

## **BILL ANALYSIS**

Senate Research Center  
80R14400 SLO-D

C.S.S.B. 103  
By: Hinojosa et al.  
Criminal Justice  
4/16/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Research has shown that many of the youth incarcerated with the Texas Youth Commission (TYC) were physically abused by employees, and the rate of such occurrences has drastically increased in recent years. Turnover rates and inadequate training of employees at TYC are major contributors to the increasing abuse. Recruiting and retaining staff have been major challenges for TYC. The lack of a criminal investigation division within TYC is another contributor to the increasing rate of violence, both to youth and staff. Lowering the ratio of youth to staff, increasing the amount of training for employees, and providing independent investigations of alleged crimes could reduce the rate of abuse and violence occurring at TYC facilities.

C.S.S.B. 103 requires TYC to provide 300 hours of training to guards before they begin their duties at facilities and to maintain a ratio of at least one guard for every 12 youth committed to the facility. C.S.S.B. 103 requires TYC to establish an office of inspector general for the purpose of investigating criminal acts among TYC youth, guards, and other TYC employees, and reporting the results of any investigation to the TYC Board. C.S.S.B. 103 prohibits TYC from assigning a child younger than 15 years of age to the same dormitory as a youth at least 17 years of age. C.S.S.B. 103 requires the Texas Rangers to make monthly unannounced visit to facilities and to submit reports to the Texas Sunset Advisory Commission for inclusion in TYC's sunset review evaluation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Texas Youth Commission in SECTION 19 (Section 61.034, Human Resources Code), SECTION 23 (Sections 61.0356 and 61.0357, Human Resources Code), SECTION 26 (Section 61.061, Human Resources Code), and SECTION 32 (Section 61.0815, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the advisory board of the Texas Youth Commission in SECTION 19 (Section 61.034, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, as follows:

(17) Updates a reference to the Texas State Board of Medical Examiners to refer to the Texas Medical Board.

(25) Updates a reference to the Texas Department of Health to refer to the Department of State Health Services.

(28) Updates a reference to Article 1.10D, Insurance Code, to refer to Section 701.104, Insurance Code.

(29) Includes inspectors general commissioned by the Texas Youth Commission (TYC) as officers under Sections 61.0451 and 61.0931, Human Resources Code.

(32) Updates a reference to the Texas Commission on Private Security to refer to the Texas Private Security Board.

SECTION 2. Amends Article 61.10(f) (setting forth the composition of the Texas Violent Gang Task Force), Code of Criminal Procedure, to update a reference to the director to refer to the executive commissioner.

SECTION 3. Amends Article 104.003(a) (State Payment of Certain Prosecution Costs), Code of Criminal Procedure, as follows:

(a) Requires the state to reimburse the county for specified expenses incurred by the county in a prosecution of a felony committed while the actor was a prisoner in the custody of the Texas Department of Criminal Justice (TDCJ), rather than a prisoner in the custody of the Texas Department of Corrections, a prosecution of an offense committed in TDCJ by any person under Section 38.11 (Prohibited Substances and Items in Adult or Juvenile Correctional or Detention Facility or on Property of TDCJ or TYC), Penal Code, Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, or Sections 485.031 through 485.035 (relating to abusable volatile chemicals), Health and Safety Code, rather than Chapter 21, Acts of 55th Legislature, Regular Session, 1957 (Article 6184m, V.T.C.S.), a prosecution of a criminal offense or delinquent conduct committed on property owned or operated by or under contract with TYC, or a prosecution of a criminal offense or delinquent conduct committed by or against a person in the custody of TYC while the person was performing a duty away from TYC property.

SECTION 4. Amends Section 37.203(a) (setting forth the composition of the board of the Texas School Safety Center), Education Code, to update references to the director to refer to the executive commissioner.

SECTION 5. Amends Sections 54.04(d), (o), and (u) (Disposition Hearing), Family Code, as follows:

(d) Deletes the existing provision authorizing the court to commit a child to TYC without a determinate sentence if the court or jury found that the child engaged in delinquent conduct, if the requirements of Subsection (s) or (t) are met, of the grade of misdemeanor. Authorizes the court to sentence a child to commitment in TYC with a possible transfer to TDCJ, rather than the institutional division or the pardons and paroles division of TDCJ, if the court or jury found that the child engaged in certain delinquent conduct.

(o) Prohibits a child adjudicated as having engaged in delinquent conduct violating a penal law of this state or the United States of the grade of misdemeanor, under any circumstances, from being committed to TYC for that conduct, in addition to other prohibitions on placement of certain offenders in a disposition under this title.

(u) Provides that delinquent conduct that violates a penal law of this state of the grade of felony, rather than the grade of felony or misdemeanor, does not include conduct that violates a lawful order of a county, municipal, justice, or juvenile court under circumstance that would constitute contempt of that court, for the purposes of disposition under Subsection (d)(2).

SECTION 6. Amends Section 54.05(f) (Hearing to Modify Disposition), Family Code, to delete the grade of misdemeanor, if the requirements of Subsection (k) are met, from existing text authorizing a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony to be modified so as to commit the child to TYC if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. Makes conforming changes, deleting institutional division or the pardons and paroles division of the TDCJ.

