

External Oversight for the Texas Youth Commission: A Legislative Response to a Closed Agency Crisis

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I. Introduction

It is an honor to appear before the National Prison Rape Elimination Commission and provide testimony regarding external oversight of youth confinement facilities in Texas. Though I have only been the Chief Ombudsman for the Texas Youth Commission for five months, I have monitored prisons and juvenile facilities as a lawyer and advocate in several states and countries for more than 15 years. While there are certain limitations, the position I now hold has made my efforts to defend the rights and dignity of incarcerated people far more effective than any other position I have held before. The combination of external oversight mechanisms established by Texas SB 103, described below, will go a long way towards shining light into a previously closed system.

II. Background

The Texas Youth Commission became the subject of legislative scrutiny after a riot in the Evins Regional Juvenile Justice Center in South Texas. A Senate committee and two House committees had begun reviewing the agency during the summer of 2006. The Department of Justice also launched an investigation of the Evins facility that summer and ultimately wrote a highly critical findings letter this spring. The DOJ continues to monitor that facility.

Prior to the 80th Regular Session of the Texas Legislature, SB 103 was filed. Early in the session, the reform bill had gathered political momentum, but when revelations of a scandal involving sexual exploitation of youth in a West Texas facility hit newsstands all over the state, the Texas Legislature took to its feet. Dozens of reform bills were filed almost at once, the TYC Board of Directors and many of its executive staff resigned under pressure from the legislature, the Joint Select Committee on the Operations and Management of the Texas Youth Commission was formed in the House and Senate, and the Governor placed the agency under conservatorship, a rare occurrence in Texas. During this period, Harris County appointed a monitor for youth sent from that county to

TYC and Travis County announced that it would cease sending youth to TYC for foreseeable future.¹

Ultimately most of those bills were folded into SB 103 making it omnibus legislation. SB 103 addressed many aspects of TYC structure and juvenile justice policy in Texas. It addressed the structure of the agency, providing for an Executive Commissioner rather than a Board/Executive Director form of governance. It addressed the number of youth confined by TYC, prohibiting the incarceration of misdemeanants and youth over 19 years of age. SB 103 required greater training for staff as well as a mandate that staff be at least three years older than the youth they care for. SB 103 also requires a staffing ratio of 12 youth to 1 staff, rather than the previously common ratios of 18:1 and 24:1.

SB 103 mandates a centralized review panel that makes the final determination for extensions of length of stay. It requires enhanced rehabilitation services, emphasizing re-entry and parental involvement in treatment. Towards that end, the bill requires that a youth's place of origin be a heavily weighted factor in determining long-term placement of the youth.

The Texas Sunset Commission is instructed by SB 103 to evaluate regionalization of Texas facilities and make recommendations prior to the 81st Regular Session.

The omnibus legislation also substantially addressed oversight that heretofore had been woefully absent in the agency. That component of the bill is the focus of this testimony.

SB 103 passed both houses unanimously and was signed by the Governor on June 8, 2007 taking immediate effect. It was truly a bipartisan effort lead by Senator Juan Hinojosa, a progressive Democrat and Chairman Jerry Madden, a conservative Republican.

III. Oversight for the Texas Youth Commission

A. Office of the Independent Ombudsman

SB 103 created the Office of the Independent Ombudsman (OIO). By statute, the office is independent of TYC and must be separately appropriated. In reality, the veil of separation is thin. As a result of the limited financial resources appropriated to it and legislative decision to allocate its funding via a line item in TYC's budget, the OIO relies on TYC for all administrative infrastructure, including office space, equipment and Human Resource functions. In order to be effective, the OIO must maintain a very close collaborative relationship with the agency and its staff at all levels.

¹ The Harris County Monitor for the Texas Youth Commission collaborates closely with the OIO for TYC. She regularly visits TYC facilities and interviews Harris County youth to assure their rights are being respected. Recently, Fort Bend County appointed a monitor and it is likely other counties will follow.

The Chief Ombudsman is appointed by the Governor and confirmed by the Senate and can serve no more than three two year terms. The OIO will consist of 5 FTE's for the first biennium.

The following is a summary of provisions of SB 103 which relate to the OIO:

OIO Statutory Role:

The OIO is established for the purpose of “investigating, evaluating, and securing the rights of the children committed to the commission, including a child released under supervision before final discharge” according to SB 103.

