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Sunset Advisory Commission
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Dear Sunset Advisory Commission Project Managers:

I am writing to highlight some areas of interest that we hope the Sunset Commission will examine as part of its reviews of the Texas Youth Commission (TYC) and Texas Juvenile Probation Commission (TJPC), which will help guide the 81st Legislature.

Since March 2005, the Center for Effective Justice at the Texas Public Policy Foundation has provided research and information to Texas policymakers on ways to improve our criminal justice system. The Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets and limited government. During the previous legislative session, we worked closely with lawmakers on Senate Bill 103, which made dramatic changes to the TYC, and other matters concerning juvenile incarceration and probation.

Please find enclosed a copy of our February 2008 policy perspective "The ABC's Before TYC Enhancing Front-End Alternatives in the Juvenile Justice System," which explores many of the challenges facing both TYC and TJPC and recommends policy approaches based on best practices from around the nation. We would especially urge the Commission to consider the following policy options:

Items Relating to TYC & TJPC

- **Pool TYC and juvenile probation funds for nonviolent offenders.** Through this funding change, Ohio reduced recidivism two to six-fold and commitments to state youth lockups by 36 percent under its RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) program.¹ This involves pooling state probation and incarceration

¹ Latessa, E.J., M.G. Turner, M.M. Moon, and Applegate, B.K., A Statewide Evaluation of the RECLAIM Ohio Initiative, Perspectives 23 (2): 16, <http://www.uc.edu/criminaljustice/ProjectReports/Reclaim.PDF> Latessa, E.J., Lowenkamp, C., and Lemke, M., Evaluation of Ohio's RECLAIM Funded Programs, Community Corrections Facilities, and DYS Facilities: FY 2002 CCF Supplementary Report, http://www.uc.edu/criminaljustice/ProjectReports/CCF_Evaluation_Final_2006.pdf.

funds for nonviolent offenders and remitting that money to counties based on population and delinquency levels and/or the number of juveniles sentenced for covered offenses. Counties could then purchase slots in state lockups or use the same funds for less expensive, but perhaps more effective, local programs, such as day treatment. This funding approach could be initially applied in connection with the 300 youths referred annually to TYC for drug offenses. The RECLAIM funding pool does not apply to serious violent felony offenders, which is also an appropriate provision for Texas given that TYC is best utilized to protect the public from the most dangerous youth and rehabilitate such youth for whom counties may not have appropriate programs. We understand that the merging of TYC and TJPC may be studied, but we do not believe that this pooling and remittance of funds would require that. Consolidation of overlapping agencies can be an effective means of saving taxpayer money, but the Commission should also consider whether an agency whose budget is primarily based on incarceration would be sufficiently incentivized to be an advocate for a strong probation system. While it is unclear whether there is any connection, the Texas prison population has increased 300 percent and the state's corrections budget has quadrupled since adult probation was consolidated from a separate agency into the Texas Department of Criminal Justice (TDCJ) in 1989. Prior to the 80th Legislative session, TDCJ presented a budget that envisioned 5,000 new prison beds while the Legislature ultimately approved a budget that represented a historic shift towards community-based corrections. It is understandable that agencies defer to elected officials on broad policy changes and request funding based on projections that assume current policies will be maintained, but this reality combined with the general tendency of bureaucracies to expand can lead agencies that incarcerate to emphasize that function.

- **Enhance availability of settings other than incarceration and detention.** The Commission should consider recommending more youth group homes and day treatment centers similar to those in Missouri, particularly in major urban areas. For example, many TYC youth from Houston are in lockups hundreds of miles away because there is only limited contract capacity in the Houston area, even though 23 percent of commitments came from Harris County in 2006.² Group homes and day treatment centers can serve as step-down options for youth released from TYC and sentencing alternatives for nonviolent youth that do not need to be behind bars for public safety reasons. Contracting with juvenile probation or private operators may result in lower start-up costs than if TYC built these facilities and would also provide the state with greater flexibility should there be shifts over time in the geographic need for them. Operating costs of Missouri's group home system as of 2005 were \$43,000 per ward per year,³ far less than TYC. Moreover, a 2003 study found that the recidivism rate in the Missouri Department of Youth Services is only 8 percent, compared to TYC's 2006 rate of 52 percent.⁴
- **Facilitate data sharing between juvenile justice and education systems.** State privacy laws interfere with juvenile probation officers' ability to obtain and review educational records, including records reflecting attendance and behavior that are highly correlated with successful probation outcomes. Specifically, Texas Family Code Section 58.0051(b) on interagency information sharing provides, "Information disclosed under this section by a

² TYC Commitment Profile, <http://www.tyc.state.tx.us/research/profile.html>.

