

**Senate Criminal Justice
Committee**

**Interim Report to the
80th Legislature**



**December 2006
Senator John WHITMIRE, Chair**

SENATE CRIMINAL JUSTICE COMMITTEE

SENATOR JOHN WHITMIRE
Chairman
SENATOR KEL SELIGER
Vice Chairman



January 1, 2007

MEMBERS:
SENATOR RODNEY ELLIS
SENATOR STEVE OGDEN
SENATOR JOHN CARONA
SENATOR JON LINDSAY
SENATOR JUAN "CHUY" HINOJOSA

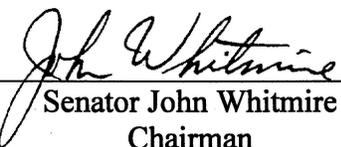
The Honorable David Dewhurst
Lieutenant Governor of the State of Texas
Capitol Building, 2nd Floor

Dear Governor Dewhurst:

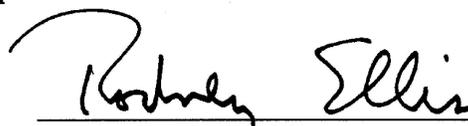
The Senate Committee on Criminal Justice submits its Interim Report in agreement with the Interim Charges that were issued this past year. The Criminal Justice Committee has held hearings over the last year to gather information on these charges. The hearings have been well attended and informative.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

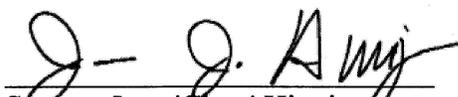
As you are aware, the charges that you issued to the Committee were very comprehensive and challenging. We have worked hard to respond to this challenge by developing broad recommendations that will benefit all Texans in the years to come. We anticipate that the Committee's recommendations will provide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

Respectfully submitted,


Senator John Whitmire
Chairman

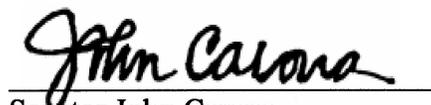

Senator Kel Seliger
Vice Chairman


Senator Rodney Ellis


Senator Juan 'Chuy' Hinojosa


Senator John Lindsay


Senator Steve Ogden


Senator John Carona



Executive Summary

Interim Charge One Recommendations

Study the resources and facilities available to offenders with mental health needs in the Texas criminal justice system. Provide an inventory of resources and facilities. Develop recommendations to better allocate existing resources and efficiently address the needs of this population.

Offenders with mental illnesses present special challenges to the Criminal Justice system. With the implementation of the Mental Health/Criminal Justice initiative, the availability of targeted supervision and mental health treatment has significantly improved the state's response to these high risk offenders. **However, the major issue is to provide adequate funds to provide the appropriate level of service and treatment required at each element of the State's Continuum of Care (attached flow chart) for mentally ill offenders.** Based upon the testimony and reports provided by agency and interested parties, the following recommendations are offered by the committee:

1. The DSHS should collect monthly data on the length of time 46.B defendants are held in local jails waiting for state hospital commitment. In addition, DSHS should explore other options for competency restoration, particularly for misdemeanors, that can be implemented in the community by the local MHMRA's.
2. The process for cross-referencing the TDCJ offender database against the state mental health agency's client registry should be conducted on a more frequent basis. There appears to be no established time period to generate reports, therefore important information regarding an offender's prior or current mental health service history is not provided in a timely manner.
3. Continued efforts to improve the identification of mentally ill offenders at time of arrest and incarceration in local jails must be a priority. The earlier the identification is made, the earlier the courts can make more informed decisions on sentencing options and thus impose conditions reflecting the offender's need for specialized supervision and mental health treatment.
4. Current statutory requirements for DSHS and local MHMRA's to report prevalence rate information to TCOOMMI should be strengthened. Based on preliminary reports received by TCOOMMI on implementation activities, there is minimal compliance to the Rider's requirements for local MHMRA's to provide quarterly reports to TCOOMMI on cross-referencing activities with local jails.
5. An evaluation of the juvenile mental health program should be conducted to determine its impact on recidivism. This evaluation could be assigned to the Legislative Budget Board's (LBB) evaluation unit for a completion date by the 81st Legislative session.