OIO Statutory Duties:

- Report quarterly to the Governor, Lt. Governor, state auditor and all members of the legislature (aggregated and disaggregated by facility) regarding the work of the OIO and recommendations regarding the duties of the OIO as well as the result of any review or investigation, including reviews or investigations of services contracted by TYC.
- Immediately report matters of “particularly serious or flagrant” abuse or injury, problems concerning the administration of a TYC program or operation, problem concerning delivery of services, or the interference by TYC with OIO investigation
- Promote awareness of office to the public and children in TYC
- Review procedures and evaluate delivery of services
- Review complaints if it appears the child needs assistance from the OIO
- Conduct investigation if the child is in need of OIO or there is a systemic issue
- Review or inspect periodically facilities and procedures of facilities
- Provide assistance to a child or parent if a need is determined
- Review court orders as necessary to fulfill duties
- Recommend changes in procedure related to treatment of children
- Make referrals under and duties and powers listed
- Chief Ombudsman may hire and shall supervise assistants serving as advocates in administrative and disciplinary hearings
- Apprise persons interested in child welfare of the rights of the child
- Attend annual sessions, including JCO training, and may participate in appropriate professional training
- Share with the Inspector General information or communication with a child that may indicate abuse or neglect

OIO Statutory Powers and Limitations:

- OIO may contact or consult with any individual including experts
- The OIO shall have access to:
 - Records related to kids in TYC
 - Juvenile Justice Information System (maintained by the Texas Department of Public Safety)
 - Local law enforcement records

- Private entity information regarding kids
- OIO shall keep information and names confidential notwithstanding certain exceptions
- The OIO *may not* investigate criminal behavior

B. Office of the Inspector General

The legislation creates an Inspector General’s office to investigate fraud by TYC employees and crimes committed at TYC institutions or contract facilities.

C. Special Prosecutors Unit

The jurisdiction of the Texas Department of Criminal Justice Special Prosecutor Unit was expanded by SB 103 to allow for the prosecution of crimes committed at TYC institutions and contract facilities.

D. Access for Advocacy Groups

SB 103 instructs TYC to create a policy which will facilitate access to TYC youth by advocacy organizations that are dedicated to child welfare.

E. Parents’ Bill of Rights

The bill also requires the agency to create a Parents’ Bill of Rights which ensures access of parents to all aspects of their child’s treatment.

IV. Office of the Independent Ombudsman in Practice

I was appointed by the Governor’s TYC Conservator to be the Chief Ombudsman in May of 2007. However, the budget for the office did not become available until September of 2007. Presently, all OIO staff have been selected and one has begun work in the office. As the Chief Ombudsman, I have been to all TYC secure facilities and halfway houses at least once, as well as many contract care programs. I have also interviewed kids on TYC parole.

While the OIO seeks to address systemic problems with TYC service delivery, the office has resolved dozens of individual complaints. Some concerns can be resolved by facility administrators. Others require advocacy at the highest levels of the agency. As Chief Ombudsman, I meet regularly with the Acting Director of the Texas Youth Commission to apprise her of my concerns and recommend solutions. I also participate on several agency policy review working groups².

² Working group topics include gender parity, use of force, use of security and isolation, Release Review Panel, grievance system reform, parole reform, Parents’ Bill of Rights, advocacy group access, volunteer program policy reform, re-entry initiatives, youth discipline, youth representation in administrative and disciplinary processes, sex offender registration, and mentoring programs.

Parents of incarcerated youth frequently communicate their concerns to the OIO, as do advocacy groups. Employees from the field and Central Office also regularly communicate concerns to the OIO. They may do so confidentially and are protected by statute from retaliation. The OIO collaborates closely with the Governor's office and responds to legislative inquiries with great regularity.

To date, the OIO has referred over a dozen cases to the Inspector General's office for potential criminal investigation and shares all site visit reports with that office. The OIO is developing collaborations with other internal departments of the agency including the Youth Rights Division³. We are in the process of proposing a Youth Ombudsman Pilot Program at Giddings State School which will involve having two youth providing "know your rights" training on campus and reporting information to the OIO as well as information from the OIO to the student council at that campus. I hope to also initiate a program next year based on the Juvenile Detention Alternatives Initiative model that will involve TYC volunteers, university graduate students and staff participating in "Facility Self-Assessments".

An important component of the legislation creating the OIO, especially considering the limited OIO biennial budget of \$600,000, is the provision authorizing the OIO to consult with outside individuals, advocacy groups, and experts. The OIO is forging relationships to that end with academic institutions and relies heavily on graduate student interns. Local and national advocacy groups have provided invaluable support for the OIO, particularly the Texas Criminal Justice Coalition's Juvenile Justice Initiative, Texas Families of Incarcerated Youth, and the Center for Children's Law and Policy in Washington, DC.

