

BILL ANALYSIS

C.S.H.B. 2807
By: Madden
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Although the most notorious cases of abuse have been at the West Texas facility of the Texas Youth Commission (TYC), the rape, abuse, and mistreatment of inmates at facilities across the state has been prevalent for many years. The abuse of many of these youth has recently come to lawmakers' attention and has warranted immediate legislative action to remedy the long-term and extensive problems at TYC.

CSHB 2807 adds TYC inspectors general to the list of persons considered peace officers and requires the TYC to establish an office of inspector general. The bill also requires the state to reimburse counties for expenses related to the prosecution of crimes committed on property owned or operated by or under contract with the TYC, gives counties the authority to request that the Special Prosecution Unit prosecute offenses that are committed on TYC property, and establishes an Office of Independent Ombudsman to make available third party, confidential reporting for TYC youth and employees. This bill also aims to reduce the number of youth committed to the TYC by prohibiting placement of misdemeanants in the TYC and reducing the age limitation from 21 to 19 years of age.

This bill provides that Juvenile Correctional Officers shall receive 300 hours of training before they undertake guarding duties and will face more rigorous criminal background checks before employment. The TYC will have one guard supervising every 12 youths, and age will be a significant factor when assigning officers to supervise youths.

Under CSHB 2807, courts will no longer send children to the TYC for misdemeanors. A minimum length of stay shall be given to each youth admitted to the TYC with an indeterminate sentence. Long-term rehabilitation plans, reviewed at least every six months, will be created for each youth and a quarterly report will be sent to the youths' parents or guardians. For the first time, the TYC will be required to create a Parent's Bill of Rights.

Independent of this legislation, the TYC is scheduled to be under review by the Sunset Commission in 2009.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Youth Commission in Sections 23, 25, 33, and 37 of this bill.

ANALYSIS

CSHB 2807 amends the Human Resources Code, to require the Texas Youth Commission (TYC) to establish an Office of Inspector General (OIG) for the purpose of investigating crimes committed at a facility operated by the TYC or at a residential facility operated by another entity under a contract with the TYC and fraud committed by TYC employees, including parole officers employed by or under a contract with the TYC. The bill also amends the Code of Criminal Procedure to make necessary name changes and to add TYC inspectors general to the lists of persons considered peace officers. The bill also amends the Government Code to provide that, for retirement purposes, these commissioned peace officers are considered law enforcement officers, and it provides for the associated certification of names. The bill also allows the OIG to employ and commission inspectors general as peace officers, and outlines their certification and continuing education requirements.

The bill outlines to whom the OIG shall prepare and deliver a report concerning the results of any investigation, and what exactly this report must include. The executive director must also

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select a commissioned peace officer to become chief inspector general, who is required to submit a quarterly report concerning the operations of the OIG to entities enumerated in the bill which includes certain types of information enumerated in the bill. The OIG operations report will be considered public information under Chapter 552, Government Code, and shall be published on the TYC's website. The bill lays out further OIG reporting requirements concerning any serious problem concerning the administration of a TYC program or operation or any interference of the executive director or an employee of the TYC with an investigation conducted by the office, and charges the office with establishing and maintaining a permanent, prominently displayed toll-free number that can be accessed by the children in the TYC's custody and TYC employees for the purpose of reporting abuse, neglect, or exploitation of children.

CSHB 2807 provides that the state auditor, upon OIG request, has the authority to access all of the confidential information within the inspector general's office and the bill provides that any provision of this chapter relating to the operations of the office of inspector general does not supersede the authority of nor prohibit the auditor from conducting an audit or having full access to information concerning the TYC. The bill provides that the OIG may coordinate with the state auditor to review or schedule a plan for an investigation. CSHB 2807 also amends the Human Resources Code by requiring the TYC to regularly conduct internal audits of correctional facilities operated by and under contract with the TYC and medical services provided to children in its custody. The bill also requires the TYC to submit a quarterly report of the audits to the committees of the senate and house of representative with primary jurisdiction over matters concerning correctional facilities as well as to the state auditor, and provides that reports concerning the progress of the TYC in complying with the requirements of HB 2807, Acts of the 80th Legislature, Regular Session, 2007, be submitted to the joint select committee on the operation and management of the TYC. The TYC shall prepare and deliver the first report to the joint select committee on December 1, 2007, the second report on June 1, 2008 and the final report on December 1, 2008. This section of the bill expires January 1, 2009.

