposes of disposition under Subsection (d)(2), Section 54.04, Family Code.

CSSB 103 amends Section 54.05(f) (Hearing to Modify Disposition), Family Code, to delete the grade of misdemeanor, if the requirements of Subsection (k) are met, from existing text authorizing a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony to be modified so as to commit the child to TYC if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court.

CSSB 103 amends the Human Resources Code, to authorize TYC, after a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, rather than 21, to refer a child to the juvenile court that entered the order of commitment for approval of the child's transfer to TDCJ, rather than institutional division of the TDCJ, for confinement if the child has not completed the sentence and the child's conduct, regardless of whether the child was released under supervision under Section 61.081, Human Resources Code, indicates that the welfare of the community requires the transfer.

CSSB 103 amends the Human Resources Codes to provide for the evaluation of certain children serving determinate sentences. When a child who is sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, the TYC shall evaluate whether the child needs additional services that can be completed in the six-month period following the child's 18th birthday in order to prepare the child for release from the TYC's custody or for transfer to the TDCJ. The bill notes that this requirement does not apply to a child released from TYC custody or who is transferred to the TDCJ before the child's 18th birthday.

The bill amends Section 61.084, Human Resources Code to require TYC to discharge from its custody a person not already discharged on the person's 19th, rather than 21st, birthday, except as provided by Subsection (g), rather than (f) or (g). The bill also requires TYC to transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to TYC under Section 54.11(i)(1), Family Code, to the custody of TDCJ, rather than the pardons and paroles division of TDCJ, on the person's 19th, rather than 21st, birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

CSSB 103 amends Section 61.0841(a), Human Resources Code, to make conforming changes. The bill includes any written comments or information provided by TYC, local officials, family members of the person, victims of the offense, or the general public, among the pertinent information relating to the person required to be submitted by TYC to TDCJ.

The bill amends Section 508.156(a), Government Code to provide that before the release of a person who is transferred under Section 61.081(f) or 61.084(g), rather than 61.081(f), 61.084 (f) or (g), Human Resources Code, to the division for release on parole, a parole panel shall review the person's records and may interview that person or any other person the panel considers necessary to determine the conditions of parole, and may then impose any reasonable condition on the person's parole that the panel may impose on an adult inmate.

CSSB 103 amends the Penal Code to provide that a person commits a felony of the second degree if the person is an official or employee of a correctional facility, a volunteer at correctional facility, or a peace officer and intentionally employs, authorizes, or induces an individual in the custody of the TYC to engage in sexual conduct or a sexual performance. The bill also amends the Penal Code to provide that "sexual conduct" and "performance" have the meanings assigned by Section 43.25, and that "sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

The bill also repeals Sections 54.04 (s) and (t), Family Code, which describe the circumstances under which a court may make a disposition and commit a child to the TYC without a determinate sentence for misdemeanor conduct.

The bill repeals Section 54.05 (k) Family Code, which describes the circumstances under which a court may modify a disposition and commit a child to the TYC based on an adjudication of a misdemeanor.

The bill repeals Section 61.084 (f), Human Resources Code, which requires the TYC to transfer certain persons who are released under supervision after becoming 19 years of age to the custody of the pardons and paroles division of TDCJ to serve the remainder of the person's sentence on parole.

The bill provides that a person committed to the TYC on the basis of conduct constituting the commission of an offense of the grade of misdemeanor under Section 54.04(d)(2), Family Code, as it existed before the effective date of this Act, must be discharged from the TYC not later than the person's 19th birthday.

The bill makes conforming changes to the Family Code, deleting "institutional division or the pardons and paroles division of the" TDCJ.

Reentry and Reintegration Plan

The bill amends the Human Resources Code to require the TYC to develop a reentry and reintegration plan for each child committed to the custody of the TYC. The bill lays out what must be included in the plan, and stipulates that the plan must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the time of the child's final discharge from the TYC. It also requires the TYC to find a suitable alternative program or service if a program or service in the child's reentry or reintegration plan is not available at the time the child is to be released so that the child's release is not postponed.

The TYC Board shall appoint persons to serve as members of the panel, and shall determine its size and the length of the members' terms of service on the panel. The bill provides that the panel must consist of an odd number of members and lays out instructions related to the members' terms, panel policies, and explicitly notes that a person appointed to the panel is an employee of the TYC who works at the TYC's central office and may not be involved in any supervisory decisions concerning the children in the TYC's custody.

