



*Office of the Independent Ombudsman
for the Texas Youth Commission*

Quarterly Report Office of the Independent Ombudsman for the Texas Youth Commission September through December 2008

I. Introduction

This report is the First Quarterly Report of FY 2009 to be submitted by this office under statute and is intended for the Executive Commissioner of the Texas Youth Commission, the Governor, Lt. Governor, Speaker of the House, members of the Texas Legislature, and the Auditor for the State of Texas. This report will serve to provide a description of the activities of the office during the first quarter of FY 09 spanning September to December 2008, and will address the following areas as specified by Senate Bill 103 (SB103):

- the general scope of work of the Office of the Independent Ombudsman (OIO);
- trends observed as the result of reviews and investigations of facilities and contract care programs that have been undertaken by this office;
- recommendations to improve the efficiency of the operations of the Texas Youth Commission and the OIO.

II. Overview of the Work of the Office of the Independent Ombudsman

Accounting of Site Visits, Youth Contact and Individual Cases

Site Visits	Youth Contacts	Resolved Cases	Pending Cases
31	540	163	22

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OIO Staff Training

OIO staff have participated in the following trainings:

- Behind Closed Doors: Preventing, Responding to, Investigating and Prosecuting Sexual Abuse in Juvenile Justice Facilities, Texas Juvenile Probation Commission
- Strengthening Youth and Families: Ideas, Tools and Practices for Success
- CoNEXTions Overview, TYC

Working Groups

Alleged Mistreatment Incident:

In response to a report issued by the OIO last quarter, the TYC formed a working group to overhaul the AMI system. A new policy and procedure that will transform and greatly enhance the AMI system is pending approval by the Executive Commissioner.

Cultural Diversity Training:

The Chief Ombudsman provided comments on a new TYC training module on cultural diversity. He also solicited the input of advocacy groups including the Texas Criminal Justice Coalition and the Texas NAACP.

Prison Rape Elimination Act Policy:

Assistant Ombudsman Kim Bennink provided extensive commentary on TYC's proposed PREA policy.

Public Education

The Chief Ombudsman made a presentation at the following public forums:

- Teacher Educators for Children with Behavioral Disorders Conference, Arizona State University, Tempe, Arizona
- Behind the Cycle, Open Society Institute, Washington, DC
- Children' Law Symposium, Children at Risk, Thurgood Marshall School of Law, South Texas School of Law, and the Houston Bar Association, Houston, TX
- Cradle to Prison Pipeline Follow-Up Forum (Keynote), Children's Defense Fund, Houston, TX

In an effort to generate greater transparency and community collaboration, the OIO has provided a bridge between advocacy groups and the Texas Youth Commission leadership. The OIO has offered its third and fourth meeting of its Advocacy Community Briefing Series. On December 1, 2008, the OIO convened a meeting of over a dozen advocacy groups to dialogue with Executive Commissioner Cherie Townsend. On January 9, 2009, the OIO convened a

briefing in which TYC representatives provided an overview of the CoNEXTions program. Future briefings will include the following topics:

- Behavior Modification Program and Use of Force Reform
- Release Review Panel Procedure
- Gender Specific Programming

III. Trends Observed as a Result of Site Visits and Research Conducted by the Office of the Independent Ombudsman

SB 103's Impact on Adult Certifications of Youth:

At the behest of Senator Juan Hinojosa, the OIO, with the assistance of OIO Graduate Researcher Rex Baker IV (UT School of Law), has completed an exhaustive analysis of an alarming trend regarding adult certifications of youth, which we believe is attributable to SB 103's provision lowering the age of TYC youth from 21 to 19. Texas juvenile courts certified 30.9% more children to stand trial as adults in fiscal year 2008 than in the year before, despite the fact that referrals went down about 11%. This memo built upon a memo prepared last spring by OIO Graduate Researcher Terry Schuster (UT School of Law) which critiques the TDCJ Youthful Offender Program.

Suicide Alert:

The OIO has raised concerns regarding the TYC process of handling youth self-harm and suicidal ideation. We have submitted a memorandum prepared with the assistance of OIO Graduate Researcher Amanda Barstow (UT LBJ School of Public Affairs) to the agency for its consideration.

Gang Prevention and Intervention:

During confidential interviews, several TYC youth have expressed their belief that approximately 40% of youth enter the TYC with some level of gang affiliation, yet possibly greater than 80% leave with gang affiliation. OIO Youth Ombudsmen wrote a memo on this topic which was forwarded to the agency. We have also provided a memo developed with the assistance of OIO Graduate Researcher Elsa Falkenburger (UT LBJ School of Public Affairs) on the topic and have provided recommendations to the agency.

Religious Freedom:

The TYC has an excellent volunteer program. Many volunteers are affiliated with religious institutions and faith based organizations who provide very holistic and rehabilitative programming for TYC youth. However, the vast majority of those services are designed for Christian youth and not minority faiths. With the assistance of OIO Graduate Researcher Olubunmi Oyewuwo (UT School of Social Work), we have provided the agency with a memo on this topic with recommendations on how to diversify options made available to youth. The OIO

has also initiated a dialogue with the NAACP and the TYC volunteer program coordinator to explore the possibility of the NAACP creating a mentor program.

1550 Mental Illness Discharge:

The OIO has grave concerns regarding the statutory requirement that a youth serve a minimum length of confinement before she or he is eligible for a mental illness discharge. We are currently developing a multi-media presentation for interested legislators to inform them of this problem. That presentation should be finalized in the next few weeks. OIO Graduate Researcher Jen Steenbergen (UT School of Social Work) has developed a research paper regarding the use of isolation with mentally ill youth in TYC.