CSHB 2807 amends Chapter 41 of the Government Code, codifying the Special Prosecution Unit (SPU) as an independent unit that cooperates with and supports prosecuting attorneys in prosecuting offenses and delinquent conduct committed on property owned or operated by or under contract with the TYC, or those committed by or against a person in the custody of the TYC while the person is performing a duty away from TYC property. The bill describes the composition, duties, procedures, and terms relevant to a Board of Directors and Executive Board for the SPU, as well as for the board's presiding officer and assistant presiding officer, a chief of the unit, and an elected counsellor. It also states that membership on either the board of directors or executive board may not be construed to be a civil office of emolument for any purpose, and provides that while board members are not entitled to compensation, they are entitled to reimbursement for necessary expenses incurred in carrying out their duties as provided by the General Appropriations Act, if applicable. In addition, Chapter 492, Government Code, is amended by adding a section obligating the inspector general to deliver a report on a quarterly basis concerning any alleged criminal offense that the SPU is set up to prosecute. The sections relating to the creation of the SPU expire September 1, 2011.

The bill amends Chapter 325 of the Government Code by adding a section that provides for the Sunset Advisory Commission (referred to as "the commission" throughout this paragraph) to appoint a nine-member advisory committee to study a practicable plan to move the TYC toward a regionalized structure of smaller facilities and more diversified treatment and placing options, taking into consideration the likely effects on recidivism, juvenile and family access to services, and costs to this state and its counties. The commission shall take these results into consideration when it submits its review of the commission, which is set for review by September 1, 2009. The nine members of the advisory committee must include at least three nationally recognized juvenile justice experts, and at least one recognized child advocate, a presiding officer designated by the commission chairman. The commission must appoint an advisory committee not later than December 1, 2007, and the advisory committee must report its findings and recommendations to the committee not later than December 1, 2008. The section relating to the advisory commission on regionally-based TYC facilities expires September 1, 2009.

The Human Resources Code is amended to provide for a TYC advisory board, which would advise the executive director on matters concerning the TYC and assist the executive director in the performance of the executive director's duties. This advisory board will be composed of nine

members; three appointed by the governor, three by the lieutenant governor, and three by the speaker of the Texas house of representatives, all of which shall coordinate to ensure that the membership of the advisory board meet the necessary requirements. The advisory board shall designate one of its members as the chairman who, like the other members, will serve at the pleasure of the person who appointed the member. CSHB 2807 lays out the required protocol for board meetings, necessary qualifications of the board members, among whom must be at least one physician, an experienced member of a victim's advocacy group, a mental health professional and a current or former prosecutor or judge, and where a majority of members must qualify, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment of children in the custody of agencies similar in mission and scope to the TYC. The bill also provides for the manner in which advisory board members shall be compensated. With respect to the delegation of powers and duties, any power, duty, or function of the TYC that is not assigned by statute to the chief inspector general of the OIG may be exercised and performed by the executive director, who in turn may delegate to any member or employee designated or assigned by the board or by the executive director of the TYC a power, duty, or function of the executive director or the TYC that is not already assigned by statute to the chief inspector general of the office of inspector general.

The bill also strikes the addition of Section 61.103 of the Human Resources Code, pertaining to the required protocol for board meetings, necessary qualifications and composition of the board members, and information related to members' compensation and reimbursement of funds for the TYC advisory board.

CSHB 2807 amends the Human Resources Code, to provide for at-will employment of TYC employees as well as to establish procedures and practices governing employment-related grievances submitted by TYC employees and disciplinary actions within the TYC. This includes a procedure allowing a TYC employee who is recommended for dismissal to elect to participate in an independent dismissal mediation.

CSHB 2807 amends the Human Resources Code by establishing training and other guidelines related to juvenile correctional officers. It requires the TYC to provide at least 300 hours of training, which shall include on the job training, before an officer independently commences duties at the facility. The training must provide information and instruction related to the officer's duties. The bill lists the topics that the training must cover. CSHB 2807 also allows for part-time employment of juvenile correction officers and subjects them to the training requirements listed above. The bill requires that in each correctional facility operated by the TYC that has a dormitory, including those with an open-bay, the TYC must maintain a ratio of no less than one juvenile correctional officer performing direct supervisory duties for every 12 committed persons. The TYC shall also, to the extent practicable, place juvenile correctional officers in a facility where they are no more than three years older than a child they are supervising. The TYC shall also rotate the assignment of each juvenile correctional officer at an interval determined by the TYC so that a juvenile correctional officer is not assigned to the same station for an extended period of time, and shall ensure that at least one juvenile correctional officer is assigned to supervise in or near a classroom or other location while children receive education or training. The executive director shall adopt necessary rules to administer these provisions.