The bill also provides that after a child who is committed to the TYC without a determinate sentence completes the minimum length of stay the TYC shall: discharge the child from custody, release the child under supervision under Section 61.081, Human Resources Code, or extend the length of the child's stay in the custody of the TYC. The TYC by rule shall establish a panel whose function is to review and determine which of these options should be applied to a child who has completed their minimum length of stay. The panel may only extend the length of a child's stay if it determines by majority vote and on the basis of clear and convincing evidence that the child is in need of additional rehabilitation and that the TYC will provide the most suitable environment for rehabilitation. In extending the child's stay, the panel must specify the additional period of time, and must conduct an additional review and determination on the child's completion of the additional term of stay. CSSB 103 also provides that the TYC must maintain statistics on the number of extensions granted by the panel, and specifies what aggregated information must be included. The bill also provides that this information is public, and shall be posted on the TYC's website. The TYC shall prepare and deliver a report concerning the statistics to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities.

CSSB 103 requires the TYC to offer or make available programs for the rehabilitation and reestablishment in society of children committed to the TYC, including programs for sex offenders, capital offenders, children who are chemically dependent, and those who are emotionally disturbed, in an adequate manner so that a child in the custody of the TYC receives appropriate rehabilitation services recommended for the child by the court committing the child to the TYC. If such programs are unavailable, the TYC shall provide to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report explaining which programs are not offered or are unavailable, and the reason the programs are not offered or are unavailable. Such a report that be made no later than January 10 of each odd-numbered year.

The TYC shall also provide a report to the parent, guardian, or designated advocate of a child whose length of stay is extended explaining the panel's reason for the extension, and the TYC by rule shall establish a process to request the reconsideration of an extension order issued by the panel. The bill elaborates on what the request for reconsideration process shall entail, provides that the request form shall be clear and easy to understand, and requires TYC to ensure that a child may request assistance in completing the form. The bill further stipulates that the TYC shall maintain statistics on the number of requests for reconsideration of an extension order that are submitted and the action taken on reconsideration of the extension order. The bill also lays out what aggregated information must be included and provides that the statistics are considered

public information and shall be posted on the TYC website. Additionally, the bill requires the TYC to prepare and deliver a report concerning the statistics to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities.

TYC Governing Structure

CSSB 103 amends the Human Resources Code to address composition of the governing board of the TYC ("board"). The bill provides that the board shall be comprised of at least one physician, an experienced member of a victim's advocacy organization, a mental health professional, and a current or former prosecutor or judge. Additionally, a majority of the members of the board must be qualified, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment in society of children in the custody of agencies similar in mission and scope to the commission.

CSSB 103 provides that any power, duty, or function of the commission or of the board that is not assigned by statute to the office of inspector general may be exercised and performed by the executive director or any member or employee designated or assigned by the board or by the executive director.

Additional Provisions

CSSB 103 describes the retroactive effects and implementation dates related to certain amended sections and added provisions, and sets forth the effective date on which various new requirements will apply, including those related to training of juvenile corrections officers, appointments of various new officers, background checks, juvenile corrections officer ratios, placement of youth in facilities, enrollment of new employees in the Employees Retirement System, development and adoption of a mission statement, and board appointments.

This bill also updates statutory changes to reflect the name changes of the Texas Medical Board, Department of State Health Services, Texas Department of Criminal Justice and Texas Private Security Board.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The caption of SB 103 is, "relating to the Texas Youth Commission; providing penalties." The caption of CSSB 103 is, "relating to the Texas Youth Commission and the prosecution of certain offenses and delinquent conduct in the Texas Youth Commission and certain other criminal justice agencies; providing penalties."

SB 103 requires the state to reimburse counties for the prosecution of: felonies committed while the actor was a prisoner in the custody of the Texas Department of Criminal Justice (TDCJ); offenses committed in the TDCJ by any person under Section 38.11, Penal Code, Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code; and criminal offenses or delinquent conduct committed on property owned or operated by or under contract with the Texas Youth Commission (TYC) or by or against a person in the custody of TYC while performing a duty away from TYC property. CSSB 103 requires the state to reimburse counties for expenses related to the prosecution of criminal offenses or delinquent conduct committed on property owned or operated by or under contract with the TDCJ or TYC, or those committed by or against a person in the custody of the TDCJ or TYC while the person is performing a duty away from TDCJ or TYC property.

