

- SUBJECT:** Prohibiting placement in TYC for misdemeanors; limiting age to 19
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 5 ayes — Eiland, Farias, Farrar, Gonzalez Toureilles, Hernandez
0 nays
4 absent — Dutton, Bolton, Strama, Vaught
- WITNESSES:** For — Isela Gutierrez, Texas Criminal Justice Coalition; Will Harrell, ACLU, TCAJJ, NAACP, LULAC; (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Amy Tripp, Texans Care for Children)

Against — Jay Monkerud, Chief Juvenile Probation Officer; Riley Shaw, Tarrant County District Attorney

On — Vicki Spriggs, Texas Juvenile Probation Commission
- BACKGROUND:** The Texas Youth Commission (TYC) oversees delinquent children committed to it by courts and provides parole supervision for children until TYC authority ends. Youths age 17 or older at the time of a criminal offense are considered adults, and offenders younger than age 10 are referred through law enforcement agencies to another state agency. The age limit for youths at TYC is 21 years old.

Under Family Code, sec. 54.04, youths can be sent by courts to TYC for felony delinquent conduct and, under certain circumstances, for misdemeanor offenses. Youths may be placed in TYC for a misdemeanor offense only if the youth had been adjudicated previously of at least two misdemeanors or if the child had one prior felony offense.

Sentences to the TYC usually are indeterminate, meaning that TYC determines the length of commitment based on a number of factors. Juveniles found guilty of certain serious or violent crimes may be sentenced to a determinate (fixed) term of up to 40 years in a TYC facility, with possible release on parole or future transfer to the adult prison system or the adult parole system. Once youths sent to TYC under determinate sentences reach the age of 16, and until they turn 21, TYC can refer them

to the court for approval for transfer to the Texas Department of Criminal Justice (TDCJ).

DIGEST:

CSHB 1756 would prohibit youths from being sent to TYC for misdemeanor offenses. Any youth committed to TYC before the bill's effective date for a misdemeanor would have to be discharged by the youth's 19th birthday.

The maximum age limit for youths in TYC would be changed from age 21 to age 19. Youths sent to TYC on determinate sentences who had not already been released by their 19th birthday would have to be released or transferred to the adult system.

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

SUPPORTERS
SAY:

CSHB 1756 would prohibit the placement in TYC of youths who commit misdemeanor offenses so that space and resources could be devoted to those who commit more serious offenses. At this point in the agency reorganization efforts, space should be reserved for the worst offenders.

Prohibiting misdemeanor placements would not mean that kids who committed misdemeanors would go untreated or without sanctions. Local juvenile probation departments are well equipped to handle these youths, and the Legislature is working to increase their resources through the appropriations process. Studies have shown that community-based programs can be very successful in rehabilitating youths.

To properly refocus TYC's efforts and implement some of the agency reforms being enacted by the 80th Legislature, including lower staff-to-youth ratios, the agency must downsize. It is unclear how often youths are influenced by the technical aspects of sentencing. The Legislature will be able to revise the ban on misdemeanants in two years if it feels the agency has the resources to handle them.

Any effect on plea agreements would be minimal and would influence only a small number of cases. Only about 6 percent of the misdemeanants in TYC have committed a felony that was pled down to a misdemeanor offense.

Lowering the age limit of youths at TYC from age 21 to age 19 would allow the agency to focus on its core mission of rehabilitating youths. This would reserve TYC for younger offenders who should not be mixed with older offenders, who are really adults.

TDCJ is well equipped to handle these older youths. Currently, if youths are 17 years old when they commit an offense, they are handled in the adult system, and many are sent to TDCJ. At the end of February 2007, TDCJ had 162 offenders who were 17 years old, and at the end of fiscal 2006, TDCJ had about 2,400 18-and-19-year-olds. Youthful offenders typically are housed together in TDCJ, and some are placed in a youthful offenders' program. Housing 19 year olds in prisons is more appropriate than housing them with 13 year olds in TYC.

OPPONENTS
SAY:

Prohibiting the placement of misdemeanants at TYC would reduce the flexibility of judges to handle youths and would upset the sentencing dynamics in the state's juvenile justice system.

The category of offense committed by youths does not always reflect the danger the child represents to the community or the child's needs for rehabilitation. In many cases, although a youth may be adjudicated for a misdemeanor, factors such as their past crimes, their success in local programs, and their home and school situations can result in judges deciding that the TYC is the best place for them. Most misdemeanants sent to TYC repeatedly have failed in the local juvenile probation system. Plea agreements could be reduced because prosecutors who want to keep the option of sending a youth to TYC would not be willing to agree to reduce a charge to a misdemeanor. This could translate into more felony charges and convictions.

Crime could increase if youths realized that they could commit misdemeanors and not be sent to TYC. They also would know that no matter what they did in the local communities after a misdemeanor charge, they could not be sent to TYC.

CSHB 1756 could shift problems to the local level. Although new funding may be available this session for local probation departments to handle more youths, increased funding and shifts to local communities historically have not translated into permanently increased resources.

Requiring all 19-year-olds to be released or transferred to the adult system

could have a negative impact on some of those youths, who are best served at TYC where rehabilitation programs are more accessible than at TDCJ. Some youths still are immature at age 19 and face a better chance at rehabilitation if they can stay in the juvenile system.

Reducing the age cap on youths would result in youths having shorter stays at TYC even though they received long determinate sentences. This could influence judges to order the transfer of more of these youths to the adult system when they reach age 19 so that they would stay incarcerated. It also could increase the number of youths being certified to stand trial as adults if prosecutors wanted to ensure that older youths — 16-year-olds, for example — would be locked up for a number of years.

NOTES:

According to the Legislative Budget Board, CSHB 1756 would result in a general revenue gain to the state of \$58.6 million in fiscal 2008-09. This net savings would result from the reduction in the TYC population mandated by the bill, including the closure of facilities, a corresponding reduction in TYC staff, and a reduction in contracted capacity. TDCJ would see increased costs due to more youths being sent from TYC to the adult system.

The provisions of CSHB 1756 are included in HB 2807 by Madden, the Texas Youth Commission revisions, which is also on the major state calendar for May 7.