

Senate Criminal Justice Committee

**Interim Report to the
79th Legislature**



December 2004

Senator John WHITMIRE, Chair

SENATE CRIMINAL JUSTICE COMMITTEE

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November 15, 2004

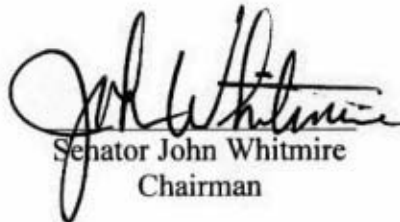
The Honorable David Dewhurst
Lieutenant Governor of the State of Texas
Capitol Building, 2nd Floor

Dear Governor Dewhurst:

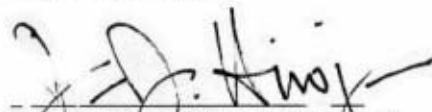
The Senate Committee on Criminal Justice submits its Interim Report in agreement with the Interim charges that were issued this past year. The Criminal Justice Committee has held hearings over the last year to gather information on these charges. The hearings have been well attended and very informative. In compliance with your request, a copy of this report will be circulated to all Senators and other interested parties.

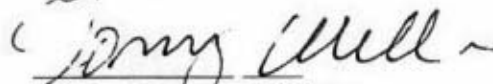
As you are aware, the charges that you issued to the Committee were very comprehensive and challenging. We have worked hard to respond to this challenge by developing broad recommendations that will benefit all Texans in the years to come. We anticipate that the Committee's recommendations will provide a guide for fiscal and operational improvement in the Texas Criminal Justice System. We thank you for your leadership and support.

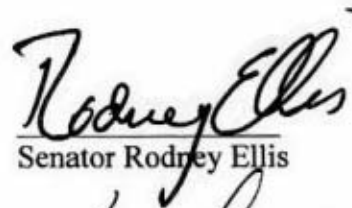
Respectfully submitted,

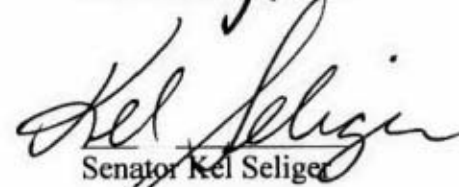

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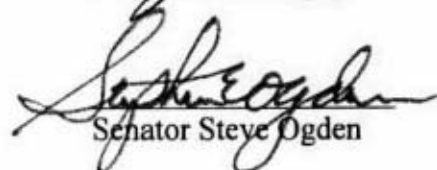

Senator Steve Ogden



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Criminal Justice Committee

Interim Charges

Executive Summary

During November 2003, Lieutenant Governor David Dewhurst announced the interim charges for the Senate Committee on Criminal Justice. The Committee began its work during its first public hearing on March 10, 2004, followed by public hearings on April 28, 2004, and August 24, 2004. Testimony was received from invited agencies and the public, along with written material submitted to the Committee. The items studied have resulted in the following recommendations for the assigned charges.

1. Study identity theft and its effects and the impact of recent legislation addressing the issue (HB 2138, SB 473, and SB 566, 78th Legislature). Make recommendations for enhancing Texas' ability to implement effective programs to prevent identity theft. Monitor federal legislation regarding identity theft to ensure that state and federal laws are complementary and make recommendations for improvements.

Recommendations:

With the Passage by the United States Congress of the Identity Theft and Assumption Deterrence Act, future laws governing this issue will come primarily from the federal level. However there are areas in which the Texas Legislature should continue its efforts to safeguard the citizens of Texas from such abuses:

- Ensure that the Texas Department of Public Safety system, which issues Texas Drivers License and Texas Identification Cards, is protected from abuse and only issues documents and assigns proper numbers to positively verified individuals.
- Clarify individuals' ability to place a freeze on the disbursement of their credit information if they believe they have been a victim of identity theft.
- Monitor the new Department of Public Safety Driver License Division Fraud Unit to determine its ability and effectiveness in pursuing alleged Identity Theft perpetrators.

2. Study and identify best practices for probation and community supervision programs including: the Community Justice Assistance Division; local probation management structure; the use of Drug Courts and the courts' impact on recidivism; programs to reduce underage drinking; mental health issues and continuity of care; use of the Community Supervision Tracking System (CSTS) and other data issues related to Criminal Justice information system components; and the implementation of HB 2668. Make recommendations for legislative changes to achieve best practices.

Recommendations:

Texas Department of Criminal Justice's (TDCJ) correctional facility population trends reveal that the budget decisions made in the 78th Legislature are no longer viable. Based on the known FY 2005 budget shortfalls, reductions in federal funds to TDCJ, and increasing medical costs, current resources will not support the increasing prison population as projected by the LBB.

The prison population is expected to exceed the operational capacity of TDCJ by FY 2006 unless policy initiatives are implemented to:

- Strengthen judicial confidence in Community Supervision Programs.
- Address the growing revocation rate of felons on community supervision to prison and state jail.
- Reduce the growing population of non United States citizens housed within TDCJ.
- Reduce the growing geriatric population housed within TDCJ and their ever increasing medical cost.
- Support the use of drug courts to divert offenders into life changing treatment and away from state jail or prison confinement.

It is also recommended that the 79th Legislature resolve the barriers to the successful completion of the Texas Computerized Criminal History system project, by requiring that Court Judgment documents contain both the state identification number for the individual defendant and the appropriate transaction numbers assigned to the individuals arrest event.

3. Study the management efficiency and organizational structure of the Texas Department of Criminal Justice, including implementation of recent restructuring by the TDCJ Board, and make recommendations on additional improvements, including possible consolidation of agency functions and other cost saving measures.

Recommendations:

Utilizing the legislative authority appropriated to TDCJ and The Texas Board of Criminal Justice, TDCJ consolidated four divisions and created the new Correctional Institution Division. This movement appears to have brought about positive results.

The Legislature should continue to monitor the TDCJ organizational structure and should encourage a similar review of the sixteen non-impacted divisions to identify possible additional savings and efficiencies.

4. Study the use and effectiveness of current parole guideline policies and make recommendations for changes to improve the policies. Develop innovative options that improve efficiency and enhance safe and effective correctional policy.

Recommendations:

Decisions made by the Texas Board of Pardons and Parole have a major impact on prison capacity, and as such directly affect the amount of resources the Legislature must provide for the operation and maintenance of state run penal facilities. Under the current environment a lowering of their approval numbers will be reflected in expedited prison crowding, costing the State an estimated \$63 million dollars to pay for temporary housing of state inmates in county jails and/or private facilities. Due to these significant issues the committee recommends that:

- Current statues intend that the mandated parole guidelines be the basic criteria for release decisions. The BPP should clearly state the reason for a denial in a written format that the inmate and others can readily understand (the current form is very confusing).

- Monthly reports on release decisions, including the special statutorily mandated panels, should be distributed to the Legislature.
- Expedite the MRIS process to prevent inmate deaths during consideration.

5. Study and make recommendations relating to improving the use of specialized police agencies and officers, specifically, the necessity, accountability, qualifications and jurisdictions of such police agencies.

Recommendations:

Expanding the list of Texas peace officers has discombobulated the meaning of the title *peace officer* and added to the confusion over the duties and responsibilities of being a peace officer. The legislature should resist and cease the ad hoc inclusion of naming new agencies, districts and organizations as peace officers and consider a reorganization of specialized police agencies into a separate category that provides clarity to their duties, responsibilities and privileges.

6. Review the Crime Victims Compensation Fund (Fund), including state and local competition, use in state agency methods of finance, evaluation of grant programs, possible diversion of funds from crime victims as a result of prior legislation, and whether the Fund meets the objectives of its authorizing legislation

Recommendations:

The legislature should repeal the Office of the Attorney General's authority to certify excess monies to be appropriated out of the CVC Fund. It should also clarify the governing statutes which state that CVC funds may only be used to compensate actual crime victims, to operate the CVC program, and to fund the crime victims' institution.

7. Study the number of foreign citizens serving sentences in Texas prisons, including information relating to prison terms, recidivism, and types of offenses. Make recommendations for reducing the costs of providing prison services for this population,

including leveraging of federal immigration funds and possible international agreements to pay home countries to transfer the prisoners to their respective countries to serve the remainder of their terms .

Recommendations:

The current increasing prison population demands that the growing number of foreign citizens within the TDCJ be dealt with in a manner that reduces the cost of their housing and frees up needed bed space.

Adherence to the following recommendations should aid in this endeavor:

- Parole-eligible foreign citizen inmates under a detainers issued by the INS should be released to INS for deportation.
- The Lieutenant Governor designating a working group charged with developing an acceptable process for utilizing federal prisoner transfer treaties.

8. Study and make recommendations concerning the cost effectiveness and efficiency of private prisons, including private services performed at state-owned prisons.

Recommendations:

TDCJ appears to be utilizing an acceptable contract development, awarding, and monitoring system. It has provided the State with assured delivery of services and accountability of expenditures. The legislature should continue to monitor TDCJ activities and ensure that similar success is obtained with any expansion of their contracts involving temporary housing or expanded intermediate sanction facilities.

INTERIM CHARGE NUMBER ONE

Study identity theft and its effects, and the impact of recent legislation addressing the issue (HB 2138, SB 473, and SB 566, Seventy-eighth Legislature). Make recommendations for enhancing Texas' ability to implement effective programs to prevent identity theft. Monitor federal legislation regarding identity theft to ensure that state and federal laws are complementary and make recommendations for improvements.

Introduction

In the past year, more than 500,000 consumer frauds and identity (ID) theft complaints have been filed with the Federal Trade Commission, doubling the figures from the previous year. Losses nearing half a billion dollars have sparked the need for expanded scrutiny of identity theft and the types of crime that accompany it. The State of Texas, in conjunction with federal laws, has taken action to prevent the spread of identity crime.

Background

The 105th U.S. Congress enacted the Identity Theft and Assumption Deterrence Act. It is the federal law targeting identity theft. The Act prohibits the knowing transfer of a means of identification of another person with criminal intent. Under this Act, a social security number (SSN) is considered a means of identification.

The 78th Legislature passed three bills that specifically address issues of identity theft. SB 566 requires law enforcement agencies that arrest a person who provides falsely identifying information to take several actions. First, the law enforcement agency must notify the person whose identity was used of the crime. The law authorizes the victim to file a declaration with the Department of Public Safety (DPS) and file an application for expunction with the state attorney. Also, the law enforcement agency must notify DPS regarding the misuse of the identifying information.

HB 2138 provides an offense for a person that steals the information contained in the magnetic strips of payment cards without the consent of the card's owner and with intent to harm or defraud. HB 2138 makes the offense a Class B misdemeanor.

SB 473 clarifies the ability of an identity theft victim to place a security alert or freeze on their consumer file. This limits the distribution of disparaging information about a person's credit record.

In 2002 an estimated 10 million people were victims of identity theft, estimated losses amount to 5 billion dollars. Texas ranks among the highest states in level of identity crime with about 93.3 victims per 100,000 persons. Many new plans to change Texas law propose a focus on criminal statutes. These include adjusting the circumstances to allow for presumption to harm or defraud under circumstances in which a person possesses identifying information. Other ideas include creating a new offense for the creation or possession of a fake ID, or higher penalties for providing false information to peace officers.

DPS has created the Driver License Division Fraud Unit, which investigates and arrests subjects engaged in identity theft. Crimes such as selling personal information, counterfeiting government documents, and tampering with government records all fall within their jurisdiction.

Current Laws

Current law requires notifications about potential ID theft, establishes criminal penalties for specific offenses, further restricts access to consumer credit reports and private information, and gives investigative authority and obligation to DPS. Penalties for ID theft can range from a Class C misdemeanor to a first-degree felony. Punishments range from small fines to prison sentences including life.

Credit reports have become a source of concern as levels of identity crime have ballooned. The Seventy-eighth Legislature has given consumers the right to place security alerts and freezes on their

credit reports in case of suspect activity. Alerts notify the recipient of a report that a consumer's identity may have been used fraudulently. A freeze prevents a consumer reporting agency from releasing any report related to credit without authorization. SB 473 requires alerts to be on a consumer's file within twenty-four hours of a request. The alert remains in effect for at least forty-five (45) days. Then report recipients must reasonably verify the consumer's identity before extending any credit, lending money, or authorizing an application for services. A security freeze may be enacted within five business days upon receipt of a request that includes a valid police report, investigative report, or complaint of identity theft. The agency has 10 days to provide the consumer with an identification number and password by which the consumer may remove or temporarily lift the freeze. Exceptions to the effect of a freeze include government agencies acting under a warrant, court order, or subpoena. Issues regarding the implementation of a freeze have been raised about the requirement of a police report, investigative report, or complaint, specifically with the definition of complaint. The text of SB 473 states that a complaint is defined in Texas Penal Code, section 32.51. Hearing testimony has revealed some confusion regarding this definition.

HB 2138 makes it a Class B misdemeanor to use an electronic device to access, read, scan, store, or transfer the information encoded in a payment card's magnetic strip without consent or with intent to harm or defraud. The punishment for this offense can include jail time up to 180 days and/or a maximum fine of two thousand dollars.

Under SB 566 local law enforcement agencies that arrest a person who gives false identifying information are required to notify the person whose identity was falsely used. The person must be informed that a subject, while under arrest in that county, misused their information, and also, that the person is entitled to file a declaration with DPS and may apply for expunction of information in criminal records and files. The arresting agency must also notify DPS that the information was misused, give the actual identity of the subject, if possible, and state whether the victim has been notified. The process of expunction requires verification of the application including fingerprint records and other identifying information. The application may be filed through the state attorney.

Recommendations

With the Passage by the United States Congress of the Identity Theft and Assumption Deterrence Act, future laws governing this issue will come primarily from the federal level. However there are areas in which the Texas Legislature should continue its efforts to safeguard the citizens of Texas from such abuses:

- Ensure that the Texas Department of Public Safety system, which issues Texas Drivers License and Texas Identification Cards, is protected from abuse and only issues documents and assigns proper numbers to positively verified individuals.
- Clarify individuals' ability to place a freeze on the disbursement of their credit information if they believe they have been a victim of identity theft.
- Monitor the new Department of Public Safety Driver License Division Fraud Unit to determine its ability and effectiveness in pursuing alleged Identity Theft perpetrators.

INTERIM CHARGE NUMBER TWO

Study and identify best practices for probation and community supervision programs including: the Community Justice Assistance Division; local probation management structure; the use of drug courts and the courts' impact on recidivism; programs to reduce underage drinking; mental health issues and continuity of care; use of the Community Supervision Tracking System (CSTS) and other data issues related to Criminal Justice information system components; and the implementation of HB 2668. Make recommendations for legislative changes to achieve best practices.

Introduction

In preparation for the Seventy-ninth Legislative Session, the Legislative Budget Board's (LBB) Criminal Justice Data Analysis Team issued its long-term adult correctional population projections on June 8, 2004. The LBB assumed these data analysis responsibilities from the former Criminal Justice Policy Council, which ceased to exist on September 1, 2003. Their projections provide the Legislature with an early warning that the prison population, which has been growing, will continue to increase not only beyond the operational capacity in FY 2006, but also beyond the available population capacity in FY 2008.

Of equal concern is that their projections show the adult community supervision direct population will decrease continually through FY 2009. A review of the LBB data, contained in Appendix A of their June 1, 2003, report, reveals that the decline in this population began in FY 1999. The average percentage decrease since 2001 is the basis for these estimates. The LBB group has utilized a 6% loss in its assumption.

The Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice (TDCJ) provides us with more specific examples of these declines in its Statistical trends in Community Supervision report of January 2003. Among the numbers for the largest 10 departments, Harris County Community Supervision and

Corrections Department (CSCD) has steadily decreased between July 1994 and August 2002, demonstrating a 22.4% loss in direct cases. In comparison the Tarrant County and Bexar County CSCD show a 3.5% and 6.2% loss, respectively.

The occurrence of increasing prison population and decreasing community supervision direct population defines the environment that will confront the 79th Legislature. Legislators will be required to provide resources to house a larger prison population, redirect portions to alternative programs, or in some other manner provide for the public safety in processing the growing offender population.