SECTION 7. Amends Section 41.102 (Employment of Assistants and Personnel), Government Code, by adding Subsection (c), to authorize the attorney general to offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning TYC.

SECTION 8. Amends Chapter 325 (Sunset Law), Government Code, by adding Section 325.0121, as follows:

Sec. 352.0121. STUDY ON TRANSITION TOWARD REGIONALIZED JUVENILE CORRECTIONS. (a) Requires the Sunset Advisory Commission to appoint an advisory committee as provided by this section to develop a practicable plan to move TYC toward a regionalized structure of small facilities and more diversified treatment and placement options, taking into consideration the likely effects of this regionalized structure on recidivism, juvenile and family access to services, and costs to this state and the counties of this state.

(b) Requires the Sunset Advisory Commission to take into consideration the findings and recommendations of the advisory committee in its report to the legislature under Section 325.012 (Recommendations) as part of its review of TYC, which, as provided by Section 61.020 (TYC, Sunset Provision), Human Resources Code, is abolished September 1, 2009, unless continued in existence as provided by this chapter.

(c) Requires the Sunset Advisory Commission to appoint an advisory committee not later than December 1, 2007.

(d) Provides that the advisory committee consists of nine members appointed by TYC in consultation with TYC, the Texas Juvenile Probation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives. Requires at least one of the members to be a recognized advocate for children.

(e) Requires the chairman of TYC to designate a presiding officer from among the members appointed to the advisory committee.

(f) Requires the advisory committee to convene at the call of the presiding officer.

(g) Prohibits a member of the advisory committee from receiving compensation from the state for committee service but authorizes a member of the advisory committee to receive reimbursement for travel to official meetings according to policies established by TYC.

(h) Requires the advisory committee to report the committee's finding and recommendations to the Sunset Advisory Commission not later than December 1, 2008.

(i) Provides that this section expires September 1, 2009.

SECTION 9. Amends Section 497.052(b) (Industry and Agriculture; Labor of Inmates, Membership), Government Code, to make conforming changes.

SECTION 10. Amends Section 811.001(9) (Definitions), Government Code, to redefine "law enforcement officer."

SECTION 11. Amends Section 814.104(b) (Eligibility of Member for Service Retirement), Government Code, to include the office of inspector general at TYC among the law enforcement activities to which eligibility for retirement applies under certain circumstances.

SECTION 12. Amends Section 815.505 (Certification of Names of Law Enforcement and Custodial Officers), Government Code, to include the office of inspector general at TYC among the agencies required to certify to the retirement system the name of a law enforcement officer or custodial officer.

SECTION 13. Amends Section 551.008(a) (Transfer of Facilities), Health and Safety Code, to update a reference to the governing board to refer to the executive commissioner of TYC.

SECTION 14. Amends Section 61.001, Human Resources Code, by amending Subdivisions (2) and (4) and adding Subdivisions (7) and (8), to define "advisory board," "executive commissioner," "office of inspector general," and "office of ombudsman."

SECTION 15. Amends Sections 61.012 and 61.0121, Human Resources Code, as follows:

Sec. 61.012. New heading: EXECUTIVE COMMISSIONER. (a) Provides that TYC is governed by an executive commissioner, rather than a governing board consisting of seven members, appointed by the governor with the consent of the senate. Requires the appointment of the executive commissioner, rather than appointments to the board, to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee, rather than appointees.

(b) Deletes existing text of Subsection (b), and redesignates existing Subsection (c) to Subsection (b). Provides that the executive commissioner, rather than board members, holds office for a term of not more than two years expiring February 1 of odd-numbered years, rather than staggered terms of six years, with the terms of two or three members expiring every two years.

(c) Provides that the executive commissioner, rather than a member, is eligible for reappointment with the consent of the senate.

(d) Provides that the executive commissioner is a full-time state officer who is entitled to a salary and reimbursement for actual expenses incurred while on TYC business.

Sec. 61.0121. New heading: QUALIFICATIONS FOR EXECUTIVE COMMISSIONER, ADVISORY BOARD MEMBERS, AND EMPLOYEES. (a) Provides that a person is not eligible for appointment as executive commissioner or as a member of the advisory board if the person or the person's spouse is employed by or participates in the management of a business entity or other organization receiving funds from TYC, owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from TYC, or uses or receives a substantial amount of tangible goods, services, or funds from TYC, other than compensation or reimbursement authorized by law, rather than for board membership, attendance, or expenses.

(b) Prohibits an officer, employee, or paid consultant of a Texas trade association in the field of criminal or juvenile justice from being the executive commissioner, a member of the advisory board, or an employee of TYC, under certain circumstances.

(c) Prohibits a person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice from being the executive commissioner, a member of the advisory board, or an employee of TYC, under certain circumstances.

(d) Makes no changes to this subsection.

(e) Prohibits a person from being appointed as executive commissioner, serving as a member of the advisory board, or acting as the general counsel to the executive commissioner, the advisory board, or TYC if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TYC.