The bill amends Chapter 110 of the Occupations Code to state that although the Texas Board of Criminal Justice may vote to exempt employees of the TDCJ from specific licensing requirements if the board determines that the requirement causes financial or operational hardship of the agency, the TYC may not exempt any of its employees from a licensing requirement imposed by the laws of the state for any reason. CSHB 2807 amends the Human Resources Code by providing that not later than September 1, 2007, the TYC shall adopt a plan for and begin the process of receiving accreditation by the American Correctional Association for each facility operated by or under contract with the TYC.

CSHB 2807 amends the Human Resources Code to require the executive director to review the national criminal history record and state criminal history record information, state criminal history record information maintained by the Department of Public Safety (DPS), and previous and current employment references of each person who is an employee, contractor, volunteer, ombudsman, or advocate working for the TYC or in a TYC facility or a facility under contract with the TYC, a person who directly delivers services to children in TYC custody, or a person

with access to records in TYC facilities or offices. The executive director shall adopt rules requiring these people to electronically provide a complete set of the person's fingerprints in a form and of a quality acceptable to the DPS and the Federal Bureau of Investigation and shall conduct an annual review of their national criminal history record information. The executive director also must ensure that the system used to check state criminal history record information maintained by the DPS is capable of providing real time arrest information. The TYC by rule may require these people to pay a fee related to the national criminal history record information review; the fee may not exceed the administrative costs incurred by the TYC in conducting the review, including the costs of obtaining the person's fingerprints. The TYC shall adopt rules necessary to administer this section. The bill also provides definitions for "department" and terms relating to national criminal history record information.

CSHB 2807 amends the Human Resources Code to provide that the TYC may not assign a 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 the TYC determines that the placement is necessary to ensure the safety of children in the custody of the TYC. This does not apply to a dormitory that is used exclusively for short-term assessment and orientation purposes. The executive director by rule shall adopt various procedures, which must address the age, physical condition, and treatment needs of a child as well as any other relevant factor, to protect vulnerable children in the custody of TYC. The TYC shall also consider the proximity of the child's family's residence in determining the child's facility placement.

CSHB 2807 amends the Human Resources Code require an initial examination of each child committed to the TYC, which includes long-term planning for the child and consideration of the child's medical, substance abuse and treatment history, including the child's psychiatric and substance abuse history. The bill also lists a number of documents, in addition to those provided under Section 61.065, that a court committing a child to the TYC shall provide to the TYC. If the minimum length of stay is set for more than a year, the initial exam must include a comprehensive psychiatric evaluation. Otherwise, the TYC must administer a comprehensive psychological assessment to a child as part of the initial examination and if the results indicate the need, conduct a psychiatric evaluation as soon as practicable. CSHB 2807 also establishes a reexamination process to determine whether a child's rehabilitation plan should be modified or continued, and submit an evaluation of progress since the child's last examination. These assessments must occur at least every 6 months. The bill also requires the TYC to integrate the provision of medical care, behavioral care, and rehabilitative services in an integrated comprehensive delivery system, and lists what medical, behavioral health, or rehabilitative services may be provided to a child in the TYC through this delivery system.

CSHB 2807 amends the Human Resources Code to require the TYC to allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and the victims of sexual assault to provide on-site information, support, and other services for children confined in TYC facilities. The bill requires the TYC to adopt security and privacy procedures for these groups, but explicitly notes that these security policies may not be designed to deny an advocacy or support group access to the children in TYC facilities. The TYC shall also adopt standards consistent with those adopted by the Texas Department of Criminal Justice (TDCJ) regarding confidential correspondence of children confined in TYC facilities with external entities, including advocacy and support groups. The bill also requires the TYC to ensure that a chaplain is employed or formally designated for each TYC correctional facility that is an institution.

