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November 25, 2008

Mr. Joey Longley, Director
Sunset Advisory Commission
P. O. Box 13066
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Please accept these public comments for the SUNSET STAFF REPORT, dated NOVEMBER 2008, in reference to the, **TEXAS YOUTH COMMISSION (TYC), TEXAS JUVENILE PROBATION COMMISSION (TJPC), OFFICE OF INDEPENDENT OMBUDSMAN (OIO)**. Thank you for the opportunity to comment on the staff report. With all due respect to your staffs' diligent efforts, I believe that some of the facts and ideas published in the report are misleading. Therefore, I cannot agree with some of the recommendations set forth by the report. I am appreciative of the immense responsibilities of the Sunset Commission staff, as they are required to come to terms with very complex systems and make recommendations based on a few months of study.

I would like to preface my comments with an excerpt from the Sunset Commission 1996 report on TYC and TJPC

"In structuring the Sunset review of TYC and TJPC, Sunset staff had two major issues to address — consolidation of the two agencies and the recent legislative reforms." "Consolidation is also further complicated by the different levels within the juvenile justice system. Both the county and the state control different aspects of the system. Sunset staff chose to approach the review by looking at the juvenile justice system as whole — a system with different stakeholders at different levels, but working towards the same goal. Instead of trying to accomplish this goal by administratively combining the two agencies into one, Sunset staff focused on coordinating resources between the two agencies and the various stakeholders. The 74th Legislature made the most comprehensive changes to the juvenile justice system since 1973 with the 1995 Juvenile Justice Reform Bill (H.B. 327). Many of the changes went into effect beginning in January 1996. As a result, the reforms have not been in place long enough to collect and evaluate data to measure success. Because of the timing and extent of the changes, Sunset staff did not attempt to address or evaluate the reforms.

We are in an eerily similar situation now: TYC has had six "leaders" in the last two years. Although not all had the same title, they all lead the agency, Dwight Harris resigned in February 2007, 2) Ed Owens, 3) Jay Kimbrough, 4) Dimitria Pope, 5) Richard Netelkoff, and then finally 6) Cherie Townsend, who was appointed 3 months ago. It is safe to say that there has not been sufficient time to see if the ideas codified in SB103 will be effective and all of the cost savings in the staff report can easily be realized without elimination of any agencies. TYC is still in need of major reculturalization. No matter its structure or the research it follows, if the culture of the organization is not changed no real differences will be achieved.

The Texas Juvenile Justice Department (TJJD), as the staff report states, will consist of TYC employees, who will bring the current culture with them.

There are statements made in the summary which are somewhat misleading

".....Probation departments, overseen and partially funded by TJPC..."

This is a key point. The TJPC and the TYC are entirely different agency types. The TYC delivers care for the states most habitual and dangerous offenders, but the TJPC is a grants management agency. The TJPC grants are related to juvenile probation, but there is no oversight. The TJPC's authority is through contract. Counties agree to follow its rules in return for funding. The TJPC standards are minimum standards and are frequently exceeded by departments. The TJPC, with the exception of minimum standards compliance, has little to do with the day to day operation of the state's 166 locally run juvenile probation departments. So, in reality your report calls for the consolidation of TYC with 166 probation departments. While the states institutions are in disarray, the juvenile probation system could not be healthier.

"Most of the youth committed to TYC have first been through and failed multiple county-run probation programs, and upon release from TYC will return to their home communities. To work effectively, the State's juvenile justice programs need to fit together seamlessly with county probation services, but they do not.

This statement seems to indicate that there is some cyclical relationship between county probation departments and currently there is not. The TYC does contract with some small counties for parole, but there are no services offered by the probation department specifically for parole clients. It is exactly the same in the adult system. This statement is also contrary to the later assertion that counties commit the less dangerous offenders to the TYC. Additional research would indicate that counties commit the least compliant children to state custody. Offense level and type are not necessarily indicative of risk to public safety or willingness to change.

"Integration of state and local services, ineffective sharing of critical information on youth moving through the system, and limited means for evaluating outcomes and targeting resources to programs that work."

