



**Texas Juvenile Justice:
Mental Health Releases from TYC**

Texas House Committee on Corrections

Interim Charge #4

April 28, 2010

Chairman McReynolds and members of the Committee, I am Jodie Smith of Texans Care for Children. Thank you for this opportunity to provide testimony today. Texans Care for Children is a statewide nonpartisan, nonprofit advocacy organization dedicated exclusively to the children of Texas. We look to our broad base of community-based experts—our partners and 220 members throughout the state who together represent thousands of Texas children—to inform our work and help us in developing our legislative agenda. We co-convene the Texas Juvenile Justice Roundtable with the Juvenile Law Section of the State Bar of Texas and the Texas Children’s Mental Health Forum in conjunction with the Texas Health Institute and with the support of the Hogg Foundation. Both of these broad-based stakeholder groups greatly influence our work on the mental health and juvenile justice charge before this committee today. Our other areas of policy work are family economic security; infant, child and maternal health; and child welfare.

Attached to my testimony you will find a white paper that Texans Care is releasing this week on the link between mental health and justice system involvement for children and youth. Discussed there in greater detail are best practices, Texas initiatives, and recommendations across the continuum of potential juvenile justice involvement for youth with unmet mental health needs: mental health promotion, front-end diversion, treatment during supervision, and community re-entry. I am happy to discuss any of the issues there at greater length.

Our starting assumption is that children with serious mental illness should not be in correctional facilities. However, too little focus on children’s social and emotional wellbeing in other systems has led to the reality that our juvenile probation departments and TYC are the providers of last resort of mental health services for children and youth whose mental health needs have remained unmet until they get in trouble with the law. Steps must be taken in our public mental health system, our healthcare system, and our child welfare system so that families can address their children’s mental health needs early and effectively. Given our collective failure to date to invest early in the mental wellbeing of children and youth, we are faced with the issue that I would like to address today—the treatment of youth who are released from the Texas Youth Commission (TYC) on a mental health release.

New policy in Texas:

In January 2010, the TYC Board adopted a new administrative policy. Though it is new, it seems that it will work as follows:

An indeterminate sentence youth can be referred for a psychological evaluation by a staff person who believes the youth has serious mental health needs and that the youth is not progressing in the TYC rehabilitation program. If the psychologist recommends discharge, the decision is reviewed at the facility level and at the central office, with final approval by the Executive Director. TYC General Counsel then files a petition with the probate court in the county where the youth will reside. The probate court has authority to order mental health services, review compliance, and change the court order. The probate court could order inpatient or outpatient mental health services, with responsibility for the cost of treatment to be assigned by the court. The youth would have no remaining link to the delinquency court or justice system and would not be subject to probation-like sanctions, though the court could modify an order for non-compliance or could order a youth into inpatient mental health services. As part of discharge, TYC staff refer the youth to the local mental health authority, the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), and the local community resource coordination group (CRCG.)

If TYC staff believes that a determinate sentenced youth has serious mental illness that prevents him or her from progressing in treatment at TYC, the agency can request that the committing juvenile court order inpatient treatment in a mental health facility, which would count towards the youth's sentence. At the end of that treatment, the committing court would retain jurisdiction and decide whether to send the youth to TYC or to the adult system for the remainder of the youth's sentence.

Learning from other states:

Few jurisdictions have a clear or model policy to address mental health releases from a juvenile correctional system. The jurisdiction that seems to have the clearest law is South Carolina, where the policy is the outcome of a class action lawsuit, *Alexander S. v. Boyd*. Resulting from the litigation is South Carolina Juvenile Justice Code Section 63-19-1450, which provides that "No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or retardation." Within 30 days of a staff person identifying that a youth may have a mental health diagnosis that falls within the diagnoses in the settlement agreement, a multi-disciplinary team holds a staffing to determine the child's needs and best placement. The juvenile justice agency then transfers the youth to the state agency identified as best qualified to care for the youth, by voluntary or legal commitment. For indeterminate sentence youth, the placement can be a long-term psychological hospitalization or community-based probation with wrap-around mental health services. Determinate sentence youth can serve out their sentence at a treatment facility, secure or community-based. Two factors influencing implementation of the settlement are budget constraints that limit treatment options and whether or not the diagnoses and criteria for release in the class action settlement reflect clinical best practice.

Concerns with new TYC policy:

The policy at TYC has been in place less than four months, so it is too early to assess its effectiveness at meeting youth's mental health needs or protecting public safety. However, there are several issues that deserve the attention of policymakers, advocates, and practitioners during the coming months, based on previous experiences in Texas, best practices, and other states.

Best practice in mental health treatment includes the use of an **interdisciplinary team** (the family and professionals with expertise in juvenile justice, health, mental health, education, disability, and substance abuse as relevant) to develop a treatment plan and be involved in its implementation, monitoring, and modification if needed. A change in statute or policy is necessary, but also needed is a complementary practice change so that a wrap-around approach is employed to support a youth and, thereby, protect public safety. This helps ensure that the complex array of challenges a youth faces are being addressed. The new Texas model does not require the use of an interdisciplinary team, though some courts may choose to involve one. In future modifications to statute and policy for youth discharged from TYC on a mental health release, policymakers should consider requiring the post-TYC process to use an interdisciplinary team.

The new TYC policy puts great responsibility on probate, and some juvenile, judges. However, many judges will not have expertise in this area. There is reason to be concerned about outcomes for youth in this new system that lacks robust **judicial education and judicial protocols** regarding the determination and ordering of an appropriate treatment plan, changing orders due to a youth's changing needs or non-compliance, involvement of a multi-disciplinary team in the court process, and the understanding and use of psychological evaluations. This is a multi-system issue and, regardless of the quality of TYC casework prior to discharge, the quality of judicial decision-making greatly impacts a child or youth's treatment, yet varies significantly across the state.

Other factors with substantial county-to-county variations are the **quality and availability of local mental health services** and **local funding** available for mental health services. The change in TYC policy intends that youth who previously may or may not have gotten short-term services through a TCOOMMI referral and the local Mental Health Authority will receive additional or different services, based on the court's order. However, the mental health workforce faces severe shortages in most parts of the states, and counties face constraints in their ability to fund appropriate services in a treatment plan. Availability of treatment and responsibility for the associated costs of services will be different for each youth's situation. Potential red flags for policymakers monitoring the success of this new policy are a lack of beds, providers, or services to meet a youth's treatment needs; cost-shifting to counties; and youth non-compliance based on a family's inability to pay for services.

Another area of potential concern is youth's **access to counsel** during the discharge process at TYC and in the subsequent court proceedings. This new policy and any modifications made by the Legislature should ensure that youth have legal counsel necessary to protect their due process and to help ensure the appropriateness of the court-ordered services.

It is important for policymakers to be mindful that simply **mandating mental health services is not effective** without timely availability of those services and a comprehensive, interdisciplinary treatment approach that supports a youth's success. This approach must be one that reflects an understanding of the inherent inappropriateness of relegating youth who have an unmet medical challenge to a correctional setting. Noncompliance of this special population should be met with further treatment, rather than sanction that only leads to further criminal justice involvement. Implementation of the current policy or future modifications to the mental health release policy should avoid the use of sanctions.

Addressing the needs of this vulnerable population of youth not only maximizes their potential and improves public safety, but also serves as an indicator of the overall effectiveness of our public and private systems in helping troubled children grow into healthy adults. We will be watching the impact of

the new TYC policy and are available to work with you on statutory changes that may be needed to the TYC, judicial, or community mental health components of this picture. Thank you for your time and commitment. If you have any questions, please feel free to contact me at 512.473.2274.

Respectfully,
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