CSHB 2807 amends the Human Resources Code by providing that the TYC shall develop and adopt a statement regarding the role and mission of the TYC. The bill amends Chapter 61 of the Human Resources Code by providing that the executive director shall develop and implement policies providing the public with a reasonable opportunity to appear before the executive director or the executive director's designee and to speak on any issue under the TYC's jurisdiction. The executive director should ensure that the location of public hearings is rotated between municipalities where, or are in close proximity to, TYC facilities are located.

CSHB 2807 amends the Human Resources Code, by adding a subsection allowing the 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 names

of children if the information is relevant to the investigation of an alleged criminal offense at a TYC facility.

CSHB 2807 amends the Human Resources Code by providing that the TYC, with advice from advocacy and support groups, shall develop a parent's bill of rights for distribution to a parent or guardian of a child under 18 years of age committed to the TYC. The provision describes what must be included in the parent's bill of rights, and requires that not later than 48 hours after a child is admitted to a TYC facility, that the TYC must mail the child's parent or guardian the parent's bill of rights and the contact information of the TYC caseworker assigned to the child. The bill also lays out the duties and responsibilities of the caseworker assigned to a child committed to the TYC, including guidelines for contacting and communicating with the child's parent or guardian by phone. The bill also provides that the TYC shall, on a quarterly basis, submit a report concerning the progress of the child and what that report shall include. The bill requires the TYC to ensure that the written information provided to a parent regarding the rights of a child in custody of the TYC is clear and easy to understand.

CSHB 2807 requires the state to reimburse counties for expenses related to the prosecution of crimes or delinquent conduct committed on property owned or operated by or under contract with the TYC, or those committed by or against a person in the custody of the TYC while the person is performing a duty away from TYC property.

The bill amends the Human Resources Code by providing that the district attorney, criminal district attorney, or county attorney may, as appropriate, represent the state in criminal matters before the district or inferior courts of the county who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning the TYC, and may also request that the special prosecution unit prosecute the offense or delinquent conduct.

CSHB 2807 amends the Human Resources Code to require the inspector general to prepare and deliver a quarterly report concerning any alleged criminal offense or delinquent conduct concerning the TYC as well as the disposition of any case involving a criminal offense or delinquent conduct concerning the TYC, and deliver it to the board of directors of the SPU. Notwithstanding the OIG's basic quarterly reporting obligations, the OIG shall immediately provide the SPU with a report concerning an alleged criminal offense or delinquent conduct concerning the TYC and described by Article 104.003(a), Code of Criminal Procedure, if the chief inspector general believes the conduct or offense is particularly serious or egregious. The bill also lays out what information the chief inspector general, under the direction of the board of directors of the special prosecution unit, must give to the foreman of the appropriate grand jury. The bill also places a duty on the executive director to immediately file a complaint with the appropriate law enforcement agency if the executive director has reasonable cause to believe that a child in the TYC's custody is the victim of a crime committed at a TYC facility.

CSHB 2807 amends the Human Resources Code to require the TYC to establish a minimum length of stay for each child committed to the TYC without a determinate sentence, taking into consideration the nature and seriousness of the child's conduct and the danger the child poses to the community. It also amends the Family Code to prohibit commitment of youth to TYC for a modified disposition arising from a misdemeanor violation committed after a previous felony or other misdemeanor adjudication. By amending Chapter 54 of the Family Code, the bill also provides that the judge of the court in which a child under a determinate sentence is adjudicated shall give credit on a child's sentence for the time spent in a secure detention facility before the child's transfer to the TYC, and for time spent in a secure detention facility pending disposition of the child's appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the child, and the TYC shall grant any credit under this section in computing the child's eligibility for parole and discharge.

The bill changes language in sections (d) and (u) of 54.04, Family Code, to remove misdemeanants from a provision allowing the court to commit a child to the TYC without a determinate sentence if their petition is disapproved, and to provide that if the court found at the conclusion of an adjudication hearing that the child engaged in delinquent conduct but had a petition approved, the court may sentence the child to the TYC with a possible transfer to TDCJ. The bill also removes misdemeanors from a provision which states that for the purposes of disposition, delinquent conduct that violates a penal law of this state of the grade of felony does

not include conduct that violates a lawful order of a county, municipal, justice, or juvenile court under circumstances that would constitute contempt of that court. The bill amends the Human Resources Code to read that once a child becomes 16 years of age, but before the child becomes 19 years of age, the TYC may refer a child to the juvenile court that entered the order of commitment for approval of the child's transfer to the TDCJ for confinement if the child has not completed the sentence or the child's conduct indicates that the welfare of the community requires the transfer.

