

- SUBJECT:** Juvenile justice and TYC facility revisions
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 8 ayes — Dutton, Eiland, Bolton, Farrar, Gonzalez Toureilles, Hernandez, Strama, Vaught
- 0 nays
- 1 absent — Farias
- WITNESSES:** For — Riley Shaw, Tarrant County District Attorney's Office; (*Registered, but did not testify*: Sally Velasquez, Texas Probation Association)
- Against — None
- On — Lisa A. Capers, Texas Juvenile Probation Commission
- BACKGROUND:** Family Code, Title 3 sets up a civil court system to adjudicate allegations against people younger than age 17 and to attempt to rehabilitate juvenile offenders. Youths age 17 or older at the time of a criminal offense are considered adults, and offenders younger than age 10 are referred through law enforcement agencies to another state agency.
- Two state agencies, the Texas Juvenile Probation Commission (TJPC), and the Texas Youth Commission (TYC) deal with children involved in the criminal justice system. About 95 percent of all juvenile cases are resolved locally through counseling, probation, dismissal, or diversion to other programs, and the remainder involve commitment to a state facility. County juvenile boards set local policy. Juvenile probation departments implement the policies of juvenile boards, process cases, provide services for juveniles referred to the juvenile justice system, supervise youths on probation, and run juvenile detention facilities. TYC oversees delinquent children committed to it by courts.
- DIGEST:** CSSB 2884 would amend numerous provisions dealing with juvenile justice proceedings, supervision, and facilities. It also would expand several criminal offenses to cover juvenile facilities and restructure Texas Youth Commission facilities.

TJPC's investigations of abuse, neglect, and exploitation. The bill would expand the Family Code definitions of abuse, exploitation, and neglect to include situations in non-residential juvenile programs and to authorize the TJPC to investigate abuse, neglect, and exploitation in these programs.

CSHB 2884 would authorize the TJPC to issue subpoenas concerning witnesses or evidence relating to:

- the agency's investigations of abuse, neglect, and exploitation;
- complaints;
- financial and programmatic audits of juvenile probation programs and facilities; and
- any other matter under the agency's jurisdiction.

The bill would establish procedures for issuing the subpoenas, including that they be signed by the chairman or vice-chairman of the commission and at least two other commission members, one of whom must be a judge.

TJPC would be authorized to employ and commission peace officers in investigate allegations of abuse, neglect, and exploitation in juvenile justice programs, and facilities. These peace officers would have to be certified by the Commission on Law Enforcement Standards and Educations.

Expanding criminal offenses to include juvenile facilities. CSHB 2884 would expand several criminal offenses to include incidents in juvenile facilities. The bill would expand the criminal offense of escape to include escape from a secure detention facility and the lawful custody of a juvenile probation officer. It would include juvenile secure correctional facilities and secure detention facilities in the offenses of permitting or facilitating an escape, giving others implements to escape, improper contact with a victim, and contraband in a correctional facility.

The bill also would expand the offenses relating to violating the civil rights of person in custody and improper sexual activity with persons in custody to include employees of the Texas Youth Commission and local juvenile probation departments.

Statewide juvenile information and case management system. CSHB 2884 would allow TJPC to participate in the creation and maintenance of a statewide data system to aid in the processing of juvenile cases, facilitate service delivery, aid in identifying at-risk and delinquent children, and help in cross-jurisdictional sharing of information about juvenile offenders. TJPC would be authorized to collect and maintain information about juvenile offenders and offenses committed by juveniles. Juvenile justice agencies would have access to data in the system and would be able to share it with appropriate partner agencies and other authorized entities.

Secure pre-adjudication detention facilities. CSSB 2884 would restrict the operation of secure pre-adjudication facilities to governmental units or private entities under contract with a governmental unit. TJPC would be authorized to deny, suspend, or revoke the registration of any secure pre-adjudication facility required to register if the facility failed to adhere to the minimum standards or to correct noncompliance with the standards in a timely manner.

Secure post-adjudication correctional facilities. CSHB 2884 would remove the statutes dealing with post-adjudication facilities from the laws governing pre-adjudication facilities and place them in a new section dedicated to post-adjudication facilities. CSSB 2884 would restrict the operation of secure post-adjudication facilities to governmental units or private entities under contract with a governmental unit. TJPC would be authorized to deny, suspend, or revoke the registration of any secure pre-adjudication facility required to register if the facility failed to adhere to the minimum standards or to correct noncompliance with the standards in a timely manner.

Under the bill, residential placements of children on probation would have to be in licensed treatment facilities or those specifically exempt from licensing or in post adjudication facilities that met the requirements of the law.

Transfers of probation supervision. The bill would make numerous revisions to the laws governing the transfer of probation supervision between counties for interim supervision, which can last for up to 180 days. These would include increasing the number of business days that a county sending a probationer to another county has to send paperwork to the receiving county and requiring offices in each county to agree on dates that supervision will begin in the receiving county. The bill would

establish when each of the counties is responsible for collecting and distributing restitution payments made by the probationer. Sending counties would be required to resume supervision of a child if the child was on interim supervision and moved to a new county before the end of a 180-day period of interim supervision.

The bill also would amend laws dealing with the permanent transfer of probation supervision between counties. Juveniles would have to be brought before the court in the new county before new or different probation conditions could be imposed. Counties receiving a new probation case of a child who is required to register as a sex offender would be authorized to conduct a sex offender registration hearing.

Statutes dealing with transferring deferred adjudication probation between counties also would be revised. If a deferred adjudication probation was extended by the court, interim supervision could be only up to 180 days. If a child violated the conditions of original deferred adjudication probation, the county that had received the case on a temporary basis would have to send it back to the sending county for prosecution or other action.

