

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 9, 2007

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB103 by Hinojosa (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.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB103, As Passed 2nd House: a negative impact of (\$27,486,330) through the biennium ending August 31, 2009.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$19,868,770)
2009	(\$7,617,560)
2010	(\$2,758,411)
2011	(\$1,389,587)
2012	(\$1,449,956)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2007
2008	(\$19,868,770)	259.0
2009	(\$7,617,560)	(61.5)
2010	(\$2,758,411)	(61.5)
2011	(\$1,389,587)	(61.5)
2012	(\$1,449,956)	(61.5)

Fiscal Analysis

The bill would amend Chapter 61 of the Human Resources Code to establish an office of inspector general in the Youth Commission (TYC) to investigate crimes committed by TYC employees, including contract parole officers, crimes committed in TYC and in contract programs. The TYC board of directors would select a chief inspector general. Not later than September 1, 2007, the agency would be required to adopt a plan to seek accreditation by the American Correctional Association. TYC would be required to regularly conduct internal audits on correctional and contract facilities and TYC medical services.

The bill would amend Sections 54.04 and 54.05 of the Family Code to restrict juvenile courts from committing youth to TYC for a misdemeanor crime, or for violation of misdemeanor probation, and require a youth committed to TYC for a misdemeanor prior to the enactment of the bill to be released not later than his 19th birthday. The bill would require 300 hours of training which must include specified topics for juvenile correctional officers (JCOs) in TYC prior to commencing duties at the assigned facility and would require TYC to maintain a staffing ratio of one JCO to twelve youth.

TYC's board of directors would include at least one physician, and experienced member of a victim's advocacy organization, a mental health professional, and a current or former prosecutor or judge. A majority of the members 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 to TYC. At least two members of the board would be required to have primary experience in a field other than criminal or juvenile justice.

Chapter 61, Human Resources Code would be further amended to prohibit TYC from housing a youth younger than age 15 in the same dormitory as a person who is 17 years of age or older unless TYC determines that the placement is necessary to ensure the safety of the youth in TYC custody. TYC would be required to assign a minimum length of stay to all youth without a determinate sentence. In establishing the minimum length of stay, TYC would consider the nature and seriousness of the youth's conduct, and the danger the youth poses to the community. The bill would require TYC to establish a panel, whose function would be to review and determine whether a youth who has completed his minimum length of stay should be discharged, released on parole, or remain in TYC custody for a specified period of time. The TYC board would determine the size of the panel and the length of terms for panel members. The panel could only extend a youth's length of stay on the basis of clear and convincing evidence that the youth is in need of additional rehabilitation and that TYC is the most suitable environment for the youth.

The bill would amend Article 104.003, Code of Criminal Procedure to require the state to reimburse expenses incurred by counties when prosecuting offenses or delinquent conduct committed on property owned or operated by TYC or the Department of Criminal Justice (TDCJ) or committed by or against a person in the custody of TYC or TDCJ while the person is away from agency property. The reimbursable expenses include salaries and expenses of interpreters, travel expenses for witnesses, food, lodging, and compensation for jurors, transcripts for appeal, inquest costs if a death occurs, travel expenses for prosecutor's staff, court reporter's fees, and the cost of special security officers.

The bill would create a special prosecution unit for the purpose of prosecuting offenses under Article 104.003, Code of Criminal Procedure. The special prosecution unit would be governed by a board of directors, which would consist of each prosecuting attorney in counties where TYC or TDCJ facilities are owned, operated, or under contract. Members of the board of directors would not be compensated for their service, but would be entitled to reimbursement of expenses incurred during the performance of their duties as board members. TYC would be required to employ or designate a chaplain for each institutional facility.

The bill would add Chapter 64 to the Human Resources Code to establish an office of ombudsman for TYC as a state agency. The office of ombudsman would evaluate the delivery of services to TYC youth, receive and review complaints, and conduct investigations of complaints if the office determines a youth committed to TYC or the youth's family is in need of assistance, or if a systematic issue in TYC's provision of services is raised in a complaint. The independent ombudsman would be appointed for a two-year term by the governor with the advice and consent of the senate. The independent ombudsman would hire assistants with the same powers and duties.

The Human Resource Code would be further amended to require the executive director, or his designee to review the national criminal history information of each person who applies for employment with TYC, and of persons employed by TYC on an annual basis. TYC would require any person who applies for employment to electronically provide the agency with a full set of fingerprints in a form acceptable to the Federal Bureau of Investigation. TYC may charge a fee for the cost of the national criminal history records review as long as the amount of the fee does not exceed the administrative costs incurred.

