

Disability Rights TEXAS



October 28, 2013

The Honorable David Dewhurst
The Honorable Joe Straus
Joint Chairs
Legislative Budget Board
P.O. Box 12666
Austin, TX 78768

Delivered via e-mail

Dear Governor Dewhurst and Speaker Straus,

As you may know, our organizations have repeatedly expressed concerns related to the quality of treatment in the state-operated juvenile facilities. Our concerns have included problems with the provision of appropriate educational services, mental health services, and overall safety in the facilities throughout the system.

We have been pleased by the Texas Juvenile Justice Department's (TJJD) recent progress and commitment to addressing these problems. Most recently, in response to the 83rd Legislature's requirement that the agency reduce the number of state-run facilities from six to five, TJJD recommended closure of Corsicana Residential Treatment Center (CRTC).¹ This recommendation was made after conducting a thorough analysis of the existing six facilities and opportunities for public input. The TJJD board approved this recommendation at the end of August.

Given our long-standing and frequently expressed belief that the mental health treatment needs of youth are not adequately met at CRTC, we were supportive of the agency's decision to close the facility. We also welcomed the agency's intention to design a long-term plan to better meet the mental health needs of youth it serves and anticipated an ongoing conversation about that plan.

¹ Texas Juvenile Justice Department (TJJD), *Facility Evaluations, Closure Recommendation & Transition Plan* (August 30, 2013).

The only remaining step in the process toward closure of CRTCC is for the Legislative Budget Board (LBB) to approve the agency's carefully considered decision. It has been with growing dismay that we have watched this last step drag on for the last two months. The failure to make a timely decision continues to place at serious risk the progress the agency has made over the last year to secure the safety of the youth in its care.

Starting in July, TJJJ froze all non-essential vacant positions to provide Corsicana employees the opportunity to transfer to other facilities upon closure, should they choose to do so.² The agency has been holding positions open, system-wide, for months. The longer these positions remain open, the more likely it is that staffing shortages leave all the facilities in the system susceptible to a flare-up of the kinds of safety problems that were being reported just over a year ago.³

It is quite likely that the inability to fill open positions is already having a negative effect on both staff morale and safety. Not only has TJJJ reported an increase in overtime as a result of the attempt to keep these positions open, the number of worker's compensation claims also increased.⁴ According to TJJJ, "August had the highest number of [workers compensation] claims for FY 2013."⁵ *The longer the LBB waits to make a decision, the higher the risk that a serious incident could occur on a TJJJ campus.*⁶

The LBB's failure to act also affects the agency's ability to focus on the most important priority: a **long-term** plan for addressing the mental health needs of youth involved in the juvenile system. TJJJ cannot make progress toward this critical goal as long as it is stymied in its efforts to move forward with the short-term plan to close the CRTCC.

² TJJJ Executive Director Message to Staff, June 28, 2013, available at http://www.tjjd.texas.gov/aboutus/ed_messages.aspx

³ See Michele Deitch, et al, *Understanding and Addressing Youth Violence in the Texas Juvenile Justice Department* (2013); see also TJJJ, August 30, 2013 Board Meeting Minutes, at 9 ("[A] protracted period of uncertainty with regard to the final disposition of the facility will result in the agency losing valuable human resources. More importantly, it will affect the treatment and programming capabilities of the facility and may create unsafe conditions for both youth and staff").

⁴ TJJJ, Safety and Security Report, October 17, 2013, available at http://www.tjjd.texas.gov/docs/BoardAgenda/Informational_Packet_101813.pdf

⁵ *Id.*

⁶ See Deitch, et al, *supra* note 3, at 71 (discussing the way that staffing practices affect youth violence).

Continued operation of six facilities, without additional funding to TJJD, creates an unreasonable risk of harm to youth system-wide and places TJJD in the position of being unable to meet its statutory and constitutionally mandated obligations to youth.⁷

Perhaps most concerning is the suggestion that TJJD could maintain all six facilities without additional funding. The 83rd Legislature's decision to cut \$23 million in funding from the money budgeted for state-run secure facilities was based on the agency closing a facility – as mandated by rider language. Rider 35 of the TJJD budget could not be more clear, specifically stating that “Funds appropriated by this Act **shall** be used for the operation of **no more than five** Juvenile Justice Department state-operated correctional facilities as of January 1, 2014.”⁸ Given this clear legislative direction, the delay in authorizing closure is especially troubling.

As the agency itself has indicated in its answers to questions posed by the LBB,⁹ requiring the agency to continue to operate six facilities without additional funding puts the safety and security of all facilities in the system at risk. TJJD felt so strongly about this that it was underlined in Mike Meyer's response to the LBB's questions: “The agency sees no tenable path to the safe and secure operation of six facilities without additional funding.” *The fact that the agency has identified this risk should serve as a clear, serious and direct warning of the potential liability the state faces should it make this ill-conceived decision.*

The agency is just emerging from a period of intense scrutiny due to high rates of violence and insecurity in its facilities. It is difficult to imagine how reducing the availability of funding for its secure operations, without allowing for closure, could have a *positive* impact. Indeed, given repeated questions regarding the adequacy of staffing and treatment in these facilities over the last three years, a reduction in funding of this size, without a corresponding reduction in the number of facilities, would likely be catastrophic for youth and staff.

