

BILL ANALYSIS

C.S.H.B. 1915
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Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Originally established in 1949 as the Texas Youth Development Council, the Texas Youth Commission (TYC) is the State's juvenile corrections agency, supervising youth committed to state confinement by local courts and youth on parole. The Texas Juvenile Probation Commission (TJPC), established in 1981, ensures access to juvenile probation services statewide by supporting and overseeing the 165 juvenile probation departments that serve all 254 counties in Texas. The Office of Independent Ombudsman (OIO), created as part of juvenile justice reforms in 2007, is responsible for investigating, evaluating, and securing the rights of children committed to TYC.

TYC and TJPC are subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. The Office of Independent Ombudsman is subject to Sunset review concurrent with TYC but is not subject to abolishment.

The Sunset Commission considered these three agencies through a special purpose review, as required by H.B. 3689 from the 81st Regular Session, and evaluated reforms initiated through S.B. 103 in the 80th Session. The Sunset re-examination found that TYC, TJPC, and OIO have implemented the majority of required reforms, but that significant problems persist in the juvenile justice system. After several years of study, the Sunset Commission concluded that the time had come to consolidate the juvenile justice agencies into a single, fiscally responsible agency to serve youthful offenders. Creating a single agency will further reforms underway at TYC, and continue the success of initiatives to divert youth from TYC and serve them in their communities. This legislation contains provisions to merge the functions of TYC and TJPC into the new Texas Juvenile Justice Department.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the new Texas Juvenile Justice Board (Board) in SECTION 1.002; to the Board in SECTION 1.004; to the Board and the Executive Commissioner of the Health and Human Services Commission in SECTION 1.007; to the Board in SECTION 1.010; and to the Texas Juvenile Justice Department, Department of Public Safety, Department of State Health Services, Department of Aging and Disability Services, Department of Family and Protective Services, and Texas Education Agency in SECTION 2.004.

SECTION 4.003 contains a transitional provision moving all rules of TYC and TJPC to the new Department on December 1, 2011, until and unless the Texas Juvenile Justice Board amends or repeals them. SECTION 4.005 contains a transition provision directing TYC and TJPC to adopt any necessary rules, as applicable, by December 1, 2011.

SECTION 1.010 rescinds rulemaking authority previously granted to the Office of Independent Ombudsman.

ANALYSIS

Abolishes TYC and TJPC and transfers their functions to a newly created state agency, the Texas Juvenile Justice Department.

Effective December 1, 2011 after a three-month phase-in period, C.S.H.B. 1915 abolishes TYC and TJPC and merges their functions into the new Texas Juvenile Justice Department with a six-year Sunset date of September 1, 2017.

C.S.H.B. 1915 requires the Board to establish the mission of the Department with the goal of establishing a cost-effective continuum of youth services that emphasizes keeping youth in their home communities while balancing the interests of rehabilitative needs with public safety. The bill requires the Board to establish funding priorities that support the mission and do not incentivize incarceration.

C.S.H.B. 1915 establishes a transition team to coordinate and oversee the transition of services and facilities from TYC and TJPC into the new Department. The transition team would exist from September 1, 2011, to March 31, 2012. In addition to assisting the Department through the consolidation, the team would submit a transition plan to the Department with short-, medium-, and long-term goals. The team is composed of 7 members, appointed as soon as possible after September 1, 2011, and not later than October 1, 2011. The team includes: a representative of the Governor who serves as presiding officer; a representative of TJPC, appointed by the TJPC Board; a representative of TYC, appointed by the TYC Board; a representative of the Lieutenant Governor selected by the Governor from a list provided by that official; a representative of the Speaker of the House selected by the Governor from a list provided by that official; one member representing the interests of juvenile offenders or their families, organizations that advocate for juvenile offenders or their families, or organizations that advocate on behalf of victims of delinquent or criminal conduct selected by the Governor; and one member with experience in the consolidation of governmental entities selected by the Governor.

The bill requires the following agencies to assist the transition team, on request, with specific matters: the Legislative Budget Board; the budget, planning, and policy division of the Governor's office; the Department of Information Resources; the office of the Attorney General; the Comptroller of Public Accounts; and the Texas Facilities Commission.

The bill provides that the enabling law for the Department shall be construed to create a unified state juvenile justice agency that works in partnership with stakeholders to provide a full continuum of services, and that produces positive outcomes for youth, families, and communities. The bill establishes numerous goals for the Department.

