(The House considered SB 653 by Whitmire, the Senate companion bill, in lieu of HB 1915, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 653.)

HOUSE RESEARCH ORGANIZATION bill analysis 4/28/2011

HB 1915
Madden, et al.
(CSHB 1915 by Madden)

SUBJECT: Abolishing TYC, TJPC and creating Texas Juvenile Justice Department

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Madden, Allen, Cain, Marquez, Parker, Perry, White, Workman

0 nays

1 absent — Hunter

WITNESSES: For — James Martin, Jefferson County and Texas Probation Association; Estela P. Medina, Juvenile Justice Association of Texas, Travis County Juvenile Probation Department; Ronald Quiros, Guadalupe County; James Williams, Brown County Juvenile Probation Department

Against — None

On — Leah Daly, Sunset Advisory Commission; Deborah Fowler, Texas Appleseed; Mimi Garcia, Texas State Employees Unions; Donald Lee, Texas Conference of Urban Counties; Adrian Moore, Council on At-Risk Youth (CARY); Natalie Nelson, Disability Rights Texas; Vikrant Reddy, Texas Public Policy Foundation; Carl Reynolds, Office of Court Administration; Jodie Smith, Texans Care for Children; Cheryln Townsend, Texas Youth Commission; Melissa Weiss, Austin County and Texas Probation Association; Ana Yáñez-Correa, Texas Criminal Justice Coalition; Jamie Bailey and Karyl Van Tassel, FTI Consulting/Texas Appleseed; Marc Levin, Center for Effective Justice, Texas Public Policy Foundation

BACKGROUND: The Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) together are responsible for juvenile offenders in the state. Both agencies will be abolished September 1, 2011, under the Sunset process unless continued by the Legislature.

About 98 percent of the youths in Texas' juvenile justice system are overseen by local probation departments, and less than 2 percent are overseen by TYC. In fiscal 2010, 63,345 juveniles were referred to the local juvenile justice system for a total of 89,419 offenses, and 1,119 of those youths were committed to TYC.

TEXAS YOUTH COMMISSION

The Texas Youth Commission (TYC) operates the state's juvenile corrections agency.

Duties and operations. TYC provides secure confinement for youths committed to the agency by courts, operates education and treatment programs for youths in its custody, and supervises youths on parole. Youths age 17 or older at the time of a criminal offense are considered adults, and offenders younger than age 10 are referred to human services agencies through local law enforcement.

In 2007, the 80th Legislature enacted SB 103 by Hinojosa, which made numerous changes in TYC operations. It limited commitments to TYC to youths who commit felony offenses and lowered the maximum age of TYC supervision from 21 to 19.

Sentences to the TYC usually are indeterminate, meaning that TYC determines the length of commitment based on several factors. SB 103 required TYC to establish a minimum length of stay for each youth committed to the agency. After youths have completed the minimum length of stay, TYC must discharge or release them or extend their stay. Juveniles found guilty of certain serious or violent crimes may be sentenced to a determinate (fixed) term of up to 40 years, starting in a TYC facility, with possible release on parole or future transfer to the adult prison or parole systems.

TYC currently operates 10 secure institutional facilities and nine halfway houses and contracts with 12 private providers and one county for residential services. The TYC population at the end of fiscal 2011, according to a January 2011 LBB report, is projected to be 1,689, down from a high of near 5,000 at the end of fiscal 2006.

Governing structure. In September 2009, the agency began operating under a new seven-member board appointed by the governor with advice

and consent of the Senate. The board must include one physician, a member of a victims' advocacy organization, a mental health professional, and a current or former prosecutor or judge. Other members must meet certain criteria in the statute. From 2007 until September 2009, the agency's governance transitioned from its previous board to a conservatorship to an appointed executive with an advisory board to the current board.

Office of Inspector General (OIG). The Office of the Inspector General is an independent division of the agency that investigates allegations of crimes and administrative violations, including those related to abuse, neglect, or exploitation in TYC. The TYC board appoints the inspector general.

Office of the Independent Ombudsman (OIO). In 2007, the Legislature, in SB 103, created the Office of Independent Ombudsman to investigate, evaluate, and secure the rights of youths committed to TYC. The office is independent of TYC, and its duties include reviewing TYC's procedures; evaluating delivery of services to youths; reviewing certain complaints; investigating certain complaints, other than those alleging crimes; reviewing agency facilities and procedures; providing assistance to children and their families; and recommending agency changes. The ombudsman is appointed for a two-year term by the governor with advice and consent of the Senate.