Background

Given the similarity of the situation facing the 79th Legislature, to that which was faced by the 78th Legislature, concerning an increasing incarcerated offender population, a revisiting of the 2003 process is useful. During March of 2001, the population of the Texas Department of Criminal Justice institutions dropped below the designated operational capacity and remained below the 97.5% level until January 2003. At one time during January 2002 the population was 6,810 beds below the operational capacity, and it appeared that this trend would continue through FY 2005. The Criminal Justice Policy Council Projection of June 2002 was revised in January of 2003, stating that the population would grow beyond the operational capacity in 2004, based on their observation of:

- Prison releases declining by 10%
- Parole revocation increasing by 14%
- Probation revocation increasing by 4%
- Pretrial felons in jails increasing by 10%

Although an incarcerated capacity problem was not anticipated prior to the 78th legislative session, both the Senate Criminal Justice Committee and the House Corrections Committee had been assigned

interim study charges related to the use of and expansion of community supervision programs. On the Senate side the following charges had been assigned:

1. Review available rehabilitation programs that provide an alternative to incarceration for nonviolent drug-dependent offenders to determine their effectiveness and recommend for further use any suitable community-based program that safely reduces recidivism among such offenders.
2. Study the impact that the revocation of technical violators of community supervision has upon the state's prison population and make recommendation for reducing the revocation rate among such offenders without unduly interfering with local judges' discretion.

These studies lead the Senate Criminal Justice Committee to issue recommendations to expand and strengthen community supervision programs in their 78th interim report. Specifically the committee issued findings that:

1. The number of available substance abuse treatment beds should be increased. 500 beds, to include additional female offender beds, would serve 1,625 offenders annually.
2. The committee also found that the state should expand the use of alternatives to revocation through increased funding of an array of residential and nonresidential sanctions and treatment programs.

The House Corrections Committee was assigned the following within their interim studies charges:

1. Study the community supervision caseloads, the effect of officer-to-offender ratios and the impact of caseload reductions on revocations and incarceration costs to the state.
2. Study the quality and availability of residential facilities and the potential cost savings of enhanced residential sentencing as an alternative to long-term incarceration.

These studies resulted in the committee issuing the following findings:

1. Reduce caseloads for community supervision officers. A ratio of one officer to seventy offenders would cost an additional \$41.2 million dollars, caseloads of eighty offenders equal and additional \$28.3 million dollars and caseloads of ninety offenders would equal and \$18.2 million dollars. At the time of the study the average caseload was one hundred and fifty-two offenders.
2. Make community supervision officers eligible for state insurance benefits.
3. Provide community supervision officers with more control over the imposition of intermediate sanctions.
4. The 78th Legislature should consider more frequent use of the early dismissal option for successful probationers.
5. Increase community correction residential alternatives.

While these recommendations and findings provided a viable framework to address the identified prison capacity issue, they ran afoul of the budget crises that appeared to worsen as the session began. Of those presented by both committees, only one committee finding found its way into law. Community supervision officers were made eligible for State insurance benefits. Rather than increase the resources for community correction programs, the state funding for these programs was reduced by \$14.8 Million dollars.

Expanding prison capacity was the chosen resolution to the identified increases in incarcerations trends. The substance abuse felony punishment programs were reduced from nine month programs to six months and consolidated into fewer institutions. Additional beds were added to select state jail facilities and the Hamilton Unit was transferred from the Texas Youth Commission to the Texas Department of Corrections, to be remodeled as a male 1,166 bed prison. The operational cost of the Hamilton Unit, according to the TDCJ conversion chart from October 20, 2003, will be \$11.7 million dollars per year, or approximately \$24 million dollars per biennium. As highlighted in the LBB projections issued June 1, 2004, by August 2004 **the TDCJ total capacity will 154,486 beds**, and the **operating capacity will be 150,624 beds**.

Community Supervision Organization / Management Structure

The provision of probation services in Texas is achieved by local judicial agencies, known as community supervision and corrections departments, with state oversight accomplished within the executive branch entity of the Texas Department of Criminal Justice's (TDCJ) Community Justice Assistance Division (CJAD). Texas Government Code, Section 493.003, establishes this division and assigns it the following functions:

- To establish minimum standards for programs, facilities, and services for community supervision and corrections departments.
- To fund programs, facilities, and services for community supervision and corrections departments.

State general revenue funds are provided through the TDCJ-CJAD appropriations for distribution to the 121 individual community supervision and corrections departments (CSCDs) that serve the 254 counties in Texas. CJAD allocates these funds over a two-year period through specific formulae under the following titles:

- **Basic Supervision Funds** which cover the basic operating costs of the department in providing services to offenders. The amount of funding received depends on the number of direct and pretrial felons, and the number of supervised misdemeanants.
- **Community Corrections Program Funds** is a set formula based on the ratio of felons placed on supervision to the population of the counties in the judicial district.
- **Diversion Program Grants** are competitive monies awarded to select departments for programs that divert offenders from incarceration.
- **Treatment Alternative to Incarceration Program Grants** are awarded to select departments to provide substance abuse treatment to offenders who do not qualify for or cannot afford any other treatment.

The local judicial agencies that are established to provide supervision and services to offenders are authorized by the Texas Government Code, Chapter 76, titled "Community Supervision and Corrections Departments." It states that the District Judge or Judges trying criminal cases in each judicial district shall establish a community supervision and corrections department and to employ district staff as necessary to:

- Conduct pre-sentence investigations
- Supervise and rehabilitate defendants placed on community supervision
- Enforce the conditions of community supervision
- Staff community corrections facilities

Employees of a CSCD are judicial district employees and are not considered state employees except for specific provisions, nor are they county employees. The judges are authorized to manage the CSCD, expend funds, and set policies and procedures. These judges are also required by this statute to organize a community justice council to provide policy guidance and direction for the development of community justice plans and community corrections facilities and programs.

According to the National Institute of Corrections report on **state organizational structures for delivering adult probation services (1999, Krauth Linke)**.¹ Texas is only one of only five states which utilize such a system. The majority of states provide probation services through a state-level executive branch agency, specifically 30 states, or 60%.

The Texas system is commonly supported by the Texas Code of Criminal Procedure, Article 42.12, Section 1, which places the responsibility wholly within the state courts "for determining when the imposition of sentence in certain cases shall be suspended, the condition of community supervision and the supervision of defendants placed on community supervision, in consonance with the powers

¹ National Institute of Corrections, State Organizational Structures for Delivering Adult Probation Services, Krauth and Linke, 1999.

assigned to the judicial branch of this government by the constitution of Texas." **Empowered by this assignment, the judges become not only the users of the system, but also the managers of the system.**

Under this process, an individual who is granted community supervision remains an active element of the court's docket. Any new appropriate level criminal cases filed or any motions concerning the probationer will be assigned to the court's jurisdiction.

A CJAD review of the fiscal year 2003 probation completion rates of felons found that 53,007 felons were closed. **Of this number, 24,575 or 46% were revoked and incarcerated:**

- 1,294 in a county jail, or 2% of the revocations
- 10,431 in a state jail, or 20% of the revocations
- 12,850 in an institution (prison), or 24% of the revocations

CJAD performed the same review for each individual County. The Harris County CSCD, again for FY 2003 felons closed, was reviewed and the study revealed that of the 8,890 felons closed, **4,331, or 49 %, were revoked and incarcerated.**

Among other large community supervision systems, this study revealed that **Travis County CSCD revoked 53 % of its closed felons, Dallas County CSCD revoked 54 % of its closed felons and, Tarrant County CSCD revoked 64% of its closed felons.**

In addition to the above, the CJAD review found that **revocation of felons for technical violations has grown by 95 %** during the period from 1994 to 2003. This review also found **a 14 % increase in the revocations of felons for a new offense** during the same time frame.

Community Supervision Tracking System (CSTS)

The Community Supervision Tracking System (CSTS) is a subsystem of the Corrections Tracking System (CTS) maintained by the Texas Department of Criminal Justice (TDCJ). The Legislature mandated its development in 1995 as an enhancement to the CTS and the Computerized Criminal History (CCH), maintained by the Texas Department of Public Safety (DPS), which were mandated in 1989. Responsibility for the development and administration of this system was assigned to the Community Justice Assistance Division (CJAD) of TDCJ. Designed as the centralized state repository of the records of all offenders under probation or community corrections supervision in Texas, its purpose is to provide local and state officials with data to track offenders and conduct fiscal analyses and program evaluations.²

A second component of CSTS is that DPS would use these records to identify offenders on probation in their CCH records to create a "flash notice" system that electronically notifies a local probation department when a probationer is rearrested.³ The enabling

law envisioned CCH as an active system with direct notification to the community supervision officer supervising the probationer. During state FY 1995-1996, approximately \$1,700,000 million dollars were appropriated and distributed through CJAD grants to local community supervision and corrections departments (CSCD) to aid in the development of CSTS. This represents the only allocation of state funds for this purpose.⁴

In February of 2002 the Criminal Justice Policy Council issued its finding concerning a required audit of the CSTS which revealed the following major problems:

² Audit of the Texas Community Supervision Tracking System, Criminal Justice Policy Council, February 2002.

³ Ibid, page i.

⁴ CSTS Historical Perspective and Current Status, Community Justice Assistance Division, June 22, 2004.

- Almost half of the records for felons (45%) and misdemeanants (46%) placed on probation in FY 2001 were missing.
- Close to half of the probation cases under direct supervision for felonies (47%) and misdemeanors (45%) had the supervision field in their records missing or a missing record. This failure does not indicate whether a person was on direct or indirect supervision (important funding issue).
- Approximately 2% of felony offenders reported in CSTS as being under direct probation supervision on July 31, 2001, were actually in a TDCJ institution and not on direct probation.
- It was found that incomplete reporting in CSTS led to an incomplete number of records "flagged" in the DPS system and that only passive notification of a probationer's arrest through the TDCJ network had been developed.
- The reporting infrastructure for the CSTS system is in place but the low level of reporting makes the system ineffective.⁵

CJAD responded to these findings and implemented a new data base system that improved the error reporting process, response, and resubmission issues. They have also initiated program changes to monitor probationer transfer processes and ensure that the CSTS accurately reflects the status of the case. Progress has been observed in a 2003 CJAD review indicating that the percentage of placements not entered had been lowered to 15% and the percentage of revocations not entered has been lowered to 14%.⁶

However, a continuing problem with the accuracy and timeliness of the CSTS data is the obstacle of obtaining required state identification numbers (SID) and transaction numbers (TRN) for each and every offender and arrest event.⁷ An SID number is the unique person identifier assigned by DPS, based on a positive identification of a person using fingerprints and a TRN is the number assigned to an arrest event and designed to track each individual arrest through the criminal justice system. In the event that an

⁵ Audit of the Texas CSTS, CJPC, February 2002, page ii.

⁶ CJAD Corrective Action Fact Sheet, CSTS, March 8, 2004.

⁷ CSTS Historical Perspective and Current Status, Community Justice Assistance Division, June 22, 2004.

arrest results in multiple criminal charges, a suffix to the TRN called a TRS is assigned to each individual charge and again is tracked through the criminal justice system. These numbers are issued in blocks to arresting authorities for assignment of the TRN and TRS; usually the SID numbers are issued in blocks to the sheriff's departments, who issue them based on positive fingerprint identification.

In theory, these unique numbers should be assigned as the case proceeds through the criminal justice system from arrest, to charging, to case prosecution, and finally to court disposition. **In reality, cases are being disposed of without these numbers being attached. If the case results in a community supervision sentence, it is then the responsibility of the CSCD to request the numbers from the arresting and identification law enforcement agency.**

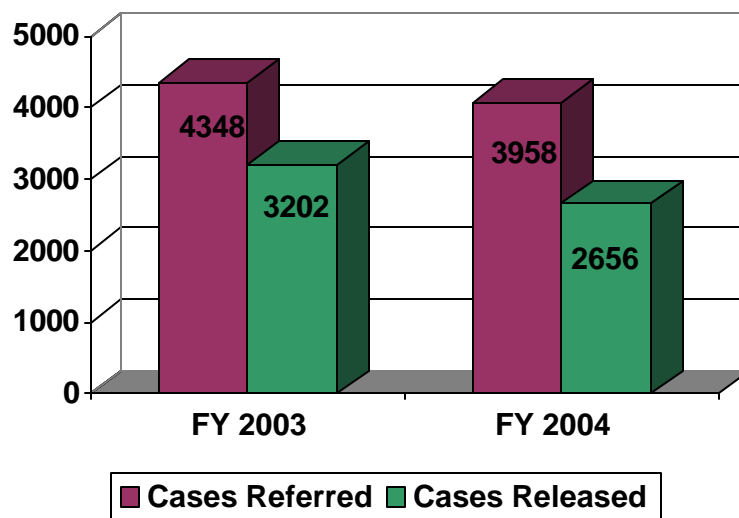
Continuity of Care Program

The Texas Correctional Office on Offenders with Medical or Mental Impairments' (TCOOMMI) Continuity of Care (COC) program provides a formal pre- and post-release aftercare system for all offenders with special needs released from TDCJ facilities (state jails, substance abuse felony punishment facilities {SAFPFs}, prisons). By identifying offenders who are in need of aftercare treatment prior to their release, the offenders' chances for a more successful reentry into the community are improved. This is particularly true for offenders who have a history of noncompliance due to mental health issues. If such offenders are identified prior to release, conditions may be imposed by the Parole Board or the courts that require mandatory participation in mental health treatment or other similar rehabilitative programs.

The COC program operates on a regionalized system of care that utilizes local mental health mental retardation authorities (MHMRA) or Texas Department of Human Services (TDHS) staff to perform their respective job functions. Through contracts between TCCOOMI and these agencies, twenty-seven COC workers and seven eligibility benefits specialists are assigned to cover each TDCJ-operated facility within the state. COC workers develop pre-release plans in conjunction with the primary service

provider in the community to which the inmate is scheduled to be released. In addition, 90 days prior to release, the Benefit Eligibility Specialist initiates all relevant applications for federal entitlements for which the inmate may be eligible (i.e., Supplemental Security Income, Social Security, Social Security Disability Insurance, Food Stamps, AIDS medications, etc.).

For the most part, the majority of inmates released from TDCJ facilities are returned to communities where TCOOMMI, and in some cases, the local CSCD or parole jointly operate targeted mental health offender programs. As a result, offenders are immediately enrolled in treatment services upon their release from custody; thus avoiding an interruption of services. The following chart depicts an overview of COC referrals and releases during the current and previous fiscal years as of July 31, 2004:



Texas continues to be the only state in the country with a continuity of care program that has been developed specifically for offenders with special needs. The linkage provided between the institution and the community has proven to be an effective strategy for ensuring immediate access to psychiatric, medical, or rehabilitative services for parolees.

As most experts would agree, the immediate availability of community resources has a decided impact on reducing recidivism. The COC program represents an innovative response toward minimizing barriers to service access, thus improving public safety.

Programs to Reduce Underage Drinking

During the 75th Legislature, SB 35 (the Zero Tolerance Bill) was passed to significantly increase punishment for underage drinking.⁸ Current law prohibits a minor from operating a motor vehicle while having any detectable amount of alcohol in his or her system. Tough sentences were mandated and applied to the new offense of driving While under the influence of alcohol. Penalties were also set to increase with repeat occurrences in accordance with the following:

- First offense: Class C misdemeanor, punishable by a fine up to five hundred dollars , attendance at an alcohol awareness class, twenty to forty hours of community service (judges' discretion), and sixty days driver's license suspension (ineligible for an occupational license for the first thirty days).
- Second offense: Class C misdemeanor, punishable by a fine up to five hundred dollars, attendance at an alcohol awareness class (judges' discretion), forty to sixty hours of community service, one hundred and twenty days driver's license suspension (ineligible for an occupational license for the first ninety days).
- Third offense: offender not eligible for deferred adjudication and his or her driver's license is suspended for one hundred and eighty days and an occupational license may not be obtained for the entire suspension period. If the minor is seventeen years of age or older, the fine increases to five hundred dollars to two thousand dollars, confinement in jail for up to one hundred and eighty days, or both.⁹

The Zero Tolerance Bill also significantly strengthened and enhanced other minor-related alcohol laws by adding automatic driver's license suspension for minors who purchase alcohol, attempt to purchase, possess, or consume alcoholic beverages, are publicly intoxicated, or misrepresent their age to obtain

⁸ Texas Alcoholic Beverage Commission, Zero Tolerance Bill, www.tabc.state.tx.us.

