



*Office of the Independent Ombudsman  
for the Texas Youth Commission*

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**HB 4451: Mental Health Discharge and Continuity of Care<sup>1</sup>**

**I. Introduction**

HB 4451 corrects two unintended omissions in the law, both dealing with access to mental health services for youth released from the Texas Youth Commission (TYC). The first omission is a lack of continuity of care services for youth who are discharged from TYC under Tex. Hum. Res. Code § 61.077. For these youth, TYC has determined that the child is unable to progress in its programming because of mental illness or mental retardation. These youth are released in order to get more appropriate mental health or mental retardation (MHMR) services in their communities. However, because of an unintended omission in the law related to the jurisdiction of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI), these youth are ineligible for continuity of care services.<sup>2</sup> HB 4451 corrects this problem by making youth discharged under Tex. Hum. Res. Code § 61.077 eligible for continuity of care services through TCOOMMI.

The second omission in the law is a lack of continuity of care services for certain youth released from TYC on parole. This problem is caused by differing definitions in the law of when a child becomes an adult. Local MHMR authorities provide services to children with a broad range of mental health diagnoses. Adults, however, do not qualify for services from most local MHMR authorities unless they have one of three "priority" diagnoses.<sup>3 4</sup> Under the regulations of

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<sup>1</sup> This briefing paper was prepared for the Honorable Representative Jim McReynolds, Chairman of the Texas House Corrections Committee.

<sup>2</sup> The phrase "continuity of care services" is defined by law (see Tex. Health & Safety Code § 614.001), and is discussed at length below, in Section II(d).

<sup>3</sup> Priority diagnoses are usually limited to Bipolar Disorder, Schizophrenia, and Major Depression (Hearing Before the Texas House Committee on Corrections, 81<sup>st</sup> Leg. (Apr. 2, 2009) (Testimony of Dee Wilson, 6400 East Highway 290, Suite 202 · Austin, Texas 78723 (512)533-2770 · (512)533-2702 fax

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the Texas Department of Mental Health and Mental Retardation (TDMHMR), a child becomes an adult when he or she turns 17. This means that a child who was receiving continuity of care services through a local MHMR authority at the age of 16, will not continue to receive those services after her 17<sup>th</sup> birthday, unless she has a “priority” diagnosis for adults.

A youth under the supervision of TYC, however, remains a juvenile until she turns 19. Thus, a problem arises when a youth is released on TYC parole and is required under the conditions of her parole to receive MHMR services and/or medication. She is likely to become ineligible for MHMR services at the age of 17, even though she may remain on parole until she turns 19. The inconsistency in the law creates a situation in which a youth may violate her parole simply by not having a particular diagnosis. Being cut off from medication and services would cause a youth to be in violation of her parole conditions. Moreover, mentally ill youth on TYC parole with a history of violent and aggressive behavior are a bigger threat to public safety when they are deprived of medication and services. Youth in this situation are much more likely to re-offend, and end up back in the juvenile (or criminal) justice system.<sup>5</sup> HB 4451 corrects this problem as well, by authorizing youth on TYC parole to continue to receive continuity of care services until the youth completes his or her parole.

This memorandum focuses on the first problem corrected by HB 4451. In **Section II**, I provide background on how the problem came to exist; explain what continuity of care services would include; and discuss how TCOOMMI can provide these services to youth discharged from TYC without increased funding.

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Director of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI), regarding H.B. 4451)).

<sup>4</sup> The authority of local MHMR entities to select priority populations can be found in Tex. Health & Safety Code §§ 531.001, 533.0352.

<sup>5</sup> See Kathleen R. Skowrya & Joseph J. Coccozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*, National Center for Mental Health and Juvenile Justice (2007), available at <http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf>; Jennifer A. Rosenblatt, Abram Rosenblatt, & Edward E. Biggs, *Criminal Behavior and Emotional Disorder: Comparing Youth Served by the Mental Health and Juvenile Justice Systems*, 27 J. BEHAV. HEALTH SERVS. & RES. 1094-3412 (2006); David M. Altschuler & Rachel Brash, *Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Reentry*, 2 YOUTH VIOLENCE AND JUV. JUSTICE 72-87 (2004).