The bill makes numerous changes to consolidate the planning and operations of the two agencies. Specifically, the bill authorizes the Department to accept and apply for gifts, grants, and donations to promote the purposes of or any activity of the Department. The bill clarifies that annual financial report, annual report, and internal audit requirements apply to the entire Department. The bill requires the Department to establish and implement a system to evaluate the effectiveness of state and county programs and services for youth. The bill eliminates unnecessary language related to joint strategic planning between TYC and TJPC. The bill retains the elements of the former coordinated strategic plan and requires the new Department to produce a plan that meets those requirements.

The bill generally requires TYC and TJPC to implement each change in law included in the legislation, including adoption of any necessary or required rule, in the three-month phase-in period for the new Department ending December 1, 2011, unless a provision specifically provides otherwise.

The bill adds Title 12 to the Human Resources Code; creates the new Department in that title; and transfers or adds various existing statutory provisions in the Human Resources Code related to TJPC, TYC, and OIO to the new Title 12, amending them as appropriate. Effective December 1, 2011, Subchapters A and B, Chapter 141, Human Resources Code, and Subchapters A, B, and H, Chapter 61, Human Resources Code are repealed. Articles 2 and 3 of the bill make conforming changes to other laws that reference the current duties and functions of TYC or TJPC.

Establishes an 11-member Board to govern the Texas Juvenile Justice Department.

The bill establishes an 11-member Texas Juvenile Justice Board to govern the new Department. The bill provides for the Governor to appoint Board members, with the advice and consent of the Senate, to staggered six-year terms. The bill provides for the following Board members: one who is a district court judge of a juvenile court, two who are county judges or county commissioners; one juvenile court prosecutor; one chief juvenile probation officer of a juvenile probation department serving a county with a small juvenile population; one chief juvenile probation officer of a juvenile probation department serving a county with a medium juvenile population; one chief juvenile probation officer of a juvenile probation department serving a county with a large juvenile population; one adolescent mental health treatment professional; one educator; and two public members. The bill defines small, medium, and large juvenile populations for the purposes of board membership. The bill also clarifies that public members or their spouses cannot have employment ties to related fields.

The bill requires that a chief juvenile probation officer on the board not vote or participate in any decision by the board that directly benefits, penalizes, or otherwise directly impacts the juvenile probation department that the chief has authority over. The bill also provides for the Board to employ the executive director of the Department, and clarifies that probation departments can appeal decisions of the Executive Director to the Board.

Grants state hearing officers authority to issue subpoenas.

The substitute authorizes department hearing officers to issue subpoenas, and administer oaths, in connection with a determination of treatment for youth under section 244.005 of the bill.

Adjusts the composition and duties of the Advisory Council on Juvenile Services.

The bill provides that the Council is composed of: the executive director of the Department or designee; the director of probation services or designee; the executive commissioner of the Health and Human Services Commission or designee; one representative of county commissioners, appointed by the Board; two juvenile court judges appointed by the Board; and seven chief probation officers appointed by the Board. The bill authorizes the Board to increase or decrease Council membership at its discretion.

The bill requires the Board to appoint one chief from each regional chiefs association from a list submitted by each regional association. The substitute directs the regional chiefs associations, to the extent practicable, to include in their lists of nominees one chief juvenile probation officer serving a county with a small juvenile population, one chief juvenile probation officer serving a county with a medium juvenile population, and one chief juvenile probation officer serving a county with a large juvenile population. C.S.H.B. 1915 requires all council members, with the exception of members appointed by virtue of their offices, to serve staggered two-year terms.

C.S.H.B. 1915 requires the Council to assist the Department in determining the needs of juvenile board and probation departments; conducting long-range planning; reviewing and proposing revisions to new and existing juvenile probation standards; analyzing the cost impact of standards on probation departments; and advising the Board on any other matter at the request of the Board.

Clarifies handling of complaints and the duties and functions of the Office of Inspector General and the Office of Independent Ombudsman.

The bill clarifies that the Inspector General reports to the new agency's Board, not the Executive Director, and requires the Board to appoint the Inspector General. The bill maintains the Office of Independent Ombudsman (OIO) as a separate state agency, but strikes the Sunset provision for the Office and the authority of the State Auditor to review the Office. C.S.H.B. 1915 grants the Department's board rulemaking authority for the Office, and eliminates the requirement that the Office track complaints regarding its operations and services.

The bill specifies that all complaints should be initially routed through the Office of Inspector General (OIG) who shall then refer all non-criminal complaints to the appropriate departmental entity, and authorizes the Board, by rule, to establish policies for referring non-criminal complaints. The bill clarifies that the Inspector General retains jurisdiction for all complaints that are wholly or partly criminal. The substitute requires the OIG to refer any criminal complaints received relating to probation services or facilities to the appropriate local law enforcement entities. The bill further requires the Department to provide immediate notice to a local probation department of any complaint received relating to the services or facilities of a probation department.