The OIO must report quarterly on its work to the governor, the lieutenant governor, the state auditor, and the Legislature. The OIO also is required to report immediately certain situations, including particularly serious or flagrant cases of abuse or injury to a child, to the governor, the lieutenant governor, the state auditor, the Legislature, and the office of the inspector general.

TEXAS JUVENILE PROBATION COMMISSION

The Texas Juvenile Probation Commission (TJPC) supports and oversees 165 local juvenile probation departments, which serve the state's 254 counties.

Duties and operations. The agency's functions include distributing state and federal funding to help counties supervise juvenile offenders and to

divert them from TYC. In fiscal 2010, TJPC provided funding to local departments to supervise 94,456 youths.

TJPC monitors and oversees local juvenile probation departments and local detention and correction facilities to ensure compliance with minimum standards. It helps counties with training, legal matters, and research and statistical issues. TJPC certifies juvenile probation and detention officers and investigates complaints alleging abuse, neglect, or exploitation of juveniles in juvenile programs. It also provides funding and oversight for juvenile justice alternative education programs and supports mental health initiatives for juvenile offenders.

Governing board. TJPC is governed by a nine-member commission appointed by the governor with advice and consent of the Senate. It includes two district court judges who sit as juvenile court judges, two county judges or commissioners, one chief juvenile probation officer, one mental health professional, one educator, a representative of an organization that advocates for juvenile offenders or crime victims, and one public member.

The commission has an advisory council whose duties include determining the needs and problems of county juvenile boards and departments and helping in long-range planning. The advisory council consists of:

- two juvenile court judges, appointed by the commission;
- three juvenile probation officers, appointed by the commission;
- two public members;
- the executive commissioner of TYC, or a designee;
- the commissioner of education, or a designee; and
- the commissioner of human services, or a designee.

Actions by the 81st Legislature. The 81st Legislature in 2009 enacted HB 3689 by McClendon, which continued TYC and TJPC from 2009 to 2011. The Sunset Advisory Commission's review of the two agencies for the 82nd Legislature was limited to:

- the agencies' compliance with SB 103 by Hinojosa, enacted in 2007, which made many revisions to the juvenile justice system;
- requirements enacted by the 80th Legislature in 2007, including programs to divert youths from TYC; and

- the agencies' initiatives to improve integration of TYC, TJPC, and county juvenile justice functions.

HB 3689 also continued TYC's Office of the Independent Ombudsman and required that it undergo Sunset review whenever TYC is reviewed.

DIGEST:

CSHB 1915 would abolish the Texas Youth Commission and the Texas Juvenile Probation Commission and create a new state agency, the Texas Juvenile Justice Department (TJJD). TYC and TJPC would be abolished on December 1, 2011, and the powers and duties of the agencies would be transferred to TJJD. A newly created board, the Texas Juvenile Justice Board, would govern the agency.

The goals of the new agency would include:

- supporting the development of a consistent county-based continuum of effective interventions and services for youth and families that reduces the need for out-of-home placement;
- increasing reliance on alternatives to placement and commitment to secure state facilities;
- locating facilities as geographically close as possible to workforce and other services, while supporting youths' connection to their families;
- encouraging regional cooperation that enhances county collaboration;
- enhancing the continuity of care; and
- using secure facilities of a size that supports effective youth rehabilitation and public safety.

On December 1, 2011, the new agency would take over the powers and duties of TJPC and TYC. The new agency would be subject to the state's Sunset Act and would be abolished September 1, 2017, unless continued by the Legislature

The bill would take effect September 1, 2011.

Transition team. CSHB 1915 would create the juvenile justice services and facilities transition team to coordinate the transition of services and facilities during the merger of the two agencies. The team would have to prepare a transition plan that included short-, medium-, and long-term transition goals for the new agency.

The seven-member transition team would have to include a member with experience in the merger or consolidation of governmental entities and representatives of:

- TJPC;
- TYC;
- the governor, who would serve as presiding officer;
- the lieutenant governor;
- the speaker of the House; and
- the interests of youth offenders or their families, an organization that advocates on behalf of these groups, or an organization that advocates on behalf of victims of juvenile offenders.

The transition team would be established September 1, 2011, and would be abolished March 31, 2012.

