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INTERIM TESTIMONY 2014

House Committee on Corrections

Charge #1: Study and review the correctional facilities and processes within Texas Juvenile Justice Department

Dear Members of the Committees,

My name is Jennifer Carreon and with me is my colleague, Elizabeth Henneke. Together, we make up the Solutions for Youth Justice Team with the Texas Criminal Justice Coalition (TCJC). Thank you for allowing us this opportunity to present public comments on the operations and efficiency of the Texas Juvenile Justice Department (TJJD).

TCJC has been closely monitoring the juvenile justice system in Texas for years, and we support the overall purpose and goals of TJJD,¹ as well as the direction that current juvenile justice reform is heading. For the past seven years, Texas' juvenile justice system has undergone major reform. State run facilities have been shut down,² a significant number of youth have been diverted from long term commitment and are now being served within their communities,³ and various measures have been put in place to ensure the safety and security of not only youth, but staff as well.⁴ Though it has been a bumpy road, these developments demonstrate that Texas' juvenile justice system as a whole has come a long way. It is important to note however, that significant hurdles remain that must be overcome.

THE BUMPY ROAD TO BECOMING A UNIFIED DEPARTMENT

OVERCOMING THE STIGMA OF THE FORMER TEXAS YOUTH COMMISSION

From its inception, the Texas Juvenile Justice Department (TJJD) has struggled to operate as a single entity. Despite the abolishment and consolidation of its two preceding agencies – the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) – practitioners within the Department continue to draw a line between counties and the “state side.” In fact, it is not uncommon to hear local practitioners refer to the commitment of a youth as “a commitment to TJJD,” as if they themselves fall under a different entity. While we recognize the importance of acknowledging how operations differ at the local and state levels, we believe that all professionals under TJJD's umbrella must internalize a sense of belonging to a single entity. This perspective is crucial in operating as a single Department working to meet the same goals.

This reluctance among counties is undeniably fueled by the stigma that the *State Programs and Facilities Division* (formerly TYC) cannot seem to shake. Since 2007, the operations of juvenile state secure facilities have been under a microscope, and rightfully so.⁵ However, we strongly recommend that the focus of that microscope be readjusted. While the continued violent outbursts among youth in these facilities definitely warrants concern, we can assure you that the issues faced by the *State Programs and Facilities Division* are much more complex than the system “just not working.”

In fact, in a recent review of youth violence within these facilities, monitors identified several systematic elements of concern that should be addressed in order to improve the operations of this division.⁶ Proper design of facilities, staffing practices, classification, structured daily operations for youth, and positive behavioral interventions to address discipline, are among those elements.⁷ Without fixing these underlying issues, the

State Programs and Facilities Division will continue to struggle, counties will remain hesitant to come under the umbrella that houses the former TYC, and unified department will never be achieved.

THE INABILITY TO OBTAIN STABILITY

Since its inception in December 2011, the TJJ Board has appointed three executive directors and handful of interim directors to get from one E.D. to the next. Other leadership positions have also experienced turnover (e.g., director of state services, chief of staff, chief financial officer, general counsel and research director). This inability to obtain stability can be attributed to a multitude of factors, the most obvious of which are overcoming the stigma associated with the former TYC and the legislative pressures to deliver a quick fix, as discussed above. If stability continues to be an issue for the agency, it will have a very difficult time in achieving the purpose and goals that the legislature has laid before them.

TURNING THE VISION FOR TEXAS' JUVENILE JUSTICE SYSTEM INTO REALITY

The legislative vision for Texas' juvenile justice system is to achieve successful outcomes for youth through a cohesive, comprehensive, front-end agency that keeps kids close to home and in their communities. Though the most recent legislative changes (e.g., prohibiting the commitment of misdemeanor youth to state secure facilities and the appropriation of commitment diversion funds to counties) reflect movement towards this vision, there are critical pieces for ensuring accountability and efficiency that continue to go ignored. In order to reach this goal, policymakers are going to have to continue to work *with* the Department and continue to provide both moral and directed financial support.

MEASURING THE OVERALL SUCCESS OF THE JUVENILE JUSTICE SYSTEM

A significant barrier to TJJ achieving success is the State's inability to set adequate performance measures that can be used to evaluate the system as a whole. Although recidivism is an important and historical measure in juvenile justice, it alone cannot be used as the sole measure of the system's success. For years, researchers have cautioned policy-makers against measuring system performance chiefly on recidivism because it "miss[es] important measures of the system's day-to-day performance, obscuring the role that citizens can and should play in promoting secure communities."⁸

For this reason, **TCJC strongly recommends that the legislature restructure the current performance measures being used to determine system effectiveness.** In creating these measures, we ask that the following elements be kept in mind:⁹

- Outcome measures must be mission based.
- The juvenile court experience can be measured.
- Intermediate outcomes are valuable.
- Measure outcomes at time of case closing.
- Use outcome data early, often, and in multiple ways.