⁹ Ibid, www.tabc.state.tx.us/leginfofor/sb35.htm.

alcoholic beverages. Again, if the offender is seventeen or older he or she faces a fine of two hundred and fifty dollars to two thousand dollars, confinement in jail for up to one hundred and eighty days, or both.¹⁰

Penalties for adults or other minors who provide alcohol for minors were also enhanced from a Class C misdemeanor to a Class A misdemeanor, which is punishable by a fine of up to four thousand dollars and/or confinement in jail for up to a year.¹¹

Prevention and intervention programs at the state level are spearheaded by the Texas Alcohol Beverage Commission (TABC), the Texas Commission on Alcohol and Drug Abuse (TCADA) now the Mental Health and Substance Abuse Division (MHSAD) of the Department of Health Services (DHS), and the Texas Juvenile Probation Commission. State resources are coordinated with private organizations through the Alliance Against Underage Drinking. The Alliance was founded on June 1, 2000, and includes fifteen state agencies and forty-four private organizations who provide a comprehensive, coordinated response to one of the most serious health threats young Texans face.¹² Among the dedicated programs to prevent underage drinking are:

- In FY 2003 TCADA spent approximately forty-eight million dollars on prevention programs aimed at stemming the use of illegal substances, including alcohol, by youth. TCADA also supports community coalitions in thirty-five settings across the state. For example, the Rio Grande Safe Communities Coalition in El Paso has implemented a "Border Binge-Drinking Reduction Program" aimed at reducing alcohol-related motor vehicle accidents caused by underage cross border binge drinking. TCADA also certifies alcohol education programs for minors with alcohol violations and driving while intoxicated (DWI) education and intervention

¹⁰ Ibid.

¹¹ Alcohol Beverage Code, Section 106.03(c).

¹² 2 young 2 drink, www.2young2drink.com.

classes for individuals with DWI offenses. There are two hundred and sixteen alcohol education programs with eighty-four thousand and eighty-two youths who attended in FY 2003.¹³

- Enforcement programs and stings, education programs, and public relations programs are operated by the Texas Alcoholic Beverage Commission (TABC). Examples include:
 - Cops in Shops Program—agents pose as customers or employees to help the store/bar deter the incidence of minors attempting to purchase alcoholic beverages. This is done in conjunction with retail accounts both on and off premises.
 - Operation Fake Out—used to identify the use of false identification and to try to track down where it was obtained.
 - Sales to Intoxicated Persons Stings (SIPS)—on location undercover officers are used to detect over-service of alcoholic beverages and/or service to minors.
 - Minor Stings—underage individuals are used to attempt to purchase alcoholic beverages at both on and off premises locations.
 - Education Programs include the Safe Prom/Graduation and Project SAVE (Stop Alcohol Violations Early).¹⁴

- The Texas Juvenile Probation Commission (TJPC) is actively involved in administering alcohol prevention and intervention programs in the Juvenile Justice Alternative Education Programs (JJADP) and other Juvenile Probation Department (JPD) supervision programs.

- Texans Standing Tall (TST) is one of twelve statewide coalitions of youths and adults united in an effort to reduce underage drinking, providing active advocacy efforts for policy changes and conferences addressing the problems associated with underage drinking.¹⁵

¹³ TCADA, Underage Drinking: Texas Facts and Consequences, April 26, 2004.

¹⁴ TABC, Reducing the incidence of Underage Drinking, April 26, 2004.

¹⁵ www.texansstandingtall.com.

Drug Courts and Impact on Recidivism

The Texas Legislature supported the use of drug courts during the 77th legislative session when it passed HB 1287. The bill amended the Health and Safety Code to authorize a county commissioners court to establish a drug court program and required that the program use the ten key components defined by the Office of Justice Programs of the United States Department of Justice. The use of the Justice Department's key components differentiates the authorized drug courts (established for treatment and behavioral change) from those courts that operate for the purpose of expediting drug cases or clearing backlogs of drug cases.¹⁶

An expansion of drug court use was also envisioned in this Act, as it required all counties with a population over five hundred and fifty thousand to establish a drug court by September 1, 2002, unless they were unable to obtain federal funding specifically for the operation of a drug court or the legislature did not appropriate money specifically for this purpose.¹⁷ The 2000 United States census indicated that Bexar County, Dallas County, El Paso County, Harris County, Hidalgo County, Tarrant County, and Travis County fell within the intent of the bill. The 2002 Census added Collin County to those impacted by the bill. At this time, twenty-four drug courts, associated with adult justice systems, have been established in sixteen counties including all of the above, with the exception of Hidalgo County.

In addition to those operating in the adult justice system, seven drug courts have been established in the juvenile justice system, along with three in the family justice system.¹⁸ The family drug courts exemplify innovative approaches designed to provide treatment to parents seeking to regain custody of their children or comply with court-ordered child support.¹⁹

The effectiveness of the drug court model is dependant on the early identification and assessment of likely candidates and swift access to treatment and recovery services, coupled with intensive judicial

¹⁶ CJAD, The Status of Drug Courts in Texas: July 2004.

¹⁷ Office of House Bill Analysis, 77RHB1287 Enrolled version, July 17, 2001.

¹⁸ CJAD, Current Picture: Drug Courts in Texas, September 15, 2001.

supervision.²⁰ Depending on the court design (pretrial diversion or post trial), the maintaining of a productive, drug-free lifestyle can result in graduates obtaining dismissed criminal charges, early release from supervision requirements, reduced supervision requirement, or deletion of charges from the participant's criminal record.²¹ A January 2003 study of three Texas adult drug courts' biennial rearrest rate concluded that the rearrest rate was significantly lower for drug court graduates than for comparable offenders who did not participate in the drug court system. The results of the study are as follows:

- Dallas County drug court graduate rearrest rate was 10.2 % versus the comparison group of non participants of 51 %.
- Jefferson County drug court graduate rearrest rate was 26.2 % versus the comparison group of non participants of 43.7 %.
- Travis County drug court graduate re-arrest rate was 24.5 % versus the comparison group of non-participants of 45.5 %.²²

Furthermore, in August of 2002, Southern Methodist University conducted a cost-benefit analysis of the Dallas County DIVERT adult drug court. The analysis revealed that for every dollar spent on an offender's drug treatment through DIVERT, the community saved nine dollars and forty-three cents (\$9.43) over a forty (40) month post-treatment period.

A review of national research provides that similar results have been documented across the United States:

- In 2003 the National Institute of Justice (NIJ) studied a sample of seventeen thousand drug court graduates nationwide and found that within the first year after graduation, only 6.4 % had been rearrested and charged with a felony offense (Roman, Townsend, and Bhati, 2003).²³

¹⁹ CJAD, The Status of Drug Court in Texas: July 2004.

²⁰ Ibid. page 2.

²¹ Ibid. page 2.

- A 2000 Vera Institute of Justice report concluded that "the body of literature on recidivism is strong enough, despite lingering methodological weaknesses, to conclude that completing a drug court program reduces the likelihood of future arrest (Fluellen and Trone, 2000).²⁴
- In 2003 the Center for Court Innovation (CCI) conducted a study of the New York State drug court system and found that the reconviction rate among two thousand one hundred and thirty-five defendants who participated in six of the state's drug courts was, on average, 29 % lower over three years than for the same type of offender who did not participate in the drug court, 13 % to 47 % respectively (Rempel, et al, 2003).²⁵
- A study in Chester County, Pennsylvania found that drug court graduates had a rearrest rate of 5.4 % versus a 21.5 % rearrest rate among the control group (Brewster, 2001).²⁶

Of interest is the fact that in Texas 90 drug-free babies have been born to active drug court participants since these programs have been established. Thirty-three were born in the past twelve months.²⁷

Drug courts in Texas have grown from three in FY 2002 to the current thirty-three with another ten in the planning stages. **However, funding has not grown beyond the legislatively appropriated seven hundred and fifty thousand dollars plus the over three million dollars in grant funds available through the Governor's Criminal Justice Division (CJD) and the TDCJ.**²⁸

²² Criminal Justice Policy Council, Initial Process and Outcome Evaluation of Drug Courts in Texas, January 2003.

²³ National Drug Court Institute, Drug Courts: A National Phenomenon, www.ndci.org.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ NDCI, A National report Card on Drug Courts, October 1, 2004.

Implementation of House Bill 2668

HB 2668, passed during the 78th legislative session and effective September 1, 2003, states that upon conviction of a state jail (SJ) felony punishable under Section 12.35(a) of the Penal Code, the judge shall suspend the sentence and place the defendant on community supervision (CS) **unless the defendant has previously been convicted of a felony**, in which case the judge may place the defendant on community supervision (probation or deferred adjudication) or order the sentence to be executed (incarcerated in a state jail facility). The change in law requires first-time offenders convicted of possessing less than one (1) gram of a controlled substance be placed on community supervision. The same holds true for similar offenses.

The Legislative Budget Board projected that the impact of HB 2668 would necessitate the shifting of 4,040 state jail admissions (offenders) from state jail facilities to community supervision (CS).

State jail populations have changed in accordance with the following:

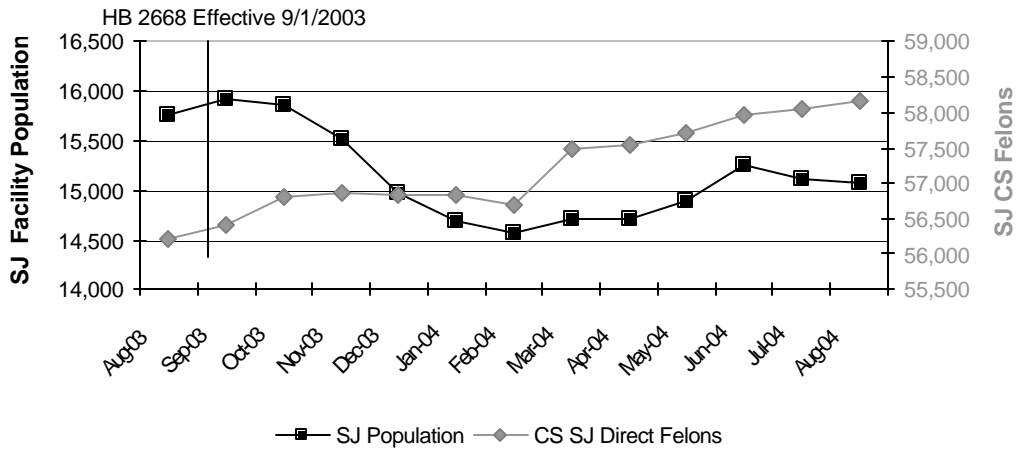
- The state jail facility population has decreased 4 % from 15,766 on August 31, 200, to 15,082 on August 31, 2004.
- The state jail community supervision population has increased 3 % from 56,232 on August 31, 2003, to 58,150 on August 31, 2004.²⁹

The following chart examines trends in state jail population. HB 2668 offenses are a subset (specific portion) of the total state jail offenses.

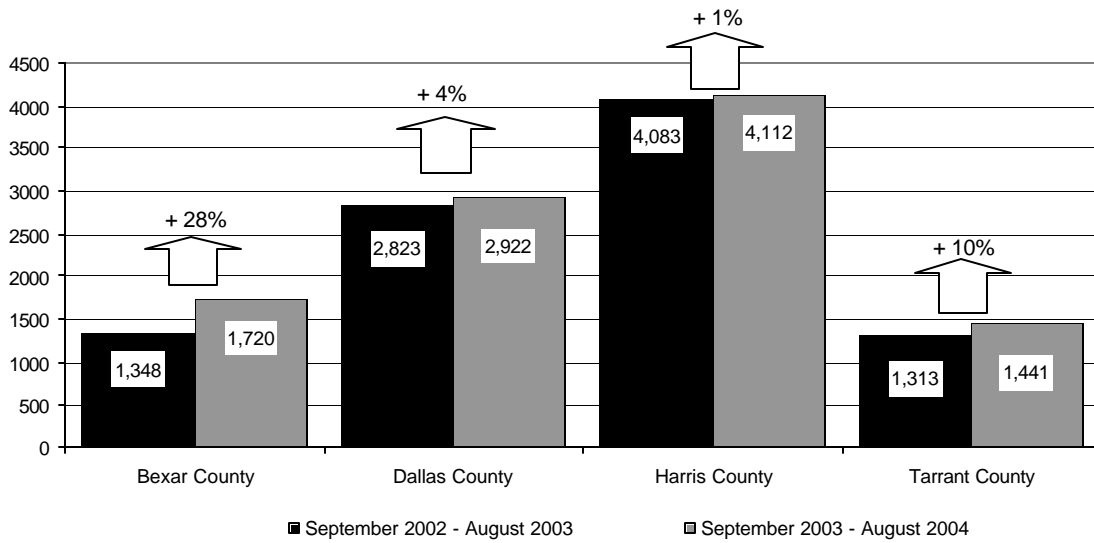
²⁸ Ibid. page 2.

²⁹ TDCJ-CJAD, Monitoring HB 2668, October 6, 2004.

State Jail Facility Population / State Jail Community Supervision Felons



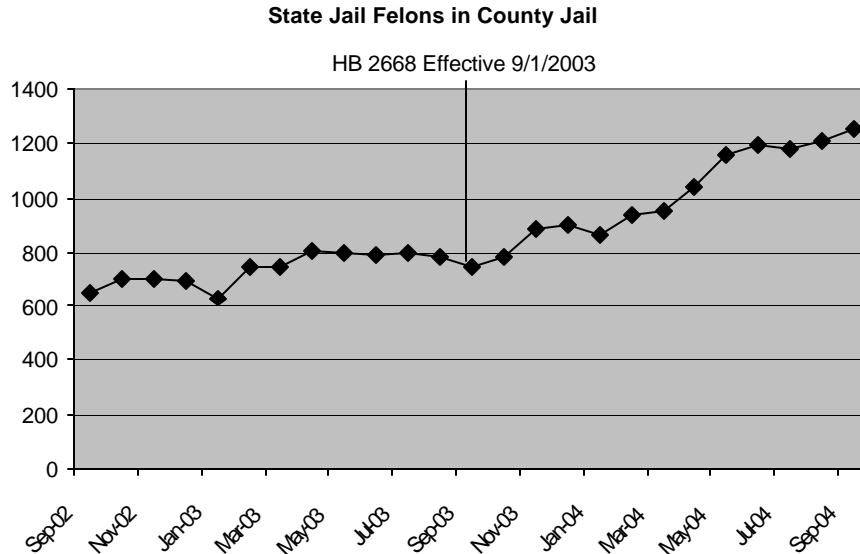
State Jail Community Supervision Placements Direct from Court



The number of state jail community supervision placements direct from court grew 9% from 25,894 in the year prior to HB 2668 to 28,123 in the year after House Bill 2668 took effect.

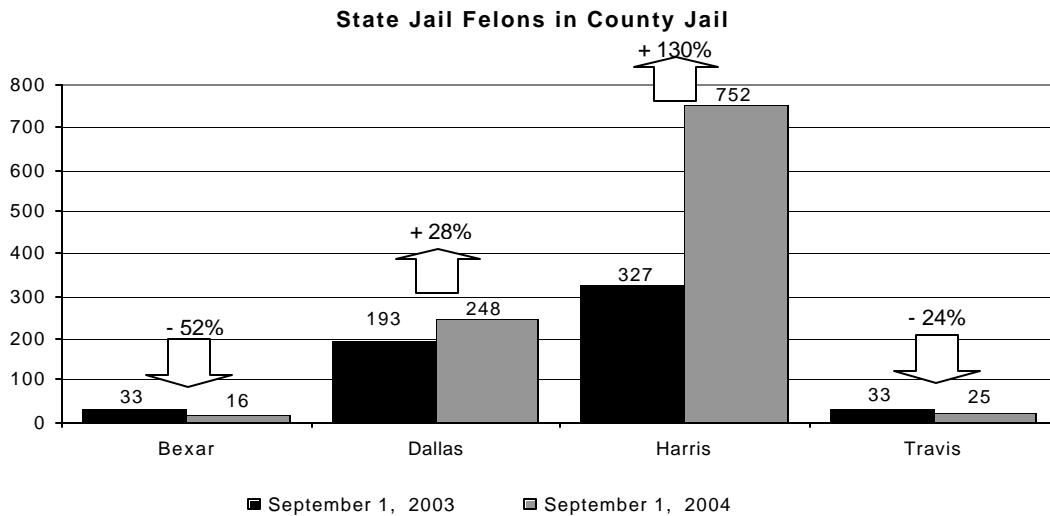
State Jail Felons Sentenced to County Jails

Section 12.44 of the Texas Penal Code allows state jail felons to be confined for up to one year in county jail (CJ) as a Class A misdemeanor. **State jail felons in county jails have increased 67% from 750 on September 1, 2003, to 1,250 on September 1, 2004.³⁰**



On September 1, 2003, 44% of all SJ felons in county jail were from Harris County.

