

DEC 05 2008



**WORKPLACE CRIMINALISTICS AND DEFENSE
INTERNATIONAL**

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Austin, Texas 78703-0022
(713) 574-6494**

Website – www.workplacecriminalistics.org

December 1, 2008

Sunset Advisory Commission
Attention: Public Comment
P. O. Box 13066
Austin, Texas 78711

Re: Texas Youth Commission

Dear Commission:

Enclosed herewith please find our position paper entitled "The Fallacies of TYC Youth Rights" relating to your Staff Report regarding Texas Youth Commission, Texas Juvenile Probation Commission and Office of Independent Ombudsman. Thank you very much for the opportunity to have provided this Public Comment.

Sincerely,

/s/


L.A. Wright
Legal Criminalist/Consulting Expert

/law



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THE FALLACIES OF TYC YOUTH RIGHTS©

**SUNSET ADVISORY COMMISSION
DECEMBER 1, 2008**

*Protecting the Workplace for All Employers
and EmployeesSM*

THE FALLACIES OF TYC YOUTH RIGHTS©

By Lynzy Wright, Legal Criminalist/Consulting Expert

All United States citizens of any age possess certain inalienable rights set forth in the United States Constitution and its amendments known as the "Bill of Rights". States' constitutions further support these inalienable rights as do states' administrative law. Youth adjudicated as "juvenile delinquents" by a state and incarcerated in correctional facilities within that state retain these inalienable rights through the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

Texas housed certain juvenile delinquents in maximum security correctional facilities such as Giddings State School ("Giddings") and delegated the responsibility of their care to the Texas Youth Commission ("TYC"). Texas promulgated certain administrative law regulations concerning "Basic Youth Rights" in the Texas Administrative Code to guide TYC in its care of such youth. These "Basic Youth Rights" on their face, purport to protect the inalienable rights of incarcerated youth by establishing certain basic rights for youth. However, since TYC does not adhere to certain industry standards developed by the American Correctional Association in operating these maximum security prisons for juvenile delinquents, these youth rights continue to be trampled upon. Such is the case at Giddings as reflected in Giddings grievances and appeals.

Right to Equal Treatment and Right of Religious Freedom - At the beginning of the Muslim religious holiday in September 2008 known as Ramadan, Giddings housed 20 Muslim students in its maximum security prison. Giddings denied these students the religious opportunity to participate fully in Ramadan by withholding lunch as a deterrent to participation. Instead of maintaining the daily caloric intake of Muslim students as all other students, Giddings withheld one-third of those calories each day from every Muslim student. Giddings also discriminated against youth based on youth sexual preference and race.

Right to Personal Possessions - Giddings lost or damaged youth personal possessions and refused to reimburse youth for their personal possessions lost or damaged by staff.

Right of Access to Mail - Giddings failed to open mail in the presence of youth for which mail addressed. Giddings also denied youth the writing of letters to attorneys.

Right to Access to Attorneys - Attorneys unable to reach youth by telephone as all attorney calls referred to administration for screening and access to youth, thereby severely limiting attorneys' access to their clients.

Right to Protection from Physical and Psychological Harm - Giddings used excessive force not dictated by the situation without utilizing industry standards of crisis management, conflict resolution and de-escalation techniques. During use of force situations, staff gawked and taunted youth being restrained and encouraged security staff to increase use of force when not needed. Giddings failed to diagnose and treat psychological issues relating to youth and continued to administer punitive measures for behavioral conduct.

Right to be Informed - Giddings repeatedly withheld information from youth under the auspices of safety and security when, in fact, purposefully withheld information from youth as a power and control mechanism. Youth committed to Giddings fulfilled their commitment requirements and, yet, remained incarcerated at Giddings for significant periods of time in excess of their court-ordered commitment requirements without explanation to youth. Giddings categorized youths' inquiries as manipulation and thinking errors when, in fact, Giddings failed to provide adequately trained staff to meet youth needs.