Unless these measures are reconstructed, the legislature will continue to allocate funds to an agency that may or may not be achieving the goals it has been asked to accomplish.

ENHANCE SAFETY, SECURITY, AND TRAINING IN STATE FACILITIES

TCJC commends TJD for taking significant steps to enhance safety, security, and training at state-operated secure institutions by implementing policies to comply with best practices and by requesting from the legislature an additional 88 staff positions. The actions are necessary in part to comply with the Prison Rape Elimination Act (PREA). In September 2003, the United States Congress unanimously passed this federal statute,¹⁰ aimed at preventing sexual assault and victimization in juvenile facilities, adult prisons, jails, lockups, and other detention facilities. Over the course of 10 years, experts around the country developed what have become the PREA standards in an effort to substantially reduce the occurrences of prison rape in adult and juvenile facilities. PREA standards are mandatory, and state and local facilities that do not comply with federal standards stand to lose 5% of particular federal funds. Additionally, **states and localities that are not in compliance with the standards may be vulnerable to litigation.** Private civil litigants might assert noncompliance with PREA standards as evidence that facilities are not meeting their constitutional obligations.

“PREA does not require State and local facilities to comply with the Department [of Justice]’s standards, nor does it enact a mechanism for the Department to enforce such compliance; instead the statute provides certain incentives for such confinement facilities to implement the standards.”¹¹ These incentives include grants to help local facilities come into compliance. **Several Texas counties have already received PREA-related grants: Dallas County Juvenile Department (\$88,942), Travis County Juvenile Probation Department (\$100,000), Atascosa County Juvenile Probation Department (\$300,000), Harris County, Texas (\$237,693), and Webb County, Texas (\$250,000).**¹²

While the Department of Justice maintains that “[t]he standards are not intended to define the contours of constitutionally required conditions of confinement,”¹³ **it is highly likely that the PREA standards will inform future civil litigation surrounding prison conditions.** In *Farmer v. Brennan*, the United State Supreme Court set forth the standard for determining if prison conditions violated the 8th Amendment.¹⁴ The two-part test adopted by the Supreme Court required the plaintiff to prove (1) that the conditions were cruel and (2) that the government was deliberately indifferent to the conditions facing the inmate. Prior to PREA, this second prong—deliberate indifference—narrowed the class of claims that litigants were able to bring, because it is extremely difficult for them to prove that a government entity was deliberately indifferent to the conditions facing inmates. **PREA has the potential, however, to change the way this litigation proceeds in the future by providing national standards—supported by extensive evidence-based research, correctional administrator input, public commentary, and other documentation—that suggest what governments must do to provide safe environments for inmates.** Thus, failure to follow these PREA standards could be seen as prima facie evidence of deliberate indifference and may result in plaintiffs succeeding past the initial stages of litigation, substantially increasing litigation costs to facilities that fail to comply with PREA.

Although there is no reliable data available specifically setting forth the costs of litigating these cases in Texas, the National Center for State Courts (NCSC) has developed a model to estimate the costs of civil litigation that resolve at different stages of litigation.¹⁵

Costs Estimates per Side of Litigation for Typical Automobile Tort Case

Litigation Stage	Amount expended on attorney's fees alone for lowest 25%	Amount expended on attorney's fees alone for highest 75%
Case Initiation	\$1000	\$7,350
Between Discovery through Formal Negotiations or ADR	\$5,000	\$36,000
Trial	\$18,000	\$109,000

This cost model suggests that litigation costs alone may substantially increase for facilities that fail to comply with PREA. It is too early to predict what the costs might be if a plaintiff is successful. One ex-inmate of Travis County has sued alleging that county and sheriff's officials displayed deliberate indifference to his safety by failing to comply with PREA; he is seeking \$2 million in damages as compensation for the rape he sustained while in the Travis County jail.¹⁶

To date, TJJJ has been a nationwide leader on PREA compliance. In 2013, TJJJ coordinated three conferences to educate practitioners about PREA, which provided training to over 450 juvenile justice professionals statewide.¹⁷ TJJJ also hosted a webinar in 2013 specific to Juvenile PREA Administrators in which over 235 individuals participated to discuss PREA-specific topics relevant to administration. Additionally, TJJJ has provided PREA compliance training for its employees. In FY 2014, 2,374 employees (95.38%) were PREA trained, and in FY 2013, 2,530 employees (95.29%) were PREA trained.