On September 1, 2004, 60% of all SJ felons in county jail were from Harris County.



³⁰ Ibid. page 2.

The number of state jail felons placed in county jails has been increasing since implementation of HB 2668.

Despite the initial reduction in the state jail population, recent trends indicate that the state jail population is moving towards the pre-HB 2668 level. Increases in the number of state jail felons being placed on community supervision are not as large as originally projected.³¹

The positive impact expected from HB 2668 has not been realized, and increases in the use of state jail beds for the designated population will hinder TDCJ's ability to house transfer institutional inmates within state jail facilities, thus creating more pressure on TDCJ's population capacity.

Recommendations

Texas Department of Criminal Justice (TDCJ) correctional facility population trends reveal that the budget decisions made in the 78th Legislature are no longer viable. Based on the known FY 2005 budget shortfalls, reductions in federal funds to TDCJ, and increasing medical costs, current resources will not support the increasing prison population as projected by the LBB.

The prison population is expected to exceed the operational capacity of TDCJ by FY 2006 unless policy initiatives are implemented to:

- Strengthen judicial confidence in Community Supervision Programs.
- Address the growing revocation rate of felons on community supervision to prison and state jail.

³¹ Ibid. page 2.

- Reduce the growing population of non United States citizens housed within TDCJ.
- Reduce the growing geriatric population housed within TDCJ and their ever increasing medical cost.
- Support the use of drug courts to divert offenders into life changing treatment and away from state jail or prison confinement.

It is also recommended that the 79th Legislature dissolve the barriers to successfully complete the Texas Computerized Criminal History system project. This can be accomplished by requiring that Court Judgment documents contain both the state identification number of the individual defendant and the appropriate transaction number of the individual arrest event.

INTERIM CHARGE NUMBER THREE

Study the management efficiency and organizational structure of the Texas Department of Criminal Justice, including implementation of recent restructuring by the TDCJ board, and make recommendations on additional improvements, including possible consolidation of agency functions and other cost-saving measures.

Introduction

During the 1998 Sunset Advisory Commission review of the Texas Department of Criminal Justice (TDCJ), a discussion was held regarding the statutory provisions which mandated divisions and division functions. It was noted that these statutes prevented TDCJ from meeting its needs, instead requiring TDCJ to rely on the legislature for structural changes.³² The Sunset Advisory Commission adopted this recommendation, which led to its inclusion in the continuing legislation passed during the 76th legislative session.

SB 371 from the 76th regular legislative session added Section 493.0021 of the Texas Government Code, which provides organizational flexibility to TDCJ. This change authorizes the executive director, with the approval of the Texas Board of Criminal Justice (TBCJ), to create, eliminate, or reassign duties of divisions, including those listed under Section 493.002 of the Texas Government Code (which assigns six divisions to TDCJ).³³ TDCJ is currently allowed to pursue a more responsive approach and has been granted the authority to organize the agency structure as needed to provide effective and efficient fulfillment of its public duties.

Background

With over 38,000 employees and 2004-2005 biennium appropriations of \$4.9 billion dollars, TDCJ is one of the largest executive branch agencies. Included under its umbrella are the second largest prison

³² Sunset Advisory Commission Decisions, July 1998.

system in the United States and the largest probation population in the United States. However the above current appropriations represent a reduction of approximately \$240 million dollars, 4.7 % from their 2002 - 2003 biennium operating budget. TDCJ was challenged to provide for an increasing offender population, with fewer resources impacting operations, programs, and staffing.

TDCJ reported that these reductions still allowed for sufficient resources to maintain a cohesive, functional criminal justice system while also preserving the security of its institutions and the integrity of its parole and community supervision programs.³⁴ Although TDCJ did not close prisons, release inmates or reduce corrections officers (security staff) or parole officers, it was forced to eliminate 1736 staff positions. Nearly 1200 of these positions were filled and resulted in a reduction in force process. Along with staff reductions, some programs and / or operations were reduced or eliminated as well:

- Reduction in Correctional Managed Health and Psychiatric Care equaling \$31.8 million dollars.
- Elimination of some substance abuse programs equaling \$23.9 million dollars.
- Reduction in operational items such as food, utilities, maintenance, freight transportation, unit necessities, and agriculture equaling \$36.3 million dollars.
- Reduction in community correction programs equaling \$14.8 million dollars.³⁵

New Correctional Institutional Division

Acting under the statutory organization flexibility authority, TDCJ Executive Director Gary Johnson proposed an organizational restructuring plan to the Texas Board of Criminal Justice, which was approved in August of 2003. The most significant change in the organizational structure involved the merger of four separate divisions, Institutional, State Jail, Operations, and Private Facilities, into a single division, the Correctional Institutions Division.³⁶ Under the previous organizational structure, each of the four divisions was responsible for supervising the operations of secure correctional facilities operated by

³³ Bill Analysis, enrolled version of SB 365 76(R).

³⁴ TDCJ Budget Summary, prepared for the Senate Finance Committee, April 13, 2004.

³⁵ TDCJ Budget Summary, prepared for the Senate Finance Committee, April 13, 2004.

or under contract with the agency, each with its own director and administrative support staff. The approved plan eliminated these divisions and created a single entity responsible for the operation of all secure facilities.³⁷ Breaking down the divisional walls to create one seamless structure should:

- Enhance the communications and collaborative decision-making among interdependent departments,
- Increase accountability, and
- Increase efficiency and maximization of agency resources.³⁸

The Correctional Institutions Division is the largest of the remaining seventeen divisions of TDCJ and includes 30,983 employees. These employees are those directly involved in the operations of the various secure facilities that are utilized by TDCJ to house inmates. Positions included are:

- 84 wardens
- 99 assistant wardens
- 118 majors
- 274 captains
- 780 lieutenants
- 1,737 sergeants
- 23,969 correctional officers
- 3,922 additional division staff³⁹

The above division employees are assigned to operate the following facilities:

- 51 state prison facilities
- 16 state jail facilities

³⁶ TDCJ Reorganization Fact Sheet, prepared by TDCJ Executive Services, June 2004.

³⁷ Ibid. page 1.

³⁸ Ibid. page 1.

- 14 transfer facilities
- 2 prerelease facilities
- 3 psychiatric facilities
- 1 Mentally Retarded Offender Program facility
- 2 medical facilities
- 5 substance abuse treatment facilities (SAFP)

Also, division employees are assigned to monitor the following privately operated secure facilities:

- 7 private prisons
- 5 private state jails
- 1 work program collocated on one private facility
- 2 pre-parole transfer facilities
- 5 intermediate sanction facilities

The centralization of responsibility for operation of diverse facilities into the Correctional Institutions Division also allowed for the realignment of the geographic regional organization chain of command. The State of Texas is divided into six regions having an inmate population capacity ranging from twenty thousand five hundred and eighty-six inmates housed to twenty five thousand nine hundred and eighteen. This grouping will facilitate resource sharing with logistically adjacent facilities, without concern for mission (state jail versus state prison). This could provide for the future possibility of one warden managing two facilities. With the geographic distribution selected, the regional directors should be able to more frequently visit and inspect their assigned units as TDCJ begins to increase its focus on self-monitoring.⁴⁰

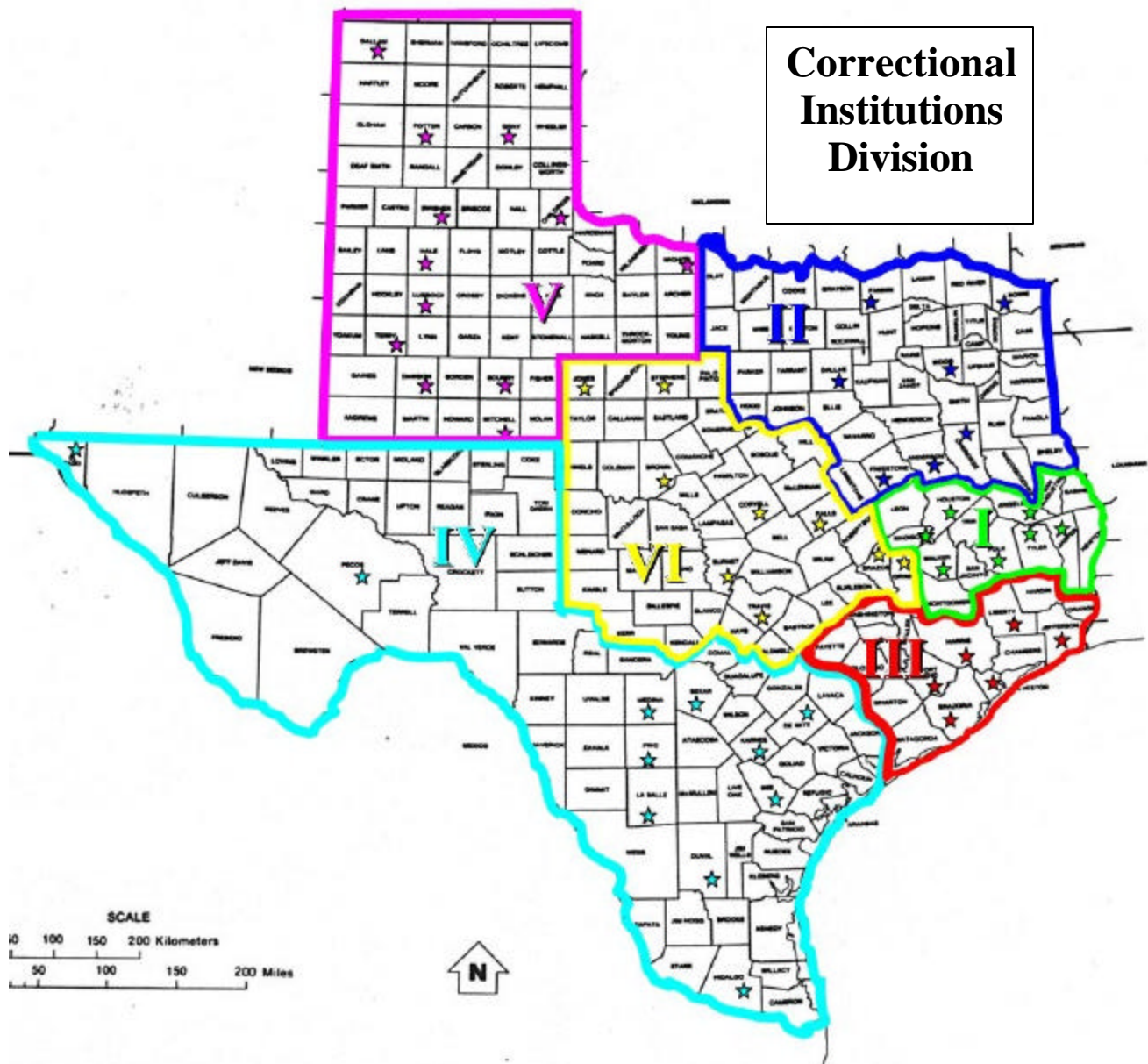
³⁹ TDCJ written testimony, Doug Dretke to Senate Criminal Justice Committee, March 10, 2004.

⁴⁰ Ibid, page 5

Recommendations

Utilizing the legislative authority appropriated to TDCJ and The Texas Board of Criminal Justice, TDCJ consolidated four divisions and created the new Correctional Institution Division. This movement appears to have brought about positive results.

The Legislature should continue to monitor the TDCJ organizational structure and should encourage a similar review of the sixteen non-impacted divisions to identify possible additional savings and efficiencies.



INTERIM CHARGE NUMBER FOUR

Study the use and effectiveness of current parole guideline policies and make recommendations for changes to improve the policies. Develop innovative options that improve efficiency and enhance safe and effective correctional policy.

Introduction

The Mission Statement of the Texas Board of Pardon and Paroles (BPP) provides the essential duties that the agency is required to perform under the Texas Constitution and governing state statutes:

- Determine which prisoners are to be released on parole or discretionary mandatory supervision.
- Determine conditions of parole and mandatory supervision.
- Determine revocation of parole and mandatory supervision.
- Recommend the resolution of clemency matters to the governor.

The Vision Statement adopted by the Texas Board of Pardons and Paroles (BPP) expands upon these duties by stating:

- Render just determination in regard to parole release and revocations, thereby maximizing the restoration of human potential while restraining the growth of prison and jail populations.
- Impose reasonable and prudent conditions of release consistent with the goal of structured reintegration of the releasee into the community.
- Resolutely administer the clemency process with recommendations to the governor fully commensurate with the public safety and due consideration.

The importance of the BPP decisions on state correctional policy is demonstrated by the prominence of the impact they have on the Legislative Budget Board's (LBB) Adult Population Projections of June 1,

2004. These projections are the basis on which the state adult correctional agencies construct their budget requests for the next biennium and are also utilized by the legislature to establish these budgets and correctional policy. The LBB has assumed for its purposes that the BPP approval rate for parole release will be thirty percent for the years 2004 through 2009. They have assumed for discretionary mandatory supervision (DMS) a release approval rate of fifty-seven percent.

Holding the other contributing factors to the projections constant, the math applied to the BPP decisions becomes very simple. If the BPP releases below these numbers, additional prison capacity may be required; if they maintain them or go above them, the current resources may prove to be adequate for the near future. Since TDCJ requires seven million dollars a year to operate a five hundred bed institution, the cost in state general revenue resources to operate additional prison capacity can be significant.

Background

Beginning in 1985 the legislature directed the BPP to develop and implement parole guidelines that **"shall be the basic criteria on which parole decisions are made"** (Article 42.18, Section 8, Texas Code of Criminal Procedure). Although initially implemented in 1987, the refinement and reexamination of guidelines continued until September 1, 2001 (FY 2002), when the current guideline instruments began to be used to assist the BPP in making parole decisions.⁴¹

Testimony and documentation provided by the BPP establishes that the current parole guidelines consist of two major components interacting to provide a single score. These components are the offense severity class and the offender risk level. During the development phase of the parole guidelines, BPP members assigned an offense severity ranking to each of the 1,931 felony offenses in the Texas Penal Code. The Parole Guidelines subcommittee of the BPP is required to periodically review the rankings assigned and recently re-ranked over 400 offenses during a series of meetings in fiscal year 2003.

⁴¹ An Overview of Texas Parole Guidelines, Criminal Justice Policy Council, December 2001.

Offense severity classes range from low for nonviolent crimes such as the illegal recruitment of an athlete, to the highest for violent offenses (the highest being capital murder). Low severity equates to less time served in prison whereas high severity equates to more time served in prison.

The second component of the parole guidelines is the risk assessment element, which classifies offenders into categories based on their risk of future recidivism. Both static risk factors and dynamic risk factors are taken into account. **Static risk factors** are those that will not change over time and are associated with the inmate's prior criminal record. These include:

- Age at first admission to a juvenile or adult correctional facility
- History of supervisory release revocations for felony offenses
- Prior incarcerations
- Employment history
- Commitment offense

Dynamic risk factors are those associated with the behavior the inmate has demonstrated since being incarcerated. These can change over time, and include:

- Inmate's current age
- Whether the inmate is a confirmed security threat group (gang) member
- Educational, vocational, and certified on the job training programs completed during present incarceration
- Prison disciplinary record
- Current prison custody level

The two major components, the offense severity class and the risk assessment element, are then combined into a parole guideline matrix. For each score level within the matrix, an approval probability rate has been calculated (see below table). Though the structure of this system permits BPP members

to exercise discretion in each individual case, these probability rates are available for evaluation should a member choose to follow BPP guidelines.

Parole approval probability guidelines level table

Offense Severity Class	Risk Level			
	Highest	High	Moderate	Low
Highest	1	2	2	3
	0-5%	5-15%	5-15%	16-25%
High	2	3	4	4
	5-15%	16-25%	21-35%	21-35%
Moderate	2	4	5	6
	5-15%	21-35%	36-50%	51-75%
Low	3	4	6	7
	16-25%	21-35%	51-75%	76-100%

An offender is scored on the intersection of the two components, the offense severity class and the risk level. In the above table a parole guideline score of the highest / highest intersection is a level one and has the poorest probability for success. In contrast, an offender having the lowest / lowest intersection is a level seven and has the greatest probability for success.

