

November 26, 2008

Sunset Advisory Commission

P.O. Box 13066

Austin, Texas 78711

Via e-mail on November 26, 2008

Dear Sunset Commission Members:

As a Board Certified Juvenile Attorney and a member of the Juvenile Council of the State Bar of Texas, I appreciate the opportunity to submit comments and recommendations on the Sunset Advisory Commission Staff Report (the "Report") about the Texas Youth Commission, the Texas Juvenile Probation Commission and the Office of Independent Ombudsman dated November 2008.

My comments are related to Issue 1 and the key recommendations related thereto.

Issue 1: Texas' Juvenile Justice Agencies, Services, and Funding Need Major Restructuring to Ensure an Effective Continuum of Treatment and Sanctions for Youthful Offenders. The Key Recommendation of abolishing TYC and TJPC and transferring their functions to a newly created state agency, the Texas Juvenile Justice Department, headed by an 11-member Board is an extreme response to the failures of the TYC system. The changes to the TYC system passed during the 2007 legislative year are slowly being implemented. However, there has not been enough time to gauge the success of these changes. On the other hand, TJPC is a well-regarded state agency that if it needs any changes at all, would be minor.

Specifically, the Report notes that 95% of youth in the system are served by county probation departments, overseen by the TJPC with the other 5% being committed to TYC. Based upon the research and studies quoted in the Report, this is an excellent ratio, 95% of children in the system are being served close to home providing opportunities for their families to participate in any programs which lowers the risk of recidivism. Additionally, the cost of these programs is borne largely by the county, alleviating the State from having to fund them. By keeping these children in county supervised programs close to home, each county probation department can incorporate an effective continuum of treatment and rehabilitation. Therefore, 95% of children in the juvenile justice system are receiving an effective continuum of treatment. Thus, the system currently in place meets the Sunset staff's key standards for 95% of youth in the system.

For the 5% who are committed to TYC, TYC provides for the treatment. Obviously, youth sent to TYC were not successful in the treatment programs offered at the county level or their committing offense was so serious that the judge or jury felt it necessary for the youth to be committed to TYC. This is what the determinate sentencing law provides. Since youth are committed at different points and for different reasons, TYC must offer a wide range of services. This is true whether TYC is a stand alone agency or is incorporated into a new agency. No where does the staff state how one agency or two

agencies will fix this problem. Furthermore, as youth progress in the TYC system, and as they age, their needs change. For example, a child committed for aggravated sexual assault may be placed at Giddings State School and benefit by attending the sex offender treatment. However, after that is completed the child may then benefit by being placed in a trade school program. One agency will not change the needs of the youth at TYC and will not alleviate the State from having to offer a wide range of services.

Further, the Sunset Staff complains that there is not enough information sharing between probation departments and TYC. Senate Bill 103 increased the requirements on committing courts to provide additional information to TYC. However, things such as psychological reports are only good for six months. A child committed to TYC is likely to need another assessment while at TYC. Further, any school testing will have to be completed by the school the child is sent to while at TYC. This is a federal requirement. All youth committed to TYC have predisposition reports prepared which includes social histories, progress in any treatment, health issues, etc. Providing these documents to TYC is a relatively minor issue, not necessitating the need for one agency. Further the Sunset Staff does not provide how local probation departments would be forced to comply any better with Senate Bill 103 because of the absence of TJPC.

TYC does not provide information back to the probation departments when youth leave TYC because these youth are on TYC parole. This has nothing to do with local probation departments, who do not supervise youth on parole. That is why TYC has a parole division. Further, the counties do not provide youth returning home with services. Further, the Staff complains there is no mechanism available for probation departments and committing courts to hold TYC accountable for the treatment of youth. There is no indication by the Sunset Staff exactly what standards TYC should be held to or why TYC should be held accountable only to the probation departments and the courts, why not the youth's family or legal counsel, or the district attorney's office, etc. Again, the Staff does not indicate how TYC would be held accountable to the various counties by the absence of TJPC.

With regard to the lost opportunities for training, it seems a simple thing to require or suggest that TYC staff attend the excellent statewide conferences TJPC hosts. In fact, TJPC does not limit itself to educate those in probation but also assists in training police officers, attorneys and judges. The Juvenile Council of the State Bar of Texas pools its resources with TJPC to provide the training noted in the report with national experts speaking. This is the best attended continuing legal education program on juvenile law in the State attended regularly by probation officers, judges, district and county attorneys as well as defense practitioners. The staff at TYC can attend these training opportunities as well as local opportunities without doing away with TJPC. Further, it is TJPC's excellent legal staff who write and edit the juvenile law manual now that Professor Robert Dawson has passed away. No where does the Staff indicate how one agency would improve this training.

The Sunset Staff indicates that there is a need for strategic planning to coordinate efforts between TJPC and TYC. What the Staff fail to consider is that TYC, being in turmoil

much of the last two years, has not had the manpower nor the consistency in management to engage in strategic planning with any other agency. When you are up to your knees in alligators, it is hard to remember that your goal was to drain the swamp. Perhaps the best course of action with regard to TYC is to do little to nothing to let the changes already implemented take effect.

Over half of the money spent on the youth in the juvenile justice system comes from counties and the federal government. No where does the Staff indicate that TJPC has been anything other than an exemplary steward of the funds it disburses to counties on behalf of the State, an average of 31% of counties' total probation expenditures. Because so much of the work done at the probationary level is done by the counties, it is hard to believe that changing the State agency in charge of disbursing funds would lead to any of the results the Staff considers necessary for a successful system. TJPC simply cannot control the counties. And the Staff seems to simply ignore the fact that the county system is successful, with 95% of the youth remaining in or near their homes.

The Staff correctly notes that committing courts send their hardest to serve youth to TYC, but typically take this course only as a last option, after exhausting local probation alternatives. Thus, it should be noted that TYC, while burdened by internal chaos, is serving the "worst" youth in the system and the youth with the highest level of need. These are not the ingredients for success stories. And yet, TYC has produced real success stories. The Juvenile Council routinely raises money to put TYC youth through college and we hope to pay for the law school tuition of a youth that has already graduated from college.

Finally, the Sunset staff concluded that a new agency would provide a "fresh start" to fixing the system's problems. This is in fact illusory. Changing the name of the agency does not fix the problems. And combining TYC with TJPC will only cause short term chaos with no real road map as to how the system would be better, let alone the expense of combining these agencies, money that would be better spent on the youth in the State's care.

Thank you for your consideration.

Very truly yours,

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