Interim Charge Two Recommendations

Study the expenditure patterns and identify trends in the community supervision and corrections departments' use of state and local monies, known collectively as the Judicial Districts Trust Funds. Ascertain the percentages spent on direct supervision of probationers and identify notable policy decisions. Provide recommendations for improvements and methods of maximizing the use of these funds.

To ensure that state general revenues provided for adult probation services, are expended in compliance with legislative intent, it is recommended that the legislature:

1. Continue to utilize the Diversion Program Funds for additional increases, rather than the formula funding line items.
2. Continue to use appropriation riders to direct and provide controls of the expenditure of these funds.
3. Instruct TDCJ-CJAD to review its allowable expenditures with emphasis on improving the consistency of expenditures among the individual CSCDs.

Interim Charge Three Recommendations

Examine the allegations of abuse and neglect within the Texas Youth Commission (TYC) facilities and the appropriateness of TYC response. Include an analysis of factors that may be affecting the safety of inmates and staff and make recommendations for Legislative actions to improve the safety of inmates and staff at these facilities.

1. Funding issues at TYC have significantly hindered the agency's ability to operate safely and effectively. Facilities are understaffed, suffer from extremely high turnover rates, and staff are poorly prepared for the demanding nature of the job. An increased training period may decrease turnover and improve interaction with students.
2. The legislature must also improve the manner in which students are currently housed, some age requirement should be established and applied that regulates interaction between students with significant differences in age. This effort would be served by limiting the number of beds to a room.
3. Although abuse is reported to law enforcement, resources limit the ability of local and county police to pursue most incidents. The TYC inspector general should have the capacity to bring criminal assault charges so reports of abuse will no longer end with the termination or resignation of the employee, and staff will feel more protected from student aggression. When staff feel endangered, they are more likely to overreact to intense situations.

Interim Charge Four Recommendations

Monitor the implementation of legislation relating to reducing the production and abuse of methamphetamine, including the predicted impact of methamphetamine's increased availability on state resources and criminal justice populations, and make recommendations for additional programs for further reductions in abuse and production.

1. Due to media attention, the methamphetamine 'epidemic' has produced widespread beliefs that have little evidentiary support, or have been exaggerated in the hopes of deterrence. A particularly damaging claim is that methamphetamine addiction does not respond to treatment. Studies suggest that methamphetamine addiction responds as effectively to treatment as most addictive substances. Also, It should be noted that figures indicate that meth use among teenagers has decreased in recent years.
2. Although retailers have complied with log book laws, authorities do not monitor the books. A comprehensive, electronic system is necessary, as the current paper logs allow a user to visit multiple locations.

Interim Charge Five Recommendations

Study and make recommendations for methods to reduce kidnapping and violence along the Texas Border, focusing on reducing drug-related crime.

1. Future grants to border operations should be made through a fiscally accountable state agency. The method of distribution did not account for population size, department size, or crime rates. There was no measure for success or failure built into the program, and an alarming lack of stipulations on the use of the money.

Interim Charge Six Recommendations

Monitor the expenditure of funds for adult probation services dedicated to lowering revocations to state prisons and state jails. Examine the compliance with, and effectiveness of, the associated budget riders and make recommendations for future funding needs.

1. The additional resources to the community supervision segment of the criminal justice system have demonstrated a positive impact on the utilization of incarceration alternatives. Expanding this initiative to non-funded CSCDs may result in additional benefits in reducing revocation and lowering the recidivism rate for probationers.
2. It is recommended that community supervision funding be maintained and expanded. The best means of allocating this funding is through the diversion line item of the TDCJ-CJAD budget, along with the controlling appropriation riders.

Interim Charge Seven Recommendations

Study the feasibility of the State of Texas establishing or contracting with a private prison facility in the country of Mexico in order to house non-violent Mexican Nationals currently being housed in Texas prisons.