SECTION 16. Amends Subchapter B, Chapter 61, Human Resources Code, by adding Section 61.0123, as follows:

Sec. 61.0123. REMOVAL FROM OFFICE: EXECUTIVE COMMISSIONER. (a) Provides that it is a ground for removal from office as executive commissioner if the executive commissioner does not have at the time of appointment the qualifications required by Section 61.0121(a) for appointment, does not maintain while serving as

executive commissioner the qualifications by Section 61.0121(a) for appointment, or violates a prohibition established by Section 61.0121(b) or (c).

(b) Provides that the validity of an action of the executive commissioner is not affected by the fact that it was taken when a ground for removal existed.

(c) Requires the chairman of the advisory board, if the advisory board has knowledge that a potential ground for removal exists under this section, to notify the executive commissioner, the governor, and the attorney general of the potential ground for removal.

SECTION 17. Amends Sections 61.013, 61.0151, 61.019, 61.0191, and 61.022, Human Resources Code, as follows:

Sec. 61.013. New heading: **ADVISORY BOARD**. (a) Provides that an advisory board for TYC is established to adopt policies and rules concerning any grievances and complaints concerning TYC, as provided by Section 61.034, to advise the executive commissioner on matters concerning TYC, and to assist the executive commissioner in the performance of the executive commissioner's duties. Deletes existing text requiring the governor to designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor.

(b) Provides that the advisory board is composed of nine members appointed by the governor with the consent of the senate and requires the governor to designate a member of the advisory board as the chairman of the advisory board to serve in that capacity at the pleasure of the governor. Deletes existing text requiring the board to meet at least four times each year.

(c) Requires the appointment of a member of the advisory board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Deletes existing text requiring a meeting to be held on the call of the chairman or on the request of four members at the time and place designated by the chairman.

(d) Sets forth the composition of the advisory board.

(e) Provides that advisory board members serve for terms of not more than two years expiring February 1 of odd-numbered years. Provides that an advisory board member is eligible for reappointment with the consent of the senate.

(f) Requires the advisory board to meet at least four times each year. Requires a meeting to be held at the call of the chairman or on the request of five members at a time and place designated by the chairman.

(g) Provides that five members constitute a quorum for the exercise of functions of the advisory board described by Subsection (a)(1).

(h) Entitles advisory board members to receive a per diem in the amount provided in the General Appropriations Act for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on advisory board business.

Sec. 61.0151. New heading: **REMOVAL FROM OFFICE: ADVISORY BOARD MEMBERS**. Sets forth the grounds for removal of an advisory board member from the advisory board. Updates references to the board to refer to the advisory board and references to the director to refer to the executive commissioner.

Sec. 61.019. **DELEGATION OF POWERS AND DUTIES**. Authorizes the executive commissioner to exercise and perform any power, duty, or function of TYC that is not assigned by statute to the advisory board, the chief inspector general of the office of inspector general, or the chief ombudsman of the office of ombudsman, rather than the

board. Authorizes the executive commissioner to delegate to the advisory board or to any employee designated or assigned by the executive commissioner a power, duty, or function of the executive commissioner or TYC that is not already assigned by statute to the advisory board or that is not assigned by statute to the chief inspector general of the office of inspector general or the chief ombudsman of the office of ombudsman. Makes conforming changes.

Sec. 61.0191. New heading: **AUDIT; AUTHORITY OF STATE AUDITOR.** (a) Creates this subsection from existing text.

(b) Authorizes the state auditor, on request of the office of inspector general, to provide information or other assistance to the office of inspector general that the state auditor determines is appropriate. Authorizes the office of inspector general to coordinate with the state auditor to review or schedule a plan for an investigation under Section 61.0451 or share other information.

(c) Authorizes the state auditor to access all information maintained by the office of inspector general, such as vouchers, electronic data, and internal records, including information that is otherwise confidential under state law. Provides that information obtained by the state auditor under this subsection is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(d) Provides that any provision of this chapter relating to the operations of the office of inspector general does not supersede the authority of the state auditor to conduct an audit under Chapter 321 (State Auditor), Government Code, or prohibit the state auditor from conducting an audit, investigation, or other review, or having full and complete access to all records and other information concerning TYC, including any witness statement or electronic data, that the state auditor considers necessary for the audit, investigation, or review.

Sec. 61.022. **ACCESSIBILITY TO PROGRAMS AND FACILITIES.** Make a conforming change.

**SECTION 18.** Amends Subchapter C, Chapter 61, Human Resources Code, by adding Sections 61.0331 and 61.0332, as follows:

Sec. 61.0331. **INTERNAL AUDIT; REPORT.** Requires TYC to regularly conduct internal audits of TYC, including audits of correctional facilities operated by and under contract with TYC, and medical services provided to children in the custody of TYC. Requires TYC on a quarterly basis to report the results of the audits to the committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities and the state auditor.