TCJC also notes that the Department has obtained outside funding to support training in this area. In 2011, "TJJJ successfully secured a demonstration grant award from the Department of Justice, Bureau of Justice Assistance to implement a Comprehensive Approach to Promoting Sexual Safety for Youth (CAPSSY) in [their] facilities."¹⁸ **TJJJ continues to pursue outside funding to support the expansion of this program at no cost to the State, reflecting responsible stewardship of the Department.**

These actions have permitted TJJJ to take affirmative steps to come into compliance with best practices regarding supervision ratios and increase on-the-job training for staff. These changes will assure that the Department's facilities are safe places for Texas youth.

ASSURE THE INDEPENDENCE OF OFFICE OF THE INDEPENDENT OMBUDSMAN

While TJJJ has increased safety in their facilities, the safety of Texas children continues to be of utmost importance. The Office of the Independent Ombudsman (OIO) was established as part of the 2007 juvenile justice reforms following the revelations of widespread abuse at Texas state secure facilities. Today, safety continues to be a significant concern at state and county juvenile facilities and must be addressed by an independent agency responsible for monitoring the Texas Juvenile Justice Department and counties who maintain their own juvenile facilities.

The OIO made 171 facility site visits in the first three quarters of Fiscal Year 2014, interviewing over 1,100 youth.¹⁹ In addition to conducting investigations, the OIO publishes quarterly oversight summaries and frequent facility-specific reports that provide invaluable information to Texas legislators and the public. For instance, in the third quarter of Fiscal Year 2014, the OIO tracked 85 reports of physical abuse, 11 reports of sexual abuse, 9 reports of neglect, 5 reports of verbal abuse, and 2 report of exploitation.²⁰ It also responded to over 287

inquiries.²¹ These reports have alerted policy-makers to dangerous situations in juvenile facilities, allowing legislators to intervene early. In addition, in 2011, Texas expanded the responsibilities of the OIO to include the review of county data on abuse, neglect, and exploitation.²² The OIO relies, however, upon data collected by TJJD rather than conducting its own investigations. **It is critically important that Texas provide the OIO sufficient independence and authority to ensure robust monitoring to protect the safety of all youth in state and county custody.**

Furthermore, **Texas should assure the independence of the OIO by removing its funding from the province of TJJD.** Texas Human Resources Code Section 261.003(b) provides that “[f]unding for the independent ombudsman is appropriated separately from funding for the department.” To date, however, the OIO has received its funding as a line item in TJJD’s Legislative Appropriations Request and relies upon TJJD’s human resources, financial analysts, and other critical employees to function. This imposes significant limitations on the OIO’s effective oversight of TJJD. Studies have found that one of the most important aspects to independence of monitoring agencies is their ability to be **“adequately resourced**, with sufficient staffing, office space, and funding to carry out their monitoring responsibilities and **the budget must be controlled by the monitoring entity.”**²³ To the extent that the OIO receives its budget, even if simply via a pass through, from TJJD, the OIO’s independence is compromised. This independence, however, is critical to assuring that the Legislature can rely fully upon the reports and evaluations by the OIO.

INCREASE ASSISTANCE TO COUNTIES

Over the past seven years, the Texas legislature has invested approximately \$140 million dollars in community alternatives.²⁴ Unfortunately, these counties are ill-equipped to conduct proper evaluation of programming and practices due to a lack of technical ability. This means that they are unable to determine if they are using funds in the most effective way and are unable to amend practices when proven to be ineffective. By providing technical assistance to counties, policy makers can help local practitioners improve their services.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Ensure system efficacy by reconstructing TJJD’s overall performance measures.** Recidivism cannot be a system’s sole measure of success. Intermediate outcomes (e.g., parental involvement, school engagement, therapeutic progress) are absolutely necessary to determine whether or not the juvenile justice system is achieving what it was created to achieve, the rehabilitation of youth.
- **Fully support the Texas Juvenile Justice Department’s efforts implement best practices, including the National Standards to Prevent, Detect, and Respond to Prison Rape.** Violence and victimization have no place in our society, including in our prisons, and we have an obligation to ensure that any facility under state or local operation is safe. The punishment of incarceration does not, and cannot, include a sentence of rape.
- **Expand the jurisdiction of the Office of Independent Ombudsman for the Texas Juvenile Justice Department so that it may investigate juvenile county facilities.** The Texas Legislature created the Office of the Independent Ombudsman (OIO) for the juvenile justice system in 2007, and tasked it with protecting the safety and rights of incarcerated youth at state secure juvenile facilities. TCJC supports legislation that would allow OIO staff to visit with youth in county juvenile facilities. The OIO has been critically important in protecting youth in state juvenile facilities, and with expanded resources would be able to provide the additional service of auditing county facilities for PREA compliance.

