



## **Texas Juvenile Justice Department**

### **Public Hearing**

Friday, August 3, 2012 - 9:00 a.m.  
Brown Heatly Building, Room 1410-1430  
4900 North Lamar Blvd.,  
Austin, Texas 78751

#### **BOARD MEMBERS PRESENT:**

Scott W. Fisher, Chairman  
Rob Kyker, Vice-Chairman  
Joseph Brown  
Calvin Stephens  
The Honorable Jimmy Smith  
Melissa Weiss

#### **EXECUTIVE STAFF PRESENT:**

Jay Kimbrough, Interim Executive Director  
Robin McKeever, Deputy Executive Director  
Cris Love, Chief Inspector General  
Brett Bray, General Counsel  
Linda Brooke, Director of External Affairs  
and Communications  
Mary Wood, Director of Staff Services  
Rebecca Thomas, Director of Integrated  
State Operated Programs & Services  
Karin Hill, Director of Internal Audit  
Debbie Unruh, Chief Ombudsman  
James Smith, Associate Deputy Director,  
Continuum of Youth Services

#### **OTHER GUESTS PRESENT:**

Colleen Buck, Office of the Governor  
David Repp, LBB  
Candace Nolte, Office of the Lt. Governor

Teri Avery, Texas House of Representatives  
Patricia Michels, Texas Observer  
Michael Haggerty, Disability Rights Texas  
Lauren Rose, Texans Care for Children  
Becky Bailey, Texas Criminal Justice Coalition  
Mike Ward, Austin American-Statesman  
Benet Magnuson, Texas Criminal Justice Coalition  
Anna Lipton Galbraith, Texas Appleseed  
Ryan Bristow, Self  
Glen McKenzie, Self  
Terri Dollar, TJJD  
Nancy Slott, TJJD  
Rebecca Marquez, TJJD  
Efrain Resendez, TJJD  
Amy Lopez, TJJD  
Bill Monroe, TJJD  
Monique Robertson, TJJD  
Belinda Castillo, TJJD  
Lisa Capers, TJJD  
Nelda Lyons, TJJD  
Christi Mallette, TJJD  
Kaci Sohrt, TJJD  
Kevin DuBose, TJJD  
Kristen Perkins, TJJD  
Melanie Cleveland, TJJD  
Lori Robinson, TJJD

### **Call to Order**

Chairman Scott W. Fisher called the meeting to order at 9:00 a.m. and presented details for the hearing.

**The Texas Juvenile Justice Department (TJJD) is seeking public testimony (written or oral) concerning emergency rules passed by the TJJD board on June 22, 2012. The agency will receive input on Texas Administrative Code Title 37, Sections 380.9503 and 380.9535, relating to rules and consequences for residential facilities and the creation and operation of the Phoenix Program.**

An introduction to the rule changes was presented by James Smith, Associate Deputy Director, Continuum of Youth Services. The Phoenix Program is an evolution in the department's attempt to respond to aggressive behavior in agency facilities. Some present at the hearing have partnered with the agency on the Redirect Program, an initial step toward dealing with consistent misbehavior. Levels of aggression have increased as population densities in facilities have increased. TJJD's first response was to develop a robust sanctions policy that allowed the superintendents latitude to hold youth accountable for their aggression. TJJD also met with the Special Prosecution Unit (SPU) to review possibilities in regard to charges. Work has continued on accountability in terms of Level 2 hearings, the use of sanctions, and the use of behavior management systems.

A small number of youth were highly aggressive and assaultive towards staff and had committed some serious assaults on staff. The need to be able to address that behavior was part of the consideration for the implementation of the Phoenix Program.

The Phoenix Program is designed on evidence-based principles and models, such as Aggression Replacement Training® and the cognitive life skills model, to work with the youth in a controlled environment. Phoenix consists of a 24-bed unit at the Mart facility. Staffing is much more controlled and self-contained. Youth receive all services within the unit with the exception of medical services. There are two primary benefits to the program. For many of the youth, providing them with a smaller and more controlled environment will help them focus and will give them a chance to develop more positive peer relationships. There is a 1 to 4 ratio of staff to youth, which provides an increased amount of supervision in the unit as well. The program also provides the opportunity for youth to work on targeted skills and motivation for change. TJJD acknowledges these youth will still get into situations that will upset them; therefore the Phoenix Program was designed to teach youth the skills they need to regulate their behavior in appropriate ways.