In **Section III**, I clarify that the House and Senate versions of the TYC Sunset bill do not currently<sup>6</sup> make the changes that HB 4451 proposes. Finally, in **Section IV**, I recommend amendments to HB 4451 on behalf of the Office of the Independent Ombudsman for the Texas Youth Commission.

**II. HB 4451 would provide continuity of care services for youth discharged from TYC under Tex. Hum. Res. Code § 61.077.**

**a. Background: The creation of a mental health discharge for certain youth committed to TYC.**

Extensive changes were made in the juvenile justice system as a result of legislation enacted during the 74<sup>th</sup> Legislature. Among the changes made, were the creation of proceedings to determine if a juvenile was not responsible for his conduct, or unfit to stand trial, as a result of mental illness or mental retardation.<sup>7</sup> The proceedings can be found in Chapter 55 of the Texas Family Code. Before the creation of Chapter 55 proceedings, TDMHMR was unlikely to accept juveniles who a court determined were in need of mental health treatment rather than punishment.<sup>8</sup> Similarly, when courts sent mentally ill or mentally retarded youth to TYC, many of those youth were quickly discharged and sent back to the counties. Thus, youth with mental illnesses and mental retardation were bounced from one agency to another, without receiving proper treatment and services.<sup>9</sup> The Legislature increased the funding for mental health services and programming within TYC, required TYC to accept mentally retarded youth, and required TYC to establish a minimum length of stay for youth committed to its charge, based on the seriousness of the offense, and the likely danger that a youth posed to his community.<sup>10</sup>

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<sup>6</sup> The Senate version of the TYC sunset bill (S.B. 1020) referred to here is the draft available to the public as of April 24, 2009.

<sup>7</sup> Senate Committee on Criminal Justice Report, Bill Analysis of C.S.H.B. 327 (74<sup>th</sup> Leg. (Tx. 1995)), available at <http://www.legis.state.tx.us/tlodocs/74R/analysis/html/HB00327S.htm>;

<sup>8</sup> Telephone Interview with Toby Goodman, Former State Representative and Current Legislative Advocate for the Juvenile Justice Association of Texas (Apr. 24, 2009).

<sup>9</sup> *Id.*

<sup>10</sup> Senate Committee on Criminal Justice Report, *supra*, note 6.

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During the interim following the session, the House Committee on Juvenile Justice and Family Issues was assigned a number of charges by Speaker Laney. One of the charges was to review the changes in the juvenile justice laws made by the 74<sup>th</sup> Legislature and make recommendations addressing omissions, errors, and problems with the implementation of the new laws.<sup>11</sup> One of the problems identified in the interim related to youth whose mental illness or mental retardation was determined not to be the cause of their delinquent conduct. These youth were sentenced according to progressive sanctions passed during the 74<sup>th</sup> Legislature, and those with serious or habitual offenses were sent to TYC. Even with the extra funding for mental health services and treatment in TYC, some of these youth were unable to progress in TYC's programming, because of their mental illness or mental retardation. Even though these youth were unable to benefit from TYC's programming, they were not eligible for release from TYC, because release for youth with indeterminate sentences depended on demonstrating progress.<sup>12</sup> Acting on the recommendations in the Interim Report, the 75<sup>th</sup> Legislature passed HB 1550, which required TYC to accept mentally ill youth (in addition to mentally retarded youth), and which provided guidelines for discharging youth who were unable to progress in TYC's programming due to mental illness or mental retardation.<sup>13</sup>

**b. Current Law: Discharging youth who are unable to progress in TYC's programming due to mental illness or mental retardation, without providing continuity of care services.**

State law requires TYC to provide programs for the rehabilitation and reestablishment in society of youth committed to its charge, including programs

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<sup>11</sup> House Committee on Juvenile Justice and Family Issues, Texas House of Representatives interim charges (74<sup>th</sup> Leg. (Tx. 1995)), available at

<http://www.lrl.state.tx.us/research/interim/chargesDisplay.cfm?cmtelD=620&s=FALSE>.

