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CENTER FOR EFFECTIVE JUSTICE

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Texas Senate Criminal Justice Committee

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Testimony of Marc Levin on SB 103 by Hinojosa on Texas Youth Commission

I am pleased to appear before Chairman Whitmire and this distinguished committee. I am the Director of the Center for Effective Justice at the Texas Public Policy Foundation, which develops and promotes public policy approaches that repair the harm done to victims, reduce recidivism, minimize the costs to the taxpayer, and avoid the excessive use of criminal law.

We are deeply disturbed by recent revelations concerning the Texas Youth Commission (TYC). We believe that Senate Bill 103 represents a positive first step towards addressing the severe problems at the Commission's facilities and commend Senator Hinojosa for filing this legislation. Accountability is vital in any public or private organization and, by creating the Independent Counsel's office, this legislation will help ensure that, when whistleblowers within TYC warn of abuses, full and impartial investigations follow, rather than retaliation and cover-ups. To ensure independence, recommend that the independent counsel report to the State Auditor's office on operational issues at TYC and inform the local district and/or county attorney's office in the jurisdiction of any possible criminal conduct.

The disruptions at TYC facilities such as the Evins unit also indicate that there is a need for improving the staff to resident ratio, as this bill would do. We would note that there are several ways to accomplish this – spending more money to hire more juvenile corrections officers, reducing unnecessary TYC commitments through more local diversion, and/or reallocating some of TYC's capacity to community-based programs that require less security staff, particularly given the advances in electronic monitoring. Indeed, even with the funds to hire more juvenile correction officers to reduce the ratios in their existing facilities, the small workforces in the remote communities where most TYC facilities are located and their high turnover rate make it doubtful that TYC can fully staff these new positions.

In light of all of these concerns, rather than stop with this legislation, we urge the Legislature to make even more far-reaching reforms. We believe that incidents of abuse, workers compensation claims that have escalated to the level of 1 in 7 TYC workers at a cost of \$6 million, and high employee turnover and recidivism rates are directly related to the Commission's excessive reliance on large, open-bay, remotely located prison-style facilities. Returning the Marlin and/or San Saba facility to TDCJ would create an opportunity to shift some of the 64 percent of TYC residents who

are nonviolent into community-based facilities. It is remarkable that TYC lacks a single facility – either an institutional or halfway house – in the Houston area, but 23 percent or 630 of their commitments came from Harris County in 2006.¹

If TYC is going to continue to be responsible for over 5,000 youths, we suggest that they consider establishing a separate therapeutic facility exclusively for nonviolent youth with a drug offense or a property offense that is linked to their drug habit. Such a facility should be established in or near a major urban area so qualified staff can be retained. We believe that such a facility should, in addition to a residential component, also offer a day treatment component. Intensive day treatment costs \$20,000 a year compared to \$57,000 at the TYC and, where a youth has a supportive family or extended family, it can achieve better results. We recently co-hosted a policy primer at which the leaders who designed the Missouri juvenile justice system spoke and highlighted their transition from large training schools to group homes of 30-40 young offenders, resulting in a recidivism rate that is now 8 percent compared to TYC's rate of over 50 percent. Interestingly these group homes are not much like prisons – many of the nonviolent offenders are in homes without bars and even at the fenced facilities for violent offenders guards wear their own street clothes and walls are decorated with artwork done by the teenagers themselves. Many of the homes have a local advisory board of business, civic, and religious leaders that help facilitate positive mentoring and job training programs. While there would be transition costs to converting some portion of TYC capacity into these kinds of facilities, the operating costs in Missouri at \$43,000 per ward per year are about 20 percent less than TYC.² More importantly, the difference in recidivism rates produces large, long-term savings on adult supervision and incarceration. We are pleased that Senators West has asked the LBB to work with TYC to estimate the short-term and long-term implications of such an initiative.

However, perhaps an ever better solution than diversifying the types of facilities in the TYC system would be to alter the entire juvenile justice funding system to provide an incentive for counties to enhance their use of innovative local community correctional programs for youth in lieu of referrals to TYC. In other words, the state would provide an incentive for counties to increase utilization of their own sentencing products that would compete with what TYC offers, particularly for nonviolent offenders. We believe much can be learned from the experience of Ohio where this was successfully done. Through its innovative RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) funding system adopted more than a decade ago, Ohio took some funds previously allocated to the Department of Youth Services – their version of TYC – and pooled and distributed them to county probation departments instead, based on population and delinquency levels.

Under RECLAIM, juvenile judges may use the funds allocated to treat juvenile offenders in the local community or pay to commit the youth to the Ohio Department of Youth Services. A separate fund was established to allow juvenile judges to sentence youth convicted of violent offenses including murder, attempted murder, kidnapping, rape, voluntary manslaughter, involuntary manslaughter, rape, arson, and violent gun offenses without using the RECLAIM funds. The Ohio RECLAIM program contrasts with the current system in Texas where the state bears the full cost of TYC commitments but funds only 30 percent of local juvenile probation through the Texas Juvenile

¹ <http://www.tyc.state.tx.us/research/profile.html>.

² http://www.news10.net/display_story.aspx?storyid=10961.

Probation Commission (TJPC). As a result, TYC commitments are “free” from the standpoint of counties, leaving them with little incentive to maximize the use of alternatives that are primarily locally funded.

