

- SUBJECT:** Specified sentences to TYC and attorney general investigation of abuse
- COMMITTEE:** Juvenile Justice and Family Issues —favorable without amendment
- VOTE:** 5 ayes — Eiland, Farias, Farrar, Gonzalez Toureilles, Hernandez
0 nays
4 absent — Dutton, Bolton, Strama, Vaught
- WITNESSES:** For — Isela Gutierrez, Texas Criminal Justice Coalition; Will Harrell, ACLU, TCAJJ, NAACP, LULAC; (*Registered but did not testify:* Amy Tripp, Texans Care for Children)

Against — Riley Shaw, Tarrant County District Attorney

On — Kristin Etter, Texas Criminal Defense Lawyers Association
- BACKGROUND:** Under Family Code sec. 54.04, youths can be sent by courts to the Texas Youth Commission (TYC) for delinquent conduct that is a felony crime, and, under certain circumstances, for misdemeanor offenses. Sentences to the TYC usually are indeterminate, meaning that TYC determines the length of commitment based on a number of factors. TYC has established policies on minimum lengths of stay.

Juveniles found guilty of certain serious or violent crimes may be sentenced to a determinate (fixed) term of up to 40 years in a TYC facility, with possible release on parole or future transfer to the adult prison system or the adult parole system.
- DIGEST:** HB 777 would allow courts to set the maximum length of a youth's sentence when committing the youth to the Texas Youth Commission and specify a date on or before the youth's 21th birthday when TYC would have to discharge the youth.

The bill also would require the attorney general to investigate allegations of abuse or neglect of youths in TYC facilities and to report the findings to TYC.

The bill also would require TYC to incorporate a component of cultural and linguistic competence into all agency training, policies, and program development.

The bill would take effect September 1, 2007, and would apply only to conduct violating laws on or after that date.

**SUPPORTERS
SAY:**

The current system of indeterminate sentences has been abused and should be discontinued. In some cases youths placed in TYC have had their sentences extended beyond their minimum stay for arbitrary and punitive, not rehabilitative, purposes. Concerns also have been raised about the requirements in the agency's resocialization program, used as part of the decision about when youths gain release.

Since youths sent to TYC can be held until their 21st birthdays, indeterminate sentences have led to inappropriately long stays for some crimes, especially for very young offenders. The average length of stay for new placements in TYC had increased 47 percent in the last 10 years to an average of 21 months.

HB 777 would address this problem by having judges give youths a maximum sentence date, so that they would not spend an inappropriate amount of time in TYC. Youths still would have incentives to work on their rehabilitation because they could be let out any time between their minimum length of stay and the maximum one. Judges, not unaccountable TYC staff, would determine the maximum amount of time a youth would spend in TYC. This change would address concerns about whether juveniles have a right to counsel if their stays were extended by agency staff members.

Authorizing the attorney general to investigate allegations of abuse or neglect at TYC facilities would add another layer of potential oversight to agency operations. Currently, these investigations are handled by agency staff. The allegations of crimes, abuse, and cover-ups that have come to light in recent months demonstrate the need to move this job outside of the agency so that investigations could be done by an independent agency and children can be better protected.

Requiring TYC to include cultural and linguistic training for staff would help staff to better connect to youth and to be more sensitive to their experiences. This should enhance empathy and understanding of the youth

and lead to better care. Even if current training includes these topics, it would be best to have the requirement in statute so that the training could not be changed.

OPPONENTS
SAY:

HB 777 is unnecessary. The problems plaguing the administration of indeterminate sentences at TYC were the result of the personnel appointed and hired to oversee and operate the agency, not with indeterminate sentencing itself. Much of the staff who were in charge when the problems occurred have resigned or been terminated, and oversight has been stepped up.

Eliminating indeterminate sentences could reduce the incentive of youths to work toward their rehabilitation. Currently, youths sent to TYC on indeterminate sentences are kept while they work through a rehabilitation plan. Many are motivated to work harder knowing that their release date depends on their efforts. Youths with short sentences would have little incentive to work on their rehabilitation if they knew they would be released in the near future. Even though the sentence date that would be established by the bill would be a maximum date, there is the danger that in many cases it would become the release date with no real consideration given to an earlier release.

The omnibus TYC bill, SB 103 by Hinojosa, would address the issue of indeterminate sentences by creating a panel to review decisions to keep youths longer than their minimum sentences. This bill and others already approved by the House this session also institute several layers of oversight for investigations, such as an office of inspector general and an ombudsman's office. These reforms should be allowed to work before a change like HB 777 is enacted. The agency will be under Sunset review this interim, and during that process the 81st Legislature will have the opportunity to examine determinate sentencing and the investigation of abuse under the new laws enacted this session.

NOTES:

The fiscal note estimates a cost to the state of \$2.7 million for fiscal 2008-09 to transfer from TYC to the attorney general the job of investigating abuse and neglect, with the attorney general estimating higher costs to do the job than those currently incurred by TYC.