Sec. 61.0332. **COMPLIANCE REPORTS.** Requires TYC to provide the joint select committee on the operation and management of TYC with reports concerning the progress of TYC in complying with the requirements of S.B. No. 103, Acts of the 80th Legislature, Regular Session, 2007. Requires TYC to prepare and deliver the first report to the joint select committee on December 1, 2007, the second report to the joint select committee on June 1, 2008, and the final report to the joint select committee on December 1, 2008. Provides that this section expires January 1, 2009.

**SECTION 19.** Amends Section 61.034, Human Resources Code, as follows:

Sec. 61.034. **POLICIES AND RULES.** Provides that the executive commissioner, rather than the commission, is responsible for the adoption of all policies and requires the executive commissioner to make rules appropriate to the proper accomplishment of TYC's functions, except as provided by Subsection (c). Requires the executive commissioner to adopt rules for the government of the schools, facilities, and programs under TYC's authority and to see that the schools, facilities, and programs are conducted according to law and to the executive commissioner's and advisory board's rules.

Provides that the advisory board is responsible for the adoption of all policies relating to all grievances and complaints concerning TYC and requires the advisory board to adopt rules concerning grievance and complaint policies and procedures, including rules concerning the policies and procedures of the office of ombudsman. Makes conforming changes.

SECTION 20. Amends Section 61.035(b), Human Resources Code, to provide that an employee of TYC is employed on an at-will basis, except as otherwise provided by this chapter. Deletes existing text authorizing TYC to remove any employee for cause, and providing that a decision by TYC is final.

SECTION 21. Amends Sections 61.0351, 61.0352, and 61.0354, Human Resources Code, as follows:

Sec. 61.0351. New heading: PROFESSIONAL INFORMATION FOR ADVISORY BOARD MEMBERS AND EMPLOYEES. Makes conforming changes.

Sec. 61.0352. DIVISION OF RESPONSIBILITY. Requires the executive commissioner, rather than the board, to develop and implement policies that clearly separate the policymaking responsibilities of the executive commissioner, the policymaking responsibilities of the advisory board, and the management responsibilities of the staff of TYC, rather than the executive director and the staff.

Sec. 61.0354. JOB PERFORMANCE EVALUATIONS. Makes a conforming change.

SECTION 22. Amends Section 61.0355(a), Human Resources Code, to make a conforming change.

SECTION 23. Amends Subchapter C, Chapter 61, Human Resources Code, by adding Sections 61.0356, 61.0357, and 61.0358, as follows:

Sec. 61.0356. JUVENILE CORRECTIONAL OFFICERS; STAFFING. (a) Defines "juvenile correctional officer."

(b) Requires TYC to provide each juvenile correctional officer employed by TYC with at least 300 hours of training before the officer independently commences the officer's duties at the facility. Requires the training to provide the officer with information and instruction related to the officer's duties, including certain specified information and instruction.

(c) Authorizes TYC to employ part-time juvenile correctional officers. Provides that a part-time juvenile correctional officer is subject to the training requirements of this section.

(d) Requires TYC to maintain a ratio of not less than one juvenile correctional officer performing direct supervisory duties for every 12 persons committed to the facility, in each correctional facility operated by TYC that has a dormitory, including an open-bay dormitory.

(e) Requires TYC to consider the age of a juvenile correctional officer or other TYC employee who performs direct supervisory duties when determining the placement of the officer or employee in a TYC facility so that, to the extent practicable, an officer or employee is not supervising a child who is not more than three years younger than the officer or employee or otherwise a similar age to the officer or employee.

(f) Requires the executive commissioner to adopt rules necessary to administer this section.

Sec. 61.0357. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW. (a) Defines "department" and "national criminal history record information."

(b) Requires the executive commissioner to review the national criminal history record information of each person who applies for employment with TYC. Requires the executive commissioner, to enable the executive commissioner to conduct the review, to adopt rules requiring a person who applies for employment with TYC to electronically provide TYC with a complete set of the person's fingerprints in a form and of a quality acceptable to the Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI).

(c) Authorizes the executive commissioner by rule to require a person who applies for employment with TYC to pay a fee related to the national criminal history record information review conducted under this section. Prohibits the fee from exceeding the administrative costs incurred by TYC in conducting the review, including the costs of obtaining the person's fingerprints.

(d) Requires the executive commissioner to adopt rules necessary to administer this section.

Sec. 61.0386. **ADVOCACY AND SUPPORT GROUPS.** (a) Requires TYC to allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and victims of sexual assault to provide on-site information, support, and other services for children confined in TYC facilities.

(b) Requires TYC to adopt security and privacy procedures for advocacy and support groups that provide on-site information, support, and other services under this section. Prohibits the security and privacy procedures from being designed to deny an advocacy or support group access to children confined in TYC facilities.

(c) Requires TYC to adopt standards consistent with standards adopted by TDCJ regarding the confidential correspondence of children confined in TYC facilities with external entities, including advocacy and support groups.

