

BILL ANALYSIS

C.S.S.B. 653
By: Whitmire
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 of 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 OIO and 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.

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.S.B. 653 abolishes TYC and TJPC and merges their functions into the new Texas Juvenile Justice Department with a Sunset date of September 1, 2017.

C.S.S.B. 653 defines a child for the purposes of Title 12 of the Human Resources Code, as added by this bill.

C.S.S.B. 653 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.

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.

C.S.S.B. 653 expands existing language in current law on interagency cooperation to include improvement of services for all youth served by the Department and authorizes the Department to cooperate and contract with “foundations” in addition to other entities.

C.S.S.B. 653 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 1, 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 seven 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, an organization that advocates for juvenile offenders or their families, or an organization that advocates on behalf of victims of delinquent or criminal conduct selected by the Governor; and one member with experience in organizational mergers selected by the Governor. The bill clarifies that a member of the transition team is not a state officer for the purposes of Subchapter B, Chapter 572, Government Code, solely because of the member’s service on the transition team.

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 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 and grants 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 Board to produce a plan that meets those requirements, according to the requirements set forth by Section 2056.002 of the Government Code.

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 population that includes 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; one educator; and two public members. 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 solely benefits, penalizes, or otherwise solely 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 bill authorizes department hearing officers to issue subpoenas in connection with a determination of treatment for youth under Section 244.005 of the bill.

Provides for 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 courts, appointed by the Board; two juvenile court judges appointed by the Board; and seven chief probation officers appointed by the Board.

The bill requires the Board to appoint one chief juvenile probation officer from each regional chiefs association from a list submitted by each regional association. The bill directs a regional chiefs association, to the extent practicable, to include in its list of nominees one chief juvenile probation officer serving a county with a population that includes fewer than 7,500 persons younger than 18, one chief juvenile probation officer serving a county with a population that includes at least 7,500 but fewer than 20,000 persons younger than 18, and one chief juvenile probation officer serving a county with a population that includes 20,000 or more persons younger than 18. C.S.S.B. 653 requires council members, with the exception of members appointed by virtue of their offices, to serve staggered two-year terms.

C.S.S.B. 653 requires the Council to assist the Department in determining the needs of juvenile boards and probation departments; conducting long-range strategic planning; reviewing and proposing revisions to new and existing juvenile probation standards; analyzing the cost impact of new standards on probation departments; and advising the Board on any other matter at the request of the Board. The bill also exempts the Advisory Council from Chapter 2110 of the Government Code.

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 and requires the Board to appoint the Inspector General.

The bill specifies that criminal complaints initially referred to the Office of Inspector General (OIG) relating to juvenile probation programs, services, or facilities shall be sent to the appropriate local law enforcement agency. The bill also requires the OIG to refer all other complaints to the appropriate departmental entity, and authorizes the Board, by rule, to establish policies for referring non-criminal complaints. 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.S.B. 653 requires the Department to provide monthly updates to local 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 requires the Department to establish a permanent, toll-free hotline to receive information on possible abuse, neglect, or exploitation of youth in the custody of the Department or housed in a local probation facility and clarifies hotline operation hours and other related requirements.

The bill maintains the Office of Independent Ombudsman (OIO) as a separate state agency. The bill requires the OIO to review reports received by the Department relating to complaints regarding juvenile probation programs, services, or facilities, and analyze the data they contain to identify complaint trends. The bill also requires the Ombudsman to report any possible standards violations by a probation department to the appropriate probation monitoring entity within the Department.

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

C.S.S.B. 653 authorizes 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 comprehensive reentry plan to a youth exiting state custody under supervision, to set out requirements for the plan, and to require a youth to acknowledge and sign the conditions of supervision before release.

Clarifies that the statewide juvenile information and case management system is not subject to consolidated statewide data center services.

The bill exempts the statewide juvenile information and case management system, created under Subchapter E, Chapter 58, Family Code, from data center services provided through statewide technology centers under Subchapter L, Chapter 2054 of the Government Code.

Eliminates authorization for the creation of state boot camp programs.

C.S.S.B. 653 removes the section of code authorizing the state to establish youth boot camps for children in state custody.

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

C.S.S.B. 653 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.

Eliminates the requirement that TYC pursue American Correctional Association Accreditation for state facilities.

The bill eliminates language in current law requiring the TYC Board to adopt a plan for each correctional facility to be accredited by the American Correctional Association. The bill also eliminates language in current law requiring the department to implement the plan.

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.S.B. 653 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.S.B. 653 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

The substitute updates the definition of “child” to include both youth under the jurisdiction of a juvenile court and youth committed to the Department. The original bill defined “child” as a youth committed to the State’s custody.

C.S.S.B. 653 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 numerous goals for the Department. The original bill contained a more brief statement on the purposes of the Department and did not contain similar language on goals.

C.S.S.B. 653 expands existing language in current law 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.S.B. 653 makes the following changes to the transition team in the original bill: reduces it from 11 to seven members; adds a member with experience in organizational mergers; removes the three representatives of juvenile probation departments; 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 clarifies that a member of the transition team is not a state officer for the purposes of Subchapter B, Chapter 572, Government Code, solely because of the member’s service on the transition team.

The substitute shortens the duration of the transition team from one year to six months. Unlike the original bill, the substitute requires the team to prepare and submit to the Department a transition plan for short-, medium- and long-term goals by March 1, 2012, and allows for the plan to include benchmarks and timelines.

C.S.S.B. 653 clarifies that two board members may be “county judges” or county commissioners, not “county court judges,” as provided for in the original bill.