³ Charton, Scott, Missouri Juvenile Justice Practices Praised, and Copied, as National Model, Associated Press, March 5, 2005, http://www.cjcj.org/press/missouri_juvenile.html.

⁴ Mendel, Dick, Small Is Beautiful: The Missouri Division of Youth Services, 5 ADVOCASEY 35-36, Annie Casey Foundation, Spring 2003, <http://www.aecf.org/upload/PublicationFiles/juvenile%20justice%20at%20crossroads.pdf>.

school district must relate to the juvenile system’s ability to serve, before adjudication, the student whose records are being released.” This provision and any other applicable statutes should be clarified to promote information sharing after adjudication as well. The Commission should also look into whether TYC education staff and TYC parole officers have sufficient access to school district educational records. Additionally, longitudinal aggregate data sharing is needed between TYC, TJPC, and TEA, as well as courts, to identify the percentage of youths in the juvenile justice system who have previously been suspended, truant, or expelled. Our analysis of TJPC referral data—combined with TEA data on suspensions—indicates that students who are in out-of-school suspension are 32 times more likely to commit a Class B misdemeanor offense or greater, or violate a judicial order, during those days than students in school.⁵ To the extent school districts can reduce out-of-school suspensions that cause students to miss more than 1 million school days every year, crime can be prevented and juvenile probation caseloads can be controlled.

Items Relating to TYC

- **Streamline TYC facilities.** Despite the costs of implementing SB 103, such as increasing juvenile correction officer training to 300 hours (the adult prison guard standard) and staffing the inspector general and ombudsman’s office, TYC’s operating budget declined from \$454.6 million in 2006-07 to \$445.3 million in 2008-09, largely due to fewer incarcerated youth and the reconversion of two facilities to the adult prison system. However, the cost per youth has increased from \$62,000 per year to about \$100,000. TYC Conservator Richard Nedelkoff has projected that TYC’s population will soon decline to 2,000, and perhaps even less.⁶ To the extent TYC institutions are not being fully utilized, they must be further consolidated to control costs. Unnecessary TYC lockups should be prioritized for closure based on their recidivism rate, the available local workforce, the number of current and recent staff vacancies, and the remaining lifespan, maintenance costs, and overall suitability of the physical plant.
- **Explore rerouting some youths at TDCJ to TYC.** According to TDCJ’s 2006 Statistical Report, there are 23 inmates ages 14 to 16, 129 age 17, and 2,378 ages 18 to 19. These figures are consistent with the 178 Texas youth below the age of 17 who were certified to stand trial as adults in 2005 – youths that would have gone to TYC had they not been certified. In 2000, TDCJ created “sheltered” (separate) housing for inmates ages 14 to 19 at two prisons that also house adult inmates, primarily at the Clemons Unit for males along with a handful of young female inmates at the Hilltop Unit. Now called the Youthful Offender Program (YOP), it was recently changed to encompass only 14 to 17 year-olds due to a lack of capacity. Nonetheless, 49 of the 178 TDCJ inmates age 17 or below still are not in the YOP, including 25 juveniles at state jails. Even among those youths in the YOP, only 38 percent are receiving an education compared to 96 percent at TYC and, although 68 percent of YOP offenders are in a treatment program, it has been reduced to 8 weeks from 1 to 2 years.⁷ Of 35 states that were surveyed, 15 states hold youthful offenders tried and sentenced as adults in juvenile facilities until at least the age of 18, and 6 of these states hold youthful

⁵ The State of Juvenile Probation Activity in Texas, Texas Juvenile Probation Commission, September 2007, <http://www.tjpc.state.tx.us/publications/reports/RPTSTAT2005.pdf>.