BPP Approval Rates by Guideline Level

Since the implementation of the current parole guidelines in FY 2002, the BPP has maintained statistics on its approval rates within each guideline score level. The guidelines now provide the BPP members with an objective criterion to supplement individual case assessments in making parole decisions. However, as stated, the use of guideline levels is discretionary, and no particular level guarantees a grant or rejection of parole. Their utilization should provide the following enhancements to the decision process:

- Guideline levels will cause the criteria used in making parole decisions to be more explicit and predictable to the public, the legislature, correctional officials, and offenders.
- They will bring about a reduction of disparity in sentencing decisions.
- They will provide stability in parole release policies over time. This will assist in making prison population projection more accurate.

- They will enable the BPP to readily and more quickly evaluate cases according to risk level and avoid releasing high-risk inmates too early or low-risk inmates too late. This will in turn allow for more time to evaluate remaining cases where a decision might be tougher to reach.⁴²

**BPP Approval Rates by Guidelines Level
FY 2002 through FY 2004 Year to date**

GUIDELINE LEVEL		FY 02	FY 03	FY 04 (YTD)	APPROVAL PROBABILITY
1	Considered	542	593	391	0 - 5%
	Approved	20	34	24	
	Rate	3.69%	5.73%	6.14%	
2	Considered	7,510	7,949	5,187	5 - 15%
	Approved	934	1,140	800	
	Rate	12.44%	14.34%	15.42%	
3	Considered	10,626	10,949	6,019	16 - 25%
	Approved	1,932	2,226	1,273	
	Rate	18.18%	20.33%	21.15%	
4	Considered	18,954	19,380	12,487	21 - 35%
	Approved	4,643	4,920	3,196	
	Rate	24.50%	25.39%	25.59%	
5	Considered	6,345	6,986	4,597	36 - 50%
	Approved	1,834	2,411	1,716	
	Rate	28.90%	34.51%	37.33%	
6	Considered	8,597	9,158	5,828	51 - 75%
	Approved	3,128	3,822	2,559	
	Rate	36.38%	41.73%	43.91%	
7	Considered	2,020	1,905	2,055	76 - 100%
	Approved	1,128	1,077	1,102	
	Rate	55.84%	56.54%	53.63%	
Total	Considered	54,594	56,920	36,564	
	Approved	13,619	15,630	10,670	
	Rate	24.95%	27.46%	29.18%	

MEDICALLY RECOMMENDED INTENSIVE SUPERVISION (MRIS)

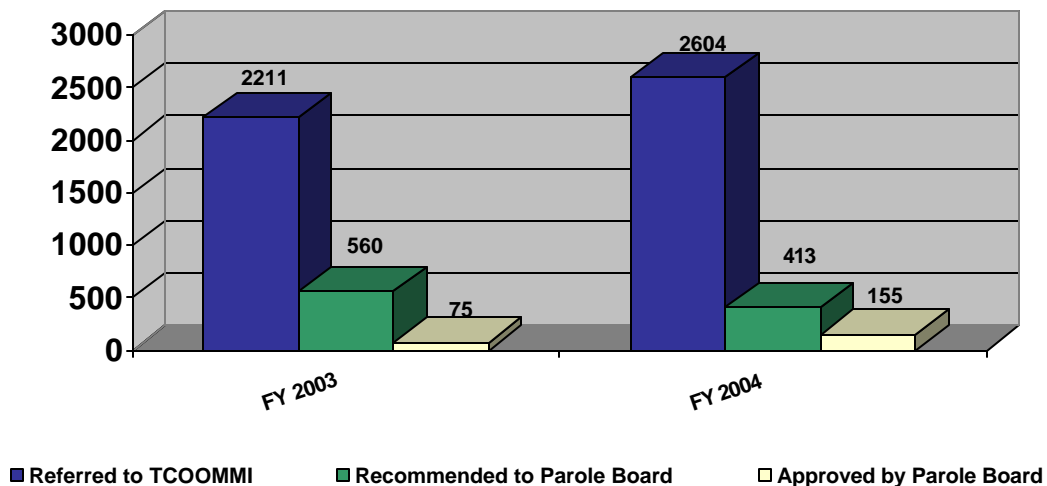
During the 78th legislative session, the passage of HB 1670 resulted in a number of substantive changes to the statutory provisions concerning Medically Recommended Intensive Supervision (MRIS). Those changes include:

⁴² An Overview of Texas Parole Guidelines, Criminal Justice Policy Council, December 2001.

- Repealed requirements mandating that all medically eligible parolees to released to the designated skilled nursing facility
- Excluding all sex offenders from MRIS consideration
- Including certain 3g offenders for MRIS eligibility if the medical conditions were either terminal or required long-term care

The legislative intent of these modifications was to expand and enhance the early release of inmates who, due to their medical conditions, would no longer pose a threat to public safety. In addition, medical costs associated with their treatment could be greatly reduced once the offender was released from custody.

Since the implementation of the legislation on September 1, 2003, the approval and release rate for MRIS has demonstrated upward movement. As noted in the following chart, the referral, submission, and approval rate have shown a significant increase during the past fiscal year.

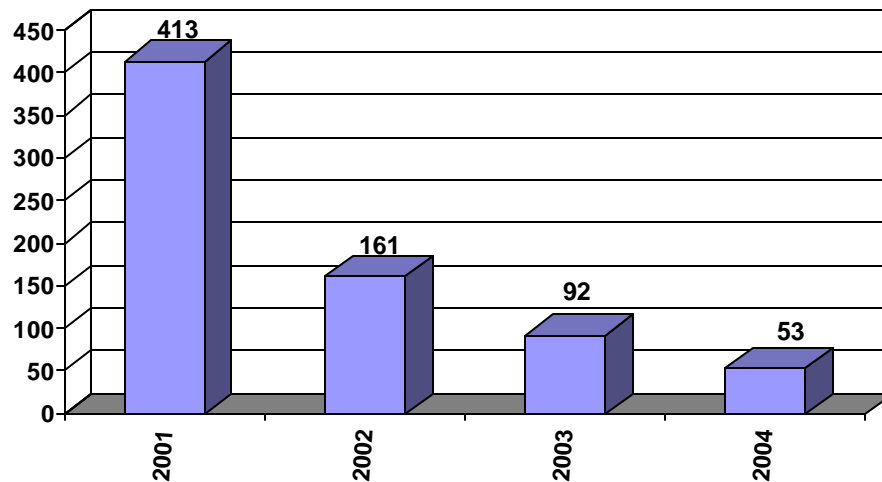


The expanded pool of eligible inmate population has, in part, contributed to this increase. Since September 1, 2004, 3,018 3(g) offenders have been referred for MRIS consideration.

The repeal of the designated nursing home also appears to have impacted the number of inmates refusing to be considered for MRIS. As noted in the following chart, the number of inmates refusing MRIS consideration has dramatically decreased during the past four (4) years. It is anticipated that the repeal of the statutory requirements will continue to have a positive impact on the overall number of inmate refusals.

The revised statutory provisions for MRIS appear to have had a positive impact on the overall success of the MRIS program. There are, however, statutory and/or administrative issues that have been identified as potential impediments to the program. These include the exclusion of sex offenders, timely identification and referral of eligible offender populations, and post-release placement options.

MRIS Refusals by Fiscal Year



During the first year after the implementation of House Bill 772, nine hundred and eighty-five sex offenders were identified as meeting the medical criteria for MRIS, but were excluded from consideration due to the new statutory restrictions.

While public safety is a compelling reason for excluding all sex offenders from consideration, there are practical implications that warrant further scrutiny of this policy. This situation is best demonstrated by two inmate cases which were presented during FY 2004.

According to the correctional managed care providers, there were two offenders whose combined medical care and treatment costs totaled more than five million dollars during the past fiscal year. Based upon their medical conditions, they had virtually no chance of a healthy recovery. As such, these offenders posed a minimal risk to the public safety and were unlikely to be repeat offenders. However, because both offenders were convicted of sex offenses they were ineligible for MRIS consideration.

There is no question of the legislature's commitment to the public safety of Texas citizens. This is evidenced by the significant increase in the number of prison beds during the past decade and the decrease in parole approval ratings. There is, however, a need to examine policies that can be enacted to reduce state expenditures, while maintaining public safety as the legislature's first priority.

Recommendations

Decisions made by the Texas Board of Pardons and Parole have a major impact on prison capacity, and as such directly affect the amount of resources the Legislature must provide for the operation and maintenance of state run penal facilities. Under the current environment a lowering of their approval numbers will be reflected in expedited prison crowding, costing the State an estimated \$63 million dollars to pay for temporary housing of state inmates in county jails and/or private facilities. Due to these significant issues the committee recommends that:

- Current statues intend that the mandated parole guidelines be the basic criteria for release decisions. The BPP should clearly state the reason for a denial in a written format that the inmate and others can readily understand (the current form is very confusing).

- Monthly reports on release decisions, including the special statutorily mandated panels, should be distributed to the Legislature.
- Expedite the MRIS process to prevent inmate deaths during consideration.

INTERIM CHARGE NUMBER FIVE

Study and make recommendations relating to improving the use of specialized police agencies and officers, specifically, the necessity, accountability, qualifications, and jurisdictions of such police agencies.

Introduction

During the 78th legislative session, two bills were passed into law; one expanding the list of peace officers and the other expanding the jurisdiction of a hospital police department to include certain surrounding public property. The expansions were accomplished by authorizing a state commission to employ and appoint peace officers, not the first to be able to do so. However, it was noted that these expansions are being presented in an ad hoc manner and that there is an absence of a generally accepted state policy in this arena. Another concern is the jurisdiction of special-function police agencies; many of whom are employed by private companies. Most enabling statutes place specific restrictions on their jurisdiction, limiting it to those areas owned or under the control of the special district.

Background

Starting with 68th Legislature in 1983, Article 2.12 of the Texas Code of Criminal Procedure titled "Who Are Peace Officers" has been amended each session to expand, not only who is a Texas peace officer, but also the agencies and/or commissions authorized to commission, appoint, and employ them. Currently with this section thirty-four separate categories of peace officers (police) are authorized under this Article, including not only the traditional municipal, county, and state agencies, but also a proliferation of specialized police. Examples of traditional police agencies include city police departments, county sheriffs and constable departments, Department of Public Safety troopers and rangers and district attorney investigators. The common feature of this working definition is that these

agencies and departments are directly responsible to an elected government entity or official such as a city council, county commissioners court, or the executive branch of state government.

Recent additions to this expanded list of peace officers include those who are responsible to an appointed board, an appointed commission or an employee of such. Examples of such peace officers are those commissioned by the Texas State Board of Medical Examiners, the Texas Board of Dental Examiners and those commissioned under the Education Code (Independent School Districts, Superintendent has direct control). Investigators in this category fall under the working definition of specialized police agencies.

In addition to those in Article 2.12, Article 2.121 authorizes the director of the Department of Public Safety to appoint as peace officers up to two hundred and fifty employees of railroad companies to aid law enforcement in the protection of railroad property, passengers, and employees. These officers are employed by railroad companies and paid for by railroad companies and may make arrests and exercise all the authority of a peace officer in relationship to railroad property or property under a railroad's custody and control. These officers are specifically restricted from enforcement of traffic and transportation violations.

Adjunct police officers are yet another group of peace officers. They are authorized under Article 2.123, and are employed by a private institution of higher education. These officers are appointed by a chief of police or county sheriff (depending upon whose jurisdiction the private institution falls under) and have full peace officer authority. They are, however, restricted in their geographical area of operation to the campus and the area surrounding the campus as agreed upon by the appointing official.

Peace Officer Duty and Responsibility

Texas Code of Criminal Procedure, Article 2.13, specifies the duties and powers of peace officers, and demonstrates the importance of their role in preserving the peace, enforcing our laws, and protecting the lives and property of Texas citizens:

- It is the duty of every peace officer to preserve the peace within his jurisdiction. To affect this purpose, he shall use all lawful means.
- He shall, in every case where he is authorized by the provisions of this code, interfere without warrant to prevent or suppress crime.
- He shall execute all lawful processes issued to him by any magistrate or court.
- He shall give notice to some magistrate of all offenses committed within his jurisdiction, when he has good reason to believe there has been a violation of the penal law.
- He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.
- It is the duty of every officer to take possession of a child under Article 63.009(g) of the Texas Code of Criminal Procedure.

An important component to the designation of a peace officer is discussed in the Texas District and County Attorneys Association's (TDCAA) publication **Criminal Laws of Texas** (2001-2003, Diane, Burch, and Beckam). The duties and powers of a peace officer are present twenty-four hours a day, regardless of whether he/she is on duty or off duty:

- Whenever a peace officer sees someone about to commit an offense, it is the officer's duty to prevent it, whether or not the officer is on duty. **Blackwell v. Harris County**, 909 S.W. 2d 135, 138-9 (Tex. App.-Houston [14th Dist] 1995, writ denied).
- An off-duty police officer who observes a crime immediately becomes an on-duty police officer. **City of Dallas v. Half Price Books**, 883 S.W.2d 374, 377 (Tex. App.-Dallas, no writ).

What some may see the designation of peace officer as a privilege **is in reality an imposed duty and responsibility**. A prime example of such is a police officer carrying a **weapon twenty-four hours a day** and sometimes even in those areas normally restricted such as airports. In some cases the officer may even carry his or her weapon as a passenger on a commercial airplane.

Training and Qualification

Texas Occupations Code, Chapter 1701, titled "Law Enforcement Officers", establishes the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and assigns to it the responsibility to license peace officers, county jailers and public security officers in Texas. Section 1701.301 states that a person may not appoint a person to serve as an officer, county jailer, or public security officer unless the person appointed holds an appropriate license issued by the commission.

TCLEOSE is given the responsibility to establish, through its rulemaking authority, the qualifications and training for the issuance of a license to include:

- submitting an application,
- completing the required training,
- passing the required examination,
- being declared to be of satisfactory psychological and emotional health and free from drug dependency or illegal drug use; and
- Demonstrating weapons proficiency.⁴³

A person who has been convicted of a felony is disqualified from becoming an officer, public security officer or county jailer, and the commission cannot issue a license and a law enforcement agency may not appoint or employ the person in such a capacity. In this section, a conviction also includes any deferred adjudication of guilt sentence for a felony offense.⁴⁴

Other sections of the Occupations Code detail the requirements and process for:

- Continuing education requirements for peace officers, forty hours every twenty-four months are currently mandated.

⁴³ Texas Occupation code, Section 1701.307. (Issuance of License).

⁴⁴ Ibid. Section 1701.312.

- Continuing demonstration of weapons proficiency, at least annually.
- Rules for professional training and recognition.
- Rules governing employment records.
- Disciplinary and criminal penalties for violation of the code.
- Special rules and training for peace officers assigned to a public school (school resource officer).

In defining who peace officers are, the Texas Code of Criminal procedure, Article 2.12, contains the provision that certain named agencies must have a permanent peace officer license issued under Chapter 1701, of the Texas Occupations Code. Although this statement is not contained in the entire list of thirty-four agencies, based on Chapter 1701 of the Texas Occupation Code, case law has clarified that all peace officers listed in Article 2.12 must hold a license from TCLEOSE certifying their qualifications and must be commissioned by a government agency named in Texas Code of Criminal Procedure, Article 2.12.⁴⁵

Accountability and Jurisdiction of Specialized Police

As the proliferation of specialized police officers, units, and agencies began, so did the inconsistencies in duties, responsibilities, and accountability. The issue of accountability for peace officers being responsible to appointed officials is demonstrated in the Texas Government Code, Chapter 466, titled "State Lottery", which was added during the 73rd Legislature. In Section 466.020, titled "Security", The executive director of the Texas Lottery Commission is required to maintain a department of security and appoint a deputy to administer the department. The executive director is then authorized to employ security officers or investigators as deemed necessary and may commission them as peace officers as the executive director sees fit. A specific power granted to these peace officers and those working in conjunction with the Lottery Commission or the Department of Public Safety in the enforcement of that chapter is the warrant less search and seizure of lottery vending machines, lottery computer terminals, or

⁴⁵ Blackwell vs. Harris County, 909 S.W.2d 135, 138-39 (Tex App.-Houston {14th dist} 1995, writ denied).

other lottery equipment located on the premises of someone holding a sales agent license issued by the Lottery Commission.