1. Inter-American Convention on Serving Criminal Sentences Abroad and the United States-Mexico Treaty on the Execution of Penal Sentences both state that once a prisoner is transferred to the receiving country, that country assumes all responsibilities for the care of the prisoner. So long as these treaties are in effect, the State is obligated to follow the terms and conditions of them. Without further changes to these federal treaties, the Committee cannot recommend the State of Texas establish or contract with a private prison facility in the country of Mexico in order to house non-violent Mexican Nationals currently being housed in Texas prisons.
2. The language in the Texas Constitution can be interpreted as prohibiting the State from transporting inmates out of Texas to any other country for a crime committed in Texas. Meanwhile, the United States Prisoner Transfer Treaties and Article 42.17, Texas Code of Criminal Procedure expressly allow the transfer of federal and state inmates of foreign nationality to their home countries. Therefore, the Committee recommends the amending of Section 20, Article I, Texas Constitution to reflect allowances made by the U.S. Prisoner Transfer Treaties and Article 42.17, Code of Criminal Procedure.

Interim Charge Eight Recommendations

Review other states' correctional health care systems and make necessary recommendations to improve the effectiveness and efficiency of Texas' system.

1. The appropriate level of health care provided to Texas inmates must be addressed. As major problems exist in the five general types of health care systems in other states, improving the current Texas Managed Health Care Committee services is recommended.
2. Improvements to the system should consider, the increasing prison population, the aging of the offender population and the increase in commutable diseases among the incoming offender population. Efforts to reduce the impact of these known contributors should be utilized to the maximum and funded accordingly.

Table of Contents

Interim Charge One.....2

Interim Charge Two.....11

Interim Charge Three.....16

Interim Charge Four.....21

Interim Charge Five.....25

Interim Charge Six.....29

Interim Charge Seven.....40

Interim Charge Eight.....45

Bibliography.....53

Minutes/Witness Lists.....55

Interim Charge Number One

Study the resources and facilities available to offenders with mental health needs in the Texas criminal justice system. Provide an inventory of resources and facilities. Develop recommendations to better allocate existing resources and efficiently address the needs of this population.

Introduction

The disproportionately large number of offenders with mental health needs currently under penal supervision is a growing concern for states across the country. Only about 5% of the total U.S. population suffers from mental illness, while 16% of the inmate population is in some way afflicted.²

Every year thousands of new inmates enter into the criminal justice system who are previous recipients of mental health services: this situation has only been made worse by the deinstitutionalization of the mentally ill in the 1960's and 1970's. As a result, approximately 90% of the country's psychiatric beds are currently closed, and the community based care that was promised is not being delivered with sufficient resources.³ Without the mental health hospitals and the community based care, many mentally ill individuals are ending up behind bars. This growing problem has become the expedient means to remove these individuals from the street.⁴

Today large numbers of people with serious mental illness are kept locked in jails or in prisons due to the absence of resources in our community based care system and our state mental hospitals.

Background

Often for public safety purposes, a mentally ill person who commits a horrendous criminal act justifies the incapacitation of that individual through any available source. However, most often the majority of mentally ill offenders have committed minor, non-violent crimes.⁵ With these offenders a cycle of events develops. First, contact is made with the mentally ill offender and the police officer who repeatedly responds to the complaints. Then, prosecutors will see the same offenders over and over. Next, the jail and or prison administrators and staff, followed by the probation or parole officers come in contact with the offender. Unless linkage with an appropriate mental health program can be established, this cycle will continue.⁶

² *Criminal Justice/Mental Health Consensus Project*, Council of State Governments, June 2002

³ *Prisons: Minnesota's New Asylums for the sick*, Stare Tribune Newspaper, February 11, 2002

⁴ *Ibid*, page one

⁵ The Council of State Government, letter to Senator Whitmire, December 23, 2003

⁶ *Criminal Justice/Mental Health Consensus Project*, Council of State Governments, June 2002

The presence of mentally ill offenders within Texas' largest county jail system is illustrated by information developed by a detail review of the Harris County Jail's midnight census of December 15, 2005.⁷ Testimony revealed that:

- Nearly 50% of the female inmates were being provided or had been provided mental health services by the local or state mental health mental retardation (MHMR) system.
- 1 in 3 male inmates were being provided or had been provided mental health services by the local or state MHMR system.
- 1 in 10 inmates in the jail on that day were mentally ill.
- 4 out of ten mentally ill inmates suffered from one of the three mental health priority population conditions.
- 2 out of 10 mentally ill inmates suffered from conduct disorder and illness emerging during childhood or adolescence, but did not qualify for state funded treatment during adulthood.
- On average, when a charge is filed against a mentally ill offender it results in a 50% longer jail stay as compared to a regular offender.
- Jail booking of mentally ill offenders accounted for 34% of all felony jail bookings and 26% of all misdemeanor jail bookings.
- An 11 month follow up revealed that a mentally ill offender was two times more likely to be booked again than a regular offender for a felony and 1.7 times more likely to be booked again for a misdemeanor .
- Recidivistic criminal behavior by mentally ill offenders accounted for 52% of the jail days in a year.