There are currently seven youth in the program. Youth go through a due process hearing to be admitted into the program. Admission is based on eligibility, Level 2 hearings, and consideration of a youth's potential to cause further harm to youth and staff. There is oversight at the executive level at the Central Office prior to admission into the program.

Academics, individual counseling, case plan development, and medical and psychological services are all provided to youth in the program. Youth will have an opportunity to graduate through a three-level system once they have demonstrated the skills to keep themselves, their peers, and staff safe. Once they complete level three, the process for transition will begin and the youth will transition back to the regular facilities.

Chairman Fisher asked for questions from Board members, and there were none. Chairman Fisher opened up the hearing to those who had signed up to speak.

Chairman Fisher recognized Michael Haggerty, an attorney with Disability Rights Texas (DRT). DRT is the federally mandated protection and advocacy organization whose purpose is to protect and advocate for the legal human rights of people with disabilities and mental illness in the state of Texas. Mr. Haggerty thanked the Board for the opportunity to speak, and stated that DRT appreciates what is perceived to be renewed interest by TJJJ to engage and dialogue with advocates. After reviewing the emergency rules regarding the Phoenix and Redirect Programs, DRT has some issues with some of the language and policies contained therein.

The first issue is there is not a cap on the maximum number of days a youth may spend in either program. There was a cap on Redirect, but it was removed recently. From their experiences representing clients with disabilities in various types of institutions and specifically for children and youth, DRT has observed that many youth with disabilities and mental illness have tremendous difficulty navigating through level systems like those found in the Phoenix Program. The concern is a youth may enter the Phoenix Program and then have difficulty navigating the level system, and because there is no cap at which a youth placement would be critically reviewed, that youth may be stuck in Phoenix until he or she is old enough to be sent to adult facilities. DRT believes some of the criteria stated in the Phoenix rule regarding steps youth would be required to take in order to progress through the level system lacks some clarity and are subjective. Youth with disability and mental illness often have difficulty knowing what is expected of them, and for these youth in particular it is very important that they have a clear idea of what they need to do in order to progress through levels.

The Phoenix Program presents youth with a double-level system; the TJJJ level system and the Phoenix Program level system on top of that. After they get out of Phoenix, they go back to stage one of the TJJJ general level system. For these reasons, DRT is asking the Board to consider placing a cap on the number of days youth can spend in Redirect or Phoenix. DRT also encouraged the agency to more clearly describe to youth the steps they need to take and the expectations for their behavior. This could be a function of either redrafting the rule or perhaps communicating it differently.

DRT also encouraged the department to reconsider the policy of automatically reverting youth back to stage one in the general system upon completion of the Phoenix Program. If a youth is successful in the Phoenix Program,

it seems counterproductive to send them back to stage one in the general system, where they would have to start all over again in an environment that often leads to backsliding. DRT recommends when youth graduate from the Phoenix Program, they are able to start back in the TJJD level system at the same level they had achieved when they went into the Phoenix Program.

The second concern was regarding a provision in the Phoenix rule exempting certain youth with mental illness and disability when their diagnosis contraindicates their placement. The Phoenix rule doesn't contain a clear explanation for how that decision will be made by the manager of institutional clinical services. DRT believes the Phoenix rule should track the language contained in the General Administrative Policy (GAP), formerly 8751 and is now 380-8751; i.e., the rule concerning special-needs offenders. If there is no reference or explanation as to how that contraindicating decision is made, youth who are placed in the Phoenix Program have no opportunity to meaningfully contest that determination, and the ability to challenge that decision is important for those youth who have tremendous difficulty navigating through a level system. Tracking the language of the GAP policy or directly referencing it in the rule will provide much needed clarity and transparency to that process.