CSHB 2807 amends the Human Resources Codes to provide for the evaluation of certain children serving determinate sentences. When a child becomes 18 years of age, the TYC shall evaluate whether the child needs additional services that can be completed in the six-month period following the child's 18th birthday in order to prepare the child for release from the TYC's custody or for transfer to the TDCJ. The bill notes that this requirement does not apply to a child released from TYC custody or who is transferred to the TDCJ before the child's 18th birthday. A person committed to the TYC on the basis of conduct constituting the TYC 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, must be discharged from the custody of the TYC not later than the person's 19th birthday.

The bill amends the Human Resources Code to require the TYC to develop a reentry and reintegration plan and describes provisions related to completion of a minimum length of stay in the TYC, respectively. The first section provides that the TYC shall develop a reentry and reintegration plan for each child committed to the custody of the TYC, lays out what must be included in the plan, and stipulates that the plan must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the time of the child's final discharge from the TYC. It also provides that the TYC shall find a suitable alternative program or service if the child's reentry or reintegration plan is not available at the time of the child's release. The latter two sections provide that after a child who is committed to the TYC without a determinate sentence completes the minimum length of stay established by the TYC under Section 61.062, the TYC shall: discharge the child from custody, release the child under supervision under Section 61.081, or extend the length of the child's stay in the custody of the TYC. The executive director by rule shall establish a panel whose function is to review and determine which of these options should be applied to a child who has completed their minimum length of stay. The panel may only extend the length of a child's stay if it determines by majority vote and on the basis of clear and convincing evidence that the child is in need of additional rehabilitation and that the TYC will provide the most suitable environment for rehabilitation. In extending the child's stay, the panel must specify the additional period of time, and must conduct an additional review and determination on the child's completion of the additional term of stay. CSHB 2807 also provides that the panel must maintain statistics on the number of extensions granted by the panel, and what aggregated information must be included. The bill also provides that this information is public, and should be posted on the TYC's website. The TYC shall prepare and deliver a report concerning the statistics to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities. The executive director shall appoint persons to serve as members of the panel, and shall determine its size and the length of the members' terms of service on the panel. The bill provides that the panel must consist of an odd number of members and lays out instructions related to the members' terms, panel policies, and explicitly notes that a member of the panel is an employee of the TYC and may not be involved in any supervisory decisions concerning the children in the TYC's custody and that a person appointed to the panel must be a TYC employee who works at the TYC's central office.

CSHB 2807 provides that the TYC shall make available or offer programs for the rehabilitation and reestablishment in society of children committed to the TYC, including programs for sex offenders, capital offenders, children who are chemically dependent, and those who are emotionally disturbed, in an adequate manner so that a child in the custody of the TYC receives appropriate rehabilitation services recommended for the child by the court committing the child to the TYC. If such programs are unavailable, the TYC shall report to the legislature by January 10 of each odd-numbered year.

The TYC should also provide a report to the guardian of a child whose length of stay is extended explaining the panel's reason for the extension, and the executive director by rule shall establish

a process to request the reconsideration of an extension order by the panel. The bill elaborates on what the request for reconsideration process shall entail, provides that the request form shall be clear and easy to understand, and that a child may request assistance in completing the form. It further stipulates that the TYC shall maintain statistics of the number of requests for reconsideration of an extension order and what information must be included, and provides that the statistics are considered public information, shall be posted in the TYC website, and shall be prepared and delivered to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities.

CSHB 2807 amends the Human Resources Code, to provide that the TYC shall discharge from its custody a person not already discharged by the person's 19th birthday. The TYC shall transfer a person who has not been given a determinate sentence to the TDCJ on the person's 19th birthday. However, before the release of such a person on parole, a parole panel shall review the person's records and may interview that or any other person the panel considers necessary to determine the conditions of parole, and may then impose any reasonable condition on the person's parole that the panel may impose on an adult inmate. The Human Resources Code is amended to state that not later than the 90th day before the date the TYC transfers a person to the custody of the TDCJ for release on parole under certain sections, the TYC shall submit to the TDCJ all pertinent information relating to the person as explained by the bill. The bill also provides that the TDCJ shall grant credit for sentence time served by a person at the TYC and in a juvenile detention facility in computing the person's eligibility for parole and discharge from the TDCJ.