⁶ Remarks by Richard Nedelkoff at Texas Public Policy Foundation Policy Primer “Mission Redefinition at the Youth Commission,” June 25, 2008, <http://www.policycast.com/TexasPolicy/audio/2008-06-25-PP-tyc.mp3>.

⁷ Shuster, Terry, Meeting the special needs of TDCJ’s youthful offenders, LBJ School of Public Affairs seminar paper, April 27, 2008 citing statistics gathered from TDCJ Executive Services, 2008.

offenders in juvenile facilities until at least the age of 21.⁸ As part of pending legislation reauthorizing federal funding that assists states with juvenile justice programs, Congress is considering limiting the placement of youth in adult lockups and/or offering incentives to reduce it.⁹ Congressional concern is based on evidence indicating higher rates of recidivism among youth co-mingled with adults along with a greater risk of abuse by other inmates.¹⁰ Many of the Texas youths incarcerated at TDCJ are precisely the most serious offenders that TYC is wisely being repurposed to focus on, and a longstanding bright spot in the agency has been its nationally known Giddings Capital Offender Program, which according to a 1998 study reduced recidivism of capital offenders by 52 percent compared with non-participants.¹¹ More recent data reported in 2008 shows the following results:

Results of TYC’s Capital & Serious Violent Offender Treatment Program¹²

| 3-yr cohort | Rearrest rate | Rearrest, violent | Reincarceration rate |
|---------------------|----------------------|--------------------------|-----------------------------|
| Enrolled | 40% | 5% | 15% |
| Not enrolled | 77.8% | 23.7% | 40.6% |

To the extent that rerouting some youth at TDCJ to TYC would reduce recidivism, the long-term savings to the state could be substantially more than those from improvements in the recidivism rates of older inmates due to the actuarial impact of a longer remaining lifespan. The Commission should consider statutory changes that would reroute the approximately 150 youth at TDCJ between ages 14 and 17 to TYC. Some youth sentenced to TDCJ who have just turned 18 could also be considered, but most 18 and 19 year-olds would not spend enough time at TYC to warrant placement and the attendant costs. While TYC’s cost per day is significantly higher than TDCJ, the actual budget implications of moving a small number of youths at TDCJ to TYC may be more favorable than the per diems would suggest. First, excess capacity at TYC has contributed to the above-referenced increased cost per youth. Second, capacity pressures at TDCJ drive up fuel costs through nightly busing of inmates around the state, could ultimately lead to costly construction of new adult prisons, and may contribute to recidivism by resulting in the co-mingling of different classes of inmates and frequent transfers that disrupt the continuity of education and treatment programs.

- **Emphasize vocational training at TYC facilities.** Given that the average youth committed to TYC has an IQ of 88, functions at a 5th to 6th grade level despite being 16 years old, and typically has few if any high school credits, high school graduation is often not realistic, particularly with shorter confinement periods at TYC since SB 103. Moreover, most youths discharged from TYC have no financial support and thus do not re-enter school. Research indicates employment of ex-offenders substantially reduces recidivism. Consequently, TYC programming should emphasize earning a GED and obtaining vocational training in fields such as welding, automotive repair, and construction. While TYC has vocational programs,

⁸ Deitch, Michele, et al. (2007). State survey spreadsheet: transfer policy and practice. University of Texas, LBJ School of Public Affairs. (Unpublished data on file with the author).

⁹ Don’t Teach Our Children Crime, *New York Times*, July 3, 2008, http://www.nytimes.com/2008/07/03/opinion/03thu2.html?_r=1&ref=opinion&oref=slogin.

¹⁰ Austin, J., Johnson, K., & Gregoriou, M. (2000). Juveniles in Adult Prisons and Jails. Office of Juvenile Justice and Delinquency Prevention, <http://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.

¹¹ Heide, Kathleen, *Young Killers: The Challenge of Juvenile Homicide*, 1998, <http://books.google.com/books?id=swceHKr6OOYC&printsec=frontcover&ie=ISO-8859-1>.

¹² McCormick & Fredlund (2008), 2007 Review of Agency Treatment Effectiveness. Texas Youth Commission.

each type of program is not at each facility. TYC should include as a performance measure the number of GEDs and occupational certificates obtained by incarcerated youths.