SECTION 24. Amends Sections 61.0423 and 61.044, Human Resources Code, as follows:

Sec. 61.0423. **PUBLIC HEARINGS.** Requires the executive commissioner, rather than the board, to develop and implement policies that provide the public with a reasonable opportunity to appear before the executive commissioner or the executive commissioner's designee and to speak on any issue under the jurisdiction of TYC that is not under the jurisdiction of the advisory board. Requires the advisory board to develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board. Makes a conforming change.

Sec. 61.044. New heading: **BIENNIAL BUDGET.** Deletes existing Subsection (a) requiring the executive commissioner to perform the duties assigned by TYC. Requires the executive commissioner, rather than the director, to prepare, rather than prepare and submit to TYC for its approval, a biennial budget of all funds necessary to be appropriated by the legislature to TYC to carry out the purposes of this chapter. Requires the budget to be submitted and filed by the executive commissioner, rather than TYC, in the form and manner and within the time prescribed by law.

SECTION 25. Amends Subchapter C, Chapter 61, Human Resources Code, by adding Sections 61.0451 and 61.0452, as follows:

Sec. 61.0451. **OFFICE OF INSPECTOR GENERAL.** (a) Provides that the office of inspector general is established at TYC for the purpose of investigating fraud committed by TYC employees, including parole officers employed by or under a contract with TYC, and crimes committed at a facility operated by TYC or at a residential facility operated by another entity under a contract with TYC.



(b) Requires the office of inspector general to prepare and deliver a report concerning the results of any investigation conducted under this section to certain persons.

(c) Requires the report prepared under Subsection (b) to include a summary of the actions performed by the office of inspector general in conducting the investigation, a statement of whether the investigation resulted in a finding that fraud or a criminal offense occurred, and a description of the finding. Provides that the report is public information under Chapter 552, Government Code, only to the extent authorized under that chapter and other law.

(d) Authorizes the office of inspector general to employ and commission inspectors general as peace officers for the purpose of carrying out the duties described by this section. Requires an inspector general to have all of the powers and duties given to peace officers under Article 2.13 (Duties and Powers), Code of Criminal Procedure.

(e) Requires peace officers employed and commissioned under Subsection (d) to be certified by the Commission on Law Enforcement Officer Standards and Education under Chapter 1701, Occupations Code, and to complete advance courses relating to the duties of peace officers employed and commissioned under Subsection (d) as part of any continuing education requirements for the peace officers.

(f) Requires the executive commissioner to select a commissioned peace officer as chief inspector general. Provides that the chief inspector general is subject to the requirements of this section, and authorizes the chief inspector general to only be discharged for cause.

(g) Requires the chief inspector general to on a quarterly basis prepare and deliver a report concerning the operations of the office of inspector general to certain persons.

(h) Provides that a report prepared under Subsection (g) is public information under Chapter 552, Government Code, to the extent authorized under that chapter and other law, and requires TYC to publish the report on TYC's Internet website. Requires a report to be both aggregated and disaggregated by individual facility and include information relating to the types of investigations conducted by the office of inspector general, such as whether an investigation concerned narcotics or an alleged incident of sexual abuse, the relationship of a victim to a perpetrator, if applicable, and the number of investigations conducted concerning suicides, deaths, and hospitalizations of children in the custody of TYC.

(i) Requires the office of inspector general to immediately report to the executive commissioner, the advisory board, the governor's general counsel, and the state auditor any particularly serious or flagrant problem concerning the administration of a TYC program or operation or any interference by the executive commissioner or an employee of TYC with an investigation conducted by the office.

Sec. 61.0452. OFFICE OF OMBUDSMAN. (a) Sets forth the purposes of establishing the office of ombudsman at TYC.

(b) Requires the office of ombudsman to report the results of an investigation conducted under this section to the executive commissioner, the advisory board, and the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities.

(c) Authorizes the office of ombudsman, notwithstanding any other law, to access, inspect, or copy any record necessary to carry out the responsibilities provided under this section.

(d) Authorizes an employee of the office of ombudsman, in performing the responsibilities provided under this section, to communicate privately with a person who has received or is receiving services from TYC. Provides that a communication described by this subsection is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) Provides that the name, address, or other personally identifiable information of a person who files a complaint with the office of ombudsman, information generated by the office of ombudsman in the course of an investigation, and confidential records obtained by the office of ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, are authorized to be disclosed to the appropriate person if the office determines that disclosure is in the general public interest, necessary to enable the office to perform the responsibilities provided under this section, or necessary to identify, prevent, or treat the abuse or neglect of a child.

(f) Prohibits TYC from discharging or in any manner discriminating or retaliating against an employee who in good faith makes a complaint to the office of ombudsman or cooperates with the office in an investigation.

(g) Requires the executive commissioner to select a chief ombudsman. Authorizes the chief ombudsman to only be discharged for cause.

SECTION 26. Amends Subchapter D, Chapter 61, Human Resources Code, by adding Section 61.061 and 61.062, as follows:

Sec. 61.061. PLACEMENT RESTRICTIONS IN COMMISSION FACILITIES. Prohibits TYC from assigning a male child younger than 15 years of age to the same correctional facility dormitory as a person who is at least 17 years of age unless TYC determines that the placement is necessary to ensure the safety of children in the custody of TYC. Provides that this subsection does not apply to a dormitory that is used exclusively for short-term assessment and orientation purposes. Requires the executive commissioner by rule to adopt scheduling, housing, and placement procedures for the purpose of protecting vulnerable children in the custody of TYC. Requires the procedures to address the age, physical condition, and treatment needs of a child as well as any other relevant factor.