"Both state agencies are developing systems to maintain information on youth, such as education, treatment, and family history, but the agencies have not coordinated their efforts to ensure the efficient sharing and use of data. In addition, TYC historically has not worked well with TJPC to plan for the best arrangement of facilities and services so that county and state programs fit together and are mutually supportive."

The JCMS data project is in the planning stages and is now being overseen by the Council of Urban Counties. Collaboration in this project is not a problem. Many, if not all, departments are excited about the possibilities that this system offers. Money is the major barrier to collaboration on this project. Early estimates place the price of this software anywhere from 14 to 40 million dollars to build and maintain. The TJPC's portion of this cost is estimated to be approximately 4 million, with mostly the urban counties covering the rest. The TYC has been in the throws of turmoil and constant change and its leadership was not able to participate. Staff should have added this cost to the fiscal impact of the consolidation, since it has repeatedly recommended information sharing in many of its recommendations.

"And that state services need to be reshaped to complement and respond to the needs of the local counties committing these youth to State care. Staff have given careful consideration to the composition and expertise of the governing body needed to effectively guide this new entity to ensure that the concerns of local counties are not obscured."

There is a framework for what will happen to probation services in the state of Texas, when the very different functions of probation and institutions are combined. In 1989 adult probation was combined with the TDC. Since that time, prison population has grown to a point where Texas has the largest prison population anywhere else in the world. 1 in 4 people involved in the criminal justice system in Texas are in TDCJ institutions. In contrast, the bifurcated Juvenile Justice system in Texas commits 1 in 100 to state care. It is of no consequence how strongly the legislature encourages a county need to be met because when dollars run short, children in the states care must eat, be treated for medical conditions and be supervised. No matter how effective a counseling program is, in the end it is not necessary. The state will never see federal action for how it treats children in the community, but it will see it if it deprives children in its care the services they need. Even a temporary cut in community services will result in higher institutional populations, which will result in more community supervision cuts and the cycle is set. The only way to adequately protect the states most effective resource is to keep it separate.

Support

In the staffs support section, there is a brief mention of four other state programs. There is additional information to consider that negatively impacts the recommendations of the staff's report.

Ohio has a unified probation system. Ohio only budgeted 19% for Juvenile Court Appropriations, or 52.7 million. If Texas follows that formula it would mean a 29 million dollar cut to local probation departments. Ohio had 8,854 felony adjudications, and had committed 1,895 of those adjudications to state custody, or a rate of about 21%. Each day a child was in custody it cost Ohio \$215 compared to the current Texas rate of \$184. Texas committed about 5% of children. If probation departments were to commit 4,500 additional children a year, it would cost the state of Texas \$223.5 million a year if counties were to commit 20% of its felonies.

Louisiana, as of 2007, has a recidivism rate of 20% in its secure facilities. However, there were only about 430 in secure state facilities. Louisiana had about 1,353 children in state run non secure facilities. Louisiana has a bifurcated system similar to the current system in Texas.

"The (California Little Hoover) Commission recommends that the state begin planning now to ultimately eliminate its juvenile justice operations and create regional rehabilitative facilities for high-risk, high-need offenders to be leased to and run by the counties. Juvenile justice operations and policy should be moved from the Department of Corrections and Rehabilitation and placed in a separate Office of Juvenile Justice that reports to the governor's office. (I would like to emphasize that California is doing the opposite of this proposal, they are creating their own TJPC.) This office should combine and consolidate the juvenile justice divisions currently under the chief deputy secretary of juvenile justice as well as the juvenile offender grant administration and oversight currently under the Corrections Standards Authority. Through the new office, the state can provide real value through consistent leadership, technical advice and guidance to help counties implement and expand evidence-based programs for juvenile offenders. This office should conduct research and analysis on best practices and share them with counties. It should coordinate with other state agencies that provide youth services and provide counties with guidance on how to best leverage funding sources." Sounds amazingly like the TJPC.

