

Dawn Roberson

From: Karl Spock
Sent: Monday, December 01, 2008 8:30 AM
To: Dawn Roberson
Subject: FW: OIO Response to Issue 2
Attachments: OIO Response to Sunset Advisory Commission Staff Report.doc

From: Will Harrell
Sent: Wednesday, November 26, 2008 2:30 PM
To: Joey Longley
Cc: Karl Spock
Subject: OIO Response to Issue 2

Mr. Joey Longley, Director
C/O Karl Spock
Sunset Advisory Commission
6th Floor, Robert Johnson Building
1501 North Congress Avenue
Austin, TX 78701

November 26, 2008

Dear Mr. Longley:

I wanted to thank you and your staff for the review of the Office of the Independent Ombudsman. I found your staff to be very insightful throughout the process. We had many conversations, email communications and even went on a site visit to a TYC facility. I found the process not only instructive, but also enjoyable.

We acknowledge the issue identified with respect to the OIO and embrace all the Sunset Commission staff recommendations. We will keep you informed as to our progress in implementing those recommendations.

Thank you for the opportunity to provide the attached feedback. We look forward to the public hearing scheduled December 15th and 16th. Please don't hesitate to contact us if you require further information or comment.

Respectfully,

Will Harrell, JD, LL.M.
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SB103, Sec. 64.002.

"The office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the commission, including a child released under supervision before final discharge."

OIO Response to Sunset Advisory Commission Staff Report Issues and Recommendations

ISSUE 2: The Office of the Independent Ombudsman and the New Texas Juvenile Justice Department Need Clearer Guidelines to Ensure Effective Interaction

Key Recommendations:

- Require the new Texas Juvenile Justice Department and Office of the Independent Ombudsman to jointly develop and adopt rules outlining procedures for the Department to review and comment on OIO's draft reports and to formally respond to OIO's published reports.
- Require the Department and OIO to adopt a memorandum of understanding outlining how the agencies should communicate in areas of overlapping responsibilities.
- Require that OIO undergo Sunset Review at the same time as the Department.

Recommendation #1: Require the new Texas Juvenile Justice Department and Office of the Independent Ombudsman to jointly develop and adopt rules outlining procedures for the Department to review and comment on OIO's draft reports and to formally respond to OIO's published reports.

The OIO does not agree with the with the Issue 1 recommendation that TYC and TJPC be merged into a new agency. For the purpose of our response, we refer to TYC and not the proposed Texas Juvenile Justice Department. If the Legislature does create this new agency, the OIO will comply with the Sunset recommendations accordingly.

With that caveat, the OIO acknowledges and embraces this issue and agrees with each key recommendation as they relate to the inter-agency functioning of the OIO and TYC. In fact, the OIO has sought to develop such a formalized process with the TYC since the May 2007. In testimony to the Prison Rape Elimination Act Commission (PREA Commission) December 2007 hearing, OIO Chief Ombudsman stated that:

It is too early to truly measure the efficacy of the new TYC oversight mechanisms created by SB 103. The OIO is still in the experimental stage, and no clear consensus has emerged on the role and function of the OIO among elected officials or within TYC. While some believe the OIO should merely address individual youth complaints, others believe the OIO should focus on trends and seek to impact agency policies and procedures. Currently, the OIO attempts to do both.

To be sure, regardless of structure, any Ombudsman is only as good as the leadership of the agency he/she monitors. An Ombudsman will be successful to the extent that the agency leadership is receptive and collaborative rather than defensive and dismissive.

The Texas Youth Commission has operated in the shadows for decades and as a result, a culture of transparency will take time to cultivate. While a level distrust and skepticism linger, the mere existence of these oversight mechanisms has bolstered the confidence that the Legislature, the advocacy community, parents of incarcerated youth, and the general public has in the TYC.

The Sunset report has stimulated the process of formalization and refining inter-agency communication and collaboration. It is important to acknowledge that the OIO has been satisfied with the responsiveness of TYC in most cases, especially since January of this year.

It is also important to note that Executive Commissioner Cherie Townsend has already begun to incorporate OIO observations into upper management considerations. She has invited the Chief Ombudsman to address the Executive Management Team on the first Monday of each month. Deputy Commissioner James Smith has extended a standing invitation to the Chief Ombudsman to attend monthly superintendent meetings. Ms. Townsend has met with the full OIO staff to hear their concerns and to discuss enhanced collaboration and she meets in-person with the Chief Ombudsman every two weeks. During the first standing meeting between Ms. Townsend and Will Harrell, which predated the Sunset staff report, she raised the same issues identified in that report and committed to formalizing and enhancing inter-agency communication and collaboration. Finally, Ms. Townsend has designated a TYC staff person who will act as the formal repository of all OIO site visit reports, special reports, and individual cases and track TYC responses.

The OIO plan to evaluate our work and then formalize interagency relations and communication was proposed in January of this year by the OIO and Ms. Townsend has endorsed the plan and triggered its implementation. We have engaged an external expert Professor Michele Deitch to assist with the evaluation of the work of the OIO and develop a formalized process. Professor Deitch is highly qualified to assist in this endeavor and brings a fresh and neutral perspective to the task.

Professor Deitch is an attorney, and teaches courses in criminal justice policy, prisons and human rights, and juvenile justice policy as an adjunct professor at the University of Texas--Lyndon B. Johnson School of Public Affairs and the University of Texas School of Law. Her primary areas of expertise are in the independent oversight of correctional institutions and the rights of prisoners. As a Soros Senior Justice Fellow, she spent a year conducting extensive research on domestic and international independent prison oversight entities. In 2006, she organized a major international conference that drew together more than 100 of the world's leading experts on the oversight issue. The

conference was entitled “Opening Up a Closed World: What Constitutes Effective Prison Oversight?”, and she was honored with a Resolution by the Texas Legislature for her work on this conference. Professor Deitch is currently preparing a sourcebook about correctional oversight. She has also provided featured testimony on the oversight issue before the National Prison Rape Elimination Commission and the Commission on Safety and Abuse in America’s Prisons, and was instrumental in helping the American Bar Association Task Force develop its recent recommendations and report about correctional oversight. Additionally, from 2004 to 2007, Professor Deitch served as the draftsman of the American Bar Association’s proposed standards on the legal rights of prisoners.

Last year, Professor Deitch was appointed to serve on the TYC Blue Ribbon Task Force, which issued a report with numerous recommendations for improving TYC operations.

Recommendation #2: Require the Department and OIO to adopt a memorandum of understanding outlining how the agencies should communicate in areas of overlapping responsibilities.

The OIO agrees with this recommendation. The OIO and TYC have previously entered into an MOU for the purpose of administrative services such as records retention and creating the Legislative Appropriations Request.

Recommendation #3: Require that OIO undergo Sunset Review at the same time as the Department.

The OIO agrees with this recommendation.

Conclusion

We appreciate the work of the Sunset Commission staff and agree to their recommendations with the exception that we do not believe that TYC and TJPC should be merged into the Texas Department of Juvenile Justice. We will keep the Commission apprised of our progress in the implementation of these well-received recommendations.