The next issue concerned the length of school day as written in the Phoenix rule. The Texas Education Code requires TJJD secure facilities to provide a seven-hour school day at minimum. The Phoenix rule provides only for six hours of educational programming. While the education code does include "intermissions and recesses" as part of the seven-hour school day, and the Phoenix Program's six hours of education programming and one hour of lunch does probably comply with the code, DRT sees no reason why the TJJD policy shouldn't be brought into conformity with the letter of the Texas Education Code for clarity.

Concerning Redirect, DRT has significant concerns regarding the reduction in the number of counseling minutes provided to youth in Redirect. The new rule for Redirect reduces the amount of mental health counseling from 210 per week, or 30 minutes per day with a case worker, to 30 minutes per week plus daily visits with a case worker. DRT has significant concerns about reducing the amount of counseling with a case worker by 85%. The youth's placement in Redirect speaks to their substantial need for counseling, and Redirect is the program where services are intended to be more intensive. DRT sees it as counterproductive to cut counseling hours for that program. If it is a staffing issue, DRT encourages TJJD to hire more staff to accommodate the high-needs population.

Mr. Haggerty encouraged the department to bring in independent experts to assess, review, diagnose and ultimately fix any systemic and programmatic issues with the TJJD facilities. He feels the changes to the Redirect Program and the implementation of the Phoenix Program could work, but bringing in experts would enable the

department to address the immediate security concerns, address security concerns moving forward, and help the department achieve positive outcomes for youth under its care. Mr. Haggerty concluded his remarks.

Chairman Fisher recognized Benet Magnuson with the Texas Criminal Justice Coalition (TCJC). Mr. Magnuson thanked the Board for the opportunity to provide comments on the Phoenix Program, and for their general availability to the concerns of advocates. TCJC has been working with the agency on a range of systemic and programmatic challenges in the state facilities, and they appreciate the agency's willingness to work with them on these.

Mr. Magnuson addressed five specific parts of the Phoenix rule. The first is in subsection B-2, part of the applicability criteria. The subsection states that youth with a determinate sentence who have been approved by the final TJJD authority for court hearing to transfer the youth to the institutions division of the Texas Department of Criminal Justice are not eligible for the Phoenix Program. TCJC understands from speaking with TJJD leadership that currently many of the youth who are being transferred to the adult prison system are not being considered for the Phoenix Program, which has resulted in a level of transfers to the adult system three and a half times higher than in previous years. The youth are taken out of the juvenile justice system, which emphasizes rehabilitation and has special expertise in the needs and risks of juveniles, and are placed in adult facilities and prisons, which do not operate around the same mandate for rehabilitation. The concerns around this subsection are that it needs to be clarified to indicate that until the final decision is made to transfer them, youth are eligible for the Phoenix Program and all rules apply to them.

The second concern was regarding subsection F-2, a counterproductive exception to the eligibility requirements. All of the other eligibility requirements require the youth to have committed an assault that results in serious bodily injury, repetitive assaults that cause bodily injury, or the chunking of bodily fluids. The exception is F-2, which says that a youth who engages in any other major rule violation when the totality of circumstances justifies the placement and the placement is directed by the executive director or designee, a youth may be placed in the Phoenix Program. This is too broad and too vague. The risk is that a youth who comes into the Phoenix Program under that exception may have serious challenges and problems, but these problems will be of a different kind and have a different risk level than the other youth in the program. The treatment and programming therefore will not be designed for that youth and, more dangerously, that youth will be mixed in with youth with high assaultive risk behavior. Research shows that this increases the risk level for those lower-risk offenders and can pose significant rehabilitation challenges.

The third concern was subsection H-1, which discusses the admissions process and the decision to admit a youth into the program. H-1 specifically discusses the decision-making process and calls for a Level 2 due process hearing. Up to this point, while the department has conducted many assessments of youth, there needs to be a

specific validated assessment of that youth's risk for violent behavior, not just a general risk for recidivism or some of the other risks that the assessment tools currently in place evaluate. There are instruments like this that have been validated, such as the structured assessment of violent risk in youth (SAVRY). Other states use this assessment with similar programs. This would allow the agency to conduct an assessment before the Level 2 hearing and therefore have specific information regarding the youth's risk for violent behavior. Level 2 hearings are an important opportunity for attorneys to advocate for youth and it's important that they have all information possible specifically about the violent risks that the youth poses, not just a general risk for recidivism.