Sec. 61.062. ESTABLISHMENT OF MINIMUM LENGTH OF STAY. Requires TYC to establish a minimum length of stay for each child committed to TYC without a determinate sentence. Requires TYC, in establishing a minimum length of stay for a child, to consider the nature of and seriousness of the conduct engaged in by the child and the danger the child poses to the community.

SECTION 27. Amends Sections 61.071 and 61.072, Human Resources Code, as follows:

Sec. 61.071. INITIAL EXAMINATION. (a) Creates this subsection from existing text. Requires TYC to examine and make a study of each child committed to it as soon as possible after commitment. Requires the study to be made according to rules established by TYC and to include long-term planning for the child and consideration of the child's medical and treatment history. Deletes existing text requiring the study to include a determination of whether the child will need long-term residential care.

(b) Requires the initial examination to include a comprehensive psychiatric evaluation for a child for whom a minimum length of stay is established under Section 61.062 of one year or longer.

(c) Requires TYC to administer comprehensive psychological assessments to a child as part of the child's initial examination, including assessments designed to identify whether a child is in need of a psychiatric evaluation. Requires TYC to

conduct a psychiatric evaluation of the child as soon as practicable if the results of a child's psychological assessment indicate that the child is in need of a psychiatric evaluation.

Sec. 61.072. REEXAMINATION. Requires TYC to periodically reexamine each child under its control, except those on release under supervision or in foster home, for the purpose of determining whether a rehabilitation plan made by TYC concerning the child should be modified or continued. Requires the examination to include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination. Authorizes the examination of a child to be made as frequently as TYC considers necessary, rather than desirable, but requires the examination to be made at intervals not exceeding six months, rather than one year.

SECTION 28. Amends Section 61.0731, Human Resources Code, by adding Subsection (c), to authorize TYC to disclose to a peace officer or law enforcement agency images of children recorded by an electronic recording device and incident reporting and investigation documents containing the names of children if the information is relevant to the investigation of a criminal offense alleged to have occurred in a facility operated by or under contract with TYC.

SECTION 29. Amends Subchapter E, Chapter 61, Human Resources Code, by adding Sections 61.0763 and 61.0764, as follows:

Sec. 61.0763. RIGHTS OF PARENTS. (a) Requires TYC to develop a parent's bill of rights for distribution to the parent or guardian of a child who is under 18 years of age and committed to TYC. Sets forth the required provisions to be included in the parent's bill of rights.

(b) Requires TYC to mail, not later than 48 hours after the time a child is admitted to a TYC facility, to the child's parent or guardian at the last known address of the parent or guardian the parent's bill of rights and the contact information of the TYC caseworker assigned to the child.

(c) Requires TYC on a quarterly basis to provide to the parent, guardian, or designated advocate of a child who is in the custody of TYC a report concerning the progress of the child at TYC, including the academic and behavioral progress of the child, and the results of any reexamination of the child conducted under Section 61.072.

Sec. 61.0764. COMMISSION CASEWORKERS. (a) Requires TYC to assign a caseworker to a child committed to TYC. Requires a caseworker to explore family issues and needs with the parent or guardian of a child committed to TYC, to provide the parent or guardian of a child committed to TYC with information concerning programs and services provided by TYC or another resource as needed, and to perform other duties required by TYC.

(b) Requires a TYC caseworker, at least once a month, to attempt to contact the child's parent or guardian by phone, in person while the parent or guardian is visiting the facility, or, if necessary, by mail; if unsuccessful in contacting the child's parent or guardian under Subdivision (1), to attempt at least one additional time each month to contact the child's parent or guardian; and to document successful as well as unsuccessful attempts to contact the child's parent or guardian.

(c) Requires a caseworker or another facility administrator, to the extent practicable, to attempt to communicate with a parent or guardian who does not speak English in the native language of the parent or guardian.

SECTION 30. Amends Section 61.079(a), Human Resources Code, to authorize TYC, after a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, rather than 21, to refer a

child to the juvenile court that entered the order of commitment for approval of the child's transfer to TDCJ, rather than institutional division of the TDCJ, for confinement if the child has not completed the sentence and the child's conduct, regardless of whether the child was released under supervision under Section 61.081, indicates that the welfare of the community requires the transfer.

SECTION 31. Amends Subchapter E, Chapter 61, Human Resources Code, by adding Section 61.0791, as follows:

Sec. 61.0791. EVALUATION OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES. Requires TYC, when a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, to evaluate whether the child is in need of additional services that can be completed in the six-month period after the child's 18th birthday to prepare the child for release from the custody of TYC or transfer to TDCJ. Provides that this section does not apply to a child who is released from the custody of TYC or who is transferred to TDCJ before the child's 18th birthday.

