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Joint Select Committee on TYC

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Testimony of Marc Levin on TYC Reform

Progress Report & Recommendations on Short-Term Goals

- **We believe that, as a result of SB103 and the work of the conservator and new administration, significant progress has been made, particularly in the areas of central office governance, the reporting of abuse, parental rights, and internal controls.** The rerouting of misdemeanants to counties has succeeded in removing youth from TYC who had convictions for alcohol use, shoplifting, marijuana possession, curfew violations, and other nonviolent offenses and the state, through the Juvenile Probation Commission, is assisting counties in sanctioning and rehabilitating these offenders closer to the families and potential future place of employment. **Prior to the current reforms, some 64 percent of TYC youth were nonviolent offenders and there was incentive for counties to unnecessarily refer misdemeanants to TYC, thereby shifting the cost to the state since the state paid only 30 percent of juvenile probation.**¹
- The *Austin American-Statesman* reported this week that 20 percent of youth who have been paroled have been arrested for new crimes. Only 42 of the 408 arrests were for violent offenses. However, TDCJ's Parole Division can address the problem of 19-21 year-old indeterminately sentenced violent offenders being paroled that still pose a high risk by **imposing confinement in a community-based treatment center, halfway house, or post adjudication facility or reporting to a day treatment center or work program as a condition of adult parole. GPS monitoring can also be used in conjunction with day programs to ensure a youth reports as required and is in school, work, or another scheduled setting.** TDCJ should have sufficient funds for this in the near-term, since they were funded for the cost of operating 1,400 new intermediate sanctions beds starting September 1, 2007, but it will take many more months if not at least a year for them to come online. TDCJ may reallocate up to 25 percent of its budget without legislative approval. It is important that the most dangerous offenders aged 19-21 receive more intensive parole supervision than TDCJ typically provides for adult offenders, as many of them lack parental or other support systems. Also, prioritizing investments in parole supervision is justified because the risk and cost of recidivism is greater for youthful offenders relative to a 55 year-old TDCJ parolee because of the impact of life span on future incarceration costs and the statistical evidence indicating that young adulthood constitutes the prime crime committing years.
- The effectiveness of education and workforce programming at TYC must be increased. TYC continues to focus on mirroring the statewide school curriculum despite the fact that most youth

¹ A 2003 report by the Comptroller noted, "In some cases, for instance, county juvenile probation departments will send youths to TYC simply because available TJPC funding has run out—even if the youths' offenses do not merit TYC placement, and despite the fact that TYC placement is far more expensive than probation options."

are so far behind academically that high school graduation in the time they are at TYC is often unrealistic. **While TYC states that improvements to its educational and vocational programs have been completed, a staff member at one facility told me just this week that youth are being discharged without having even been given an opportunity to take a GED exam or receive vocational training.** Each state school tends to have a few vocational programs so welding, for example, may be available at one school but not at most others. Ex-offenders who are employed are three to five times less likely to re-offend.

- We are pleased that TYC is pursuing partnerships with local workforce boards. In Missouri, companies have been identified that will hire youth coming out of their group homes. **TYC should set a performance measure for the percent of youth who are either employed or in school within a year following release. Lawmakers must act to lower barriers for ex-offenders to obtain occupational licenses (SB1750 last session) and provide employers with civil liability relief from negligent hiring lawsuits when they hire ex-offenders (HB2537).** We are currently studying whether through a business tax deduction, or some other mechanism, it would be good policy to give employers a financial incentive to hire former TYC youth that may offset some of the cost of the training, supervision, and civil liability risk that may be involved.
- We recognize the need for the current efforts to increase the accountability of each school to the central office, because each school was essentially its own fiefdom prior to the current reforms, contributing to the failure to detect and remedy abuses and resulting in the duplication of some administrative services. We have received information indicating that employee attendance is still low at the Al Price unit and there continues to be insufficient monitoring of attendance and performance, partly because many of the administrator positions remain vacant. At the same time, each school has unique conditions and it is important to make sure that TYC's organizational approach does not swing too far towards centralized micromanagement that focuses on inputs and procedures, rather than measurable outcomes. **We suggest setting benchmarks such as the recidivism rate, youth educational attainment as measured by a diagnostic exam on intake and outtake, youth employment rates upon reentry, verified abuse complaints, and employee attendance and then tying success on these benchmarks with performance pay for superintendents and principals at each school.** Implementation of such a system may need to follow the ongoing effort to place youth at facilities closer to home while at the same time having specialized units such as single gender environments. In addition to avoiding disruptions in the delivery of educational and treatment services and saving transportation costs, greater continuity in placements will facilitate implementation of these outcome-based performance measures, as otherwise it is difficult to hold one institution or its leaders accountable for performance when a youth has transferred several times.

Recommendations on Long-Term Goals for Sunset Process

- We are pleased that TYC has agreed with the concerns that we and other outside groups have expressed about the structural problems associated with its remote facilities. It is remarkable that TYC lacks a single facility—either an institutional or halfway house—in the Houston area, but 23 percent or 630 of their commitments came from Harris County in 2006.² Even with the funds to hire more juvenile correction officers (JCO's) to reduce the ratios, the small workforces in the

² <http://www.tyc.state.tx.us/research/profile.html>.

remote communities where most TYC facilities are located and the high turnover rate (JCO turnover rate is still over 60 percent McLennan I & II, Crockett, West Texas, and Sheffield schools) mean that it is unclear whether TYC can fully staff these new positions. **We believe the 12-1 youth to staff ratio should not be etched in stone—it may be that having more skilled professionals such as counselors and better programming can improve youth behavior, reducing the need for JCO’s. However, the long-term solution to TYC’s staffing problems and 50 percent recidivism rate remains moving towards the Missouri model of community-based group homes that has resulted in an 8 percent recidivism rate.**