<sup>12</sup> Senate Committee on Jurisprudence Report, Bill Analysis of H.B. 1550 (75<sup>th</sup> Leg. (Tx. 1997)), available at <http://www.legis.state.tx.us/tlodocs/75R/analysis/html/HB01550S.htm>; Telephone Interview with Toby Goodman, *supra*, note 7.

<sup>13</sup> Texas Legislative Council, *Summary of Enactments 75<sup>th</sup> Legislature, Regular Session 1997*, available at <http://www.tlc.state.tx.us/pubssoe/75soe/75soe.pdf>.

for youth who are emotionally disturbed and/or chemically dependent.<sup>14</sup> TYC is required to administer comprehensive psychological assessments of each youth as part of the youth's initial examination, including assessments designed to identify whether the youth is in need of a psychiatric evaluation. If a need for a psychiatric evaluation is indicated, TYC is required to conduct one.<sup>15</sup> TYC must re-examine each youth at least every six months to determine if the youth's rehabilitation plan should be continued or modified.<sup>16</sup>

If a mentally ill or mentally retarded youth is committed to TYC on an indeterminate sentence, and has served his minimum length of stay, he may be discharged if TYC determines that he is unable to progress in the commission's rehabilitation programs because of his mental illness or mental retardation.<sup>17</sup> These youth are discharged in order to receive MHMR treatment and services in the community.<sup>18</sup> The law authorizing a mental health discharge for these youth is consistent with the public policy of the State that persons with mental illness or mental retardation shall be afforded treatment in their own communities.<sup>19</sup>

TCOOMMI was created in order to provide continuity of care services to offenders with special needs in the criminal and juvenile justice systems.<sup>20</sup> The problem with the current law, however, is that once a youth is discharged from TYC, he is no longer under State supervision. He is no longer *in* the juvenile justice system, therefore he doesn't qualify for TCOOMMI services. Without funding and support from TCOOMMI,<sup>21</sup> youth who are discharged from TYC due to mental illness or mental retardation are placed on long waiting lists for MHMR services, and are unable to receive the services they need to make a successful transition to their communities.<sup>22</sup> This means that the youth who TYC determines have the highest need for MHMR services in their communities – who are

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<sup>14</sup> Tex. Hum. Res. Code § 61.0315.

<sup>15</sup> Tex. Hum. Res. Code § 61.071.

<sup>16</sup> Tex. Hum. Res. Code § 61.072.

<sup>17</sup> Tex. Hum. Res. Code § 61.077.

<sup>18</sup> See Tex. Hum. Res. Code § 61.0772.

<sup>19</sup> See Tex. Health & Safety Code § 531.001.

<sup>20</sup> Tex. Health & Safety Code § 614.007.

<sup>21</sup> The functions of TCOOMMI are explained in more detail in the next subsection, titled, "The functions of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI)".

<sup>22</sup> Testimony of Dee Wilson, *supra*, note 2.

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discharged in order to receive those services – are not eligible to receive those services once released.

One possible solution to this problem is to change the law so that a youth who is unable to progress in TYC’s programming due to mental illness or mental retardation is paroled, rather than discharged. This would ensure that the youth was eligible for TCOOMMI services by keeping the youth in the juvenile justice system, and under State supervision. This possible solution has been widely rejected by advocates and practitioners throughout the State. As Dee Wilson, Director of TCOOMMI, explains, “If you release a seriously mentally ill kid on parole, he’s going to be revoked . . . . The intent of the mental health discharge is to keep them from bouncing in and out of TYC, when the reality is that they can’t benefit from correctional programming.”<sup>23</sup>

A better solution, proposed by HB 4451, would authorize youth discharged from TYC due to mental illness or mental retardation to qualify for and receive continuity of care services through TCOOMMI. Rather than keeping these youth in a system not designed to meet their needs, this solution simply expands TCOOMMI’s jurisdiction, so that these offenders can get the needed treatment and services.