The original bill changed the governing structure of the TYC by replacing the existing structure of a governing board and executive director with a new structure consisting of an executive commissioner and an advisory board. The original bill, in various sections, makes conforming changes accordingly. The substitute does not replace the governing board and executive director and therefore does not make these conforming changes.

SB 103 contains language describing the appointment and terms of the executive commissioner; CSSB 103 removes this language. SB 103 contains provisions regarding the qualifications for the executive commissioner and advisory board; CSSB 103 removes these provisions. SB 103 contains language regarding the removal from office of the executive commissioner; CSSB 103 removes this language. SB 103 contains language regarding the composition, qualifications, duties, powers and functions of the advisory board, as well as provisions for the removal from office of the advisory board; CSSB 103 removes this language.

SB 103 prohibits a child adjudicated as having engaged in delinquent conduct violating a penal law of this state or the United States of the grade of misdemeanor, under any circumstances, from being committed to TYC for that conduct. CSSB 103 deletes this language from the original bill.

The substitute contains language not in the original bill which provides that the judge of the court in which a child under a determinate sentence is adjudicated shall give credit on a child's sentence for the time spent in a secure detention facility before the child's transfer to the TYC, and for time spent in a secure detention facility pending disposition of the child's appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the child, and the TYC shall grant any credit under this section in computing the child's eligibility for parole and discharge. The original bill does not contain this language.

The substitute contains language not in the original bill which allows the office of the independent ombudsman of the Texas Youth Commission access to confidential information in the juvenile justice information system.

CSSB 103 codifies in statute the Special Prosecution Unit (SPU) as an independent unit that cooperates with and supports prosecuting attorneys in prosecuting criminal offenses or delinquent conduct committed on property owned or operated by or under contract with the TDCJ or TYC, or those committed by or against a person in the custody of the TDCJ or TYC while the person is performing a duty away from TDCJ or TYC property. The substitute describes the composition, duties, procedures, and terms relevant to a Board of Directors and Executive Board for the SPU, as well as for the board's presiding officer and assistant presiding officer, a chief of the unit, and an elected counsellor. It also states that membership on either the board of directors or executive board may not be construed to be a civil office of emolument for any purpose, and provides that while board members are not entitled to compensation, they are entitled to reimbursement for necessary expenses incurred in carrying out their duties as provided by the General Appropriations Act, if applicable.

SB 103 requires the special prosecution unit, on a quarterly basis, to prepare a report concerning offenses or delinquent conduct prosecuted, to be provided to the executive commissioner and the legislative committees with primary jurisdiction as well as posted on TYC's website. CSSB 103 requires the counsellor elected by the executive board governing the board of directors of the special prosecution unit to prepare a report concerning offenses or delinquent conduct prosecuted or a request for assistance otherwise from a prosecuting attorney, to be provided to the board of directors of the special prosecution unit and the legislative committees with primary jurisdiction as well as posted on TYC's website. SB 103 requires TYC to publish this report on TYC's website; CSSB 103 requires the board of directors of the special prosecution unit to request that TYC publish the report on TYC's website. SB 103 requires that this report include information relating to: the number of requests for assistance received under Section 61.098, Human Resources Code; the number of cases investigated and the number of cases prosecuted on receiving a request for assistance under Section 61.098, Human Resources Code; the types and outcomes of cases prosecuted by the special prosecution unit on receiving a request for assistance, such as whether the case concerned narcotics or an alleged incident of sexual abuse; and the relationship of a victim to a perpetrator, if applicable. CSSB 103 requires that the report include information relating to: the number of requests for assistance received under Section 61.098, Human Resources Code, and requests for assistance otherwise received from prosecuting attorneys; the number of cases investigated and the number of cases prosecuted; the types and outcomes of cases prosecuted such as whether the case concerned narcotics or an alleged incident of sexual abuse; and the relationship of a victim to a perpetrator, if applicable.

The substitute also contains language not in the original bill requiring the counsellor, in consultation with the board of directors of the special prosecution unit, to notify the foreman of the appropriate grand jury if: the counsellor receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the counsellor reasonably believes jeopardizes the health, safety, and welfare of children in the custody of TYC, the counsellor reasonably believes the conduct could constitute an offense under Article 104.003(a), Code of Criminal Procedure, and involves the alleged physical or sexual abuse of a child in the custody of a TYC facility or an investigation related to the alleged abuse and the counsellor has a reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

CSSB 103 updates the lists of persons for whom the TYC is entitled to obtain criminal history record information maintained by the Department of Public Safety.