The bill amends the Human Resources Code, to provide that if a child is committed to the TYC and placed by it in any institution or facility has escaped or been released under supervision and broken the conditions of release, that the child may be arrested by a sheriff, deputy sheriff, constable, or police officer, or taken into custody of the TYC by a commissioned peace officer employed by the TYC, including an inspector general with the OIG.

Subtitle A, Title 3, Human Resources Code, is amended by adding Chapter 64 to provide for an Office of Independent Ombudsman of the Texas Youth Commission. This section lays out definitions of terms and the purpose for establishing the state agency, which shall investigate, evaluate, and secure the rights of the children committed to the TYC. The section also establishes the independence of the ombudsman from the TYC, and provides for separate funding from the TYC.

The governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years, and may serve a maximum number of three terms in that capacity. The section also lays out the possible reasons for removal of the ombudsman as well as what situations may constitute a conflict of interest, which would prevent an individual from serving as independent ombudsman, and necessary qualifications of the independent ombudsman, who must be qualified by training and by at least five years' experience. It also provides that the ombudsman may hire assistants to perform under the independent ombudsman's direction.

The office of independent ombudsman is subject to review under the Texas Sunset Act, but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2009 and every 12th year after 2009 are reviewed.

CSHB 2807 describes what must be included in the quarterly report that the ombudsman shall submit to the governor, lieutenant governor, and each member of the legislature, and describes what serious or flagrant instances must be immediately reported to the governor, lieutenant governor, speaker of the house of representatives, state auditor, and OIG. The TYC shall allow any child committed to it to communicate with the independent ombudsman or an assistant to the ombudsman; the communication may be made in person, by mail, or by any other means, and is confidential and privileged. The bill notes that the records of the independent ombudsman are confidential, except that the independent ombudsman shall share a communication with a child that may involve the child's abuse or neglect to the OIG and disclose its nonprivileged records if required by a court order on a showing of good cause. The independent ombudsman may also make reports relating to an investigation public after redacting certain personally-identifying information of those involved in a claim. The bill provides that information within and generated

by investigations of the independent ombudsman are not subject to disclosure under Chapter 552, Government Code, except 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. CSHB 2807 lays out what information the independent ombudsman should promote awareness of to the public and to the children committed to the TYC. The bill omits the Criminal Justice Policy Council from and adds the office of independent ombudsman of the TYC to the list of those who may view confidential information in the juvenile justice information system.

CSHB 2807 amends the Government Code to provide that the attorney general may offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning the TYC.

CSHB 2807 grants rulemaking authority to the office of independent ombudsman, and applies it under Chapter 2001, Government Code, making the office of independent ombudsman a state agency. The bill also provides that the financial transactions of the office are subject to audit in accordance with Chapter 321, Government Code. The bill lays out the specific duties of the independent ombudsman, emphasizes that the ombudsman shall not perform duties relating to the investigation of alleged criminal behavior, provides information related to training curriculum, and notes that the TYC may not discharge, discriminate, or retaliate against an employee filing a good faith complaint or cooperating in an investigation with the office of the independent ombudsman. The TYC, the DPS, and local law enforcement agencies shall allow the independent ombudsman to access records related to children committed to the TYC. The independent ombudsman shall have access to the records of any private entity that relate to a child committed to the TYC.

CSHB 2807 amends the Penal Code to read that an official, employee, volunteer, peace officer, or person other than an employee who works for compensation at a correctional facility commits an offense if the person intentionally denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity, or engages in sexual conduct, intercourse, or deviate intercourse with an individual in custody or, in the case of an individual in the custody of the TYC, employs, authorizes, or induces the individual to engage in sexual conduct or performance. The latter of these is typically a state jail felony, but if the individual is in TYC custody, that offense is a second degree felony. The bill amends Section 39.04(e) of the Penal Code by adding Subdivisions 4 and 5, which provide that "sexual conduct" and "performance" have the meanings assigned by Section 43.25, and that "sexual performance" means any performance or part thereof that includes sexual conduct by an individual. The bill also repeals Sections 54.04 (s) and (t), and 54.05 (k) Family Code, as well as 61.001 (3), 61.0122, 61.014, 61.015, 61.0151, 61.017, and 61.084 (f), Human resources Code.