Dr. Schnee also provided that during 2004, 62% of the 16,000 juveniles supervised by the Harris County Juvenile Probation Department had a diagnosable mental illness. 9,920 juveniles fell into this category.⁸

In order to assess the state's current mental health resource capability, the Committee requested testimony from the four agencies with sole or partial responsibility for the delivery of treatment services to juvenile or adult offenders with mental illnesses. Those agencies included the Department of State Health Services (DSHS), Texas Department of Criminal Justice (TDCJ), Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC). The following sections provide a summary of the testimony and issues discussed with the Committee.

Department of State Health Services – State Hospital Forensics Resources

During the past several years DSHS has noted an increased demand for forensic beds for defendants committed under of the Code of Criminal Procedure Section 46.B. These defendants have been determined incompetent to stand trial, and are required to be committed to the state hospital for restoration of competency. Once restored, the

⁷ Testimony by Steven B. Schnee, Executive Director of MHMRA of Harris County, June 21, 2006

⁸ Ibid

defendant is returned to the committing county to continue the criminal proceedings. According to testimony, 46.B defendants may have to remain in jail an estimated 3 to 4 months prior to being admitted to the state hospital for competency restoration due to lack of bed space.

This delay is problematic for a number of reasons. Jails are inadequately equipped to handle a defendant who is incompetent. Furthermore, if the defendant refuses to voluntarily take the prescribed medications for managing the mental illness, the jail has little recourse. Unless the defendant is determined to be a serious threat to himself or others, the jail cannot involuntarily medicate the inmate. This in turn forces jail staff to manage the defendant's behavior under difficult circumstances.

Another concern with the current law is the length of time the process takes to commit defendants with misdemeanor and felony charges to a state hospital for competency restoration. In some cases, the defendant with misdemeanor charges could serve more time in the jail and state hospital than what the punishment would have required had the defendant been competent. Considering the cost of state hospitalization, the fiscal implications are significant. In addition, the counties cost to incarcerate the defendant pending the availability of a forensic bed is considerable as well. Efforts to provide alternatives to state hospitalization are limited.

Harris County is currently operating a pilot program in the jail designed to stabilize defendants on medication in an effort to restore competency. This program, referred to as the Rusk Diversion Project, is jointly funded by Harris County, Mental Health Mental Retardation Authority (MHMR) and the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI). The project's preliminary results indicate that the average length of stay in the jail is 21 days compared to 90 for those defendants committed to state hospitals. Though additional study of the cost-benefit of this project is warranted, the potential application of this program in other jurisdictions, particularly for defendants with misdemeanor charges, is a promising option to be considered.

Texas Department of Criminal Justice

During the past decade, the number of offenders with mental illnesses within the criminal justice system has continued to increase. According to TCOOMMI, the prevalence rate of current or former clients of the public mental health system within the criminal justice system is approximately 19%.

The following chart provides the results of cross-referencing of criminal justice and mental health databases conducted in February 2006.

Texas Department of Criminal Justice – CARE* Match Rates February 2006		
	<u>Total</u>	<u>CARE* Matches</u>
Probationers:	430,312	57,719 (13%)
Parolees:	77,167	21,097 (27%)
CID:	151,528	45,628 (30%)
<hr/>		
Total:	659,007	124,444** (19%)
* Client Assignment and Registration System (CARE)		
** Data includes all persons served by MHMR and is not limited to current target populations of Schizophrenia, Bipolar or Major Depression		

Based on these statistics, almost one out of every 5 offenders under TDCJ's supervision is a current or former client of the mental health system.

However, according to TDCJ, the results are somewhat misleading due to the information included in the DSHS client database. DSHS reports that the data includes client information for state hospital admissions for substance abuse treatment, crises or one-time-only service provision, and individuals who do not meet current service eligibility guidelines.