RECLAIM has achieved phenomenal results, as the recidivism rate of RECLAIM participants is 7 percent, according to a University of Cincinnati study I am providing to the Committee, compared with the over 50 percent rate for TYC offenders.³ The study also showed that the RECLAIM funding change resulted in 36.2 percent fewer commitments to DYS than projected. Even moving to a system like RECLAIM for just the largest Texas counties could make an enormous difference, as five counties account for 54 percent of TYC commitments.

One question is whether a funding shift similar to that in Ohio could be accomplished in Texas without bringing TYC and TJPC back as one agency. Such a consolidation may result in the leadership difficulties facing TYC being hoisted upon the juvenile probation system and JJAEPs, which are currently overseen by an agency that has strong leadership. Also, as we have seen on the adult side, the institutional division inevitably becomes the dominant force in a combined criminal justice agency, creating budgetary incentives and a culture that emphasize incarceration. While local sentencing decisions would affect the volume of juvenile corrections services they consume from each agency, we believe the budgets of both agencies could be adjusted accordingly if Texas moved to a funding system like RECLAIM.

Actually, Texas has been doing something similar to Ohio on a small scale, which recently became even smaller. Through the Small County Diversionary Grants made by TJPC, qualifying small counties that might not otherwise be able to fully afford a residential facility are paid to provide community-based residential placements for juveniles they would otherwise send to TYC. This funding was reduced in 2003 and the TJPC has asked for a \$600,000 exceptional item for this in 2008-09.

It is worth noting that TYC houses some misdemeanor offenders who would be solely the responsibility of counties in the adult criminal justice system. For example, a misdemeanor offender can be placed at TYC for a violation of misdemeanor probation if he has one prior misdemeanor or felony adjudication. This availability of TYC placement, in light of the current county/state funding system, provides a disincentive for counties to continue working with such misdemeanants through community-based programs. A 2003 report by the Comptroller noted, “In some cases, for instance, county juvenile probation departments will send youths to TYC simply because available TJPC funding has run out—even if the youths’ offenses do not merit TYC placement, and despite the fact that TYC placement is far more expensive than probation options.”⁴

In its 25th anniversary report released earlier this year, TJPC estimates that, if their request to reinstate \$9.4 million funding for diversionary programs, that include community-based local and Level 5 residential facilities, the small county diversionary program, and the Harris County Boot Camp, are not funded, the result will be increased TYC commitments that will cost the state an additional \$75 to \$98 million.⁵ The report also notes that: 1) 43% of juvenile probation departments

³ <http://www.uc.edu/criminaljustice/ProjectReports/Reclaim.PDF> and http://www.uc.edu/criminaljustice/ProjectReports/CCF_Evaluation_Final_2006.pdf.

⁴ <http://www.window.state.tx.us/etexas2003/gg02.html>.

⁵ http://www.tjpc.state.tx.us/whats_hot/previous/25YearsofService.pdf

offered fewer services to juveniles in 2005 than in 2001; 2) half of all felony juvenile sex offenders on probation received no sex offender treatment in 2005; 3) the majority of juveniles under supervision do not have access to mental health or drug treatment services; and 4) only 37 percent of felony and felony weapons offenders received intensive supervision probation in 2005.

Given that TYC is looking at gradually increasing population pressures culminating with a need for an additional 769 beds in 2012 according to the LBB, it is noteworthy that the TJPC report states that three secure locally operated juvenile post-adjudication facilities were closed in 2005 and 2006 and that 47 percent of secure facilities were operating at less than 60 percent of capacity. It appears that better coordination between the state and local juvenile authorities is needed so that TYC is not flooded while local facilities are underutilized. Although community-based facilities are ideal, a provision for local departments to transfer incarcerated youths to postadjudication facilities in other counties should be considered as a way to relieve capacity pressures at TYC. A facility in an adjoining county is likely to be less remote than a TYC facility.

In addition to the accountability provisions of SB103, it also requires that youths 14 and under be housed separately from that are over 17. Only 18 percent of commitments are 14 are younger and offenders can remain at TYC until they reach 21, if they are in the middle of their rehabilitation program when they turn 18. Common sense suggests that housing a 12 year-old with a 20 year-old can result in bad influences and physical intimidation. The logistical ramifications of any change must be considered, but some degree of segregation should be achieved.

In regard to age, we also recommend looking at establishing a separate TDCJ facility for nonviolent youthful offenders, aged 18-25, which could simply involve converting an existing facility. There are some 10,000 TDCJ inmates in this age group, many of whom were transferred from TYC. Despite the problems at TYC, these transferees received far more rehabilitative and educational services at TYC, as they should since their per diem cost is three to four times as much, than they do at TDCJ where they simply mixed in with older, hardened, and violent offenders. We believe that whatever progress many of these young offenders made while at TYC is often undone as a result. Establishing a separate TDCJ facility to serve these and other youthful offenders, particularly those that are nonviolent, would prevent this mixing and could result in the more efficient provision of educational programming by the Windham School District for this age group.

Another concern we have is that there is insufficient information publicly available on TYC's outcomes. For instance, what is the recidivism rate for each of its facilities and for youth who have gone through each of its specialized programs? For example, the Victory TYC facility in Vernon is unique in that it is a military-style cadet program. Policymakers need to know whether it is more or less effective than other TYC facilities for comparable types of offenders.

Finally, we also believe that some of the initiatives we have studied and recommended on the adult side, such as drug courts and victim-offender mediation for first-time minor property offenses, can be expanded on the juvenile side as well, thereby reducing the recidivism rate of first-time juvenile offenders and avoiding the repeat offenses that often result in TYC commitment.

Thank you for your consideration and I am pleased to answer any questions.