C.S.H.B. 1915 requires the Department to provide monthly updates to juvenile probation departments on the status of any complaint relating to a claim of abuse, neglect, or exploitation and immediate updates of departmental decisions relating to these claims and complaints.

The bill provides for a single hotline for the entire Department and clarifies hotline operation hours.

The bill requires all probation departments to report complaints relating to youth to the OIO on a monthly basis, and authorizes the Board to develop rules on complaint reporting, including the types of information that should be reported. C.S.H.B. 1915 requires the Ombudsman to review and analyze probation complaint data for trends, and requires the Ombudsman to report any possible standards violations to the appropriate probation monitoring entity within the Department.

Requires the State Board of Education to grant charters for detention, correctional, or residential facilities for youth on probation.

C.S.H.B. 1915 requires the State Board of Education to grant charters to detention, correctional, or residential facilities for juveniles on probation. The bill requires these charters to comply with current law for charter schools, and provides that these charters will not count against the statutory cap on charter schools.

Consolidates reentry and reintegration plans and requires youth to sign their conditions of release.

The bill consolidates multiple reentry and reintegration plan provisions in current law into one section of law. The bill also adds new language to require the Department to clearly explain a youth's reentry plan to a youth exiting state custody under supervision, and to require a youth to acknowledge and sign the conditions of supervision before release.

Clarifies that the Juvenile Justice Information System maintained by the Department of Public Safety (DPS) is not subject to consolidation in the State's Data Center.

The bill exempts the Juvenile Justice information System maintained by DPS from data consolidation in the State's Data Center.

Eliminates authorization for the creation of state boot camp programs.

C.S.H.B. 1915 strikes the section of code authorizing the Department to establish youth boot camps for children in state custody.

Clarifies the Department's role regarding 19 to 21 year olds.

C.S.H.B. 1915 clarifies that the new agency has the authority to retain youth aged 19 to 21 in its custody if they were committed to TYC prior to June 8, 2007, consistent with the law at the time of commitment.

Allows the State to transfer a closed TYC facility, in a county with a population less than 100,000, to the county or city where the facility is located.

C.S.H.B. 1915 permits TYC or the Department to transfer closed facilities to the county or municipality in which the facility is wholly or partly located if the county has a population of less than 100,000. The county or municipality is required to use the transferred property to benefit the public interest of the State. If the recipient fails to use the property for public purpose the property will revert to the Department. C.S.H.B. 1915 authorizes the transfer of property from September 1, 2011 until September 1, 2017, at which point the transfer provision expires.

The bill repeals the following statutory provision effective December 1, 2011.

- Human Resources Code, Subchapters A, B, and H of Chapter 61
- Human Resources Code, Subchapters A and B of Chapter 141

EFFECTIVE DATE

September 1, 2011

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1915 abolishes TYC and TJPC and merges their functions into the new Texas Juvenile Justice Department effective December 1, 2011 after a three-month phase-in period. The original bill abolished TYC and TJPC and merged their functions into the new Texas Juvenile Justice Department effective September 1, 2012 after a one-year phase-in period.

C.S.H.B. 1915 provides that the enabling law for the Department shall be construed to create a unified state juvenile justice agency that works in partnership with stakeholders to create a full continuum of services, and produces positive outcomes for youth, families, and communities. The substitute also establishes the goals for the Department. The original bill did not contain such language.

C.S.H.B. 1915 expands existing language on interagency cooperation to include improvement of services for all youth served by the department. The original bill covered only youth on probation. The substitute also authorizes the Department to cooperate and contract with "foundations" in addition to other entities. The original bill did not extend to foundations.

C.S.H.B. 1915 makes the following changes to the transition team in the original bill: reduces it from 11 to seven; adds a member with experience in organizational mergers; removes the three chief juvenile probation officers; and consolidates the three members representing outside interests and organizations into one member who represents the interests of juvenile offenders or their families, an organization that advocates on behalf of juvenile offenders or their families, or an organization that advocates on behalf of the victims of delinquent or criminal conduct. The substitute also changes the agency leadership requirements on the transition team in the original bill from the executive directors of TYC and TJPC, appointed by the Governor, to a representative of each agency appointed by their respective boards.

The substitute requires the appointment of the transition team as soon as possible after September 1, 2011 and not later than October 1, 2011, whereas the original bill required appointment as soon as possible after September 1, 2011. The substitute also shortens the duration of the transition team from one year to six months, and requires the team to prepare and submit to the Department a transition plan for short-, medium- and long-term goals by March 1, 2012.