CSHB 2807 describes the retroactive effects of its amended sections and added provisions, and sets forth the effective date in which various new requirements will apply, including those related to training of juvenile corrections officers, appointments of various new officers, background checks, enrollment of new employees in the Employees Retirement System, and board appointments. The bill provides that a rule adopted by the TYC before the effective date of this Act is a rule of the executive director of the TYC until superseded, modified, or repealed by the executive director.

CSHB 2807 amends the Government Code to require the inspector general to prepare and deliver a quarterly report concerning any alleged criminal offense or delinquent conduct concerning the Texas Department of Criminal Justice and described by Article 104.003(a), Code of Criminal Procedure, and deliver it to the board of directors of the SPU.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO BILL

CSHB 2807 adds language not in the original bill to provide that the state shall reimburse the county for incurred expenses related to the prosecution of delinquent conduct, as well as for a

criminal offense. The substitute also provides that a county is eligible for reimbursement if the crime or delinquent conduct is committed by a person in the custody of the Texas Department of Criminal Justice (TDCJ) or the Texas Youth Commission (TYC) while the person is performing a duty away from either the TDCJ or the TYC, adding to the introduced bill's provision for reimbursement to counties for those crimes or delinquent conduct on property owned by or under contract with the TDCJ or TYC.

The substitute deletes language in the original bill that would not apply Subsections (b), (c), and (d) of Section 499.053 of the Government Code to persons transferred from the TYC under Section 61.084 (h) (3), Human Resources Code. CSHB 2807 also deletes language from the introduced version of the bill that would amend Section 508.156(a) of the Government Code to allow a parole panel to determine the conditions of parole of a person transferred under Section 61.081(f) or 61.084(g), Human Resources Code, and deletes Section 508.1561 and adds it to Subchapter E, Chapter 508, Government Code, providing conditions, terms, and other provisions relating to granting parole to a person without a determinate sentence.

The substitute replaces language in the original bill concerning the composition of the governing board of the TYC with language reflecting the appointment of an executive director, including additional subchapters with definitions of terms, information related to appointment and term length, necessary qualifications, and an additional section relating to removal. In the same section, the original bill also requires that at least one member of the TYC governing board be a member of a child advocacy organization and at least one a member of a victim's advocacy organization. In the substitute, this requirement was moved to the section pertaining to the TYC advisory board, which adds that among members of the advisory board that, in addition to having at least one experienced member of a victim's advocacy group, that at least one be a physician, a mental health professional, a current or former prosecutor or judge, and where a majority of members must qualify, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment of children in the custody of agencies similar in mission and scope to the TYC.

CSHB 2807 adds language to the original bill relating to the TYC internal audit and report to stipulate that regular internal audits shall be conducted on facilities under contract with the TYC as well as on the TYC itself. The substitute also adds that the TYC shall conduct internal audits of the medical services it provides to children in its custody, and should submit quarterly reports to the state auditor in addition to the original stipulation that they be sent to the committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities.

The substitute adds Section 61.0452 to Subchapter C, Chapter 61, Human Resources Code as an addition to the original provisions under Section 61.0451, and amends some of its language. In the description of the Office of Inspector General (OIG), the substitute changes, "The TYC shall establish an office of inspector general for the purpose of investigating..." to the more active language, "the office of inspector general is established at the TYC for the purpose of investigating..." The substitute omits all language relating to "the board" and replaces it with language that is consistent with the establishment of an executive director. Instead of providing report data to "the board," the substitute states that the OIG shall "prepare and deliver a report" concerning investigation results to nine specific officials, and elaborates on what the report must include. The substitute also adds to the requirements of the peace officers employed and commissioned under the subsection allowing the OIG to employ and commission inspectors general as peace officers that they must complete advanced courses as part of any continuing education requirements for peace officers. The substitute omits the language in the introduced bill requiring the chief inspector general to report information to the board, and adds that the inspector general may only be discharged for cause. The substitute elaborates on the chief inspector general's reporting requirements concerning the operations of the office of inspector general, including who must receive the reports, the public nature of the reports, how the reports should be aggregated and composed, and to whom the chief inspector general must report if any particularly serious or flagrant problem concerning the administration of a TYC program or operation or any interference by the executive director or an employee of the TYC with an investigation conducted by the office occurs. In an additional section, the substitute provides for a toll free number and describes its purpose, as well as how it will be displayed and accessed.