Right to Accuracy and Fairness in Decision-Making - Giddings coerced youth into waiving valuable due process requirements which resulted in youth being confined in security facilities for days without due process of law. Giddings assigned hearing managers that were directly involved in youths' hearing matters. Giddings failed to notify parents within the required timeframes to allow parents to assist youth in due process hearings. Giddings failed to train its youth volunteer advocates to adequately represent youth at due process hearings. Giddings failed to train its youth volunteer advocates to raise affirmative defenses, extenuating circumstances, undue risk and mitigation evidence at youth due process hearings.

Right to Express Grievances and Appeal Decisions - TYC and Giddings purportedly offered appeal options to its youth, but retaliated against those youth who chose to utilize appeal options or questioned the validity of those appeal options. Giddings' correctional staff sat at a cafeteria table directly in front of the Giddings grievance box as an

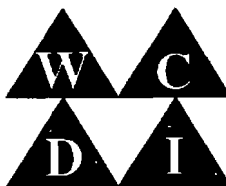
intimidation measure to dissuade youth from filing grievances in the only grievance box at the facility and retaliated against those youth filing grievances. Giddings withheld appeal rights from students in grievances, Level II appeals and Review Panel Decisions. Giddings also appointed grievance decision authorities directly involved in grievances issues. Giddings altered the fairness and outcome of Level II hearings by appointing untrained and unprepared youth advocates to assist youth. Giddings continually mooted youth grievances to prevent them from seeking redress of their grievances. Giddings held due process hearings without having investigated youths' abuse, neglect and exploitation complaints.

RECOMMENDATIONS

- Require TYC to maintain ACA accreditation to operate maximum security facilities.
- Require TYC to adhere to Performance-Based Standards to operate maximum security facilities.
- Require the inspection of all TYC maximum security facilities annually by the U.S. Department of Justice.
- Require TYC to overhaul youth grievance system to increase due process safeguards.
- Require TYC to overhaul due process hearing procedures to increase due process safeguards.
- Require TYC to implement youth ombudsman program to operate maximum security facilities.
- Require TYC to adequately train its volunteer youth advocates to increase due process safeguards.
- Require TYC to designate a "Use of Force Youth Advocate" at each maximum security facility to arrive at scene of all use of force situations.
- Require TYC to provide significant and necessary amount of names of pro bono attorneys interested in representing youth confined in maximum security facilities and provide access by these pro bono attorneys to confined youth.

- Require TYC to implement discrimination reporting system separate from AMI reporting system to operate maximum security facilities.
- Require TYC to install at least three grievance boxes at all maximum security facilities in the view of security cameras.
- Require TYC to implement "privileged mail" ACA procedures at all maximum security facilities.
- Require TYC to provide annual statistics to the U.S. Department of Justice of all suicide threats, attempts and suicides.
- Require TYC to properly investigate and conclude youth complaints of abuse, neglect and exploitation BEFORE conducting due process hearings regarding same incident.
- Require TYC to overturn all charges against youth involved in "use of force" situations where TYC fails to videotape incident for any reason.
- Require TYC to overturn all charges against youth involved in grievance situation where TYC fails to videotape incident for any reason.
- Require TYC to participate in mandatory random drug testing of all staff.

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December 7, 2008

Sunset Advisory Commission
Attention: Public Comment
P. O. Box 13066
Austin, Texas 78711

Re: Texas Youth Commission

Dear Commission:

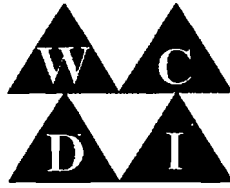
Enclosed herewith please find our position paper entitled "TYC Rewards Employee's Reporting of Youth Rights Violations with Termination" relating to your Staff Report regarding Texas Youth Commission, Texas Juvenile Probation Commission and Office of Independent Ombudsman. Thank you very much for the opportunity to have provided this Public Comment.