SECTION 32. Amends Subchapter F, Chapter 61, Human Resources Code, by adding Sections 61.0814 and 61.0815, as follows:

Sec. 61.0814. REENTRY AND REINTEGRATION PLAN. Requires TYC to develop a reentry and reintegration plan for each child committed to the custody of TYC. Sets forth the required provisions to be included in the plan for a child.

Sec. 61.0815. COMPLETION OF MINIMUM LENGTH OF STAY. (a) Requires TYC, after a child who is committed to TYC without a determinate sentence completes the minimum length of stay established by TYC for the child under Section 61.062, in the manner provided by this section, to discharge the child from the custody of TYC, to release the child under supervision under Section 61.081, or to extend the length of the child's stay in the custody of TYC.

(b) Requires the executive commissioner by rule to establish a panel whose function is to review and determine whether a child who has completed the child's minimum length of stay should be discharged from the custody of TYC as provided by Subsection (a)(1), be released under supervision under Section 61.081 as provided by Subsection (a)(2), or remain in the custody of TYC for an additional period of time as provided by Subsection (a)(3).

(c) Requires the executive commissioner to determine the size of the panel and the length of the members' terms of service on the panel. Requires the panel to consist of an odd number of members, and requires the terms of the panel's members to last for at least two years. Provides that a member of the panel is an employee of TYC and is prohibited from being involved in any supervisory decisions concerning children in the custody of TYC. Requires the executive commissioner to adopt policies that ensure the transparency, consistency, and objectivity of the panel's composition, procedures, and decisions. Requires the executive commissioner to appoint persons to serve as members of the panel.

(d) Authorizes the panel to extend the length of the child's stay as provided by Subsection (a)(3) only if the panel determines by majority vote and on the basis of clear and convincing evidence that the child is in need of additional rehabilitation from TYC and that TYC will provide the most suitable environment for that rehabilitation. Requires the panel, in extending the length of a child's stay, to specify the additional period of time that the child is to remain in the custody of TYC and to conduct an additional review and determination as provided by this section on the child's completion of the additional term of stay. Requires the panel, if the panel determines that the child's length of stay should not be extended, to discharge the child from the custody of TYC as provided by Subsection (a)(1) or to release the child under supervision under Section 61.081 as provided by Subsection (a)(2).

(e) Requires TYC to maintain statistics of the number of extensions granted by the panel. Requires the statistics to include aggregated information concerning the race, sex, specialized treatment needs, and county of origin for each child for whom an extension order is requested, the facility in which the child is confined, and if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(f) Provides that the statistics maintained under Subsection (e), to the extent authorized under law, are public information under Chapter 552, Government Code, and requires TYC to post the statistics on TYC's Internet website. Requires TYC to prepare and deliver to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (e).

(g) Requires TYC to provide a report to the parent, guardian, or designated advocate of a child whose length of stay is extended under this section explaining the panel's reason for the extension.

SECTION 33. Amends Sections 61.084(e) and (g), Human Resources Code, as follows:

(e) Requires TYC to discharge from its custody a person not already discharged on the person's 19th, rather than 21st, birthday, except as provided by Subsection (g), rather than (f) or (g).

(g) Requires TYC to transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to TYC under Section 54.11(i)(1), Family Code, to the custody of TDCJ, rather than the pardons and paroles division of TDCJ, on the person's 19th, rather than 21st, birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

SECTION 34. Amends Section 61.0841(a), Human Resources Code, to make conforming changes. Includes any written comments or information provided by TYC, local officials, family members of the person, victims of the offense, or the general public, among the pertinent information relating to the person required to be submitted by TYC to TDCJ.

SECTION 35. Amends Section 61.093(a), Human Resources Code, to make conforming changes.

SECTION 36. Amends Subchapter G, Chapter 61, Human Resources Code, by adding Section 61.098, as follows:

Sec. 61.098. PROSECUTION OF CERTAIN CRIMES CONCERNING THE COMMISSION. (a) Authorizes the district attorney, criminal district attorney, or county attorney performing the duties of a district attorney who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning TYC and described by Article 104.003(a), Code of Criminal Procedure, to request, as appropriate, that the special prosecution unit prosecute the offense or delinquent conduct.

(b) Requires the special prosecution unit on a quarterly basis to provide the executive commissioner and the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report concerning offenses or delinquent conduct prosecuted by the special prosecution unit on receiving a request for assistance under this section. Provides that a report under this subsection is public information under Chapter 552, Government Code, and requires TYC to publish the report on TYC's Internet website. Requires a report to be both aggregated and disaggregated by individual facility and to include specific information.

SECTION 37. Amends Section 141.022(a) (Advisory Council on Juvenile Services), Human Resources Code, to make conforming changes.

SECTION 38. Amends Section 141.047(b) (Interagency Cooperation), Human Resources Code, to make a conforming change.