**c. The functions of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI).**

TCOOMMI is a division of the Texas Department of Criminal Justice (TDCJ). It is a unique division in the country, given targeted funds by the Legislature to ensure that offenders with special needs are provided with immediate access to services.<sup>24</sup> MHMR services in the community are so limited that individuals referred for services are most often placed on a waiting list. Offenders who need MHMR services but who cannot access those services pose a high risk to public safety. Thus, TCOOMMI was created in response to this

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<sup>23</sup> Telephone Interview with Dee Wilson, Director of the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) (Apr. 23, 2009).

<sup>24</sup> *Id.*

public safety concern, ensuring that this population would be given priority and funding for treatment and services in the community.<sup>25</sup>

With State and federal funding, TCOOMMI provides continuity of care services for mentally ill and mentally retarded offenders by coordinating with and monitoring services provided by the Department of State Health Services (DSHS), the Texas Department of Mental Health and Mental Retardation (TDMHMR), and local MHMR authorities.<sup>26</sup> DSHS operates the State’s mental health facilities, and inspects, licenses, and enforces regulations in local mental health and substance abuse facilities.<sup>27</sup> TDMHMR develops and provides community-based MHMR treatment and services, and disburses federal and State funds to local MHMR authorities.<sup>28</sup> Local MHMR authorities are entities to which TDMHMR delegates its responsibilities within a specific region for coordination of services, including coordination with criminal and juvenile justice entities.<sup>29</sup>

**d. The definition of “continuity of care services”: What services would TCOOMMI be providing to youth released on a mental health discharge?**

“Continuity of care services” refers to the process of identifying the medical, psychiatric, psychological, educational, and rehabilitative treatment and service needs of an offender with mental impairments; developing a plan for meeting the treatment and service needs of the offender; and coordinating the provision of treatment and services between various agencies, such that they may continue to be provided to the offender at all stages of the juvenile or criminal justice system.<sup>30</sup>

TCOOMMI coordinates with local MHMR authorities to provide mental health and mental retardation services to offenders. “Mental health services” includes all services necessary to treat, care for, control, supervise, and

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<sup>25</sup> *Id.*

<sup>26</sup> Tex. Health & Safety Code §§ 614.013, 614.019.

<sup>27</sup> Tex. Health & Safety Code §§ 1001.072, 1001.073.

<sup>28</sup> Tex. Health & Safety Code §§ 533.001, 533.034, 533.035, 533.040.

<sup>29</sup> Tex. Health & Safety Code § 531.002.

<sup>30</sup> Tex. Health & Safety Code § 614.001.

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rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction. “Mental retardation services” includes all services related to the education, training, habilitation, care, treatment, supervision, and control of persons with mental retardation.<sup>31</sup>

Local MHMR authorities are required by law to provide (at a minimum): 24-hour emergency screening and rapid crisis stabilization services; community-based crisis residential services or hospitalization; community-based assessment, including the development of interdisciplinary treatment plans and diagnosis and evaluation services; family support services, including respite care; case management services;<sup>32</sup> medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and psychological rehabilitation programs, including social support activities, independent living skills, and vocational training.<sup>33</sup>

**e. The cost of services for youth released on a mental health discharge can be absorbed into TCOOMMI’s existing budget.**

In the past two years, TCOOMMI has provided continuity of care services for 4405 seriously mentally ill juveniles on county probation, and 2845 seriously mentally ill juveniles on TYC parole.<sup>34</sup> In the same two years, only 84 youth received mental health discharges from TYC.<sup>35</sup> Because of the unintended omission in the law, however, none of these 84 youth were eligible for TCOOMMI

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<sup>31</sup> Tex. Health & Safety Code § 531.002.

<sup>32</sup> “Case management” refers to a process by which a person or team maintains continuous contact with a mentally ill or mentally retarded person, coordinating access to and delivery of services to that person (Tex. Health & Safety Code § 614.001).

<sup>33</sup> Tex. Health & Safety Code § 534.053.