In addition, the substitute adds language not in the original bill obligating the inspector general of the TDCJ to deliver, on a quarterly basis, a report to the board of directors of the special prosecution unit concerning any alleged criminal offense concerning TDCJ and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding quarter. The substitute also adds language not in the original bill requiring the inspector general of TYC to deliver, on a quarterly basis, a report to the board of directors of the special prosecution unit concerning any alleged criminal offense or disposition of any case involving a criminal offense or delinquent conduct concerning TYC and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding quarter.

SB 103 removes a statutory requirement that the members of the governing board of the TYC be citizens who are recognized within their communities for their interest in youth. CSSB 103 does not remove this requirement from statute. The substitute adds language requiring that the governing board of the TYC be comprised of at least one physician, a mental health professional, and a current or former prosecutor or judge and that a majority of the members of the board be qualified, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment in society of children in the custody of agencies similar in scope and mission to the TYC.

SB 103 provides that any power, duty, or function of the TYC that is not assigned by the statute to the advisory board, the chief inspector general of the office of inspector general, or the chief ombudsman of the office of ombudsman may be exercised and performed by the executive commissioner. CSSB 103 provides that any power, duty, or function of the TYC or of the governing board of TYC that is not assigned by statute to the office of inspector general may be exercised and performed by the executive director of TYC or any member or employee designated or assigned by the governing board of TYC or by the executive director of TYC.

SB 103 provides that the state auditor may access all information maintained by the office of the inspector general, such as vouchers, electronic data, and internal records, including information that is otherwise confidential under law. CSSB 103 provides that the state auditor may access all information maintained by the office of the inspector general, such as vouchers, electronic data, and internal records, including information that is otherwise confidential under *state* law. CSSB 103 also makes a statutory change not made by SB 103: the substitute provides that the TYC, not only its financial transactions, is subject to audit by the state auditor.

Instead of eliminating the governing board of the TYC, as done by the original bill, CSSB 103 provides requirements for its membership.

SB 103 provides for an advisory board of the TYC and describes its composition, functions and procedures for the removal of its members. CSSB 103 does not contain this language.

CSSB 103 contains language not in the original bill which requires the TYC to, not later than September 1, 2007, adopt a plan for and begin the process of receiving accreditation by the American Correctional Association for each facility operated by or under contract with the TYC.

CSSB 103 contains language not in the original bill which provides that the TYC shall make available or offer programs for the rehabilitation and reestablishment in society of children committed to the TYC, including programs for sex offenders, capital offenders, children who are C.S.S.B. 103 80(R)

chemically dependent, and those who are emotionally disturbed, in an adequate manner so that a child in the custody of the TYC receives appropriate rehabilitation services recommended for the child by the court committing the child to the TYC. If such programs are unavailable, the TYC shall report to the legislature by January 10 of each odd-numbered year.

CSSB 103 contains language not in the original bill which provides that the TYC shall develop and adopt a statement regarding the role and mission of the TYC.

CSSB 103 contains language not in the original bill which requires the TYC to establish procedures and practices governing employment-related grievances submitted by TYC employees and disciplinary actions within the TYC. This includes a procedure allowing a TYC employee who is recommended for dismissal to elect to participate in an independent dismissal mediation.

SB 103 provides that juvenile correctional officers shall receive 300 hours of training before they undertake duties. CSSB 103 adds that this training must include on-the-job training. The substitute also adds that the TYC shall rotate the assignment of each juvenile correctional officer at an interval determined by the TYC so that a juvenile correctional officer is not assigned to the same station for an extended period of time. CSSB 103 also adds that the TYC shall ensure that at least one juvenile correctional officer is assigned to supervise in or near a location in which children are receiving education services or training.

SB 103 requires the executive director of TYC to adopt rules necessary to administer Section 61.0356, Human Resources Code. CSSB requires the TYC to adopt rules necessary to administer Section 61.0356, Human Resources Code.