- **Revamp TYC performance measures to focus on results.** TYC performance measures currently include the number of juveniles arrested and the length of time served at TYC, even though more arrests and longer stays at TYC facilities are not necessarily desirable. Additionally, TYC does not evaluate the rate at which youth who are released are employed or enrolled in an educational institution within three or six months. Finally, TYC does not report outcomes such as recidivism on a unit by unit basis, which would be useful in strengthening the accountability of the leaders at each unit, developing incentive-based employee retention programs, and determining whether certain units should be closed.

Items Relating to TJPC

- **Consolidate juvenile probation funding streams, enhance flexibility of funding dedicated to postadjudication facilities and intensive supervision, and link share of funding to offender outcomes.** Currently, there are 19 different juvenile probation funding streams for which TJPC enters into contracts with probation departments, creating unnecessary complexity. Of the two largest streams, basic juvenile probation funding is allocated by county population level (a good approach because it does not create an incentive to put more youth on probation than necessary) and community corrections funding is allocated by the number of referrals to juvenile probation. Some of these different streams should be consolidated and, rather than require that designated funding streams be used for intensive supervision probation (ISP) and postadjudication facilities, those funds should be allocated based on the number of youths adjudicated for the most serious offenses and that county's utilization of TYC relative to the size and seriousness of its offender population. Also, some portion of community corrections funding should be linked to performance benchmarks for each department adjusted for the risk level of their caseload, such as the percent of probationers who are rearrested or commit additional crimes (with a greater weight for violent crimes), technical revocations to TYC, school attendance, academic and behavioral progress, employment rate of youth not in school, and percent and amount of restitution collected.
- **Implement juvenile victim-offender mediation (VOM) programs to handle minor property offenses through binding restitution and community service agreements.** Pursuant to HB 2291 passed last session, TJPC is concluding a study to be completed in January 2009 of the 11 existing local VOM programs that will include recommendations to the Legislature regarding broader implementation. As originally drafted, the bill would have created guidelines for such programs and provided a funding stream through an adult offender fee and a participant fee. A national multi-site study found that 79 percent of victims who participated in such programs were satisfied, compared with 57 percent of victims who went through the traditional court system.¹³ A separate national study of juvenile pretrial victim-offender mediation found a 32 percent recidivism reduction.¹⁴ Mediation programs also save

¹³ Latimer, J., Dowden, C. and Muise, D., The Effectiveness of Restorative Justice Practices: A Meta-Analysis, *Prison Journal*, 85:127-44 (2005).

¹⁴ Nugent, W, Umbreit, M., Wiinamaki, L, and Paddock, J., Participation in Victim-Offender Mediation Reduces Recidivism, *VOMA Connections* 5(3), Summer 1999, <http://www.voma.org/docs/connect3.pdf>.

taxpayers' money, as they reduce utilization of courts and prosecutors – a California program costs only \$250 per case.¹⁵

- **Enable juvenile probation departments to use state funds for youths not on probation who they monitor.** State law currently allows informal dispositions, including by law enforcement, which are primarily made in first-time Class B misdemeanor cases.¹⁶ These informal dispositions involve either a probation officer or police department staff member following up to make sure the youth complies with the conditions of the diversion even though the youth is not technically on probation. Probation departments should be permitted to spend state funds for this purpose and, although these dispositions are significantly less costly than probation, some portion of state funding should be based on the number of diverted youth who are monitored by probation departments without being on probation. Incentivizing informal dispositions would help control future growth in juvenile probation caseloads by ensuring that youth who commit a minor misdemeanor and have no prior offenses are not unnecessarily placed on probation.
- **Expand juvenile drug courts.** Drug courts reduce recidivism by 30 to 60 percent.¹⁷ Additional drug courts could be funded through allocating a fraction of the funds generated from seized assets, as proposed in SB 1780 by Senator Whitmire last session.
- **Ensure youths on juvenile probation receive an education.** Many juvenile probation officers report that public school officials seek to avoid enrolling youth on juvenile probation. However, public schools are legally obligated to educate every child. States such as Pennsylvania have recognized the importance of linking schools and juvenile probation by instituting school-based probation officers, which have reduced suspensions and drop-outs and increased academic progress.¹⁸ While this should be a local decision, state law should require the Texas Education Agency, upon receiving information from TJPC that a school is refusing to enroll a student on juvenile probation, to order that school district to admit the student.
- **Revise Education Code Section 29.012 to allow juvenile probation departments to receive education funding directly from the state for youths in residential facilities.** Currently, some school districts send over low-performing teachers to these facilities and there is often no principal or other instructional leader in charge. In 1999, the Dallas County Juvenile Probation Department and Dallas ISD agreed to put the county's residential facilities under a charter school operated by the Juvenile Probation Department and student performance has dramatically improved. The state should allow counties to independently decide to receive state per-student funding along with the obligation to provide instruction for youth in postadjudication and detention facilities. These departments could then charter a school or contract with a school district or other provider. Such charters should not count towards the state cap on charters and their accountability evaluations should be based on