C.S.H.B. 1915 establishes an 11-member Texas Juvenile Justice Board to govern the new Department, with the following membership: one district court judge who sits as a juvenile court judge; two county judges or commissioners; one prosecutor in juvenile court; one chief juvenile probation officer of a juvenile probation department serving a county with a population with fewer than 7,500 persons younger than 18; one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes at least 7,500 but fewer than 20,000 persons younger than 18; one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes 20,000 or more persons younger than 18; one adolescent mental health treatment professional licensed under Subtitle B or I, Title 3, Occupations Code; one educator, as that term is defined by Section 5.001, Education Code; and two members of the general public.

In contrast, the original bill established a 13-member Texas Juvenile Justice Board to govern the new Department. The bill provided for the following Board composition: four juvenile court judges or county commissioners; one juvenile court prosecutor; one chief juvenile probation officer of a juvenile probation department serving a county with a small population; one chief juvenile probation officer of a juvenile probation department serving a county with a medium population; one chief juvenile probation officer of a juvenile probation department serving a county with a large population; one mental health or other treatment professional; one educational professional; one advocate for juvenile offenders or crime victims; and two public members.

C.S.H.B. 1915 provides that a person cannot be a public member of the board if the person or the person's spouse is employed in the field of criminal or juvenile justice. The original bill provided that a person could not serve as a public board member if they or their spouse was registered, certified, or licensed by a regulatory agency in the field of criminal or juvenile justice.

C.S.H.B. 1915 requires the Board to establish the singular mission of the Department with the goal of establishing a cost-effective system of juvenile services that effectively balances the need for public safety and youth rehabilitation while emphasizing keeping youth in communities. The substitute also requires the Board to establish funding priorities that support the mission and do not incentivize incarceration. The original bill made it a mission of the Department to achieve the goal of prioritizing the use of probation services for juveniles over the commitment of juveniles to state facilities.

The substitute expands the authority of the Department to use gifts, grants, and donations for any purposes of the Department. The original bill authorized the Department to use the money only for probation services.

The substitute authorizes department hearing officers to issue subpoenas, and administer oaths, in connection with a determination of treatment for youth under section 244.005 of the bill. The original bill did not contain this provision.

The substitute provides that the Advisory Council on Juvenile Services is composed of 13 members: the executive director of the Department or designee; the director of probation services or designee; the executive commissioner of the Health and Human Services Commission or designee; one representative of county commissioners, appointed by the Board; two juvenile court judges appointed by the Board; and seven chief probation officers appointed by the Board. The substitute authorizes the Board to increase or decrease Council membership at its discretion. The substitute changes "commissioner of human services" to "executive commissioner of health and human services."

The original bill provided for 10 Council members including: two juvenile court judges, appointed by the Board; three juvenile probation officers, appointed by the Board; two citizens who are knowledgeable of juvenile services, appointed by the Board; the Executive Director of the Department or the Executive Director's designee; the Commissioner of Education or the Commissioner's designee; and the Commissioner of Human Services or the Commissioner's designee.

Unlike the original bill, the substitute requires the Board to appoint to the Council one chief from each regional chiefs association from a list submitted by each regional association. The substitute directs the regional chiefs associations, to the extent practicable, to include in their lists of nominees one chief juvenile probation officer of a juvenile probation department serving a county with a small juvenile population, one chief juvenile probation officer of a juvenile probation department serving a county with a medium juvenile population, and one chief juvenile probation officer of a juvenile probation department serving a county with a large juvenile population. The substitute defines small, medium, and large

counties for the purposes of council membership. The original bill had no similar provisions as it did not specifically include chief probation officers on the Council.

C.S.H.B. 1915 requires all council members, with the exception of members appointed by virtue of their offices, to serve staggered two-year council terms. The original bill did not contain these provisions.

C.S.H.B. 1915 increases the duties of the Advisory Council on Juvenile Services by requiring the Council to assist the Department in: reviewing and proposing revisions to new and existing juvenile probation standards; analyzing the cost impact of standards on probation departments; and advising the Board on any other matter at the request of the Board. The original bill simply required the Council to help determine local need and problems and assist in long-range planning, both of which are maintained in the substitute.

Unlike the original bill, the substitute specifies that all complaints should be routed through the Office of Inspector General who shall then refer all non-criminal complaints to the appropriate departmental entity, and authorizes the Board, by rule, to establish policies for referring non-criminal complaints. C.S.H.B. 1915 clarifies that the Inspector General retains jurisdiction for all complaints that are wholly or partly criminal. The substitute requires the OIG to refer any criminal complaints received relating to probation services or facilities to the appropriate local law enforcement entities. The substitute further requires the Department to provide immediate notice to a local probation department of any complaint received relating to the services or facilities of a probation department. The original bill required a complaint system, but did not contain similar provisions related to the role of the OIG, particularly as it relates to complaints concerning local probation departments.