SECTION 39. Amends Section 141.0471(c) (Coordinated Strategic Plan for Juvenile Justice System), Human Resources Code, to require the governing board of the Texas Juvenile Probation Commission and the executive commissioner of TYC to adopt the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

SECTION 40. Amends Section 110.302(c), Occupations Code, to authorize the Texas Board of Criminal Justice to vote or the executive commissioner of TYC, rather than the governing board, to decide, rather than vote, to exempt employees of TDCJ or TYC, as appropriate, from a specific licensing requirement imposed under this section if the board or executive commissioner determines that the requirement causes financial or operational hardship on the agency.

SECTION 41. Amends Sections 39.04(b) and (d) (Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody), Penal Code, as follows:

(b) Provides that an offense under Subsection (a)(1) (denying or impeding a person in custody in the exercise or enjoyment of any right, privilege, or immunity) is a Class A misdemeanor. Provides that an offense under Subsection (a)(2) (engaging in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the individual is in the custody of TYC.

(d) Requires the attorney general to have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death, except that the attorney general is required to have concurrent jurisdiction with law enforcement agencies to investigate any violation of this statute involving an individual in the custody of TYC.

SECTION 42. Amends Section 43.25 (Sexual Performance by a Child), Penal Code, by amending Subdivision (1) and adding Subdivision (8), to redefine "sexual performance" and to define "child."

SECTION 43. Amends Section 43.25, Penal Code, is amended by amending Subsection (b), (d), and (g) and adding Subsection (f-1), as follows:

(b) and (d) Updates references to a child younger than 18 years of age to refer to a child.

(f-1) Provides that the affirmative defense to prosecution provided by Subsection (f)(3) does not apply to the prosecution of an alleged offense involving a child in the custody of TYC.

(g) Authorizes the court or jury, when it becomes necessary for the purposes of this section or Section 43.26 to determine the age of a child who participated in sexual conduct, rather than to determine whether a child was younger than 18 years of age, to make this determination by certain specified methods.

SECTION 44. Repealer: (1) Sections 54.04(s) and (t) (authorizing the court make a disposition committing a child to TYC without a determinate sentence for certain misdemeanors), Family Code;

(2) Section 54.05(k) (authorizing the court to modify a disposition committing a child to TYC for certain misdemeanors), Family Code; and

(3) Sections 61.001(3) (defining "chairman"), 61.0122 (Board Member Training), 61.014 (Quorum), 61.015 (Per Diem; Expenses), 61.017 (Executive Director), and 61.084(f) (requiring TYC to transfer a person to the custody of the pardons and paroles division of TDCJ), Human Resources Code.

SECTION 45. Requires a person committed to TYC on the basis of conduct constituting the commission of an offense of the grade of misdemeanor under Section 54.04(d)(2), Family Code, as it existed before the effective date of this Act, to be discharged from the custody of TYC not later than the person's 19th birthday.

SECTION 46. Makes application of Sections 39.04(b) and 43.25, Penal Code, prospective to September 1, 2007.

SECTION 47. (a) Provides that Section 61.0356(b), Human Resources Code, as added by this Act, applies only to a juvenile correctional officer hired by TYC on or after the effective date of this Act. Requires TYC, as soon as practicable but not later than six months after the effective date of this Act, to complete providing the training to juvenile correctional officers hired before the effective date of this Act that is necessary to conform to the requirements of Section 61.0356(b), Human Resources Code, as added by this Act.

(b) Requires TYC, as soon as practicable after the effective date of this Act, to ensure that each correctional facility operated by TYC that has a dormitory, including an open-bay dormitory, has a ratio of not less than one juvenile correctional officer performing direct supervisory duties for every 12 children committed to the facility, as required by Section 61.0356(d), Human Resources Code, as added by this Act, and that male children younger than 15 years of age are assigned to separate correctional facility dorms from persons who are at least 17 years of age as required by Section 61.061, Human Resources Code, as added by this Act.

SECTION 48. Requires the governor, as soon as practicable after the effective date of this Act, to appoint the executive commissioner of TYC, as required by Section 61.012, Human Resources Code, as amended by this Act, with a term of office expiring February 1, 2009, and to appoint members of the advisory board of TYC, as required by Section 61.013, Human Resources Code, as amended by this Act, with terms of office expiring February 1, 2009.

SECTION 49. Requires TYC, before October 1, 2007, to certify to the Employees Retirement System of Texas, in the manner prescribed by the retirement system, the name of each person employed by the office of inspector general at TYC as a law enforcement officer, as defined by Section 811.001, Government Code, as amended by this Act, and any other information the system determines is necessary for the crediting of service and financing of benefits under Subtitle B, Title 8, Government Code.

SECTION 50. Requires TYC, as soon as practicable after the effective date of this Act, in the manner prescribed by Section 61.0357, Human Resources Code, as added by this Act, to begin obtaining national criminal history record information for each person who applies for employment with TYC.

SECTION 51. Provides that a rule adopted by TYC before the effective date of this Act is a rule of the executive commissioner of TYC or the advisory board of TYC, as appropriate, until superseded, modified, or repealed by the executive commissioner or advisory board, as appropriate.

SECTION 52. Effective date: upon passage or September 1, 2007.