SB 103 requires the executive commissioner of the TYC to review the national criminal history record information of any person who applies for employment with TYC, is employed by TYC, or volunteers with or provides direct delivery of services to children in the custody of the TYC. CSSB 103 requires the executive director or the executive director's designee to review the national criminal history record information, state criminal history record information maintained by the Department of Public Safety (DPS), and previous and current employment references of each person who is an employee, contractor, volunteer, ombudsman, or advocate working for the TYC or in a TYC facility or a facility under contract with the TYC, a person who directly delivers services to children in TYC custody, or a person with access to records in TYC facilities or offices. Additionally, the bill requires the executive commissioner of the TYC to review on an annual basis, the aforementioned persons' national criminal history record information and on a continuing basis not less than once every three months, their state criminal history record information. The substitute requires the executive director or the executive director's designee to review on an annual basis their national criminal history record information and requires TYC to ensure that the system used to check state criminal history record information is capable of providing real time arrest information. SB 103 provides that the executive commissioner of TYC may by rule require a person whose national criminal history record information must be reviewed to pay a fee related to the *first* national criminal history record information review conducted. The substitute removes the word "first" from this provision. SB 103 requires the executive director of TYC to adopt rules necessary to administer Section 61.0357, Human Resources Code; CSSB 103 requires the TYC to do so.

SB 103 requires the chief inspector general of the TYC to prepare and deliver certain reports. CSSB 103 removes the requirement in the original bill that these reports be provided to the joint select committee on the operation and management of TYC.

CSSB 103 adds language not in the original bill requiring the TYC to establish a permanent, toll-free number for the purpose of receiving any information concerning the abuse, neglect, or exploitation of children in TYC custody and charges the office of inspector general with ensuring its prominent display and access by children and employees.

CSSB 103 adds a requirement not in the original bill that TYC ensure that a chaplain is employed or formally designated for each commission correctional facility that is an institution.

SB 103 provides that the TYC may not assign a male child younger than 15 years of age to the same correctional facility dormitory as a person who is at least 17 years of age unless the TYC determines that the placement is necessary to ensure the safety of children in the custody of the TYC. CSSB 103 deletes "male" from this provision. CSSB 103 also includes language not in the original bill that requires the TYC to consider the proximity of the residence of a child's family in determining the appropriate commission facility in which to place the child.

The substitute contains a list of documents, not in the original bill, that a committing court must provide to the TYC.

SB 103 requires an initial examination of each child committed to the TYC, which includes long-term planning for the child and consideration of the child's medical and treatment history. CSSB 103 requires an initial examination of each child committed to the TYC, which includes long-term planning for the child and consideration of the child's medical, substance abuse and treatment history, including the child's psychiatric and substance abuse history.

The substitute contains language not in the original bill which requires the TYC to integrate the provision of medical care, behavioral care, and rehabilitative services in an integrated comprehensive delivery system, and lists what medical, behavioral health, or rehabilitative services may be provided to a child in the TYC through this delivery system.

Both the original bill and the substitute contain a requirement that the TYC develop a parent's bill of rights. The substitute deletes one of the required pieces of information to be included in the bill of rights. Additionally, both the original bill and the substitute require the TYC to provide a quarterly report to the parent, guardian, or designated advocate of the child. The substitute deletes one of the requirements of this report. The substitute also adds a provision not in the original bill which requires the TYC to ensure that written information provided to a parent or guardian regarding the rights of a child in custody of TYC or the rights of a child's parent or guardian is clear and easy to understand. The substitute adds that the bill of rights must be developed by TYC in consultation with advocacy and support groups and that TYC is only required to distribute it to the parent or guardian of a child under 18 years of age. The substitute also requires that the bill of rights include the contact information for the office of *independent* ombudsman.

SB 103 requires a caseworker or other facility administrator to attempt to communicate with a parent or guardian who does not speak English in the native language of the parent or guardian. CSSB 103 requires a caseworker or other facility administrator to attempt to communicate with a parent or guardian who does not speak English in the language of choice of the parent or guardian.

The substitute amends Section 508.156(a), Government Code to provide that before the release of a person who is transferred under Section 61.081(f) or 61.084(g), rather than 61.081(f), 61.084 (f) or (g), Human Resources Code, to the division for release on parole, a parole panel shall review the person's records and may interview that person or any other person the panel considers necessary to determine the conditions of parole, and may then impose any reasonable condition on the person's parole that the panel may impose on an adult inmate. The original bill does not do this.