Examples of the legislature authorizing special police units with intent to limit their responsibilities and duties that are in conflict with the previously referenced statutes and case law can be found in:

- Government Code, Section 402.009, titled "Authority to employ and Commission Peace Officers", authorizes the attorney general to employ and commission peace officers as investigators **for the limited purpose of assisting the attorney general in carrying out the duties of that office relating to prosecution assistance and crime prevention.**
- Human Resources Code, Section 61.0931, titled "Apprehension Specialists", authorizes the Texas Youth Commission to employ and commission **apprehension specialists as peace officers for the purpose of apprehending a child under its control.** The officers so employed and commissioned must be certified (licensed) by TCLEOSE.
- Health and Safety Code, Section 431.2471, titled "Texas Department of Health Peace Officers", authorizes the department to employ a peace officer to enforce the food and drug portions of this chapter. Such officers must be certified by TCLEOSE, must be qualified to enforce the food and drug laws by the commissioner, and must serve as the director of the food and drug division of the department. **A person employed under this section has the powers, privileges, and immunities of a peace officer while carrying out the employee's duties under this chapter (Chapter 431, Health and Safety Code).**
- Insurance Code, not codified, Section 1.10D(f), titled "Insurance Fraud Unit", authorizes the insurance commissioner to employ investigators and commission them as peace officers as the commissioner deems necessary to enforce this article. An investigator employed by the department as a peace officer must meet the requirements of peace officers imposed under the TCLEOSE statutes. Also, the commissioner **must appoint a TCLEOSE licensed chief**

investigator to supervise, direct, and administer the activities of the commissioned investigators.

Concerning jurisdictional issues, examples of the legislature authorizing special police agencies, with the intent to limit their duties as a peace officer to specific areas, can be found in:

- Health and Safety Code, Section 281.0565, titled "Employment of (Hospital) District Peace Officers", authorizes the boards of the Dallas, Bexar, and Tarrant County Hospital Districts to employ and commission peace officers **with jurisdiction including the property owned or controlled by the district and any street abutting, right-of-way over or through, or easement in the property.** These peace officers are also granted within their jurisdiction the authority granted by Chapter 14, Code of Criminal Procedure, titled "Arrest Without Warrant" and may make **an arrest without a warrant in their jurisdiction if the offense involves injury or harm to any property owned or controlled by the district.**
- Transportation Code, Section 451.108, titled "Peace Officers", authorizes the metropolitan rapid transit authorities created before 1980 where the principal municipality has a population of less than 1.2 million to establish a security force, employ security personnel, and commission security personnel as peace officers. A peace officer under this code may make an arrest in any county in which the transit authority system is located as necessary to prevent or abate the commission of an offense against the law of this state or a political subdivision of this state if the offense or threatened offense occurs on or involves the transit system. These powers include making arrests for offenses involving injury or detriment to the transit authority system, enforcements of traffic laws, and investigations of traffic accidents involving or occurring in the transit authority system. This section then goes on to give peace officers in districts where the principal municipality is over 1.5 million the powers, privileges, and immunities of peace officer in counties where the transit authority system is located, provides services or is supported by a general sales and use tax. It then states that those peace officers in districts where the principal

municipality population is less than 1.2 million are limited in jurisdiction to the transit authority's property or duties in connection with its users.

Necessity of Peace Officers Designation

The question of the necessity of designating a position as a peace officer is best illustrated by the authority granted to the Texas State Board of Pharmacy. The Texas Occupations Code, Section 554.010, titled "Peace Officer", grants the Pharmacy Board the authority to commission peace officers to enforce the relevant statutes. Those commissioned as such must be certified as qualified to be a peace officer by TCLEOSE. **An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle, except that the employee may not carry a firearm or make an arrest.**

Recommendations

Expanding the list of Texas peace officers has discombobulated the meaning of the title *peace officer* and added to the confusion over the duties and responsibilities of being a peace officer. The legislature should resist and cease the ad hoc inclusion of naming new agencies, districts and organizations as peace officers and consider a reorganization of specialized police agencies into a separate category that provides clarity to their duties, responsibilities and privileges.

INTERIM CHARGE NUMBER SIX

Review the Crime Victims Compensation Fund (Fund), including state and local competition, use in state agency methods of finance, evaluation of grant programs, possible diversion of funds from crime victims as a result of prior legislation, and whether the Fund meets the objectives of its authorizing legislation.

Introduction

The compensation for crime victims fund (CVC Fund) was established during the 66th Legislature in 1979. SB 21 (66R) established eligibility guidelines and provided for the reimbursement of expenses to crime victims within the state of Texas. Designated the payee of last resort, the **CVC Fund was created to provide a stable and constitutionally dedicated source of funding to assist and deliver service to crime victims.**⁴⁶

State revenue dedicated to the CVC Fund includes fees from court costs, parole fees, restitution, and subrogation, along with grants and donations, composing approximately eighty-six percent of available funds⁴⁷. Among these, approximately ninety-five percent come from court cost fees. A study conducted by the Office of Court Administration concluded that the majority of these court cost fees, eighty-five percent are derived from fees charged to non-jail Class C misdemeanor cases. The remainder is federal funds appropriated through the Federal Victims of Crime Act (VOCA).⁴⁸

Ten years following the implementation of the Crime Victims Compensation Act, in 1989, Texas voters amended the Texas Constitution to include the Rights of Crime Victims within that document's Bill of Rights article. **In 1997 Texas voters amended the Texas Constitution to specify that money**

⁴⁶ Senate Finance Subcommittee on Crime Victims Compensation, November 2002.

⁴⁷ Ibid. page 7.

⁴⁸ United States Code, Chapter 112, Title 42.

deposited in the CVC Fund was to only provide for delivering or funding victim-related compensation, services, or assistance.⁴⁹

After 1994 the CVC Fund demonstrated steady growth in its cash balance due to the 73rd Legislature in 1993 increasing the court costs payable to the CVC Fund without increasing distributions from the fund. However, the accumulating balances were soon recognized to be a source of alternative funding as general revenue resources began to diminish and the need for other purposes increased.⁵⁰

In 1997 the 75th Legislature passed three significant pieces of legislation that increased distributions (appropriations) from the fund.⁵¹

- House Bill 3062 amended Article 56.54 of the Code of Criminal Procedure to increase award amounts, expand benefit types covered, and authorize funding for the Crime Victims Institute.
- **Senate Bill 987 amended Article 56.541 of the Code of Criminal Procedure to authorize the legislature to appropriate excess money in the CVC Fund to state agencies providing victim-related services or assistance. It also allows the Office of the Attorney General (OAG) to use excess money from the Fund for contracts and grants supporting victim-related service or assistance.**
- Senate Joint Resolution 33 dedicated the CVC Fund to be used for delivering or funding victim-related compensation, services, or assistance.

Subsequent legislative sessions continued to multiply the purposes for which CVC Funds could be appropriated and expended.⁵²

⁴⁹ Texas Constitution, Article 1, Section 31.

⁵⁰ Senate Finance Subcommittee on Crime Victims Compensation, November 2002, page 3.

⁵¹ Ibid., page 3.

⁵² Ibid. page 3.

- The 76th Legislature authorized the reimbursement of relocation expenses for victims of domestic violence by amending Article 56.32(9) (H), Code of Criminal Procedure (CCP), and allowed the OAG to provide grants for legal services to victims by amending Article 56.541(e), CCP.
- The 77th Legislature authorized the OAG to reimburse law enforcement agencies for the cost of a medical examination for a sexual assault victim by amending Article 56.54(k), CCP. It also authorized CVC Funds for additional payments to certain peace officers who are totally disabled while on duty due to criminally injurious conduct by amending Article 56.542, CCP. Furthermore, it increased the payment to victims with permanent disability from fifty thousand dollars to seventy-five thousand dollars by amending Article 56.42(b), CCP.

The Crime Victims Compensation Act only requires that the crime victims compensation program (payment of claims and operation of the Act) and the Crime Victims' Institute receive appropriations for the CVC Fund. However, it allows excess money not utilized for these two programs to be appropriated for a variety of victim-related services as authorized by the previously noted amendments. The results for the 2004 - 2005 biennium are:⁵³

Crime Victims Compensation Program	\$101,818,139.00
Crime Victims' Institute Program	\$595,065.00
Victim Assistance Programs	\$66,341,286.00
Other State Agencies	\$113,997,035.00
Total Appropriations	\$282,156,460.00
Total Revenues	\$165,318,000.00

⁵³ Office of the Attorney General, History of Appropriations from and Revenue into Fund 0469, August 10, 2004.

Because appropriations are expected to exceed revenues, it is estimated that the CVC Fund will become insolvent in FY 2006.⁵⁴

Background

On April 13, 2004, the attorney general of Texas, Greg Abbott, sent a letter to legislators stating the following:

"In December, I sent you the 2003 Annual Report for the Texas Crime Victims' Compensation Program, which detailed both the very positive results over the last year and also the perilous future of the Compensation to Victims Fund. While payment to victims increase at a record rate, Fund revenues are not keeping pace. More disconcerting is the fact that appropriations of compensation funds to other agencies have increased from \$13 million in the 2000-2001 biennium to almost \$114 million in the 2004-2005 biennium, with some appropriations going to programs not directly related to crime victims.

Last year we distributed \$71.2 million in compensation benefits. However, the trends mentioned above, the findings of the State Auditor's Office in 2002 and our own projections indicate that by the 2006-2007 biennium the Fund will not have enough money available to meet the current level of appropriations. At this rate the Fund will be headed toward insolvency and the legislative intent of the statute would be thwarted. Under current law, we will be unable to certify enough excess funds in the next biennium to meet demands. Simply stated, diversions of money from the Compensation to Victims of Crime Fund will cripple the Fund's ability to provide compensation for the legally intended beneficiaries of the Fund."

Information furnished by the Office of the Attorney General follows:

⁵⁴ Office of Attorney General, CVC Fund 0469 Forecast of Cash Balances, August 9, 2004.

**Crime Victims Fund 0469
Forecast of Cash Balances
As of August 27, 2004**

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
300.0										
200.0										
100.0										
0.0										
(100.0)										
(200.0)										
(300.0)										
(400.0)										
(500.0)										

**Insolvent
2006**



	1998-1999 Biennium	2000-2001 Biennium	2002-2003 Biennium	2004-2005 Biennium
APPROPRIATIONS				
Attorney General:				
<i>Crime Victims' Compensation:</i>	64,804,393	69,631,822	112,292,964	101,818,139
<i>Crime Victims' Institute (OAG)</i>	-	841,921	688,522	-
<i>Victim Assistance:</i>				
Victim Coordinator/Liaison Grants	-	2,000,000	4,806,800	4,788,486
Statewide Victim Notification System	-	-	7,149,690	7,149,690
Sexual Assault and Crisis Prevention	-	1,000,000	7,318,238	13,930,604
Other Victim Assistance Grants	-	-	20,000,000	20,724,500
Children's Advocacy Centers	-	2,749,516	7,998,006	7,998,006
CASA	1,000,000	3,000,000	4,000,000	6,000,000
Legal Services Grants	-	-	5,000,000	5,000,000
<u>Sexual Assault Services Grant</u>				
(TAASA)	-	500,000	750,000	750,000
Victim Assistance Total:	1,000,000	9,249,516	57,022,734	66,341,286
Attorney General, Total:	65,804,393	79,723,259	170,004,220	168,159,425
Other Agencies:				
SHSU - Crime Victims' Institute	-	-	-	595,065
TDCJ - BIPP & Victim Services	-	4,700,000	5,380,664	5,465,550
DHS - Family Violence Shelters	3,600,000	8,600,000	30,712,664	34,693,696
DPRS - Foster Care & Adult Prot. Svc.	-	-	31,965,418	65,565,418
ERS - Peace Officer Death Benefit	-	-	-	5,479,902
OCA - Foster Care Courts Program	-	-	2,150,000	2,197,404
Other Agencies, Total:	3,600,000	13,300,000	70,208,746	113,997,035
FUND 469 APPROPRIATIONS, TOTAL:	69,404,393	93,023,259	240,212,966	282,156,460
REVENUES (Actual through 2002-03; Comptroller projection for 2004-05)				
Fees from Court Costs	132,115,098	148,663,762	150,321,757	157,732,000
Copies	21	718	261	2,000
Conf./Seminar/Training Reg. Fees	0	8,214	16,450	
Fees for Admin. Services (Parolee Fees)	1,579,274	3,149,709	4,207,313	4,678,000
Restitution	1,690,725	1,949,055	1,808,023	1,866,000
Gifts/Grants and Donations	406,045	564,639	368,899	388,000
Sales of Furniture & Equipment	1	59	26	0
Official State Coin Royalties	30	0	0	0
Warrants voided by Statute of Limitations	66,953	101,599	82,261	66,000
Third Party Reimbursements	5,027	6,988	9,562	4,000
Subrogation	635,342	606,859	807,155	582,000
Total Revenue - State Funds	136,498,516	155,051,603	157,621,707	165,318,000

Programs at the Office of the Attorney General	Appropriated 2004-05
Crime Victims Compensation. Program serves as payer of last resort to victims of violent crime. Provides reimbursement to a victim for certain expenses resulting from the crime that cannot be paid with other sources. Eligible expenses include medical bills, lost wages, and relocation expenses for certain victims .	\$101,818,139
Other Victim Assistance Grant Program. Funding for grants to support various programs in the state that serve victims of crime, such as Mothers Against Drunk Driving, Safe Place, People Against Violent Crime, and others.	\$20,724,500
Children’s Advocacy Centers. Provides funds to develop and support local child advocacy programs that offer a coordinated, multi-disciplinary response to cases of suspected child abuse.	\$7,998,006
Sexual Assault Prevention and Crisis Services Program. Provides funding and technical assistance to sexual assault programs in the state. Distributes training materials for law enforcement, medical personnel, and sexual assault staff and volunteers. Provides evidence collection protocol for sexual assault forensic evidence collection. Certifies sexual assault training programs and Sexual Assault Nurse Examiners.	\$13,930,604
Victim Notification System. Funding for the implementation of a statewide automated system at the county level to provide victims with information about a change in offender status or change in court date, required by passage of House Bill 1572.	\$7,149,690
Crime Victim Civil Legal Services. Funding for the Supreme Court to provide grants to local programs that offer civil legal services for victims of violent crime.	\$5,000,000
Victims Assistance Coordinators and Victims Liaisons. Provides grants to local law enforcement agencies and prosecutor’s offices to fund statutorily required coordinator/liaison positions.	\$4,788,486
Programs at the Office of the Attorney General	Appropriated 2004-05
Court Appointed Special Advocates. Provides funds to help develop and support local CASA programs. CASA volunteers are court appointed to advocate for the best interests of abused children involved in the legal and welfare systems.	\$6,000,000
Sexual Assault Services Program Grants. Provides a grant to the Texas Association Against Sexual Assault (TAASA) for program development, technical assistance, and training to support local sexual assault programs. The grant is also used for statewide training for local programs, law enforcement agencies and other victim services groups.	\$750,000
Total, Programs at the Office of the Attorney General	\$168,159,425
Programs Funded at Other Agencies	Appropriated 2004-05
Crime Victim Institute - (SHSU). Studies impact of crime on victims and their families, develops policy recommendations for improving treatment of victims by criminal justice system, and gathers data related to victimization. (Prior to 2004-05, this was funded at the Office of the Attorney General.)	\$595,065
Public Safety Benefits - (ERS).	\$5,479,902

Victim Services - (TDCJ). This division provides notification to keep victims informed of an offender's status after conviction and sentencing to the Texas Department of Criminal Justice. The Victim Services Division also operates a clearinghouse to serve as a central source of information about services and issues involving crime victims in Texas. **\$2,965,550**

Programs Funded at Other Agencies **Appropriated 2004-05**

Battering Intervention and Prevention Program - (TDCJ) The BIPP program provides grants to local non-profit organizations to support rehabilitation programs for offenders on community supervision (probation) whose crimes include domestic violence. The intent is to help offenders change their beliefs and attitudes about domestic violence and to adopt non-abusive behavior. **\$2,500,000**

Family Violence Services - (DHS). Family Violence contractors provide services such as emergency 24-hour a day shelter, 24-hour hotline, children's services and therapeutic activities, employment and training services, assistance in obtaining medical care, legal assistance in civil and criminal justice systems, counseling services, transportation, law enforcement liaison and community education, and information and referral services. **\$34,693,696**

Foster Care Payments - (DPRS). Grant benefit payments to providers of foster care for abused and neglected children who have been removed from their own homes. **\$62,082,708**

Adult Protective Services - (DPRS). Receive and investigate reports of abuse, neglect, and exploitation of elderly persons and adults age 18-64 with disabilities. Arrange for services to remedy or prevent further abuse. **\$3,482,710**

Foster Care Courts - (OCA). Designed to reduce the time children spend in temporary foster care by expediting the judicial administration of child abuse and adoption cases. The program provides for the operation of 16 Specialized Foster Care Courts established around the state. Primary expenditures include the salaries of judicial court masters and assistants at the 16 specialized courts. **\$2,197,404**

Total, Programs Funded at Other Agencies **\$113,997,035**

Total, All Programs **\$282,156,460**

A review of the preceding materials clearly reveals that future funds available in the CVC Fund will not support the level of appropriations which have currently been authorized. For the CVC Fund to continue fulfilling its primary purpose of actual crime victim compensation, the appropriations of excess funds (which have been depleted) must cease and funding levels must be established that are within the projected funds dedicated to the CVC Fund.