The substitute adds language to require the Department to provide monthly updates to a local juvenile probation departments on the status of any complaint relating to a claim of abuse, neglect, or exploitation involving the local juvenile probation department. The substitute also requires the Department to provide an immediate update of departmental decisions relating to these complaints. The original bill did not contain these provisions.

The substitute clarifies that probation departments can appeal decisions of the Executive Director “relating to juvenile probation programs, services, or facilities” to the Board. The original bill had a similar provision but did not specify the types of decisions that could be appealed.

The substitute makes technical changes to clarify that requirements in current law related to annual financial reporting, annual reports, and internal audits will apply to the new Department. The substitute also adds the Legislative Budget Board (LBB) to the list of recipients for the Department’s annual report. The original bill did not clearly indicate that these provisions applied to all functions of the agency and, instead, applied them selectively to either probation functions or functions related to state commitment. The original bill did not require the Department to provide the annual report to LBB.

The substitute requires the department to establish one hotline to accept calls relating to possible violations of rights of youth in state care and on probation. The bill requires the Department to ensure that the hotline will be answered 24 hours per day, every day of the year by staff. The original bill did not require the hotline to be answered at all times.

C.S.H.B. 1915 adds language to require the Department to establish and implement a system to evaluate the effectiveness of state and county programs and services for youth. The original bill did not contain this provision.

The substitute makes technical corrections to the original bill to clarify that rulemaking is the responsibility of the Board, but allows the Board to delegate the adoption of certain policies relating to state-operated facilities and departmental personnel to the Executive Director. The original bill granted rulemaking authority to the Board, Department, and Executive Director.

Unlike the original bill, the substitute adds language to require the State Board of Education to grant charters to detention, correctional, or residential facilities for juveniles on probation and requires these charters to comply with all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code. The substitute also provides that such charters not be counted against the statutory cap on charter schools.

The substitute eliminates unnecessary language in the original bill related to joint strategic planning between TYC and TJPC, but retains language providing specific requirements for the strategic plan for the agency.

The substitute requires all probation departments to report complaints relating to youth to the Ombudsman on a monthly basis. The substitute authorizes the Board to develop rules on complaint reporting, including the types of information that should be reported. The substitute requires the Ombudsman to review and analyze probation complaint data for trends. The substitute also requires the Ombudsman to report any possible standards violations to the appropriate probation monitoring entity within the Department. The original bill did not contain these provisions.

C.S.H.B. 1915 removes the separate Sunset provision for the Office of Independent Ombudsman and the authority of the State Auditor to review the Office. C.S.H.B. 1915 rescinds rulemaking authority from the Office and the Department and grants it to the Department's board. C.S.H.B. 1915 eliminates the requirement that the Office track complaints regarding its operations and services. The original bill did not contain these provisions.

Unlike the original bill, the substitute strikes language in statute that authorizes the Department to contract for residential placement of youth on probation with a specific mental health and mental retardation authority (MHMR) facility. Instead, C.S.H.B. 1915 authorizes the new department to contract for residential space with any local MHMR authority for youth on probation.

The substitute clarifies that the Inspector General reports to the new agency's Board, not the Executive Director, and requires the new agency's Board to appoint the Inspector General. The original bill provided for the Executive Director to select the Inspector General.

The substitute clarifies that the Department may use a comprehensive psychiatric evaluation completed within the 90 days before commitment. The original bill required a new examination, without exception, to satisfy initial examination requirements.

C.S.H.B. 1915 makes technical changes to the original bill to correctly identify each agency in agreements between the Department and the Department of Family and Protective Services.

The substitute makes technical changes to consolidate multiple reentry and reintegration plan provisions into one section of law. The original bill had similar provisions, but in separate sections of law. The substitute requires the Department to clearly explain a youth's reentry plan to a youth exiting state custody under supervision, and requires a youth to acknowledge and sign the conditions of supervision before release. The original bill did not contain these provisions.

The substitute exempts the Juvenile Justice Information System maintained by the Department of Public Safety from data consolidation in the State's Data Center. The original bill did not contain these provisions.

The substitute removes language in law authorizing the Department to establish youth boot camps for children in state custody. The original bill contained language, similar to current law, authorizing the Department to establish youth boot camps.

The substitute clarifies that the new agency has the authority to retain youth aged 19 to 21 in its custody if they were committed to TYC prior to June 8, 2007, consistent with the law at the time of commitment. The original bill did not contain this provision.