To clarify appointment of chief juvenile probation officers to the Board, the substitute specifies one chief serving a county with a juvenile-age population of less than 7,500; one serving a county with a juvenile-age population of between 7,500 and 20,000; and one serving a county with a juvenile-age population of 20,000 or more. The original bill based selection of chiefs on the population of the county overall and did not specify county size beyond small, medium, and large.

C.S.S.B. 653 adjusts language on Board member recusal to require chief probation officer recusal in cases relating “solely” to the board member’s department. The original bill required recusal in cases relating “directly” to the chief probation officer’s department.

C.S.S.B. 653 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 substitute also requires the Board to establish funding priorities for services that support this mission and that do not provide incentives to incarcerate youth. The substitute removes a provision in the original bill that established that the mission of the Department is to achieve the goal of prioritizing probation over state commitment.

The substitute removes the requirement, contained in the original bill, that the Board issue a report on the merger of TYC and TJPC.

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

The substitute authorizes a department hearings officer to issue a subpoena in connection with a determination of treatment for a youth under Section 244.005 of the bill. The original bill did not contain this provision.

C.S.S.B. 653 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 original bill provided for nine Advisory Council members including: two juvenile court judges, appointed by the Chief Justice of the Supreme Court; three chief juvenile probation officers, appointed by the Juvenile Justice Association of Texas; a representative of the county commissioners courts, appointed by the Texas Association of Counties; the Executive Director of the Department or the Executive Director's designee; the director of probation services of the Department or their 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 Advisory Council one chief juvenile probation officer 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 juvenile-age population of less than 7,500, one chief juvenile probation officer of a juvenile probation department serving a county with a juvenile-age population of between 7,500 and 20,000, and one chief juvenile probation officer of a juvenile probation department serving a county with a juvenile-age population of 20,000 or more. The original bill did not contain these provisions. The substitute also updates "commissioner of human services" to "executive commissioner of the Health and Human Services Commission."

C.S.S.B. 653 requires all council members, with the exception of members appointed by virtue of their offices, to serve staggered two-year council terms. The substitute requires Council members with terms to draw lots at the first council meeting to establish which members' terms expire each year. The original bill did not contain these provisions.

C.S.S.B. 653 requires the Council to assist the Department in proposing revisions to new and existing juvenile probation standards, and to assist the Board on other matters as requested. The substitute also provides that the advisory council is not subject to Chapter 2110, Government Code. The original bill did not contain these provisions.

C.S.S.B. 653 requires the Department to act on complaints relating to the Department or a local juvenile probation department. In contrast, the original bill required the Department to maintain a system to act on complaints filed with the Department, other than complaints relating to juvenile boards, and another system to act on complaints relating to juvenile boards.

The substitute specifies that criminal complaints initially referred to the Office of Inspector General (OIG) relating to juvenile probation programs, services, or facilities shall be sent to the appropriate local law enforcement agency. The substitute also requires the OIG to refer all other complaints to the appropriate departmental entity, and authorizes the Board, by rule, to establish policies for referring non-criminal complaints. The original bill required complaints concerning criminal matters to go to the OIG and all other complaints to go to the Office of Independent Ombudsman.

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 did not contain a provision requiring the Department to notify local probation departments of complaints.

The substitute requires the Department to provide monthly updates to a local juvenile probation department 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 to the probation department of departmental decisions relating to these complaints. The original bill did not contain these provisions.

C.S.S.B. 653 requires the Department to ensure its toll-free number for reporting abuse, neglect, and exploitation is in operation and answered by staff 24 hours a day, every day of the year. The original bill provided for the hotline, but did not contain this provision relating to its hours of operation.

C.S.S.B. 653 requires 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 adds language to authorize 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 original bill did not contain these provisions.

The substitute requires the Board to review and adopt a strategic plan according to the requirements set forth by Section 2056.002 of the Government Code. The original bill required the Board to adopt a strategic plan before December 1 of each odd-numbered year.

The substitute requires the Department to file its annual report with the Legislative Budget Board (LBB) in addition to other recipients listed in law. The original bill did not require the Department to provide the annual report to LBB.

The substitute eliminates language in current law requiring TYC to adopt and implement a plan for each correctional facility to be accredited by the American Correctional Association. The original bill maintained these requirements from current law, but simply transferred them from TYC to the Department.

The substitute makes technical corrections to allow the Board to delegate the adoption of certain policies relating to state-operated facilities and departmental personnel to the Executive Director. The original bill did not contain these provisions.

The substitute clarifies that the Department may use a comprehensive psychiatric evaluation completed within the 90 days before commitment to satisfy initial examination requirements for certain youth committed to the State. The original bill maintained the psychiatric evaluation requirements in current law and simply transferred them from TYC to the Department.

The substitute removes language in current law authorizing TYC to establish youth boot camps for children in state custody. The substitute also makes conforming changes to Section 152.0011 of the Human Resources Code to conform to the elimination of state boot camps. The original bill maintained current law relating to state boot camps and simply transferred the provision from TYC to the Department, making conforming changes to Section 152.0011 of the Human Resources Code based on the transfer.

C.S.S.B. 653 maintains current law which establishes the Office of Independent Ombudsman as an independent state agency with the Ombudsman appointed by the Governor. The substitute includes several conforming provisions related to the administration of an independent state agency. The original bill established the Office of Ombudsman at the Department; required the Board to appoint the Ombudsman; and removed provisions from law related to the OIO's status as an independent agency.

The substitute expands the duties of the Ombudsman by requiring the Ombudsman to review and analyze probation complaint data, that is reported to the Department under other requirements, 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.

The substitute exempts the statewide juvenile information and case management system, created under Subchapter E, Chapter 58, Family Code, from data consolidation in the State's Data Center. The original bill did not contain this provision.

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.