The bill would amend Chapter 325, Government Code, to add the requirement that the Sunset Commission appoint an advisory committee not later than December 1, 2007 to develop a plan of a regionalized structure of smaller facilities and more diversified treatment. The committee would be directed to consider how the smaller, regionalized structure would affect recidivism, juvenile and family access to services, and costs to the state and counties. The Sunset Commission would be required to consider the recommendations of the advisory committee in its report to the Legislature.

The bill would require TYC to examine the youth's medical and treatment history as soon as possible after commitment, and complete a psychological assessment for each youth to determine if a psychiatric evaluation is necessary. A psychiatric examination would be required for any youth whose length of stay was established at one year or longer. TYC would be required to reexamine the youth at least every six months to determine if the youth's rehabilitation plan should be modified. The bill would require TYC to assign a caseworker to explore family issues and needs with parents or guardians of TYC youth, provide the parent or guardian with information concerning programs and services provided by TYC, and perform other duties required by TYC.

Chapter 61, Human Resources Code would be amended to lower the age a youth must be either released or transferred for confinement in the Department of Criminal Justice (TDCJ) to 19 years of age. TYC would be required to evaluate youth serving determinate sentences to determine if the youth is in need of additional services that could be completed within a six-month period after the youth's 18th birthday to prepare the youth for release or transfer to TDCJ.

Section 39.04 of the Penal Code would be amended to make an offense where a person engages in sexual conduct with a TYC youth a second degree felony. TYC would be required to adopt a zero-tolerance policy regarding the detection, prevention and punishment of sexual abuse, including consensual sexual abuse of youth in TYC custody. TYC would be required to post notices of the zero-tolerance policy in the office of the chief administrator, the employee break room, the cafeteria and at least six additional locations in each facility. TYC employees who provide sex offender treatment would be required to be licensed.

TYC would be required to release a report of alleged abuse or neglect of TYC youth, protecting the identity of the youth, the person who made the report and any other person whose life or safety may be endangered. TYC would be required to review and compare the accessibility and funding of treatment programs provided to female and male TYC youth. The bill would exempt time served in TYC-operated and contract facilities, and in facilities operated by a juvenile board in lieu of committing a youth to TYC from the three-year limit after which information must be removed from an intelligence database. Determinate sentence youth would receive credit for time served in detention prior to commitment to TYC and credit for time served in TYC prior to transfer to TDCJ.

The bill would permit a juvenile court in a county with a population of 335,000 or greater to require a youth who is found to have engaged in delinquent conduct that violates a penal law of the grade of misdemeanor to participate in a community-based program administered by the county's juvenile board. In order to be eligible for the program, the youth must be previously adjudicated for at least two misdemeanor offenses on two separate occasions, or previously adjudicated for at least one felony offense. The programs would be required to be in place not later than January 1, 2008. The Juvenile Probation Commission (JPC) would provide grants to juvenile boards for the community-based programs, and would be required to establish guidelines for implementation of the programs. The guidelines would be required to be in place not later than November 1, 2007, and each juvenile board would have to comply with the guidelines. JPC would be required to prepare and deliver a report describing the implementation and effectiveness of the community-based programs and comparing the cost of the community-based programs to the cost of committing youth to TYC. The report would be delivered to the governor, the lieutenant governor, and each member of the legislature not later than January 1, 2009.

The bill would amend Section 51.12, Family Code to limit who could operate a pre-adjudication or post-adjudication secure detention facility. The judge and a majority of the juvenile board where pre-adjudication and post-adjudication facilities are located would be required to inspect each facility annually. The judge and the juvenile board are directed to use specified documents in determining whether the pre-adjudication and post-adjudication facilities are suitable for the detention and placement of youth.

The bill would require the Juvenile Probation Commission to inspect each pre-adjudication and post-adjudication facility annually. JPC would be required to certify that each facility is suitable for the detention or placement of youth, and would be allowed to deny, suspend, or revoke the registration of any facility it inspects for non-compliance with minimum standards. JPC would be required to provide a copy of the certification of the facility to the juvenile board, which in turn would provide a copy to those responsible for operating the facility. The bill would take effect immediately if passed by a two-thirds vote of all members elected to each house, or on September 1, 2007 if it does not receive the necessary vote.