Sincerely,

/s/ 

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**TYC REWARDS EMPLOYEE'S REPORTING
OF YOUTH RIGHTS VIOLATIONS
WITH TERMINATION©**

SUNSET ADVISORY COMMISSION
DECEMBER 7, 2008

*Protecting the Workplace for All Employers
and EmployeesSM*

**TYC REWARDS EMPLOYEE'S REPORTING
OF YOUTH RIGHTS VIOLATIONS
WITH TERMINATION©**

By Lynzy Wright, Legal Criminalist/Consulting Expert

When Jennifer Jones, Senior Manager, Texas Sunset Advisory Commission, spoke to me during the Commission's visit to Giddings State School, we discussed the areas of retaliation students experienced at Giddings. Nothing could have been farthest from my mind that I would become a victim of retaliation too, and, ultimate termination, for speaking up about Giddings youth rights violations. Instead of presenting my views as an employee, I now have the unique opportunity to provide the Sunset Advisory Commission with the actual facts and law of my situation which speaks volumes about the "above the law" approach Texas Youth Commission ("TYC") fosters within the agency. TYC also hoped to meet American Correctional Association standards, but when applying ACA standards, Giddings failed miserably.

In my book, *The Triangle Workplace*, Principle Four discusses "Legal Procedure gets immediate scrutiny, evaluation and overhaul, if necessary, to protect the *Workplace*. ... Determine all inside and outside counsel, due diligence standards, existing lawsuits, potential lawsuits, pending and potential claims, to name a few."¹ While the Sunset Advisory Commission, during its Sunset Review of TYC, may have run statistics on student (incarcerated youth) grievances that relate to retaliation and physical and psychological youth injuries, legal costs associated with the Texas Attorney General representing TYC over and over again jump out to anyone running a search on PACER, the Federal Judiciary's centralized registration, billing, and technical support center for electronic access to U.S. District, Bankruptcy, and Appellate court records. Surely, the Texas Constitution does not intend for the Texas Attorney General to represent the State in litigation involving TYC wrongdoing over and over again without the Sunset Advisory Commission making necessary and needed changes at TYC as indicated in the Sunset's recent Report.

As the former Youth Rights Specialist Investigator III at Giddings State School, YRS was repeatedly disciplined, and ultimately terminated, for reporting youth rights

¹ Wright, L. (2005). *The Triangle Workplace*. The Wright Word Publishing - Houston and Austin.
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violations. TYC is not in the business of rehabilitating youth, it is in the business of providing jobs to residents of the State who have continuously over the years, ignored the constitutional state and federal rights of incarcerated youth continuing to operate as an agency in the State of Texas with a deplorable and completely unacceptable recidivism rate. From the first day I arrived at Giddings, I had the opportunity to get to know over 400 students, who accepted responsibility for their actions, and should have had the chance to learn from their mistakes to create a new life. Presentation of this position paper demands that each one of these over 400 students, as well as all other TYC former, present and future students be given the chance to make a new life with the proper skills, education, professional assistance and medical and psychological treatment that each one constitutionally deserves.

Religious Discrimination - Whether or not taking the approach that incarcerated youth are not subject to Title VII of Civil Rights Act protections and that Title VII does not apply to TYC employees involved in religious discrimination of incarcerated youth, the fact remains that the Civil Rights of Institutionalized Persons Act ("CRIPA") and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") do apply to TYC. Giddings discriminated against its Muslim Ramadan students and administration and TYC Central Office failed and refused to address the problems until the ACA accreditation team arrived at Giddings.

YRS reported the following:

- "YRS was contacted today by (Withheld), case manager, that one of his students was not being allowed to have their lunch for Ramadan and the student was upset. I sent an email to (Withheld) and (Withheld) and (Withheld) called to say they are putting breakfast and dinner in the refrigerator as (Withheld) had stated would happen for Ramadan, but that they were not putting away lunch. (Withheld) had not mentioned they were withholding lunch from Ramadan students. I sent an email to (Withheld) in Central Office, but received no reply. (Withheld), Giddings Chaplain, did not provide an appropriate email response. Therefore, YRS went to student tonight to ask if his Ramadan issues were resolved and he said No. He provided the following issues to file a grievance as follows:

"(1) Giddings is withholding lunch for Ramadan students; and (2) last year, Ramadan students were allowed to bring their lunch back and put it in the refrigerator on the (sic) respective dorms. Dorm (Withheld) only has two students on Ramadan, but Giddings, at last count today, has 20 students signed up for Ramadan."