Recommendations

The legislature should repeal the Office of the Attorney General's authority to certify excess monies to be appropriated out of the CVC Fund. It should also clarify the governing statutes which state that CVC funds may only be used to compensate actual crime victims, to operate the CVC program, and to fund the crime victims' institution.

INTERIM CHARGE NUMBER SEVEN

Study the number of foreign citizens serving sentences in Texas prisons, including information relating to prison terms, recidivism, and types of offenses. Make recommendations for reducing the costs of providing prison services for this population, including leveraging of federal immigration funds and possible international agreements to pay home countries to transfer the prisoners to their respective countries to serve the remainder of their terms.

Introduction

Since 1995 the federal government has provided minimum monetary relief to states holding imprisoned foreigners through the State Criminal Alien Assistance Program (SCAAP). The Texas Department of Corrections has received these monies, along with local county jails, to offset their costs. For FY 2004 and 2005, TDCJ based its budget on the assumption the agency would receive \$32.9 million dollars, each year from these sources. The allocation for 2004 established by the federal budget will be \$14.6 million dollars, creating a shortfall of \$18.3 million dollars for fiscal year 2004.

With the known losses of federal monies and with the number of incarcerated offenders projected to increase, substantial benefits could arise were the 79th Legislature to revisit the strategy for inmate deportation.

Background

The November 13, 2003, the Texas Department of Criminal Justices Executive Services report, titled "Offenders with Foreign Place of Birth and Citizenship", to the Senate Criminal Justice Committee states that nine thousand seven hundred and seventy-seven inmates were identified as having foreign birth and citizenship. Also at the time, three thousand five hundred and ten inmates had been served with a final order for deportation through the United States Immigration and Naturalization Service (INS). Many of these identified inmates were **parole eligible, two thousand two hundred and ninety**. This

exemplifies a pool of inmates for which the release to parole for deportation represents potentially significant incarceration cost savings.

Following a TDCJ report (TDCJ Executive Services Report, titled "Offenders with Foreign Place of Birth and Citizenship", dated December 12, 2002), HB 1670 was passed by the 78th Legislature, amending the Texas Government Code, Section 508.146, to authorize the Board of Pardons and Parole to create special parole panels to review inmates who are not citizens of the United States, as defined by federal law, and who are subject to deportation by the United States Immigration and Naturalization Service. Excluded from these reviews are inmates who have committed sex offenses, as described by Chapter 62 of the Texas Code of Criminal Procedure, and offenses designated as aggravated under Article 42.12, Section 3(g). The panels are designed to recommend inmates for parole release to the immigration authorities, who would then incarcerate them in federal facilities until they can be returned to their country of citizenship⁵⁵.

House Bill 1670 Implementation

The Board of Pardons and Parole (BPP) has implemented HB 1670 by ordering qualifying inmates to be reviewed by a special parole panel under BPP Parole Chair Rissie Owens in Huntsville, Texas. Inmates who have a final order of deportation are referred to this special panel when they are considered parole eligible under the appropriate time served formulas and when they are designated for parole review. If the intent of the change was to expedite inmates for deportation purposes, the current process does not achieve that intent. Since parole eligible inmates would be reviewed by any of the regular panels during their review period, the only possible gain in release would be if the special panel is more focused on and amenable to the release of these inmates for deportation purposes.

The only specific information on the reviews these particular offenders received was presented by the BPP special panel. The panel's numbers reveal that:

⁵⁵ C. S. H. B. 1670 (78thR) Bill Analysis, May 21, 2003.

- During the previous six-month period of April through September of 2004 the special panel voted on 166 cases.
- 56 cases were approved for parole and 110 cases were denied.
- This represents an approval rate of approximately 33 %. The release rate is similar to that observed by regular panels, with the BPP stating that denials are based on:
 - nature of offenses these inmates are incarcerated for and
 - the disciplinary history while in the institution.⁵⁶

On August 31, 2004, the BPP provided that the population of **inmates who have a final deportation order is three thousand two hundred and seventy nine, with two thousand one hundred and eighty-two being parole eligible.**⁵⁷ These numbers have remained relatively stable during this review time line.

Foreign Born Inmates Statistics

Following is a series of charts which provide a detailed review of non-United States citizen offenders and their offenses and parole eligibility status.

⁵⁶ Letter from Rissie Owens, dated October 15, 2004.

⁵⁷ Ibid. page 2.

TDCJ Inmates with Final Deportation Order as of August 31, 2004

Offense		All	All - Parole Eligible	All - Not Parole Eligible	Mexican Only	Mexican - Parole Eligible	Mexican - Not Eligible
V	Assault	413	281	132	343	244	99
V	Homicide	601	301	300	451	225	226
V	Kidnapping	56	28	28	42	23	19
V	Robbery	463	268	195	295	188	107
V	Sex Assault	744	444	300	584	350	234
Total - Violent		2,277	1,322	955	1,715	1,030	685
P	Arson	11	9	2	8	7	1
P	Burglary	243	229	14	202	192	10
P	Forgery	4	3	1	4	3	1
P	Fraud	1	1	0	1	1	0
P	Larceny	12	12	0	6	6	0
P	Stolen Vehicle	13	12	1	12	11	1
Total - Property		284	266	18	233	220	13
D	Drugs	412	361	51	302	260	42
Total - Drugs		412	361	51	302	260	42
O	Escape	6	6	0	3	3	0
O	Family Offense	3	3	0	1	1	0
O	Obscenity	1	1	0	1	1	0
O	Obstruct Justice	4	4	0	3	3	0
O	Public Order Crime	20	14	6	11	9	2
O	Sex Offense	139	78	61	118	65	53
O	Traffic / DWI	109	105	4	103	100	3
O	Weapon	18	17	1	13	12	1
O	Other /Unclassified	6	5	1	4	3	1
Total - Other		306	233	73	257	197	60
Grand Total		3,279	2,182	1,097	2,507	1,707	800

Offender's Initial Parole Review Date was prior to August 31, 2004

V - Violent Offense

P - Property Offense

D - Drug Offense

O - Other &

Unclassified

3,504 files provided by INS

3,279 files matched to TDCJ data base

224 files invalid - (Offenders are Inactive)

1 duplicate record in INS files

As of August 31, 2004, TDCJ incarcerates the following foreign offenders:

- 11,677 offenders with claimed foreign place of birth.
- 3,279 active offenders with final orders for deportation.

TDCJ Inmates with Foreign Place of Birth and Citizenship as of August 31, 2004

Offense	All	All - Parole Eligible	All - Not Parole Eligible	Mexican Only	Mexican - Parole Eligible	Mexican - Not Eligible
V Assault	1,352	803	549	1,070	640	430
V Homicide	1,098	422	676	804	315	489
V Kidnapping	128	55	73	96	44	52
V Robbery	1,139	542	597	736	383	353
V Sex Assault	1,684	660	1024	1,285	515	770
Total - Violent	5,401	2,482	2,919	3,991	1,897	2,094
P Arson	37	32	5	22	19	3
P Burglary	705	563	142	561	448	113
P Forgery	44	15	29	29	9	20
P Fraud	37	15	22	21	6	15
P Larceny	126	54	72	73	27	46
P Stolen Vehicle	60	16	44	48	13	35
Total - Property	1,009	695	314	754	517	237
D Drugs	1,788	1225	563	1,408	960	448
Total - Drugs	1,788	1,225	563	1,408	960	448
O Escape	27	25	2	19	18	1
O Family Offense	39	19	20	32	16	16
O Obscenity	4	2	2	1	1	0
O Obstruct Justice	85	26	59	70	20	50
O Public Order Crime	82	47	35	49	27	22
O Sex Offense	503	213	290	418	172	246
O Traffic / DWI	870	753	117	756	656	100
O Weapon	81	62	19	62	47	15
O Other/Unclassified	74	17	57	60	14	46
Total - Other	1,765	1,164	601	1,467	971	496
Grand Total	9,963	5,566	4,397	7,620	4,345	3,275

Offender's Initial Parole Review Date was prior to August 31, 2004

V - Violent Offense 11,677 offenders claim to be foreign born

P - Property Offense Citizenship determined by TDCJ records 1,696 claiming US citizenship omitted

D - Drug Offense 9,963 remaining were used in sample

O - Other & Unclassified 542 State Jail Offenders are included as not eligible

41 SAFP Offenders are included as not eligible

As of August 31, 2004, TDCJ incarcerates the following foreign offenders:

11,677 offenders with claimed foreign place of birth.
3,279 active offenders with final orders for deportation.

18 Death Row offenders are not included

TDCJ Inmates with Final Orders for Deportation that were Denied Parole / MS After Deportation Orders Were Issued as of August 31, 2004

Offense		All	All - Parole Eligible	All - Not Parole Eligible	Mexican Only	Mexican - Parole Eligible	Mexican - Not Eligible
V	Assault	210	210	N/A	181	181	N/A
V	Homicide	253	253	N/A	187	187	N/A
V	Kidnapping	20	20	N/A	17	17	N/A
V	Robbery	179	179	N/A	119	119	N/A
V	Sex Assault	390	390	N/A	310	310	N/A
Total - Violent		1,052	1,052	N/A	814	814	N/A
P	Arson	5	5	N/A	3	3	N/A
P	Burglary	139	139	N/A	114	114	N/A
P	Forgery	2	2	N/A	2	2	N/A
P	Fraud	1	1	N/A	1	1	N/A
P	Larceny	7	7	N/A	3	3	N/A
P	Stolen Vehicle	9	9	N/A	9	9	N/A
Total - Property		163	163	N/A	132	132	N/A
D	Drugs	207	207	N/A	145	145	N/A
Total - Drugs		207	207	N/A	145	145	N/A
O	Escape	2	2	N/A	1	1	N/A
O	Family Offense	1	1	N/A	1	1	N/A
O	Obscenity	0		N/A	0		N/A
O	Obstruct Justice	3	3	N/A	2	2	N/A
O	Public Order Crime	11	11	N/A	6	6	N/A
O	Sex Offense	61	61	N/A	52	52	N/A
O	Traffic / DWI	60	60	N/A	58	58	N/A
O	Weapon	13	13	N/A	9	9	N/A
O	Other/Unclassified	1	1	N/A	1	1	N/A
Total - Other		152	152	N/A	130	130	N/A
Grand Total		1,574	1,574	N/A	1,221	1,221	N/A

V - Violent Offense
P - Property Offense
D - Drug Offense
O - Other & Unclassified

Offender's Initial Parole Review Date was prior to August 31, 2004
Citizenship determined by TDCJ records

174 offenders that were denied parole / MS before final orders were issued are not included above.

As of August 31, 2004, TDCJ incarcerates the following foreign offenders:

11,677 offenders with claimed foreign place of birth.
3,279 active offenders with final orders for deportation.

United States Prisoner Transfer Treaties

On November 30, 1977, the United States of America and the United Mexican States entered into force an international treaty for the execution of penal sentences where:

- Sentences imposed in the United Mexican States on nationals of the United States of America may be served in penal institutions in the United States and are subject to the supervision of the authorities of the United States of America in accordance with the provisions of the treaty.
- Sentences imposed in the United States of America on nationals of the United Mexican States may be served in penal institutions in the United Mexican States and are subject to the supervision of the authorities of the United Mexican States in accordance with the provisions of the treaty.⁵⁸

Individual states are also authorized to participate in the above treaty, as long as the state has adopted legislation authorizing the transfer of foreign prisoners. Texas did so during the 65th Legislature, adding Article 42.17 to the Code of Criminal Procedure, titled "Transfer Under Treaty", which states:

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals, the governor is authorized, subject to the terms of such treaty, to act on behalf of the State of Texas and to consent to the transfer of such convicted offenders under the provisions of Article IV, Section 11 of the Constitution of the State of Texas.

Similar to the treaty with Mexico, the United States of America also has executed additional treaties for the exchange of criminally convicted prisoners so that they may be returned to their country of citizenship. The Council of Europe multilateral prisoner transfer treaty covers most of the European

⁵⁸ Treaty Between the United States of America and the United Mexican States on the Execution of Penal Sentences, November 30, 1977, TIAS 8718.

Countries, and the Organization of American States Treaty, covers most of the countries in North and South America. All of the existing treaties are available for the state to utilize, based on Article 42.17 of the Texas Code of Criminal Procedure, through the Texas Governor's office of General Counsel. This office is tasked to work with the following federal level agency, designated to process prisoners for transfer: the Department of Justice, International Prisoner Transfer Unit, Office of Enforcement Operations.

Although these treaties are available for inmates within the Texas prison system and all inmates are required to be notified, seldom does a release of a Texas inmate occur. If an inmate from Texas was released, it would be to the federal prison system in Mexico or other treaty countries. Most successful negotiations of transfers have been from the United States prison system. As cited by the Governor's Office, examples of barriers to increased usage of these treaties are that an inmate must be parole eligible and that Mexico requires that a transfer inmate have five years or less to serve, due to its own overcrowded prison system. A major hurdle to utilizing these treaties is the significant difference (higher number of years) in sentences that Texas inmates demonstrate in comparison to other countries for the same crime.

On April 16, 2004, the League of United Latin American Citizens, Office of District XV, passed a resolution that calls for the use of the treaty with Mexico to transfer Mexican national Texas prisoners to Mexico so that they may serve their sentences. It states that participation in the treaty exchange program would save significant state funds and free up numerous prison beds since, each prisoner is exchanged into federal, rather than state, custody.⁵⁹

TDCJ confirmed that information on the international treaties is provided to offenders in their intake orientation process and that the TDCJ State Counsel for Offenders Office furnishes forms to inmates upon request for the inmate to prepare and send to the Governor's Office. Staff involved stated that, at least within the last six years, no transfers of this nature have been approved.

⁵⁹ League of United Latin American Citizens, Office of District XV, Resolution dated April 16, 2004.

Recommendations

The current increasing prison population demands that the growing number of foreign citizens within the TDCJ be dealt with in a manner that reduces the cost of their housing and frees up needed bed space. Adherence to the following recommendations should aid in this endeavor:

- Parole-eligible foreign citizen inmates under a detainers issued by the INS should be released to INS for deportation.
- The Lieutenant Governor designating a working group charged with developing an acceptable process for utilizing federal prisoner transfer treaties.

INTERIM CHARGE NUMBER EIGHT

Study and make recommendations concerning the cost effectiveness and efficiency of private prisons, including private services performed at state-owned prisons.

Introduction

During FY 2004 the Texas Department of Criminal Justice (TDCJ) oversaw over \$125 million dollars of contracts with private service providers. The majority of these funds are utilized in TDCJ's private prisons and state jail facilities, with the remainder expended in support of parole supervision.⁶⁰

On July 27, 2004, Lieutenant Governor David Dewhurst issued the following instructions to chairmen of the Senate standing committees:

"I want outsourcing of state business to have stricter accountability and oversight to ensure that every taxpayer dollar is being spent wisely. For this reason, I'm asking you, as chairman, to have your committee take the necessary steps to insure greater accountability and stricter oversight of our state outsourcing by the agencies your committee regularly oversees. As chairman, I believe you and your committee are well positioned to achieve this goal."

Background

The Texas Department of Criminal Justice assigns to its Business and Finance Division the responsibility for developing and selecting service contracts for private prisons, halfway houses, state jails, substance abuse treatment services, sex offender treatment services, professional services, consulting services, construction services, and interagency agreements.⁶¹ The Contracts Branch of the Contracts and

⁶⁰ Texas Department of Criminal Justice, Fiscal Years 2006-2007 Legislative Appropriations Request, August 23, 2004, page 3-4.