Methodology

TYC reports the agency would require additional staff to meet the provisions of the bill, offset by a reduction of 638 staff in fiscal year 2008 and 958.5 staff in fiscal year 2009 caused by the release by attrition of youth age 19 and misdemeanor offenders. The total impact of the bill would be 259 additional FTEs in fiscal year 2008 and a decrease of 61.5 FTEs in fiscal year 2009 and in future years. The estimated cost to implement the provisions of the bill would be \$19,868,770 in fiscal year 2008 and \$7,617,560 in fiscal year 2009. TYC based its estimates on the assumption that the bill requires at least one staff present for every twelve youth at all times. The agency would incur costs from the establishment of the Office of Inspector General, the minimum length of stay review panel, the increased preservice training requirement of JCOs, additional internal audit staff, and chaplains.

There are other costs associated with this bill that cannot be determined at this time. TYC reports it cannot determine the cost of ACA accreditation, the enhanced treatment requirement, costs associated with advocacy

and support groups, and the revised healthcare delivery system. The cost of establishing the office of ombudsman as a state agency and the independent special prosecution unit (SPU) would depend on the number of staff and prosecutors, the number of office locations, and the travel expenses for staff and SPU board members.

TYC estimates that the release of youth who are age 19 or older and are currently committed for misdemeanor offenses, and youth who commit misdemeanor offenses no longer being eligible for commitment to TYC would reduce the average daily population by 259 in fiscal year 2008 and 602 in fiscal year 2009. The release or transfer to TDCJ of felony offenders who are 19 or older and are currently committed to TYC, and the future implications of releasing or transferring all felony commitments at age 19 is estimated to reduce TYC population by 433 each year. Parole populations would be reduced by 26 misdemeanants in fiscal year 2008 and 159 in fiscal year 2009, and 932 felons each year. The impact of the population reduction would result in the closure of facilities, and a reduction in contracted capacity after the first two years.

In order to counter the savings to TYC from the provision of the bill that would release youth from TYC custody, the cost to TDCJ to accommodate the sentenced offenders and certain violent offenders that would be transferred to TDCJ was also included. TYC estimates that 404 youth would be transferred to TDCJ in fiscal year 2008 and 278 youth would be transferred to TDCJ in each following fiscal year as a result of the bill. TYC also estimates 1,117 youth would be transferred to the adult parole system in fiscal year 2008 and 732 youth would be transferred to the adult parole system in each following fiscal year as a result of the bill.

In order to estimate the future impact of the proposal, the transfer of offenders from TYC to TDCJ was applied in a simulation model. Costs of incarceration by TDCJ are estimated on the basis of \$40 per inmate per day, reflecting approximate costs of either operating facilities or contracting with other entities. No costs are included for facility construction. Costs of parole supervision are estimated on the basis of \$3.51 per day. The total state fiscal impact to TDCJ would be a cost of \$6,088,445 in fiscal year 2008 and \$7,490,977 in fiscal year 2009 for a biennial cost to TDCJ of \$13,579,422.

JPC reports that ten counties would be impacted by the community-based misdemeanor programs in the bill. JPC anticipates a pilot program would be developed in each of the ten counties. Using a program size of 30 youth, a 6-month length of stay, and a \$50 per day estimated cost (based on a current program run by a vendor in Dallas County), JPC anticipates each pilot program would cost \$547,500 per year for a total cost of \$5,475,000 for all ten programs per year.

JPC further reports that two additional half-time FTEs would be necessary to develop, oversee, monitor, and reimburse the programs. The additional costs are estimated at \$49,874 in fiscal year 2008 and \$47,964 in future years. The total anticipated cost of the community-based programs for misdemeanor offenders is \$5,524,874 in fiscal year 2008 and \$5,522,964 in fiscal year 2009, and in future years. The biennial cost would be \$11,047,838. The analysis assumes that the state would bear the total cost of the community-based programs.

JPC anticipates hiring five additional staff to fulfill the requirement of inspecting and certifying all pre-adjudication and post-adjudication facilities in the state. The cost of the additional staff is estimated at \$278,645 in fiscal year 2008 and \$269,095 in fiscal year 2009. This includes \$187,995 in salaries, \$23,965 in travel, \$3,951 in operating expenses, and \$53,184 in benefits per year, and \$9,550 for equipment in fiscal year 2008.

Local Government Impact

The bill may impact units of local government, but we are unable to determine a cost estimate at this time.

Source Agencies:

LBB Staff: JOB, ES, GG, AI