- "Expressed concern in management meeting that addressing the food issues surrounding student fasting for Ramadan does not cause the massive problems staff reports and envisions because it is handled at every college with ease and with much larger percentages of Islam students."
- "Massive facility resistance arose due to Ramadan student grievance. (Withheld) in the Central Office resolved the grievance with perfect facility solutions for the 20 Ramadan students."
- "Even though (Withheld) in the Central Office provided Giddings with Ramadan procedures that do not withhold lunch from students, Giddings students reported Saturday 09/06/08 that they are still having lunch withheld due to Ramadan."
- "YRS finally achieved a monumental victory regarding the Giddings Ramadan religious practices youth rights violations. Fourteen students observing Ramadan filed a grievance signed by all these Muslim students stating that the withholding of lunch due to Ramadan was a youth rights violation. Instead of assigning it to the Chaplain, who, along with Giddings management, refused to follow the guidelines set by Chaplain Stutz in the Central Office or assist YRS in correcting these problems, YRS assigned it to the Facility Business Manager, the supervisor of the food service manager. All fourteen Ramadan students walked out of the cafeteria thanking YRS over and over for finally receiving the food they rightfully deserve since Ramadan is not a withholding of food (Giddings withheld lunch), but, rather, a postponement of food until the Ramadan sunset feast each night."

YRS was disciplined by TYC as follows:

- "You entered into a disagreement with (Withheld) regarding how the food would be handled for the youth fasting for Ramadan. You failed to honor his authority in making a decision regarding this religious practice."
- "In addition to this perceived disrespect, you were incorrect in your assignment of the grievance to the Chaplain. The issue had nothing to do with a youth's religious practice but rather about the amount of food the youth were receiving at their evening meal. Food issues are not assigned to the Chaplain, they are assigned to (Withheld), TYC Dietician. You failed to assign the food issue grievance to (Withheld), the proper authority. Ms. Wright, you caused a number of people to waste their time being involved in an issue that you incorrectly assigned and caused frustration and upset among staff."

Treatment of Commission Employees Who Cooperate with Independent Ombudsman - Section 64.102 of the Texas Human Resources Code states as follows:

"The commission may not discharge or in any manner discriminate or retaliate against an employee who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation." Employee reported the religious discrimination to the Chief Ombudsman as follows:

- "To put it in a different religious context, it would be the following: 'Because I am Catholic and I want to celebrate Christmas, I have to do without lunch for a month.' I realize they are incarcerated youth, but that only increases their need for religious practice, no matter what faith. I will fax the probation letter to you shortly."

Employee filed two (2) retaliation grievances (which were both denied), stating:

- "Retaliation and Relegation for assisting students and youth ombudsmen in complaining of religious discrimination, youth rights violations, constitutional violations of state and federal law and TYC policy violations regarding the rights of juveniles."
- "Retaliation and Relegation for complaining of religious discrimination, youth rights violations, constitutional violations of state and federal law and TYC policy violations regarding the rights of juveniles."

ACA Accreditation - The ACA Accreditation team made a presentation at Giddings, after discussing the religious discrimination issue stated above, of their ACA standards along with Performance-Based Standards, to achieve Giddings accreditation in 2009. YRS was assigned many ACA standards that related to the grievance process, discrimination and exploitation and began immediate implementation of these standards in preparation for Giddings pre-accreditation trial run in April 2009. Massive resistance occurred, both from Giddings Administration and Central Office, even though the edict from Central Office stated accreditation in 2009.