- The Missouri group homes have a local advisory board of business, civic, and religious leaders that help facilitate positive mentoring and job training programs. While there would be transition costs to converting some portion of TYC capacity into these kinds of facilities, **the operating costs in Missouri at \$43,000 per ward per year are about 20 percent less than TYC.³ More importantly, the difference in recidivism rates produces large, long-term savings on adult supervision and incarceration.**
- **Even though misdemeanor placements have been eliminated, there are still nonviolent youth being referred to TYC for drug possession felonies and property offenses. By integrating the juvenile justice funding system, the state can provide an incentive for counties to enhance their use of innovative local community correctional programs for youth in lieu of referrals to TYC. We believe much can be learned from the experience of Ohio where this was successfully done.** Through its innovative RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) funding system adopted more than a decade ago, Ohio took some funds previously allocated to the Department of Youth Services—their version of TYC—and pooled and distributed them to county probation departments instead, based on population and delinquency levels.
- Under RECLAIM, juvenile judges may use the funds allocated to treat juvenile offenders in the local community or pay to commit the youth to the Ohio Department of Youth Services. A separate fund was established to allow juvenile judges to sentence youth convicted of violent offenses including murder, attempted murder, kidnapping, rape, voluntary manslaughter, involuntary manslaughter, rape, arson, and violent gun offenses without using the RECLAIM funds. The Ohio RECLAIM program contrasts with the current system in Texas where the state bears the full cost of TYC commitments but funds less than half of local juvenile probation through the Juvenile Probation Commission. As a result, TYC commitments are “free” from the standpoint of counties, leaving them with little incentive to maximize the use of alternatives that are primarily locally funded.
- **RECLAIM has achieved phenomenal results, as the recidivism rate of RECLAIM participants is 7 percent, according to a University of Cincinnati study compared with the over 50 percent rate for TYC offenders.⁴ The study also showed that the RECLAIM funding change resulted in 36.2 percent fewer commitments to DYS than projected. Even moving to a**

³ http://www.news10.net/display_story.aspx?storyid=10961.

⁴ <http://www.uc.edu/criminaljustice/ProjectReports/Reclaim.PDF> and http://www.uc.edu/criminaljustice/ProjectReports/CCF_Evaluation_Final_2006.pdf.

system like RECLAIM for just the largest Texas counties could make an enormous difference, as five counties account for 54 percent of TYC commitments.

- **Implement juvenile victim-offender mediation programs at the local level to handle minor property offenses through binding restitution and community service agreements.** Pursuant to HB2291, the Juvenile Probation Commission is conducting a study of the handful of existing programs and will make recommendations to the Legislature in July 2008 on how to achieve broader implementation. A 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.⁵ A national study of juvenile pretrial victim-offender mediation found a 32 percent recidivism reduction.⁶ Mediation programs also save taxpayers' money, as they reduce utilization of courts and prosecutors—a California program costs only \$250 per case.⁷
- **Expand juvenile drug courts.** Drug courts reduce recidivism by 40 to 60 percent.⁸
- **Explore need for another specialized TDCJ facility for youthful offenders up to age 25, which could simply involve converting an existing facility.** There are some 10,000 TDCJ inmates in this age group. Establishing a separate TDCJ facility to serve these and other youthful offenders, particularly those that are nonviolent, would prevent this mixing with more hardened offenders and could facilitate more comprehensive provision of educational programming by the Windham School District for this age group.
- **Continue reforming alternative schools and school discipline policies that may be correlated with juvenile incarceration.** Unfortunately there is no research on the percent of TYC inmates who have previously been suspended or expelled, but the percentage is likely very high. Texas schools make 1.7 million referrals to in-school suspension, 286,000 referrals to out-of-school suspension, and 130,000 referrals to Disciplinary Alternative Education Programs (DAEPs). Some perpetually disruptive students require removal, but too often students are being removed for minor misbehavior. States with higher rates of suspension also have higher juvenile incarceration rates. Research indicates that out-of-school suspension retards academic progress and does not improve behavior, as it is seen as a reward rather than a punishment by many students. Alternatives include student behavior contracts and accounts, peer mediation, better teacher training in discipline, and positive behavioral supports. By implementing positive behavioral supports, Pickle Elementary in Austin ISD has gone from having the most suspensions to Disciplinary Alternative Education Programs (DAEPs) to zero.⁹ Significant reforms during this session in this area were: 1) HB426 requiring the Texas Education Agency to set standards for DAEPs, 2) Amendment to HB2532 creating intake and outtake diagnostic exams for DAEP students, and 3) HB278 eliminating criminal citations in school for conduct that does not violate any criminal law such as chewing gum and tardiness.

⁵ Umbreit, M., with R. Coates and B. Kalanj. 1994. *Victim Meets Offender: THE IMPACT OF RESTORATIVE JUSTICE AND MEDIATION*. Monsey, N.Y.: Criminal Justice Press.

⁶ See, <http://www.voma.org/docs/connect3.pdf>.

⁷ Niemeyer, M. and D. Shichor (1996). "A Preliminary Study of a Large Victim/Offender Reconciliation Program," *FEDERAL PROBATION* 60(3):30-34.

⁸ Drug Courts: The Right Prescription for Texas by Marc Levin, February 2006. (<http://www.texaspolicy.com/pdf/2006-02-PP-drugcourts-ml.pdf>).

⁹ <http://www.statesman.com/news/content/news/stories/local/08/04/0804behavior.html>.