<sup>34</sup> Texas Correctional Office on Offenders with Medical or Mental Impairments, *TCOOMMI Biennial Report, 2009*, available at [http://www.tyc.state.tx.us/programs/special\\_treat.html#mental](http://www.tyc.state.tx.us/programs/special_treat.html#mental).

<sup>35</sup> *1550 Discharges March 2007 – March 2009*, Corsicana Residential Treatment Center, Texas Youth Commission (on file with author).

services.<sup>36</sup> While 84 youth is a large enough number to justify legislation expanding TCOOMMI's jurisdiction to provide continuity of care services, it is not so large that it would require appropriating additional funding. Dee Wilson, Director of TCOOMMI, testified before the House Committee on Corrections that TCOOMMI could absorb the cost of providing these services within its existing budget.<sup>37</sup>

**III. The House and Senate versions of the TYC Sunset bill do not currently make the changes that HB 4451 proposes.**

Both the House and Senate versions of the TYC Sunset bill (HB 3689 and SB 1020) include a section requiring juvenile justice agencies to develop a memorandum of understanding (MOU) with various agencies, establishing their responsibilities in providing continuity of care for juvenile offenders with mental impairments. While an MOU allows these agencies to develop inter-agency policies and procedures for coordination of care and exchange of information, it does not include TDCJ-TCOOMMI among the participating agencies, nor does it extend TCOOMMI's jurisdiction over youth discharged under Tex. Hum. Res. Code § 61.077, or over youth on TYC parole who are 17 years and older.

**IV. Possible amendments to HB 4451, recommended by the Office of the Independent Ombudsman for the Texas Youth Commission.**

Legislators discussing HB 4451 should consider adding conforming language to the definition of "continuity of care services" in the Texas Health & Safety Code,<sup>38</sup> so that it includes provision of treatment, care, and services following an offender's discharge from the Texas Youth Commission under Tex. Hum. Res. Code § 61.077.

Legislators should consider striking the language in the committee substitute to HB 4451, requiring referral to TCOOMMI "regardless of whether the

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<sup>36</sup> Will Harrell, Independent Ombudsman for the Texas Youth Commission, Remarks to Juvenile Justice Reform and the Texas Legislature seminar, University of Texas, LBJ School of Public Affairs, Austin, TX (Mar. 10, 2009).

<sup>37</sup> Testimony of Dee Wilson, *supra*, note 2.

<sup>38</sup> Tex. Health & Safety Code § 614.001(3-a)(C).

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child is receiving mental health services or mental retardation services”. This language is unnecessary and confusing.

Finally, legislators should also consider striking the language in Tex. Hum. Res. Code § 61.077, requiring a youth to serve a minimum length of stay before becoming eligible for a mental health discharge. TYC case managers and treatment staff may be able to identify a youth who is unable to progress in the commission’s programming due to mental illness or mental retardation after several weeks or months. Because the law requires a youth to complete a minimum length of stay, however, TYC may hold him for a year or more without being equipped to provide the treatment and services he needs.<sup>39</sup> The minimum length of stay was created by the Legislature in 1995 to prevent TYC from automatically “bouncing” a youth back to the county.<sup>40</sup> The minimum length of stay, however, was not tied to a youth’s ability to progress in treatment and programming, but rather to the seriousness of the youth’s offense.<sup>41</sup> The Legislature’s intent to prevent an automatic bounce-back of a youth would be adequately safeguarded by striking the requirement that a youth serve his entire minimum length of stay, and replacing it with a requirement that TYC make a thorough attempt to rehabilitate the youth in its specialized programming before determining that the youth is unable to progress in that programming. Making this amendment may also require conforming language to be added to Tex. Hum. Res. Code § 61.062, which provides guidelines for establishing a youth’s minimum length of stay.

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<sup>39</sup> Will Harrell remarks, *supra*, note 35.

<sup>40</sup> Telephone Interview with Toby Goodman, *supra*, note 7.

<sup>41</sup> Tex. Hum. Res. Code § 61.062.