

SUBJECT: Allowing special prosecution unit to handle crimes committed in TYC

COMMITTEE: Corrections — committee substitute recommended

VOTE: 4 ayes — Madden, Hochberg, McReynolds, Jones
0 nays
1 present not voting — Dunnam
2 absent — Haggerty, Oliveira

WITNESSES: For — Isela Gutierrez, Texas Criminal Justice Coalition; Will Harrell, ACLU, Texas Coalition Advocating Justice for Juveniles, NAACP, LULAC; (*Registered, but did not testify:* Jodie Smith, Texans Care for Children)

Against — None

On — Gregg Cox, Travis County District Attorney, Public Integrity Unit; Gina DeBottis, Special Prosecution Unit; Robert Kepple, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure, art. 104.003 requires the state to reimburse counties for expenses they incur in prosecuting any felony crime committed while the defendant was an inmate in a state correctional facility and in prosecuting drug offenses and offenses related to abusable volatile chemicals, such as paint and similar substances, committed by anyone in a Texas Department of Criminal Justice (TDCJ) facility.

This reimbursement is accomplished by making the resources of the state-funded Special Prosecution Unit (SPU) available to prosecutors in counties that house TDCJ units. The SPU, headquartered in Walker County, receives an appropriation through the Comptroller's Judiciary Section to investigate and prosecute felony offenses committed by prisoners and misdemeanor and felonies committed by agency employees and others when the criminal conduct affects the operation of TDCJ. Crimes prosecuted by the office include violent crimes, sexual assault,

weapons offenses, drug offenses, bribery, and civil rights violations, and involve defendants who are inmates, employees, visitors, and others.

DIGEST:

CSHB 427 would authorize prosecutors in counties that house Texas Youth Commission (TYC) facilities to request that the state Special Prosecution Unit prosecute any criminal offense committed on agency property. It would require the state to reimburse counties for expenses incurred in prosecuting these offenses.

The bill also would require the state to reimburse counties for expenses incurred in the prosecution of any criminal offense on TDCJ property, instead of only felonies committed by inmates and certain drug offenses committed by others.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 427 is necessary to address a problem that may have contributed to the recent scandal involving allegations of sexual abuse and other crimes in Texas Youth Commission facilities. Some of these alleged crimes were not prosecuted, and often when this occurs, it is due to a lack of local prosecutorial resources.

Currently, local prosecutors with TYC facilities in their districts are responsible for pursuing alleged crimes that occur in the facilities when they receive a report from a law enforcement authority. This responsibility can overburden a prosecutor's office, especially if it is in a small, rural area. Experience has shown that usually when allegations of crimes in correctional facilities are not prosecuted, it is because of a lack of local prosecutorial resources. When a crime occurs in an adult prison, the local prosecutor can ask for help from the SPU, but no such help is available for prosecutors with TYC facilities in their districts.

CSHB 427 would address this problem by allowing state resources to be used to prosecute criminal offenses that occur in TYC facilities, just as they are used to prosecute offenses in adult correctional facilities. TYC facilities are state entities, and the state should bear the cost of prosecuting crimes that occur within them.

The system that would be established by CSHB 427 for TYC already works well for the prosecution of crimes committed in adult prisons, and it would work for areas with juvenile facilities. When local prosecutors invite the SPU to work in their jurisdictions, the SPU staff is sworn in as assistant prosecutors in the local county. In the adult system the SPU receives reports of alleged crimes directly from TDCJ's office of inspector general, then takes over a case. If CSHB 427 were implemented and no other laws changed, the SPU would receive reports of alleged crimes directly from law enforcement authorities. However, if other legislation such as HB 914 by Madden that would institute a TYC office of inspector general staffed by commissioned peace officers were enacted, the SPU could receive cases directly from the new TYC office.

CSHB 427 would present no conflict with the constitutional authority of elected prosecutors because the SPU staff is sworn in by the local prosecutor and works under the prosecutor's authority. Local voters could exercise oversight by holding their local prosecutors responsible for the work done by the SPU just as they do for the work done by other employees in the office.

Currently, the SPU handles prosecutions in about 90 percent of the counties with TDCJ units. Prosecutors in other counties handle their own prosecutions because they have the necessary resources, but they know that the SPU is on call should they need it. Extending the jurisdiction of the SPU to handle cases from youth facilities would be an efficient way for the state to meet its responsibilities. SPU prosecutors have experience working cases from correctional facilities and would be able to handle TYC cases by working out of their existing satellite offices.