⁷ See *Helling v. McKinney*, 509 U.S. 25 (1993)(housing a prisoner in an environment that poses an unreasonable risk of harm to future health may constitute cruel and unusual punishment in violation of the Eighth Amendment); *J.H. ex rel. Higgin v. Johnson*, 346 F.3d 788, 791 (7th Cir. 2003)(constitutional duty to keep youth safe from harm inflicted by third parties, including other juveniles).

⁸ CSSB 1, 83rd Reg. Sess., (Texas Juvenile Justice Department, Rider 35) (emphasis added).

⁹ E-mail exchange between Angela Isaack, Manager, Public Safety and Criminal Justice Team, Legislative Budget Board, and Mike Meyer, Chief Financial Officer, TJJD (October 17 & 21, 2013)(Obtained October 25, 2013 via open records request by Texas Appleseed to TJJD).

Even if funding is made available to continue the operation of CRTC, the remote location of this facility makes it impossible to provide mental health treatment consistent with youths' constitutional rights.¹⁰

Even if the state finds the money to continue to operate all six facilities, CRTC could not adequately meet youths' mental health needs. Concerns regarding the quality of mental health treatment provided to youth at CRTC have been repeatedly raised for years.¹¹ Most recently, in recognizing that Corsicana had the highest rate of assaultive behavior in the system, a report assessing violence in TJJD facilities found:

Corsicana concentrates youth with the most severe mental health needs in a single facility, in a setting that seems poorly designed to meet the very substantial needs of these youth. The disproportionate level of violence at the Corsicana facility is indicative of the difficulty the agency currently has in addressing mental health issues. Finding and funding an appropriate option for this population of youth should be a high priority for the Legislature, as continuation of the current situation is unsafe for both youth and staff in Corsicana.¹²

Problems providing adequate mental health treatment are closely related to the remote location of the facility itself. Despite many dedicated and caring staff, Corsicana simply is not an appropriate location for a facility to treat youth with significant mental health issues.

The CRTC's location has made it difficult to hire and keep qualified mental health professionals on staff. In its recommendation for closure, TJJD notes that UTMB has indicated that the vacancy rate for UTMB staff at Corsicana is 30 percent and, for psychiatrists, 60 percent. This is consistent with our 2010 study of staffing, which led us to raise concerns with the U.S. Department of Justice.¹³ It is also consistent with the 2011 Sunset Commission report, which noted, "[H]iring the specialized treatment and education professionals TYC youth need remains challenging, especially at...the Corsicana Residential Treatment Center...Corsicana, which serves the youth with the most severe mental health needs, currently has five mental health provider vacancies, including the most senior position."

¹⁰ See *Youngberg v. Romeo*, 457 U.S. 307(1982); *Morales v. Turman*, 383 F. Supp. 53, 101 (E.D. Tex. 1974), rev'd on other grounds, 535 F.2d 864 (5th Cir. 1976), rev'd, 430 U.S. 322 (1977).

¹¹ Letter from Advocacy, Incorporated, Center for Public Representation, National Center for Youth Law and Texas Appleseed to Judy Preson, Chief, Special Litigation Section, United States Department of Justice, August 24, 2010; The Moss Group, Inc., *Systemic Assessment of the Texas Youth Commission's Sexual Safety Reform Strategies* (2010); Deitch, et al, *supra* note 3.

¹² Deitch, et al, *supra* note 3 at 110. This raises another liability concern for TJJD, which is constitutionally required to keep juveniles safe from harm inflicted by third parties, including by other juveniles in the facility. See *J.H. ex. rel. Higgin v. Johnson*, 346 F.3d 788, 791 (7th Cir. 2003).

¹³ Letter from Advocacy, Inc., et al, *supra* note 11, at 8.

TJJD notes that Navarro County has been designated as a mental health shortage area by the U.S. Department of Health and Human Services. The inability to appropriately staff Corsicana is most keenly felt by the youth who are housed there.¹⁴ A 2011 report published by Disability Rights Texas, Texas Appleseed, and the National Center for Youth Law documents problems experienced by Disability Rights Texas clients:

Ben's time at Corsicana can best be defined as unstable and lacking adequate supports. He has seen at least five caseworkers assigned to him come and go and, for a period of time, Ben was without a caseworker entirely. Various multi-disciplinary team meetings to manage his progress have consisted only of Ben, his current caseworker and a note taker. Without consistent supports and services, he has had immense difficulty advancing through the program. In addition, Ben's medication regime is frequently interrupted or changed, causing him to become more disruptive and setting back any progress he has made through the TYC stages. After more than two years in TYC, Ben is still at stage one of his five-stage release program.¹⁵

Despite TJJD's ongoing efforts to adequately staff Corsicana, the location of the facility makes it impossible to solve the shortage of mental health professionals. While the report documenting Ben's experience was published two years ago, many of Disability Rights' clients continue to experience problems associated with the inability to provide appropriate mental health treatment at Corsicana.