The fourth concern was subsection M-2, which is the reentry and graduation provision. The recommendation was for expanding this considerably. Mr. Magnuson echoed the concerns stated by DRT, that many of the youth involved, especially if they have disabilities, have a lot of challenges in moving through a level system. The reentry provision calls for youth to basically start over and go back to level one of the program, and this is a concern for several reasons. The first is that over the past couple of years, many reports have identified programmatic and systematic challenges in these facilities that are leading in many cases to assaultive behavior.

If youth that have made progress in the Phoenix Program are put back into a campus that has had problems, it poses a high risk that the youth will lose all progress that they made. Additionally, the length of stay in facilities right now is averaging 16 months, and research shows that this length of stay is not effective. Mr. Magnuson stated that they'd heard from staff that they were expecting the average assaultive youth to spend up to six months in the Phoenix Program, which means if you add that to an average length of stay of 16 months, this rises to almost 2 years on average, which goes against all the research. Therefore TCJC recommends amending that subsection to clarify that the reentry plan will consider a full range of appropriate placements for the youth, not only Redirect but also specialized programming on TJJD campuses, halfway houses, and parole if appropriate, and that at the same time the youth would not necessarily have to start over in the CoNEXTions program if they've made progress in the Phoenix Program.

The final concern was subsection P-3, which calls for an intervention from the Central Office if the youth has spent 120 days on any one level. According to information from TJJD leaders, they expect the average youth to spend up to six months in the Phoenix Program. If the agency waits until 120 days, there is potential for youth to spend twice the time in one level before review. TCJC recommends cutting this time in half, with a review after 60 days.

Mr. Magnuson expressed appreciation for the agency's willingness to engage on these topics and to produce regular public reports on a range of issues, including time spent in seclusion, the amount of time youth have

spent on each level of the program, what happens to the youth afterwards, and whether the program has reduced assaultive behavior and what impact the program has had. These kinds of annual public reports are greatly appreciated. Mr. Magnuson concluded his remarks.

Chairman Fisher recognized Lauren Rose with Texans Care for Children (TCC). Ms. Rose expressed appreciation for the Board's acceptance of their request for a hearing on the rule changes. Ms. Rose further thanked Board members who have met with advocates to discuss this issue and others with TCC.

The first concern TCC had regarding the Phoenix Program was tiered visitation time with parents. Parent involvement is extremely important in a youth's rehabilitation, and the half hour given to youth in the first tier doesn't seem like enough, particularly when a youth most likely has been moved to a new facility, potentially further away from their family. Ms. Rose recognized that giving youth incentives to progress through the tiers is important, but she feels there should be more encouragement of parental involvement while youth are in the program.

She reiterated concerns that DRT shared about the school day, expressing the need for the school day to meet Texas Education Code requirements and ensure that there is a structured day in place for the youth.

A further concern, stated previously by Mr. Magnuson, was to make sure youth currently being considered for transfer to the adult system have the opportunity to go through the Phoenix Program first. Right now is the time to look at what's causing the assaultive behaviors, as opposed to moving youth out of the system and into the adult system.

Ms. Rose stated a final concern that the Phoenix Program may be seen as a fix to the current crisis in facilities, when in reality it is a Band-Aid measure. Ms. Rose requested that the Board not think of this rule as having fixed the problem of assaultive behavior. There is a need to look at systemic problems across the agency as well as the cultural problems in facilities that are causing youth to escalate their violent behavior. Ms. Rose concluded her remarks.

Upon completion of the public comments, Chairman Fisher thanked those present for their participation. He expressed appreciation on behalf of the Board for input provided; it will be taken under advisement.

### **Adjourn**

Chairman Fisher adjourned the meeting at 9:43 a.m.