⁶¹ TDCJ website, general information.

Procurement Department is specifically designated to initiate the contract process through the development of the request for proposals and bid opportunities.

An important first step in this process is to ensure that TDCJ's complete requirements are contained in the request for proposals, including:

- Statement of services to be performed
- Contract terms
- Contract compliance provisions
- Contract audit and monitoring provisions
- Insurance requirements
- Contract termination provisions

The second step in the contract process is to perform objective proposal evaluations, reviewing proposals for initial qualifications and acceptability. Then using weighted evaluation criteria such as, cost, past performance, financial viability, technical capability, and experience, numerical scores are awarded. The scoring is divided into two categories, one a technical evaluation and the other is a cost evaluation, from which a list of qualified proposal is identified.

At this time the third step in the contract process is conducted through negotiations with the qualified vendors to obtain their submission of the "Best and Final Offers."⁶² From these submissions, the process is concluded with the best value selection based on final cost and technical evaluations. At this time, the contract is submitted to the Board of Criminal Justice for approval and awarded to the selected private provider.

With the awarding of a contract to a private service provider, the oversight and monitoring of the contract is shifted to the Correctional Institutions Division's Private Facilities' Contract Monitoring Unit.

⁶² TDCJ Contract Process, September 15, 2004.

Four geographical regions, encompassing the entire state, have assigned staffs who perform compliance monitoring. A single unit will perform financial monitoring covering the entire state. Staff dedicated to these functions includes:

- 16 compliance field monitors
- 7 assistant compliance field monitors
- 4 financial contract monitors

All compliance and financial monitors conduct reviews of all contractors on an on-going basis, with each facility receiving on site visits from a compliance monitor at a minimum of once per week. The current fifty-one facilities under monitoring include:

- 7 correctional centers
- 5 state jails
- 3 work program and pre-parole transfer facilities
- 4 intermediate sanction facilities
- 7 halfway houses
- 2 parole division county jail beds sites
- 23 substance abuse residential treatment facilities

The frequency of monitoring visits and reviews varies, depending on the type of facility, risk level, and reported issues. Quality control activities performed by the contract monitors are:

- Conduct facility risk assessments
- Review quarterly performance measure reports
- Conduct investigations
- Respond to ombudsman and other inquiries
- Provide technical assistance
- Review draft requests for proposals (RFP's)

- Participated in the review of responses to RFP's
- Provide after hours emergency contact coverage for non secure community-based facilities
- Observe public hearings
- Calculate fiscal sanctions due to contract noncompliance
- Recommend contract modifications
- Maintain records and files for each assigned facility
- Maintain documentation and work papers for all review activity
- Complete special projects⁶³

Compliance reviews are conducted by the contract monitors utilizing four methods, which are, scheduled compliance reviews, scheduled site visits, unscheduled site visits, and unannounced site visits after hours, weekends, or holidays.

Specific review categories for compliance and financial review include, but are not limited to:

- | | |
|-----------------------------------|-------------------------------|
| • Security | • Petty Cash/Cash Equivalents |
| • Annual Budget | • ACA Accreditation |
| • Programming | • Property Inventory |
| • Billing | • Subcontracts |
| • Food Service | • Commissary Operations |
| • Offender Co-Payment | • Maintenance |
| • Health and Safety | • Welfare Funds |
| • Offender Savings/Trust Accounts | • Education |
| • Personnel | • Vending and Telephone |
| • Cost Allocation | • Health Services |
| • Training | • Medical Co-Payment |
| • Expenditures | • Use of Force |

⁶³ TDCJ Contract Monitoring Unit, Executive Summary, September 20, 2004.

- Grievance
- Internal Controls
- Disciplinary
- Lease/Mortgage Agreements
- ADA Compliance
- Mileage Claims
- TCADA Licensure
- Payroll
- 25% Assessments
- Physical Plant
- Insurance Coverage
- Armory
- Compliance with UGMS
- Visitation
- Adherence to GAAP
- Policies and Procedures

To ensure a high degree of performance of the compliance monitors, TDCJ assembles quality assurance review teams to audit their staff and verify that they are performing their assigned duties in a thorough, consistent, and professional manner. Together these activities provide the state with an assurance of accountability and internal control of private provider services under contract with TDCJ.

Demonstrating the effectiveness of the TDCJ monitoring system, during FY 2004 their efforts resulted in the collection or reduction in payments for noncompliant findings of over \$890,738.94. The contract monitors identified 2,429 deficiencies that were acted upon during this time frame. Activities utilized to discover and disclose these deficiencies were:

- 32 full compliance reviews
- 101 specific topic compliance reviews
- 3 full financial compliance reviews
- 22 financial limited scope reviews
- 10 financial closeout reviews
- 39 investigations
- 650 unannounced site visits
- 15 office of inspector general referrals
- 13 security reviews

- 10 grievance reviews
- 1542 compliance standard reviews⁶⁴

TDCJ resources utilized within the contract procurement, awarding, and monitoring activities cost TDCJ approximately \$2.9 million dollars. Failure to discover noncompliance of vendors and ensure that the services are being provided as contracted (security and safety of inmates housed) could result in losses or misuse of significant portions of the \$125 million dollars utilized by TDCJ for private prisons, private operators of state jails, halfway houses, and other contracted parole services.

Recently the State Auditor's Office (SAO) released portions of the Contract Management Guide, which they have been tasked to develop in response to media reports of possible abuses of state contracts.⁶⁵ Although in draft form, it provides recommendations for agencies to establish control of their current contracts through listed best practices. SAO states that the ability to obtain results is dependent on the interaction of the following elements:

- **Plan** - Identify contracting objective and contracting strategy.
- **Procurement** - Fairly and objectively select the most qualified contractors.
- **Rate/Price Establishment** - Establish prices that are cost -effective and aligned with the cost of providing the goods and services.
- **Contract Formation** - Ensure that the contract contains provisions that hold the contractor accountable for producing desired results.
- **Contract Monitoring** - Monitor and enforce the terms of the contract.⁶⁶

⁶⁴ TDCJ, Monitoring and Oversight Summary - FY 2004 CID - Private Facilities, October 7, 2004.

⁶⁵ State Auditor's Office, Contract Management Guide, Draft of July 29, 2004.

⁶⁶ Ibid, page 5

A comparison of the suggested guidelines provided by the SAO with the current practices of TDCJ reveals that the current TDCJ process is within and follows a similar track to that suggested by the SAO contract management framework.

TDCJ successfully used its process during the awarding of contracts for FY 2004 and 2005. By implementing an extended time frame for request for proposal submission, expanding the scope of institutions that are eligible to bid, and then following up with aggressive negotiation of the cost per day, TDCJ has been able to reduce the cost of the contracted beds currently used within the TDCJ Correctional Institutions Division. They have reduced the cost from approximately forty dollars a day, as contracted prior to August 2002, to the current range of thirty dollars to thirty-three dollars a day.⁶⁷ A portion of this cost saving was obtained by limiting the medical services provided by the private facilities, with the state assuming those costs under the State Correctional Managed Health Care.

Recommendations

TDCJ appears to be utilizing an acceptable contract development, awarding, and monitoring system. It has provided the State with assured delivery of services and accountability of expenditures. The legislature should continue to monitor TDCJ activities and ensure that similar success is obtained with any expansion of their contracts involving temporary housing or expanded intermediate sanction facilities.

⁶⁷ TDCJ, Executive Services, J. Baldwin, September 23, 2004.

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** REVISION **
SENATE
NOTICE OF PUBLIC HEARING

COMMITTEE: Criminal Justice

TIME & DATE: 1:00PM, Wednesday, March 10, 2004

PLACE: Capitol Extension E1.028

CHAIR: Senator John Whitmire

Organizational Meeting

- I. Call to order
 - II. Adopt Interim Rules
 - III. Invited Testimony
Legislative Budget Board
 - IV. Invited Testimony, Charges 2 and 3
TDCJ Mr. Gary Johnson, Ms. Christina Melton Crain
 - V. Invited Testimony, Charges 4 and 7
Mrs. Rissie Owens, Chair, Board of Pardons and Parole
 - VI. Public Testimony
 - VII. Adjourn/Recess
-

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE
Wednesday, March 10, 2004
1:00 p.m.
Capitol Extension, Room E1.028

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Wednesday, March 10, 2004, in the Capitol Extension, Room E1.028, at Austin, Texas.

MEMBERS PRESENT:	MEMBERS ABSENT:
Senator John Whitmire	Senator John Carona
Senator Tommy Williams	Senator Juan Hinojosa
Senator Rodney Ellis	
Senator Steve Ogden	

The chair called the meeting to order at 1:20 p.m. There being a quorum present, the following business was transacted:

The Chair laid out the proposed committee rules for consideration. Senator Ellis moved the adoption of the committee rules. There being no objection, it was so ordered. The motion passed with 4 ayes, 0 nays, 0 present and not voting and 2 absent.

The committee then heard invited testimony on four Interim charges. Charge 2 relating to the best practices for probation and community supervision programs, Charge 3 relating to the management and organizational structure of the Texas Department of Criminal Justice, Charge 4 relating to the effectiveness of current parole guideline policies and Charge 7 relating to foreign citizens serving sentences in Texas prison's. Witness's testifying and registering on the Interim charges are shown on the attached list.

There being no further business, at 3:30 p.m. Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

Senator John Whitmire, Chair

Carley Rose, Clerk

WITNESS LIST

Criminal Justice Committee
March 10, 2004 - 1:00P

Board of Pardon's and Parole

ON: McElroy, Laura General Counsel (Board of Pardon's
and Parole), Austin, TX

Criminal Justice Data Analysis Team/LBB

ON: Connolly, Michele Manager (Legislative Budget
Board), Austin, TX
Newton, John Assistant Director (Legislative Budget
Board), Austin, TX

Interim Charges 2 and 4

FOR: Del Llano, Ann (American Civil Liberties Union of
Texas), Austin, TX

Parole Guidelines

ON: Gonzalez, Juanita M. Board Member (Texas Board of
Pardon's and Parole), Gatesville, TX
Owens, Rissie Chair (Texas Board of Pardon's and
Parole), Huntsville, TX

Texas Department of Criminal Justice/Interim Charge 2

Registering, but not testifying:

On: White, Bonita Director, Community Justice Asst. Div.
(Texas Department of Criminal Justice),
Austin, TX

Texas Department of Criminal Justice/Interim Charges

ON: Johnson, Gary Executive Director (Texas Department
of Criminal Justice), Huntsville, TX
Melton Crain, Christina Chairman (Texas Board of
Criminal Justice), Dallas, TX

Registering, but not testifying:

On: Dretke, Doug Correctional Institutions Director
(Texas Department of Criminal Justice),
Huntsville, TX

Texas Department of Criminal Justice/Interim Charges/MRIS

On: Kifowit, Dee Director (Texas Department of Criminal
Justice), Austin, TX

Transfer of Inmates

ON: Lang, Daniel R. Attorney (Habern O'Neil Buckey),
Houston, TX

SENATE
NOTICE OF PUBLIC HEARING

COMMITTEE: Criminal Justice

TIME & DATE: 9:00AM, Wednesday, April 28, 2004

PLACE: E1.016

CHAIR: Senator John Whitmire

-
- I. Call to order
 - II. Invited testimony on Juvenile Justice issues in committee, charge 2 and programs to reduce underage drinking
 - III. Invited testimony on charges 4 and 7
 - IV. Public Testimony
 - V. Adjourn/Recess
-

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE
Wednesday, April 28, 2004
9:00 a.m.
Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Wednesday, April 28, 2004, in the Capitol Extension, Room E1.016, at Austin, Texas.

The chair called the meeting to order at 9:04 a.m. The following business was transacted:

The committee heard invited and public testimony on Interim charge two related to underage drinking and other community supervision programs. Witnesses registering and testifying on the topic are shown on the attached list.

The committee heard invited and public testimony on Interim charge 4 related to parole guidelines. Witnesses registering and testifying on the topic are shown on the attached list.

At 10:32 Senator Seliger assumed the chair.

At 10:35 Senator Whitmire resumed the chair.

There being no further business, at 10:40 a.m. Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Carley Rose, Clerk

WITNESS LIST

Criminal Justice Committee
April 28, 2004 - 9:00A

Interim Charge 2

AGAINST: Lewis, Bill Public Policy Liaison (Mothers Against
Drunk Driving), Keller, TX

ON: Fox, Jeannene (Texas Alcoholic Beverage Commission),
Austin, TX

Harris, Dwight Executive Director (Texas Youth
Commission), Austin, TX

Levins, PhD, Tracy Interagency Relations Liaison
(Texas Youth Commission), Austin, TX

Spriggs, Vicki (Texas Juvenile Probation
Commission), Austin, TX

Steen, Alan Administrator (Texas Alcoholic Beverage
Commission), Austin, TX

Weizenbaum, Jon Director of Government Relations
(Texas Commission in Alcohol and Drug Abuse),
Austin, TX

Interim Charge 4

ON: Del Llano, Ann (American Civil Liberties Union of
Texas), Austin, TX

SENATE
NOTICE OF PUBLIC HEARING

COMMITTEE: Criminal Justice

TIME & DATE: 1:30PM, Tuesday, August 24, 2004

PLACE: E1.016

CHAIR: Senator John Whitmire

The Senate Criminal Justice Committee will hold a hearing on Tuesday, August 24, 2004 at 1:30 pm in E1.016.

The Committee will hear invited and public testimony on Charge 1 relating to the study of identity theft and its effects, and the impact of recent legislation addressing the issue. Make recommendations for enhancing Texas' ability to implement effective programs to prevent identity theft. Monitor federal legislation regarding identity theft to ensure that state and federal laws are complementary and make recommendations for improvements.

The Committee will hear invited and public testimony on charge 6 relating to the review of the Crime Victims Compensation Fund. This includes state and local competition, use in state agency methods of finance, evaluation of grant programs, possible diversion of funds from crime victims as a result of prior legislation, and whether the Fund meets the objectives of its authorizing legislation.

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, August 24, 2004

1:30 p.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, August 24, 2004, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Steve Ogden
Senator Tommy Williams

MEMBERS ABSENT:

Senator John Carona
Senator Rodney Ellis
Senator Juan Hinojosa
Senator Kel Seliger

The chair called the meeting to order at 1:35 p.m. The following business was transacted:

The Committee heard invited and public testimony on Interim charge 1 relating to the study of Identity theft and the impact of recent legislation addressing the issue. Witness's testifying and registering on the Interim charge are shown on the attached witness list.

The Committee then heard invited and public testimony on Interim charge 6 relating to the Crime Victim's Compensation Fund, including state and local competition, use in agency methods of finance, evaluation of grant programs, possible diversion of funds from crime victims as a result of prior legislation, and whether the fund meets the objectives of its authorizing legislation. Witness's registering and testifying on the Interim charge are shown on the attached witness list.

There being no further business, at 3:25 p.m. Senator Whitmire moved that the Committee be recessed subject to the call of the Chair. Without objection, it was so ordered.

Senator John Whitmire, Chair

Carley Rose, Clerk

WITNESS LIST

Criminal Justice Committee
August 24, 2004 - 1:30P

Interim Charge 1

ON: Brewer, John Assistant District Attorney (Harris
County District Attorneys Office), Houston,
TX
Carmona, Paul Chief, Consumer Protection Division
(Texas Attorney General), Austin, TX
Elder, Frank Assistant Chief (Texas Department of
Public Safety), Austin, TX
Hefner, Scott Lieutenant, Criminal Investigation Div
(Texas Attorney General), Austin, TX

Registering, but not testifying:

On: Sells, Robert Lieutenant (Department of Public
Safety), Austin, TX

Interim Charge 6

FOR: Lewis, Bill Public Policy Liason (Mothers Against
Drunk Driving), Keller, TX
ON: Cates, Sheryl Executive Director (Texas Council of
Family Violence), Austin, TX
Key, Alicia Administrative Director (Office of Court
Administration), Austin, TX
Lippincott, Chris Public Affairs Director (Texas
Association Against Sexual Assault), Austin,
TX
Millholland, Herman Director (Office of the Attorney
General), Austin, TX
Sarate, Sebastian Director, Victim Services (People
Against Violent Crime), Austin, TX