Education:

Last quarter, with the assistance of OIO Expert Consultant Dr. Michael Krezmien, the OIO issued a report raising serious concerns regarding the educational services provided by the TYC. In response, the agency developed a magnificent corrective action plan. We continue to monitor the plan's implementation, and we are pleased with the agency's responsiveness and commitment to enhance educational services.

The OIO has serious concerns regarding barriers facing youth who attempt to re-enter public schools upon their release from TYC, and we applaud the interim study recommendations issued by the Senate Criminal Justice Committee in this regard. OIO Expert Consultant Courtney Robinson is currently conducting and evaluating obstacles these youth face and is developing recommendations.

Specialized Treatment Services, Assessment and Classification Process, and Youth Placement:

Upon the recommendation of House Corrections Committee Chairman and Joint Select Committee Co-Chairman Jerry Madden, OIO staff have spent considerable time this quarter evaluating this aspect of TYC operations in close collaboration with TYC staff. Our report is forthcoming.

Upon the request of the Office of State Representative Sylvester Turner, the OIO conducted an evaluation of systemic issues which may have contributed to a series of incidents of sexual assault at the Mart I Orientation and Assessment Unit. We submitted the evaluation to TYC on January 9, 2009.

IV. Recommendations to Improve the Effectiveness of TYC and the OIO

The Sunset Commission staff report stimulated the process of formalization and refining OIO-TYC inter-agency communication and collaboration. It is important to acknowledge that the OIO has been satisfied with the responsiveness of TYC in most cases, especially since January of this year.

It is also important to note that Executive Commissioner Cherie Townsend has insured an unprecedented level of open collaboration between TYC and the OIO and has already begun to incorporate OIO observations into upper management considerations. She has invited the Chief Ombudsman to address the Executive Management Team twice a month. Deputy Commissioner James Smith has extended a standing invitation to the Chief Ombudsman to attend monthly superintendent meetings. Ms. Townsend has met with the full OIO staff to hear their concerns and to discuss enhanced collaboration, and she meets in-person with the Chief Ombudsman every two weeks and whenever otherwise necessary. During the first standing meeting between Ms. Townsend and Mr. Harrell, which predated the Sunset staff report, she raised the same issues identified in that report and committed to formalizing and enhancing inter-agency communication and collaboration. Finally, Ms. Townsend has designated a TYC staff person to provide administrative assistance to the OIO and act as the formal repository of all OIO site visit reports, special reports, and individual cases and track TYC responses on a part-time basis.

The OIO plans to evaluate our work and then formalize interagency relations and communication was proposed in January of this year by the OIO and Ms. Townsend has endorsed the plan and triggered its implementation. We have engaged an external expert, Professor Michele Deitch, to assist with the evaluation of the work of the OIO and develop a formalized process. Professor Deitch is highly qualified to assist in this endeavor and brings a fresh and neutral perspective to the task.

Professor Deitch is an attorney, and teaches courses in criminal justice policy, prisons and human rights, and juvenile justice policy as an adjunct professor at the University of Texas--Lyndon B. Johnson School of Public Affairs and the University of Texas School of Law. Her primary areas of expertise are in the independent oversight of correctional institutions and the rights of prisoners. As a Soros Senior Justice Fellow, she spent a year conducting extensive research on domestic and international independent prison oversight entities. In 2006, she organized a major international conference that drew together more than 100 of the world's leading experts on the oversight issue. The conference was entitled "Opening Up a Closed World: What Constitutes Effective Prison Oversight?", and she was honored with a Resolution by the Texas Legislature for her work on this conference. Professor Deitch is currently preparing a sourcebook about correctional oversight. She has also provided featured testimony on the oversight issue before the National Prison Rape Elimination Commission and the Commission on Safety and Abuse in America's Prisons, and was instrumental in helping the American Bar Association Task Force develop its recent recommendations and report about correctional oversight. Additionally, from 2004 to 2007, Professor Deitch served as the draftsman of the American Bar Association's proposed standards on the legal rights of prisoners.

Last year, Professor Deitch was appointed to serve on the TYC Blue Ribbon Task Force, which issued a report with numerous recommendations for improving TYC operations.

Since the inception of both offices, the OIO and the TYC Office of the Inspector General have fostered a positive relationship and continued collaboration. In keeping with the Sunset Commissions recommendations, the Chief Ombudsman and the Inspector General meet bi-weekly and exchange information on a regular basis.

V. Conclusion

Undoubtedly when the Texas Legislature convenes for its 81st Regular Session, the leading topic for discussion concerning the Texas Youth Commission will be the Sunset Commission staff recommendations. While we embrace the report and concur with most of the observations, the OIO cannot support the recommendation that TYC and the Texas Juvenile Probation Commission be abolished and a new agency be formed, combining the functions of the abolished agencies.

There can be no one more frustrated with the pace of TYC reform than the OIO. We struggle in pursuit of reform and full implementation of SB 103 each and every day. While the reforms have been slow, it is our opinion that reform is decidedly afoot in many ways. We also believe there could hardly be anyone more capable than Cherie Townsend to lead the transformation of TYC, if she is given the chance and is provided the support she needs from the legislature, TYC staff and the community.

The radical reformation of an agency cannot be achieved in an instant. It is a process and we believe that process would be obstructed by the implementation of this particular Sunset Commission staff recommendation. That is not in the best interest of children currently in the custody of TYC, nor those who will follow during the next three years. We could support a reevaluation of the proposition in four years.