Repurposing the facility is not a viable option, since the age and condition of the CRTC grounds pose a serious risk to any youth housed at the facility.¹⁶

There has been some suggestion that Corsicana could remain open as a secure facility for youth without mental health needs – leaving the agency to proceed with its plan to transfer youth with mental health issues to the Mart facility. Corsicana is the oldest facility in the system, having originally been built in the 19th century as an orphanage. The age of the facility presents tremendous challenges in terms of appropriately maintaining the campus itself in a way that ensures youth safety.

This facility has been projected as having the highest repair costs of all the facilities in the system for some time.¹⁷ In its report recommending closure, TJJD notes “The physical plant is in poor condition and many of the buildings warrant complete replacement. Immediate repairs that *must be completed to ensure that the facility*

¹⁴ Id; see also Disability Rights Texas, National Center for Youth Law, & Texas Appleseed, *Thinking Outside the Cell: Alternatives to Incarceration for Youth with Mental Illness* (2011).

¹⁵ Disability Rights Texas, et al, *Thinking Outside the Cell*, at 5.

¹⁶ See *Helling v. McKinney*, *supra* note 7.

¹⁷ See Texas Youth Commission, Facility Comparison Matrix, October 2010 (projecting repair costs for Corsicana at over \$2.3 million).

meets basic life and safety standards total \$4,416,313.”¹⁸ A 2007 report indicated that it would cost over \$30 million to bring the facility “up to standard.”¹⁹

Furthermore, the fact that “**hazardous debris and glass are continually unearthed** after rain or strong winds...despite repeated efforts to clear the campus grounds”²⁰ poses a significant and ongoing safety risk to youth confined there, as evidence by the high incidence of self-harming behavior among youth at CRTC. To suggest that this is a problem only for youth who have a serious mental illness is foolish and shortsighted. In fact, youth who are transferred to Corsicana often are transferred as the result of self-harming or suicidal behavior while housed on another campus. Housing *any* youth on a campus with this problem poses a significant risk of serious harm and suggests deliberate indifference to the needs of youth in TJJD care. Taking these risks exposes TJJD to liability.

TJJD must be given the opportunity to pursue the long-term plan for mental health services that it began to explore in its recommendation to close CRTC

The report setting forth TJJD’s recommendation to close the CRTC included both a short-term plan for more appropriately handling youth with serious mental health problems (close Corsicana and move the youth to the Mart facility) **and** a long-term plan (begin working toward a staff secure facility in an urban setting). The long-term ability to effectively address the shortfalls in treatment for juvenile justice involved youth who have serious mental health issues will not be managed by closure of Corsicana and transfer of the youth currently housed there to the Mart facility.

*The Mart facility itself is a federally designated mental health shortage area.*²¹ While this may be temporarily addressed through transfer of Corsicana treatment staff to the Mart facility, the designation indicates that a shortage exists for the youth currently housed at the Mart facility. Thus, transferring staff is unlikely to address the shortage, given that youth with more serious mental health issues are being transferred at the same time.

Additionally, while the most pressing safety issue posed by the Corsicana facility – the availability of glass and other materials used by youth to self harm – may be partially ameliorated by moving youth to Mart, the Mart facility itself is not conducive to appropriate treatment of this population. It is widely understood to be

¹⁸ TJJD, *supra* note 1, at 8 (emphasis added).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Health Resources and Services Administration, United States Department of Health and Human Services, Find Shortage Areas: HPSA by State & County (listing McLennan State Juvenile Correctional Facility as a mental health professional shortage area for McLennan County), *available at* <http://hpsafind.hrsa.gov/HPSASearch.aspx>

the facility that is the most prison-like campus in the system, making it a poor setting for appropriate mental health treatment.

TJJD has begun its work on a long-term plan for a more appropriate setting, as discussed in their report recommending closure of Corsicana. The agency should be able to turn its full attention to ongoing development of an appropriate long-term plan. Instead, it is caught in limbo, waiting for the LBB to approve its ability to move forward. Every day that the LBB delays, youth and staff are faced with heightened risk of harm, and state taxpayers are faced with the possibility that they will be left to pay for any liability that may result. We therefore respectfully ask that the LBB immediately approve the TJJD board's recommendation for closure of CRTC.

We appreciate your attention to this matter. We are happy to answer any questions you may have, and look forward to your quick resolution of this issue.

Sincerely,

/s/ Deborah Fowler

Deborah Fowler
Deputy Director
Texas Appleseed
dfowler@texasappleseed.net

/s/ Kat Lewis

Kathryn Lewis
Supervising Attorney
Disability Rights Texas
klewis@disabilityrightstx.org

/s/ Bob Fleischner

Bob Fleischner
Assistant Director
Center for Public Representation
RFleischner@cpr-ma.org

/s/ Pat Arthur

Pat Arthur
Juvenile Justice Consultant
patricia.j.arthur@gmail.com

cc: Governor Rick Perry
The Honorable John Whitmire, Chair, Senate Criminal Justice Committee
The Honorable Tan Parker, Chair, House Committee on Corrections
Mike Griffiths, Executive Director, TJJD