CSHB 2807 amends the introduced version of the bill by omitting repetitive language related to the discharge of persons 19 years of age or older committed without a determinate sentence. The substitute also omits the portion of the introduced bill which provides a change of heading in Section 61.0841, Human Resources Code, and adds language changed from original law or elaborates on provisions in the introduced version of the bill relating to Section 61.0841 (a), Human Resources Code, relating to the pertinent information that the TYC shall submit to the TDCJ.

The substitute amends language in the original bill related to requesting a hearing with the special prosecution unit to allow a request "as appropriate," rather than restricting such a request to a county in which property is owned or operated by the TYC.

The substitute adds 61.001(3), 61.0122, 61.014, 61.015, 61.0151, and 61.017 to those laws repealed in the introduced version of the bill, and omits the language of a section within the introduced bill providing that the TYC should establish the OIG as soon as practicable, instead including this information within sections pertaining specifically to the OIG and within sections concerning the implementation of all of the policies, procedures, and positions set forth by CSHB 2807.

CSHB 2807 adds multiple sections and subchapters not in the original bill. The substitute adds the office of the independent ombudsman to the list of those who may receive confidential information about children in the juvenile justice system, allows the attorney general to assist the prosecuting attorney in the prosecution of criminal offenses concerning the TYC. It also provides for a special prosecuting unit (SPU), including definitions of relevant terms, the general function of the SPU, the composition, qualification and duties of its chief, board of directors and officers; the election, procedures, qualifications, reporting requirements, and duties of a counselor; information related to the SPU's emolument status, and the members' compensation and reimbursement.

The substitute to House Bill 2807 adds a provision for a study on the transition toward regionalized juvenile correction and information regarding the inspector general's quarterly report on criminal offenses. It makes provisions for the TYC inspector general to receive retirement benefits, establishes at-will employment for TYC employees, and allows for juvenile correctional officers to be employed part time. Additionally, the substitute explicitly details new provisions for juvenile correctional officers regarding training requirements, specific instruction of duties, establishment of an acceptable officer to inmate ratio and age gap, and allows the executive director to adopt rules to administer these provisions. The substitute provides information regarding required background and criminal history checks, including definitions and acceptable fees to potential and current employees.

The substitute defines the primary functions as well as TYC security and confidentiality requirements relating to the role of advocacy and support groups. CSHB 2807 disallows those children less than 15 years of age from being in the same dormitory as a person over 17 years of age, with some exception, and establishes the components of determining the minimum length of stay of commissioned youth. It provides information regarding the initial examination of children, including assessment requirements, guidelines, and the required frequency and purpose of reexamination. The committee's substitute provides for certain information to be disclosed to a peace officer or law enforcement agencies about a child involved in a criminal investigation at the TYC.

The substitute also adds a section regarding the rights of parents or legal guardians of committed children, including what information they must receive, procedures for proliferating information, and provides for a quarterly progress report, what information is included in the progress reports, assignment of TYC caseworkers along with their purpose and duties, and procedures that must be taken to contact an inmate's guardian. The substitute adds language relating to evaluation of certain youth seeking determinate sentences after the age of 18, and provides for procedure and required information for a comprehensive reentry and reintegration plan, establishment of a review panel by the Executive Director, statistic and data collection, and provides for the submission of information to guardians when their children's stay is extended.

CSHB 2807 contains a section establishing the Office of Independent Ombudsman of the TYC, including definition of terms, purpose, establishment of independence from the TYC, promoting awareness of the office, duties and powers of the independent ombudsman, training, protocol for appointments and office management, appointment and duty of assistants, removal, potential conflicts of interest, acceptable access and disclosure of information related to youth, and provisions related to rulemaking authority and sunseting. The substitute also provides that if a TYC employee authorizes or induces a child committed to the TYC to engage in sexual conduct or performance, that the offence is a second degree felony instead of a typical state jail felony. The substitute also amends the Penal Code by providing that "sexual conduct" and "performance" have the meanings assigned by Section 43.25, and that "sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

The final sections of the substitute acknowledges the effects of its amended sections and added provisions, and sets forth the effective date in which various new requirements will apply, including those related to training of juvenile corrections officers, appointments of various new officers, background checks, enrollment of new employees in the Employees Retirement System, and board appointments.