New governing board. CSHB 1915 would create an 11-member board to oversee the new TJJD. The members would be appointed by the governor, with the advice and consent of the Senate. The board would be composed of:

- a district court judge who was a juvenile court judge;
- two county judges or commissioners;
- a juvenile court prosecutor;
- three chief juvenile probation officers, one from a county with fewer than 7,500 persons younger than 18 years old, one from a county with at least 7,500 but fewer than 20,000 persons younger than 18 years old, and one from a county with 20,000 or more persons younger than 18 years old;
- an adolescent mental health treatment professional;
- an educator; and
- two public members.

The governor would designate the presiding officer, and members would serve staggered six-year terms. Board members would not be compensated for their service on the board but could be reimbursed for expenses.

The chief juvenile probation officers on the board would be required to avoid the appearance of a conflict of interest by not voting or participating

in board decisions that directly benefited, penalized, or otherwise directly impacted their juvenile probation departments.

The board would employ the agency's executive director. It also would establish the mission of the department, with the goal of a cost-effective continuum of youth services that emphasized keeping youths in their communities while balancing their rehabilitative needs with public safety.

The board members would have to be appointed by December 1, 2011.

Advisory council on probation issues. CSHB 1915 would establish an advisory council on juvenile services to help the TJJD. Its duties would include:

- determining the needs and problems of county juvenile boards and probation departments;
- conducting long-range strategic planning;
- reviewing and proposing revisions to standards related to juvenile probation programs, services, and facilities;
- analyzing the cost impact on juvenile probation departments of proposed standards; and
- advising the TJJD board.

The council would be composed of:

- the executive director of TJJD, or a designee;
- the director of probation services at TJJD, or a designee;
- executive commissioner of the Health and Human Services Commission, or a designee;
- a representative of county commissioners courts, appointed by the board;
- two juvenile court judges, appointed by the board; and
- seven chief juvenile probation officers, appointed by the board.

The seven juvenile probation officers would be appointed by the TJJD board from each of the state's regional probation chiefs associations.

Member would serve two-year terms, and the TJJD board could change the number of advisory council members as necessary. Members of the advisory board would have to be appointed by December 1, 2011.

Office of Inspector General (OIG); complaints. The Office of the Inspector General, currently within TYC, would be re-established at the new department. It would be under the direction of the board. The board would select the chief inspector general, who would operate directly under its authority. The office would continue its current duties, including investigating crimes committed by department employees and crimes and delinquent conduct committed at department facilities.

Complaints to TJJD would have to be initially referred to the OIG. The OIG would retain jurisdiction over complaints that raised or had the potential to raise criminal matters.

The OIG would have to refer criminal complaints about juvenile probation programs, services, or facilities to the appropriate local law enforcement agency. The OIG would have to provide immediate notice to local juvenile probation departments of complaints relating their programs, services, or facilities. Other complaints would have to be referred to the appropriate division of the TJJD.

Office of the Independent Ombudsman (OIO). CSHB 1915 would continue the Office of the Independent Ombudsman, which currently investigates, evaluates, and secures the rights of youth committed to TYC. The OIO would continue to be independent of the department and be appointed by the governor with advice and consent of the Senate.

Local juvenile probation departments would have to report monthly to the OIO describing the complaints they had received about youths they served. The OIO's duties would be expanded to include reviewing and analyzing the reports and reporting possible standards violations by local probation departments to TJJD.

Other provisions

Probation services. TJJD would have to establish and implement a system to evaluate the effectiveness of county and state programs and services for youth. It also would have to report annually to the governor and the Legislature on its operations and the condition of probation services in Texas. The report would have to include an evaluation of the effectiveness of community-based programs and a comparison of the cost of a child in one of these programs with the cost of committing a child to TJJD.

Transfer of TYC facilities. CSHB 1915 would authorize TYC and TJJD to transfer closed facilities in counties with populations of less than 100,000 to the county or city in which the facility was located. Cities and counties would have to use the property to benefit the public interest. If a county or city no longer used the property for a public purpose, ownership would revert to TJJD.

Charter school. The bill would require the State Board of Education to grant a charter for a school upon the application of a detention, correctional, or residential facility for juvenile offenders. This charter would not count against the state cap on charter schools. Any facility receiving a charter would have to provide all the educational opportunities and services required of school districts.

Toll-free number. TJJD would be required to continue to operate the toll-free telephone numbers available in TYC and juvenile probation facilities that are used to receive information about the abuse, neglect, or exploitation of children. Youth in the department's custody or in a local probation facility and employees of the TJJD and local facility would have to have confidential access to telephones for calling the toll-free number. The number would have to be staffed 24 hours day, year around.