- **Assure the financial independence of the Office of Independent Ombudsman by removing any financial entanglements with the Texas Juvenile Justice Department.** The OIO should be both physically and financially removed from the agency that it monitors. Such a move would assure that the OIO continues to maintain its independence and the credibility upon which the legislature relies when evaluating the safety of Texas children held in these facilities.
- **Increase the technical assistance that county juvenile probation departments are currently receiving in order to ensure their effectiveness in programming and practices.** By prioritizing the assistance being given to the counties, policymakers can ensure that the agency is continuing on the path of becoming a true front-end agency.

Citations

¹ Texas Human Resource Code, Title 12, Subtitle A, Chapter 201 § 201.002 – 201.003.

² Since 2007, nine state-secure facilities have been closed. Deborah Fowler, *a True Texas Miracle: Achieving Juvenile Justice Reform in a Tough Economic Climate*, First Focus, p.7. At the end of the 83rd legislative session, TJJD was asked to shut one more facility, Corsicana Residential Treatment Center, which is currently operating without youth and at the direction of the Legislative Budget Board.

³ With the implementation of Senate Bill 103 (2007), which prohibited the commitment of misdemeanor youth to state secure facilities, and the creation of a commitment diversion fund for counties (2009), the number of youth committed to the States' juvenile justice facilities, has decreased by approximately 65%, from 2,327 youth in 2007 to 818 youth in 2013. Texas Juvenile Justice Department, Commitment Profile: <http://www.tjjd.texas.gov/research/profile.aspx>.

⁴ Senate Bill 103, 80th (R) legislative session, created the Office of the Independent Ombudsman, which is responsible for monitoring and inspecting state secure facilities in order to ensure the safety and security of both youth and staff.

⁵ In 2007, the Texas Youth Commission (now the *State Programs and Facilities Division* of TJJD), came under intense scrutiny by practitioners, advocates, and policy makers alike. The commission received over a thousand complaints for misconduct and over 300 allegations of both youth on youth and staff on youth sexual misconduct and physical assaults. *The Washington Post*, "In Texas, Scandals Rock Juvenile Justice System:" <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/04/AR2007040402400.html>.

⁶ Michele Deitch (May 2013) et. al., *Understanding and Addressing Youth Violence in the Texas Juvenile Justice Department: Report to the Office of the Independent Ombudsman*.

⁷ Ibid.

⁸ John Dilulio (1991), *No Escape: The Future of American Corrections*. New York, NY Basic Books, Inc.; J. Petersilia (1993) *Measuring the Performance of Community Corrections in Performance Measures for the Criminal Justice System*. Washington, DC: Bureau of Justice Statistics.

⁹ Doug Thomas (May 2006), *How Does the Juvenile Justice System Measure Up? Applying Performance Measures in Five Jurisdictions*, National Center for Juvenile Justice.

¹⁰ Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601-15609 (2003).

¹¹ U.S. Department of Justice, National Standards to Prevent, Detect and Respond to Prison Rape, Executive Summary, p. 10 (emphasis added); see also Webinar: PREA Readiness – Arlington County Detention Facility, @ 56:00, <http://www.prearesourcecenter.org/training-and-technical-assistance/webinars/827/webinar-prea-readiness-arlington-county-detention-fac>.

¹² OJP Grant Awards, <http://grants.ojp.usdoj.gov:85/selector/main>.

¹³ Ibid. at 2.

¹⁴ 511 U.S. 825 (1994).

¹⁵ Paula Hannaford-Agor & Nicole L. Waters, *Estimating the Cost of Civil Litigation*, Jan. 2013, 5 http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx.

¹⁶ "Ex-inmate sues over Travis County jail rape claim" *Austin American-Statesman*, Mar. 14, 2014.

¹⁷ Email from Lisa Capers, "TJJD Training Efforts on PREA," (September 18, 2014).

¹⁸ Texas Juvenile Justice Department, *'Overview of Agency Sponsored Prison Rape Elimination Act (PREA) Projects, Events, Activities and Accomplishments (2005-2014)'*.

¹⁹ Office of the Independent Ombudsman "Third Quarter Report FY14" (March 1, 2014 to May 31, 2014).

²⁰ Ibid.

²¹ Ibid.

²² Texas Human Resources Code section 261.101.

²³ M. Deitch, "Special Populations and the Importance of Prison Oversight," *AM. J. CRIM. L.*, Vol. 37:3, at 112.

²⁴ The Pew Charitable Trusts, *Bending the Curve: Juvenile Corrections Reform in Texas* (June 2013).