Both the original bill and the substitute require the TYC to develop a reentry and reintegration plan for each child committed to the custody of the TYC and lay out what must be included in the plan. SB 103 requires the TYC to develop the plan in a timely manner so that it is available when a child is reviewed under Section 61.0815, Human Resources Code, after completion of a child's minimum length of stay. CSSB 103 replaces this language with the requirement that the plan must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the time of the child's final discharge from the TYC. The substitute contains an additional provision, not in the original bill, which provides that the TYC shall find a suitable alternative program or service if a program or service in the child's reentry or reintegration plan is not available at the time of the child's release.

Both the original bill and the substitute require the establishment of a panel whose function is to review and determine whether a child who has completed the minimum length of stay should be

discharged, released or remain in TYC custody, and both require the TYC to provide a report to the parent, guardian, or designated advocate of a child whose length of stay is extended by the panel. The substitute contains requirements related to this report not in the original bill and requires TYC to allow parents, guardians and designated advocates access to certain documents upon request. SB 103 also provides that a member of the panel is an employee of the TYC; CSSB 103 does not.

SB 103 requires the TYC to maintain statistics of the number of requests for reconsideration of an extension order that are submitted and requires that these statistics include aggregated information concerning the race, age, sex, offense committed, specialized treatment needs, and country of origin for each child for whom a request for reconsideration of an extension order is submitted. CSSB 103 removes "age" and "offense committed" from this requirement.

The substitute contains language not in the original bill requiring TDCJ to grant credit for sentence time served by a person at the TYC and in a juvenile detention facility in computing eligibility for parole and discharge from TDCJ.

CSSB 103 does not contain a requirement in the original bill that the governing board of the Texas Juvenile Probation Commission and the executive commissioner of the TYC adopt a coordinated strategic plan.

SB 103 contains language which permits the Texas Board of Criminal Justice or the executive commissioner of TYC to decide to exempt employees of the TDCJ or TYC from specific licensing requirements. CSSB changes this to grant permission to the Texas Board of Criminal Justice to vote to exempt employees of TDCJ from specific licensing requirements and to prohibit TYC from exempting any employee from a licensing requirement imposed by Section 110.302, Occupations Code.

SB 103 provides that an official, employee, volunteer, peace officer, or person other than an employee who works for compensation at a correctional facility commits a second degree felony offense if the person engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in the custody of the TYC. CSSB 103 changes this to provide that an official, employee, volunteer, peace officer, or person other than an employee who works for compensation at a correctional facility commits a second degree felony offense if the person engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the TYC, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance. The original bill contained language which allowed the attorney general concurrent jurisdiction with law enforcement agencies to investigate any violation of this statute involving an individual in TYC custody; the substitute removes this language. The substitute changes definitions not in the original bill, for the terms "sexual conduct" and "performance" and changes the definition of "sexual performance" from the original bill's definition. The substitute removes a definition of "child" from the original bill. The original bill contains language providing that the affirmative defense to prosecution provided by Subsection (f)(3), Section 43.25, Penal Code, does not apply to the prosecution of an alleged offense involving a child in the custody of TYC. The substitute does not contain this language and deletes references in the original bill to the age of the child as it pertains to sexual conduct and sexual performance.

SB 103 provides that the attorney general shall have concurrent jurisdiction with law enforcement agencies to investigate any violation of Section 39.04, Penal Code, involving an individual in the custody of the TYC; CSSB 103 does not contain this provision.

The original bill repeals Sections 54.04 (s) and (t), and 54.05 (k), Family Code, as well as 61.001 (3), 61.0122, 61.014, 61.015, 61.0151, 61.017, and 61.084 (f), Human Resources Code. The substitute repeals Sections 54.04 (s) and (t), and 54.05 (k), Family Code, as well as 61.084 (f), Human Resources Code.

The original bill established an office of the ombudsman in TYC. The substitute changes this to an independent ombudsman and provides related definitions. According to the substitute, the office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to TYC including a child released