Determinate sentences. The bill would allow a determinate sentence to be imposed for conspiracy to commit any of the serious and violent offenses that currently can result in a determinate sentence. It would require children who wanted a jury trial in a determinate sentencing case to elect a jury trial in writing before the commencement of voir dire. If the child was found guilty, the child, with approval of the prosecutor, could change the election of who would decide punishment. The bill would specify that the Code of Criminal Procedure requirements about defendants being present at trials and verdicts being general and separate apply to juvenile courts proceedings.

Texas Youth Commission facilities. CSSB 2884 would set a maximum capacity of 3,000 for residential facilities operated by or under contract with the Texas Youth Commission. However, TYC could go above the cap with the approval of the governor and upon a finding that more children than the cap had been committed to it.

TYC would be required to operate one or more residential facilities in each county with a population of over 600,000 and could operate a facility in any other county. The bill would set a cap of 100 on the number of children in a residential facility. TYC could confine youths only in a

residential facility in the county where a child resided. If a child lived in a county in which TYC did not operate a facility, the child could be confined only in the facility nearest to the county in which the child live d.

By September 1, 2008, TYC would have to transfer to TDCJ any facility designed to house more than 100 children. TYC would have to comply with these requirements by September 1, 2008.

Other provisions. CSHB 2884 would make numerous other changes to the statutes dealing with juvenile offenders, including:

- elevating inhalant abuse to a more serious level on the progressive sanction scale used to define how a case can be handled and how probation violations are handled;
- establishing procedures for local juvenile probation departments to handle restitution payments to victims from juvenile offenders;
- requiring magistrates' determination that a child made a statement voluntarily to be in writing and dated by the magistrate;
- establishing court and prosecutor notification procedures for a mental health residential care facilities to follow if releasing for more than 48 hours a child who had committed one of the serious or violent offenses listed in Code of Criminal Procedure, art. 42.12 sec. 3(g);
- requiring that information about the referral of a case that did not involve a youth being taken into custody be report to DPS within 30 days instead of seven;
- authorizing children waiting transfer to a residential facility or TYC or awaiting medical or health care, including waiting for services needed in the late term of a pregnancy to be held in a local detention facility;
- defining a child's last absence that can trigger the deadline for the requirement that a school district file a complaint or referral against a student for failing to attend school to be within seven days of the child's 10th absence;
- applying to juvenile proceedings the Code of Criminal Procedures guidelines for the use of a pseudonym by a victims and ones exempting the state from paying court cost or fee in trial or appeals except in limited cases;
- repealing the authorization for the TJPC to contract with private vendors for youth boot camps and the placement of the Crockett State School for Girls under the jurisdiction and control of the

TYC;

- giving juvenile courts jurisdiction over motions to transfer determinate sentence probation to an adult court if the juvenile was at least 18 years old and had fled the jurisdiction before a transfer hearing could be held if certain procedures had been followed;
- requiring the current infant care and parenting program to allow mothers to have possession of their infants for up to six months ;
and
- allowing the Texas Juvenile Probation Commission to enter into agreements to share educational information for research, audit, and analytical purposes with the Texas Education Agency, the Texas Youth Commission, and the Texas Department of Criminal Justice.

The bill would take effect September 1, 2007. It would apply to conduct that occurs on or after that date and to juvenile court orders rendered on after that date.

**SUPPORTERS
SAY:**

CSHB 2884 would revise many of the components of the juvenile justice system dealing with proceedings, supervision, and facilities to clarify them and make their implementation easier. The bill would do no harm to juvenile's rights under current law, but would address issues that have come to light since the system was revised in 1995.

CSHB 2884 would facilitate TJPC's investigations in abuse and neglect by allowing the agency to commission peace officers for investigations, giving the agency subpoena authority, and giving it the authority to investigate incidents in juvenile programs. The bill would make sure that juveniles are protected by expanding several criminal offenses to include incidents in juvenile facilities.

Current laws dealing with detention facilities would be clarified, and those dealing with transfers of probation supervision would be cleaned up and expanded to reflect issues that have come up since they were implemented after the last legislative session.

The bill would help facilitate the development of the statewide case management system so that information about juvenile cases, which already is shared among entities, can be done more efficiently and quickly. The bill would not expand access to any of the information or infringe on any juvenile's privacy rights.

The bill would make a statement about the future direction of the Texas Youth Commission by putting a cap on the number of kids that can be committed to the agency and requiring it to operate smaller facilities close to the homes of youths. Given the recent widespread, systematic problems at the agency, a complete overall and revamping of the system away from large, institutional facilities to smaller ones is warranted.

OPPONENTS
SAY:

It is premature to order the Texas Youth Commission drastically to restructure its facilities. Since the recent problems have come to light, the board of the agency has resigned, and the governor has appointed a conservator who is addressing many of the problems. A new management team is in place, and many of the staff with oversight over the agency has resigned or been terminated. An omnibus Texas Youth Commission bill, SB 103 by Hinojosa, that would change numerous structural problems in the agency is working through the legislative process. The bill includes the creation of an advisory panel to study moving the agency toward a regionalized structure of smaller facilities and more diversified treatment and placement options. The Legislature should wait and see how these changes affect the agency and receive the study produced by the advisory panel. The agency will be under Sunset review this interim, and the 81st Legislature will have the opportunity in 2009 to make changes like the ones proposed in CSHB 2884.

NOTES:

Rep. Dutton plans to offer an amendment that would remove from the bill the provisions restructuring TYC.