¹⁵ Niemeyer, M. and D. Shichor "A Preliminary Study of a Large Victim/Offender Reconciliation Program," FEDERAL PROBATION 60(3):30-34, 1996.

¹⁶ Section 52.03 of the Family Code states that each county's juvenile board "shall, in cooperation with each law enforcement agency in the county, adopt guidelines" for informal disposition. However, some juvenile boards, including the Harris County Juvenile Board, have failed to adopt such guidelines. In 2006, Dallas diverted 800 juveniles through this procedure. More than 80 percent of them successfully performed their agreement.

¹⁷ Levin, Marc, Drug Courts: The Right Prescription for Texas, Texas Public Policy Foundation, February 2006, <http://www.texaspolicy.com/pdf/2006-02-PP-drugcourts-ml.pdf>.

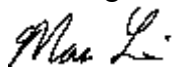
¹⁸ Clouser, M., School-based Juvenile Probation, *Pennsylvania Progress*, 2(1), March 1995.

customized criteria that reflect the uniquely challenging population and shorter period of enrollment prior to returning to a traditional campus. For the majority of juveniles who spend less than six months in a residential facility and its school, an intake and outtake diagnostic test, such as the Iowa Test of Basic Skills which is administered to students placed at Juvenile Justice Alternative Education Programs (JJAEPs) for 90 days or more, is far more useful than the TAKS test for assessing the efficacy of the educational program, because it solves the disaggregation problem by measuring the change in proficiency while in the new setting.

- **Examine linking various agency databases to connect probation, parole, and civil caseworkers assigned to a single household.** Many households have an adult probation/parole, juvenile probation/parole, and/or DPFS or DSHS caseworker assigned, although each may not be aware of the other's involvement unless it is volunteered by the client. One indication of the extent of the overlap is that some 23.1 percent of female inmates at Gatesville had been investigated by CPS in the year before their incarceration.¹⁹ TJPC's ongoing development of the Juvenile Case Management System as a pilot program in the Metroplex could foster collaboration among additional entities besides neighboring juvenile probation departments and law enforcement, particularly to the extent that other agencies such as DPFS are willing to participate. Since all adult and juvenile officers and caseworkers are concerned to some degree with the progress of both the parents and children and there may be redundancies in supervision and services, enhancing communication among these various personnel, with proper safeguards for the confidentiality of communications made to therapists and other health providers, could improve outcomes and efficiency. For example, if a juvenile probation officer makes a home visit and enters notes into their case management software, the adult probation officer or civil caseworker would be able to see that several days later and may determine that it is not necessary for them to make a home visit. The federal office of Juvenile Justice and Delinquency Prevention has an online resource that summarizes state statutes in this area, including one in Florida which provides for a juvenile interagency database.²⁰ Other states' experiences should be reviewed to determine whether the efficiencies that result from enhanced data sharing justify the cost.

I would be most appreciative if you could share this letter with your colleagues and the members of the Commission. We look forward to continuing to participate in this process and plan to submit additional materials and testimony later this year. Thank you for your consideration and please let me know if there is further information that you would like us to provide on these or other issues relating to the sunset evaluations of TYC and TJPC.

Best Regards,



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¹⁹ Farabee, David, Substance Use Among Female Inmates Entering the Texas Department of Criminal Justice - Institutional Division: 1994, TCADA, <http://www.tcada.state.tx.us/research/criminaljustice/femaleinmate94.pdf>.

²⁰ <http://dept.fvvc.edu/ojjdp/states.htm>.