Annual meeting on at-risk issues. CSHB 1915 would require the executive director, the commissioner of education, the commissioner of family and protective services, the commissioner of state health services, the executive commissioner of health and human services, and the chairman of the workforce commission to meet at least annually to discuss issues relating to at-risk youth and to make recommendations to the governor and Legislature.

Standard recommendations. CSHB 1915 also would apply several standard Sunset across-the-board recommendations to the new agency, including provisions on unbiased appointments to the agency board, restrictions on board membership and department employment, removal of board members, training for board members, public testimony at board meetings, and negotiated rulemaking and alternative dispute resolution.

SUPPORTERS SAY:

TYC and TJPC should be merged into one agency to create an effective continuum of treatment and rehabilitation for juvenile offenders in Texas. A fragmented juvenile justice system creates inefficiencies and reduces effectiveness in dealing with juvenile offenders. Restructuring the two

agencies into one would be more efficient and would produce cost savings that could be put back into helping youths. A unified agency would be in a better position to rehabilitate youths by coordinating resources and care so that state and local programs worked together.

The Sunset review process affords an opportunity to better integrate state and local services by merging the two agencies. Merging the agencies would increase cooperation and collaboration between state and local services and create a more consistent approach to handling juvenile offenders. Juveniles who break the law should be seen as one population and addressed in a single system, regardless of the frequency and severity of the laws they have broken.

Even after reforms in recent years, TYC remains a struggling agency working to improve youth services, education, treatment, medical care, and reentry efforts. TYC has a declining population and rising costs, and the best way to improve the work of TYC would be with a new agency, governing board, and outlook.

CSHB 1915 would establish goals for the new agency to ensure that both areas of the current system – probation and state commitment – received the attention they deserved. Concerns that probation issues and funding would take a back seat to the care of youths committed to the agency are unfounded. The first goal of the department would be to support a county-based continuum of services. In addition, the governing board would have a diverse membership, and an advisory committee would be created that was devoted to probation issues.

CSHB 1915 would create a new state agency and a fresh start. It would not micro-manage the agency but would set broad policy goals and allow the new board to govern. Violent, serious offenders would continue to be committed to the state's custody. Local juvenile probation departments would continue to handle the vast majority of offenders on the local level, and the state would continue to send grant funds to local departments.

Transition team. CSHB 1915 would establish a transition team to guide the agency merger. The team would help the merger occur by December 1, 2011, when the new agency would be established. The transition team would be abolished March 31, 2012.

New governing board. CSHB 1915 would establish a diverse governing board for the new agency with strong representation from local juvenile justice officials to ensure that the agency was properly guided. Having a judge and a prosecutor on the board would bring expertise to the board about court matters, and including two county judges or commissioners would ensure that local elected officials were represented. Three chief probation officers also would be on the board so that it had the benefit of knowledge from probation practitioners who represented counties of different sizes. These officers would be probation managers, not front-line staff, so it would be appropriate to have them help oversee the new agency. Conflicts of interest would have to be direct, not deal with the system as a whole, for members to have to recuse themselves. A mental health professional, educator, and public members would round out the board, bringing important expertise to the board in areas that impact juvenile offenders.

Advisory council on probation issues. The advisory council created by CSHB 1915 would create a formal way for practitioners to provide input to the agency on probation issues. The current advisory council has proved effective in getting input from front-line, local probation officials and that would continue under CSHB 1915. This would be especially helpful for the council's proposed duties to determine the needs of county juvenile boards and probation departments and to review standards relating to juvenile probation. County commissioners and judges who help fund juvenile probation systems would bring additional perspectives on these issues. Having the executive commissioner of the Health and Human Services Commission on the council would help ensure a holistic view on juvenile justice.

Office of the Inspector General. CSHB 1915 would re-create in the new agency an Office of the Inspector General, just as one now exists in TYC. This office, which would employ peace officers, is crucial to having allegations of crimes that occur in department facilities investigated in an impartial, thorough, and professional manner.

CSHB 1915 would have all complaints go through the OIG so that there was a unified system to handle complaints. While complaints would be referred to the local level, if appropriate, having all of them go through the OIG would allow records to be kept and TJJD to take note of any patterns in complaints.