"Jefferson County (MO) Circuit Judge Dennis Kehm heads a bipartisan commission that monitors the juvenile corrections system. He says the reform worked because it happened incrementally. Rather than revolutionizing juvenile corrections with a single bill, he said, Missouri experimented and built on success. He says support has been cemented each time judges see kids who pass through their court break free from their pasts". Put simply why do so much that you can't recognize when you've done too much. When you can do a little,

measure your success and proceed in the most efficient manner. "I would never send anyone to Missouri to look at them for what they do in detention," said Bart Lubow, director of the Annie E. Casey Foundation's Program for High Risk Youth. Some observers are concerned that individual courts use different standards in sending offenders to state programs. While some judges may refer only the most serious offenders, others also send kids with more minor charges, such as truancy, into state custody." The Casey Foundation also states that the Missouri model is expensive to implement and is ineffective with clients with mental illness.

Recommendation 1.1 Abolish TYC and TJPC and transfer their functions to a newly created state agency, the Texas Juvenile Justice Department, with a Sunset date of 2015.

"Reducing organizational barriers would promote more seamless operations between state and local parts of the juvenile justice system, improved collaboration on development of assessment information; better system wide strategic planning to meet the needs of youth and public safety; more opportunity for a system wide perspective when making decisions on location of institutions; and better coordination between probation and parole functions on release of a youth to the community."

Unified systems refer to state care at a much higher rate, which would eliminate any imagined savings mentioned in the staff's report. As the TYC makes the necessary step to become more rehabilitative for children in its care, confidence in its program will grow; therefore it becomes a more viable option for probation department to address rehabilitation in states care. Combining systems promotes familiarity and will breed confidence in the system and increase commitments to TYC.

Fiscal Impact

"Most of these savings would be identified and realized by consolidating the agencies, and through implementation of the recommended five-year plan. Based on likely decisions of the new Department and the Legislature, Sunset staff estimates a minimum annual savings of \$594,616 associated with a reduction of five duplicative director-level positions, and up to \$27.6 million with the closure of three facilities and the reduction of 587 associated full-time equivalents (FTEs)."

This fiscal impact does not mention all of the increases due to pilot program touted by the staff report, and it seems to indicate that TYC will be fixed and the State will save money. To be of assistance to the legislature, it would be more accurate to say that this report does not assess the additional dollars required to address issues with the TYC. The report touts the JCMS, but ignores the real reason that data sharing is not a reality today. Software engineering is cost

prohibitive for most counties. Staffs report fails to mention the well known estimated costs of the system. All of the savings mentioned in the staffs' report have very little to do with the staffs' recommendations and are mostly a result of reductions of the commitments to the Texas Youth Commission, and the consequent closure of empty facilities. Including these matters in this report are misleading.

4.3 Transfer disciplinary hearings for certified officers to the State Office of Administrative Hearings.

With all due respect to the staffs extensive experience in licensing, probation officers are certified. Hearings may involve the family code, probation standards and each department's nonstandard policies and procedures. The reason that there are not many hearings is that many of those found to have violated standards are terminated or voluntarily resign, eliminating the need for any hearing since certification is tied to a probation department, unlike a license that is tied to an individual. The TJPC only reviews applications for certification. The TJPC does not conduct any investigation or background checks on its own. All requirements are completed by the counties themselves.

In summation, the strength of the Juvenile Justice system is that the overwhelming majority of children are rehabilitated at the county level. The TJPC may need some fine tuning, and the TYC may need a complete reculturalization, but the state will save the most money in the long run by continuing to support counties in their efforts to reduce commitments to TYC. Routinely state agencies struggle with their charge to try to make rules for the incredible diverse population and demographics within the state of Texas. The juvenile probation system is successful because there are state funds to assist the state in meeting its needs, but people who know their communities work with other community members to decide how to best handle local problems. Local probation departments exist in a world of real accountability, where the people we serve go to school with our children, work alongside us and vote for our local officials. The TJPC understands that its success is dependant on our ability to be flexible, efficient and responsive. Everything in the report can be affected without the abolition of the TJPC and the TYC. Therefore, I cannot support these recommendations.

Respectfully Submitted,



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