Report of Abuse, Neglect or Exploitation - TYC has established an "Abuse, Neglect or Exploitation" reporting system. Using ACA standards, case law and TYC policies, three incidents reported to the Incident Reporting System ("IRC") were sent to Giddings as grievances. YRS chose to return these grievances to IRC stating that they should be investigated by the OIG, categorizing them as "Dual Investigations" (processing them as Giddings grievances AND to be reviewed by OIG) since they involved staff inappropriate conduct directly with specific youth.

YRS was recommended for termination and, ultimately terminated, on the above issue as follows:

- "There is no dual investigation available in this instance and you did not make a correct decision. This entire email string caused staff upset, hurt feelings and demonstrated incorrect decisions on your part."

Sexual Harassment Raised in Youth Grievances - Whether or not taking the approach that incarcerated youth are not subject to Title VII of Civil Rights Act protections and that Title VII does not apply to TYC employees involved in sex discrimination/hostile work environment of incarcerated youth, the fact remains, according to SB103, TYC is required to adopt a zero-tolerance policy toward sexual abuse.

An incarcerated youth submitted three (3) grievances that YRS categorized as "sexual harassment/hostile work environment youth grievances" by reporting to Giddings Administration as follows:

- "The National Institute of Justice has a brochure entitled "Civil Rights and Criminal Justice" that states" "... prisoners are entitled to be free from sexual harassment at the hands of prison staff."

and to Central Office as follows:

- "Since Giddings is going through ACA accreditation, using the ACA standards and PREA, what TYC definitions of sexual harassment do we use? My ACA standard 4-JCF-3A-02 says 'Juveniles are not subjected to sexual harassment' ... The new PREA policy 93.37 defines sexual harassment in (d)(5) 'Sexual harassment--repeated verbal statements, comments or behaviors of a sexual nature to a youth by an individual including threats, extortion, bribery, demeaning references to gender, derogatory comments about body or clothing, or profane or obscene language, gestures, or written comments.' Title VII (employee/employer) defines 'sexual harassment' as quid quo pro or hostile work environment (just using the definitions of what sexual harassment is), but staff IS an employee."

YRS was recommended for termination and, ultimately terminated, on the above issue as follows:

- "You raised the issue of sexual harassment by the Superintendent or the Assistant Superintendent and they asked me, youth rights manager, how to proceed with this issue. If the Administration of Giddings State School needed assistance it would have been appropriate for you to seek advice and guidance from (Withheld), as instructed, which you failed to do."

TYC Policy Violations - TYC violated the following policies, including, but not limited to:

- TYC's PRS.01.02-"Retaliation is prohibited against any employee who reports inappropriate sexual conduct, even if the report was in error. Retaliation against any employee who assists in the investigation of the complaint is strictly prohibited and appropriate disciplinary action will be taken. Cooperation in any inappropriate sexual conduct investigation is expected as a part of an employee's job duties."
- TYC's PRS.35.03-"The agency strictly prohibits retaliation against any person for filing a complaint through the employee grievance system or through an outside agency or for participating as a witness in any complaint or complaint investigation. This prohibition includes harassment, intimidation, or coercion of any person because of

- involvement in a grievance or complaint, whether as a party, representative, or witness."
- TYC's GAP.93.37-"Retaliation against any youth or employee who reports or assists in the investigation of alleged sexual abuse is strictly prohibited and is grounds for disciplinary action up to and including termination of employment."

TYC Statute Violations - TYC violated the following statutes, including, but not limited to:

- 42 U.S.C. § 1997-"which gives the Attorney General the authority to investigate institutional conditions and file suit against state and local governments to protect the basic rights of the nation's most vulnerable persons."
- 42 U.S.C. §2000e-3(a)-"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment ... because he opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceedings, or hearing under this subchapter."
- 42 U.S.C. §2000cc-1-"No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."
- Section 64.102 of the Texas Human Resources Code as follows: "The commission may not discharge or in any manner discriminate or retaliate

against an employee who in good faith makes a complaint to the office of the independent ombudsman or cooperates with the office in an investigation."

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