The OIG would be required to refer criminal matters related to juvenile probation issues to the appropriate local law enforcement agency so that the current, well-established, successful system of having local law enforcement officers handle local crimes would continue. The OIG's jurisdiction would not extend to investigating crimes that occurred in local juvenile facilities.

Office of the Independent Ombudsman. CSHB 1915 would continue TYC's ombudsman's office as an independent office. The office was established in 2007 as an independent entity to focus on the needs of youth and to advocate for them and their families, and the need for this office continues. Keeping the office independent would be necessary for it to serve as another check and balance on the agency and for youths and their families to be able to communicate with the OIO confidentially.

OPPONENTS SAY:

TYC and TJPC should be continued as separate agencies because they have distinct mandates and responsibilities that are best accomplished as independent entities. While TJPC focuses on the front end of the juvenile justice system by ensuring there are core probation services throughout the state and by supporting the counties' provision of alternatives to state commitment, TYC focuses on youths in correctional facilities and on parole. The TYC population includes the most serious juvenile offenders, many with significant mental health or other treatment issues, and can differ considerably from juveniles who are on probation for crimes ranging from the minor to the serious but who are being treated in the community. It is appropriate to maintain the current seam between the two agencies because the youth are moving from county to state supervision when they move from probation to TYC.

These different points in the juvenile justice system deserve the focus of the individual agencies without the competition for resources and attention that would come with unification. For example, in a unified agency, it might be easy or become routine to channel state funds that now go toward county probation services to handle the youths committed to the department. Agency budget cuts could fall disproportionally upon the probation part of a unified agency, which in turn would hurt counties that provide probation services.

Consolidation would divert the agencies' resources and attention, which would be better focused – especially at TYC – on continuing to implement recent reforms. These efforts should be allowed to continue without

wholesale changes being made in the agency's structure. Other reforms, such as reducing TYC's population, can continue without a merger. For example, under budget proposals being considered by the House and the Senate, TYC would be required to close facilities. Consolidating the two agencies would not solve any problems, but simply move them under a new umbrella and could harm TJPC, generally perceived as a well run, effective agency.

TYC and TJPC have been working together and collaborating in a productive and increasing way, and this could continue with both as separate agencies. For example, the agencies are working together on developing the Juvenile Justice Case Management System and in the development of a joint strategic plan.

New governing board. Having chief probation officers on the new governing board would not be appropriate. These employees of local probation departments are best suited to serving the new department on the advisory council or some other way. It would be better to beef up representation on the governing board of elected officials who are responsible for providing juvenile services.

The types of difficulties created by having these practitioners on the board are illustrated by a potentially unworkable provision in CSHB 1915 that would require them to recuse themselves from decisions that directly impacted their departments. This could make service on the board difficult for these officers because many of the board's decisions would fit these criteria, including votes on standards for local probation facilities and funding for local probation departments.

Advisory council on probation issues. The advisory council on juvenile services should be made up exclusively of practitioners, such as probation chiefs or others working in the juvenile justice field. CSHB 1915 would charge the council with specific duties relating to juvenile probation, including reviewing standards and analyzing their cost impact. This type of work would best be done by practitioners, not heads of other state agencies, such as the Health and Human Services Commission, which would be on the council under CSHB 1915.

Office of the Inspector General. Requiring all complaints to go through the OIG could be an unnecessary step since complaints can deal with non-criminal local issues or with allegations of a crime in a local juvenile facility.

NOTES:

The committee substitute made numerous changes to the original bill, including:

- changing the establishment date of the new agency from September 1, 2012, to December 1, 2011;
- establishing goals for the new agency;
- changing the size and composition of the transition team, shortening its duration, and requiring it to develop short-, medium-, and long-term transition goals;
- changing the size and composition of the agency's governing board;
- changing the composition of the advisory council and expanding its duties;
- requiring all complaints to be routed through the Office of Inspector General and requiring criminal complaints about probation services or facilities to be referred to local law enforcement authorities;
- requiring the TJJD to establish a system to evaluate the effectiveness of county and state programs and services;
- requiring local juvenile probation departments to submit monthly reports to the independent ombudsman describing the complaints they receive; and
- requiring the OIG to report to the TJJD's board and requiring the board to appoint the inspector general.

According to the fiscal note, CSHB 1915 would result in a net positive impact of $3.3 million for fiscal 2012-13 and a reduction of 21 persons from central office positions.

The companion bill, SB 653 by Whitmire, passed the Senate by 31-0 on April 13, and was reported favorably, as substituted, from the House Corrections Committee on April 26.