SPU attorneys would not be overzealous prosecutors but, in fact, would be more likely than other prosecutors to have the proper perspective on crimes committed in TYC facilities because they would see a large number of similar cases. For example, a prosecutor from the SPU may be better equipped to present to juries witnesses who are offenders and to understand the ramifications of crimes such as smuggling contraband into TYC facilities.

The system established by CSHB 427 would be more efficient and cost effective than giving one location, such as Travis County, concurrent jurisdiction to prosecute cases coming out of TYC facilities. In that situation, the Travis County district attorney most likely would call in the

SPU to handle the prosecutions anyway. Also, having the cases originate from Austin could require cases to be coordinated through Austin, and witnesses, prosecutors, and paperwork might have to travel between Austin and the facilities. The SPU also would have more experience in such cases than the attorney general, who has many other responsibilities, and the SPU would be able to respond more quickly than other entities.

While nothing in CSHB 427 directly would address the problem of a prosecutor who wanted to thwart prosecution of a justified case, experience has shown that prosecutors do not hesitate to allow the SPU to work cases freely in their jurisdictions. No local prosecutor has ever denied the SPU the ability to go forward with a case it wanted to prosecute. This should allay concerns about prosecutors who might be reluctant to call in the SPU because of a culture of protecting TYC staff who live in a community. Relationships between a youth facility and the local prosecutors' office are similar to relationships found in towns with adult prisons, and prosecutors from these areas routinely use the SPU. In fact, the SPU would be the entity most removed from any local political pressure. It is overseen by a board of elected prosecutors who could monitor its prosecutions and, if necessary, encourage a local prosecutor to call in the SPU.

There is no way to eliminate prosecutorial discretion, but the experience and objectivity of the SPU would be the best way to ensure fair decisions. Other proposals to address the current problem also would be subject to the criticism that a prosecutor's discretion could result in cases not going forward. For example, the Travis County district attorney, if given jurisdiction over crimes in TYC facilities, could decide not to move forward on a case. Under the Texas Constitution, the Attorney General's Office would have to be invited to prosecute a case because it has no original jurisdiction to prosecute criminal offenses in any situation.

The language in CSHB 427 that would broaden current law to cover all criminal offenses, instead of just the specific ones laid out in current law, would codify the current practice of the SPU. This practice of prosecuting all crimes occurring in TDCJ facilities has evolved over time and is detailed in the appropriations bill. CSHB 427 simply would revise the statutes to reflect this practice.

OPPONENTS
SAY:

The state should be cautious about expanding a system that might lead to overzealous prosecutors who were not connected to a local area. Prosecutors who focus entirely on crimes committed in TYC facilities might have less perspective on the seriousness of those crimes than those who handle diverse caseloads.

OTHER
OPPONENTS
SAY:

Under this bill, a local prosecutor still would have to call in the SPU, so the legislation would not address the problem of a local prosecutor who refused to follow through on cases that should be prosecuted. This could occur for several reasons, perhaps because of a relationship with TYC employees or a bias against juveniles in TYC. Under CSHB 427, if a local prosecutor did not invite the SPU to work in a district, important cases still could go unprosecuted.

This problem could be addressed by giving concurrent jurisdiction to another prosecutor, such as from Travis County, to prosecute offenses occurring in state youth correctional facilities. Another option would be a constitutional amendment giving similar original jurisdiction to the Attorney General's Office. Although the Travis County district attorney or the attorney general also would have discretion about whether or not to pursue cases, concurrent jurisdiction would provide another check in the system to ensure that justified cases move d forward.

Another option would be to allow the appointment of a special prosecutor from the Attorney General's Office if the chief of a local law enforcement agency found that a case of physical or sexual abuse that the agency investigated had been turned over to a local prosecutor and no action had been taken within a defined time period.

NOTES:

The committee substitute specified that the prosecutor is the entity that could request help from the SPU, instead of the county, broadened the language in current law to cover all criminal offenses, and made the bill effective immediately.

The fiscal note estimates that CSHB 427 would cost the state \$2.5 million during fiscal 2008-09. This cost is based on the SPU's handling a projected 100 to 120 TYC cases per year.

A related bill, HB 914 by Madden, which would establish an office of inspector general at TYC, require the TYC board to appoint a commissioned peace officer as inspector general, and authorize the office

to employ and commission peace officers, was reported favorably, as substituted, by the Corrections Committee on March 15.