The following are five examples of how the OIO functions:

Example 1: I was undertaking a site visit at Victory Field Correctional Academy when I walked into a dorm and noticed a toxic smell strong enough to make me gasp. Two kids were stripping the wax floor using a solution without mask or gloves and there was no ventilation. After reading the canister, I informed the JCO on duty that I didn't believe the kids should be using that chemical at all, much less without protective gear and proper ventilation. He terminated the task. I confiscated the canister and brought it to the Director of Residential Services Stan DeGerolami in the central office and explained what I observed. He studied the bottle and called the purchaser at another TYC facility, (Giddings State School), to inquire about what they use. He was informed that the cleaning solution I had found was about 10 times the level of toxicity as the one used at Giddings. Within minutes, Mr. DeGerolami instructed the head of purchasing to send a directive to purchasers at all TYC facilities instructing them that if they had this particular solution to immediately destroy it and to no longer purchase one at that level of toxicity.

³ The appropriations legislation created a number of TYC internal monitoring elements. It funded an expanded Youth Rights Division, 17 medical service monitors, over a dozen employees for the Inspector General's staff, as well as family liaisons.

Example 2: I was inspecting the security unit at the Marlin Intake Unit. Staff were playing classical music so loudly over a PA system I could barely even have a conversation. I questioned the practice, especially considering there were youth on suicide alert on the unit, and was told it was meant to calm the youth. I informed Mr. DeGerolami, Director of Residential Services of this practice and he discontinued the practice. Apparently playing classical music had been a practice that began years ago to calm youth. But in actuality, unit staff were using loud music to persuade kids to be quiet or to drown out their noise when they weren't.

Example 3: I met a few kids on a Behavior Management Program (BMP) (long-term isolation) who complained they should not be on the program at all, they had not received a due process hearing, they had not been seen by a case worker, and/or they had not been provided outdoor exercise or education regularly. At about the same time, Central Office staff had confidentially communicated to me their concerns over an increased emphasis on security and isolation throughout the agency. I also became aware of an unusually high number of youth being transferred from their campus to the McClennan County Juvenile Justice Center onto a BMP. I began to focus my investigations on this issue by reviewing files at various facilities, speaking to youth on security units, as well as local and central office staff, and reviewing internal data. I drafted a memo articulating my observations and concerns and met with the Acting Director of TYC Dimitria Pope to discuss this trend. She agreed to dispatch an audit team by December 15 to study and address the situation.

Example 4: A youth was involved in several physical alterations at the Al Price State Juvenile Correctional Facility. He was transferred as a result to Victory Field Academy. His mother contacted the OIO to explain that given her limited income and her mother's health, it would be impossible for them to maintain regular visitation with her son at his new location because it would require a nine hour drive one way. The youth's mother and grandmother had visited him almost every weekend, often bringing the youth's infant daughter while that youth lived only an hour away from his home. I contacted the Director of Residential Services to plead their case. The youth was moved to a facility closer to home on the condition that he agree to modify his behavior. To my knowledge, the youth has not been in serious trouble since.

Example 5: During a routine facility site visit, I toured the Coke County Juvenile Justice Center, a private facility run by GEO Group. It was without rival the worst juvenile facility I have seen in the state and I reported my concerns to the TYC Director of Residential Services. Almost simultaneously the Deputy Director of Residential Services and the Youth Rights Division had begun investigations of the facility and all concurred that the facility and its management were inadequate on many levels. TYC Acting Director dispatched a special audit team which corroborated the information gathered by OIO and TYC officials and within days of receiving reports and visiting the facility herself, discontinued the contract and transferred 197 youth to a TYC run facility.

V. Conclusion: Efficacy of New Oversight Mechanisms

It is too early to truly measure the efficacy of the new TYC oversight mechanisms created by SB 103. The OIO is still in the experimental stage, and no clear consensus has emerged on the role and function of the OIO among elected officials or within TYC. While some believe the OIO should merely address individual youth complaints, others believe the OIO should focus on trends and seek to impact agency policies and procedures. Currently, the OIO attempts to do both.

To be sure, regardless of structure, any Ombudsman is only as good as the leadership of the agency he/she monitors. An Ombudsman will be successful to the extent that the agency leadership is receptive and collaborative rather than defensive and dismissive.

The Texas Youth Commission has operated in the shadows for decades and as a result, a culture of transparency will take time to cultivate. While a level distrust and skepticism linger, the mere existence of these oversight mechanisms has bolstered the confidence that the Legislature, the advocacy community, parents of incarcerated youth, and the general public has in the TYC.