to supervision before final discharge. The substitute establishes the independence of the ombudsman from the TYC, and provides for the ombudsman to be funded separately from the TYC. The substitute provides that the governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years, and may serve a maximum number of three terms in that capacity. The substitute also lays out the possible reasons for removal of the ombudsman as well as what situations may constitute a conflict of interest, which would prevent an individual from serving as independent ombudsman, and necessary qualifications of the independent ombudsman, who must be qualified by training and by at least five years' experience. It also provides that the ombudsman may hire assistants to perform under the independent ombudsman's direction. The substitute provides that the office of independent ombudsman is subject to review under the Texas Sunset Act, but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2009 and every 12th year after 2009 are reviewed. CSSB 103 describes what must be included in the quarterly report that the ombudsman shall submit to the governor, lieutenant governor, and each member of the legislature, and describes what serious or flagrant instances must be immediately reported to the governor, lieutenant governor, speaker of the house of representatives, state auditor, and OIG. The TYC shall allow any child committed to it to communicate with the independent ombudsman or an assistant to the ombudsman; the communication may be made in person, by mail, or by any other means, and is confidential and privileged. The substitute notes that the records of the independent ombudsman are confidential, except that the independent ombudsman shall share a communication with a child that may involve the child's abuse or neglect to the OIG and disclose its nonprivileged records if required by a court order on a showing of good cause. The independent ombudsman may also make reports relating to an investigation public after redacting certain personally-identifying information of those involved in a claim. The substitute provides that information within and generated by investigations of the independent ombudsman are not subject to disclosure under Chapter 552, Government Code, except if the office determines that disclosure is in the general public interest, necessary to enable the office to perform the responsibilities provided under this section, or necessary to identify, prevent, or treat the abuse or neglect of a child. CSSB 103 lays out what information the independent ombudsman should promote awareness of to the public and to the children committed to the TYC.

CSSB 103 grants rulemaking authority to the office of independent ombudsman. The substitute also provides that the office of independent ombudsman is subject to audit in accordance with Chapter 321, Government Code. The substitute lays out the specific duties of the independent ombudsman, emphasizes that the ombudsman shall not perform duties relating to the investigation of alleged criminal behavior, provides information related to training curriculum, and notes that the TYC may not discharge, discriminate, or retaliate against an employee filing a good faith complaint or cooperating in an investigation with the office of the independent ombudsman. The substitute provides that the TYC, the DPS, and local law enforcement agencies shall allow the independent ombudsman to access records related to children committed to the TYC. The independent ombudsman shall have access to the records of any private entity that relate to a child committed to the TYC.

CSSB 103 defines "special prosecution unit" as the special prosecution unit established under Subchapter E, Chapter 41, Government Code. The substitute also changes the language regarding who may request that the special prosecution unit prosecute an offense or delinquent conduct. CSSB 103 adds a requirement, not in the original bill, that the office of inspector general immediately provide the special prosecution unit with a report concerning an alleged criminal offense or delinquent conduct concerning the TYC and described by Article 104.003(a), Code of Criminal Procedure, if the chief inspector general reasonably believes the offense or conduct is particularly serious and egregious. The substitute also contains language not in the original bill requiring the chief inspector general, at the direction of the board of directors of the special prosecution unit, to notify the foreman of the appropriate grand jury if: the chief inspector general receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the inspector general reasonably believes jeopardizes the health, safety, and welfare of children in the custody of TYC, the chief inspector general reasonably believes the conduct could constitute an offense under Article 104.003(a), Code of Criminal Procedure, and involves the alleged physical or sexual abuse of a child in the custody of a commission facility or an investigation related to the alleged abuse and the chief inspector general has a reason to believe that information concerning the conduct has not previously been

presented to the appropriate grand jury. The substitute also contains a requirement not in the original bill that the executive director of TYC file an immediate complaint with the appropriate law enforcement agency if he or she has reasonable cause to believe that a child in the custody of the TYC is the victim of a crime committed at a TYC facility.

Both CSSB 103 and SB 103 describe the effective dates of certain amended sections and added provisions. The original bill provides that a rule adopted by the TYC before the effective date of this Act is a rule of the executive director of the TYC until superseded, modified, or repealed by the executive director. The substitute deletes this language on rules and adds language, not in the original bill, which requires the TYC to develop and adopt a mission statement by on or before October 1, 2007. CSSB 103 also deletes language from the original bill requiring the governor to appoint an executive commissioner and advisory board of TYC and adds language, not in the original bill, requiring the governor to appoint the independent ombudsman of TYC and specifying the ombudsman's term of office. The substitute also adds language directing the board of directors of the special prosecution unit to elect the initial members of the executive board of the board of directors and setting out requirements they must follow in doing so. CSSB 103 also adds language requiring the board of directors of the special prosecution unit to elect the presiding officer, assistant presiding officer, and executive board of the board of directors and setting out requirements they must follow in doing so. The substitute also requires the executive board of the board of directors of the special prosecution unit to elect the counselor as soon as possible after the effective date of the Act.