By limiting the cross-referencing activity to only those offenders with a serious mental illness (schizophrenia, bi-polar, or major depression) the prevalence rates are significantly reduced as demonstrated in the following table.

	Number	Percent	Percent of all Active Clients*
Matched Clients Meeting Criteria	50,174	100.00%	7.66%
			Percent of all Incarcerated Clients**
Incarcerated Clients Age 22 & Over	14,698	29.29%	9.87%
• With Major Depression	4,540	9.05%	3.05%
• With Bipolar Disorder	2,871	5.72%	1.93%
• With Schizophrenia	2,814	5.61%	1.89%
• With a Non-TPDx or Crisis	4,473	8.91%	3.00%
Incarcerated Clients Under Age 22	1,780	3.55%	1.20%
• With Major Depression	261	0.52%	0.18%
• With Bipolar Disorder	169	0.34%	0.11%
• With Schizophrenia	53	0.11%	0.04%
• With a Non-TPDx or Crisis	1,297	2.59%	0.87%
			Percent of all Parole Clients***
Parole Clients Age 22 and Over	7,192	14.33%	9.35%
• With Major Depression	2,515	5.01%	3.27%
• With Bipolar Disorder	1,603	3.19%	2.08%
• With Schizophrenia	1,665	3.32%	2.16%
• With a Non-TPDx or Crisis	1,409	2.81%	1.83%
Parole Clients Under Age 22	297	0.59%	0.39%
• With Major Depression	39	0.08%	0.05%
• With Bipolar Disorder	24	0.05%	0.03%
• With Schizophrenia	9	0.02%	0.01%
• With a Non-TPDx or Crisis	225	0.45%	0.29%
			Percent of all Probation Clients****
Probation Clients Age 22 and Over	24,468	48.77%	5.70%
• With Major Depression	9,524	18.98%	2.22%
• With Bipolar Disorder	6,633	13.22%	1.55%
• With Schizophrenia	2,627	5.24%	0.61%
• With a Non-TPDx or Crisis	5,684	11.33%	1.32%
Probation Clients Under Age 22	4,174	8.32%	0.97%
• With Major Depression	849	1.69%	0.20%
• With Bipolar Disorder	687	1.37%	0.16%
• With Schizophrenia	151	0.30%	0.04%
• With a Non-TPDx or Crisis	2,487	4.96%	0.58%

*Includes prison/state jail, active parolees, & on probation as of May 31, 2006: 655,043

**Includes prison and state jail as of May 31, 2006: 148,914

***Includes active parolees as of May 31, 2006: 76,925

****Includes clients on probation as of May 31, 2006: 429,204

By identifying and targeting limited resources to those offenders with serious mental illnesses, TDCJ is focusing its efforts on those offenders who statistically are at greater risk for recidivism. An example of this targeted strategy is the specialized probation/parole caseloads and targeted mental health programs funded by TCOOMMI.

Mental Health/Criminal Justice Initiative

During the 77th Legislative session, the Legislature funded the Mental Health/Criminal Justice (MH/CJ) Initiative. These targeted funds, in the amount of \$35 million, were designed to create specialized mental health caseloads for juvenile and adult probation and targeted case management for offenders with mental illnesses. In a 2004 study conducted by the Community Justice Assistance Division (CJAD), the recidivism rate for those offenders involved in the MH/CJ model was lower than other comparable offender groups. As outlined in the following chart, the model group had a 13% recidivism rate (incarceration in TDCJ) over a two year period of time.

Outcomes:

2 Year Incarceration Rate			
Group	Felony	Misdemeanor	Overall
Model	16.3%	1.7%	13.1%
Initiative Caseload Only	23.0%	4.1%	18.7%
Non Initiative Caseload Only	24.7%	2.7%	20.1%
Case Management Only	*	*	19.4%
Overall	20.3%	3.0%	16.8%

*Offense level information was not available for offenders who received case management services only.

This result shows promise for several reasons. Current capacity projections for TDCJ prisons and state jails show a significant increase in future admissions. By investing in alternatives such as the Mental Health/Criminal Justice initiative, capacity issues are lessened. Considering that mentally ill inmates typically serve more time than other offenders, the potential benefit is even more critical. In addition, mentally ill offenders on community supervision (probation or parole) are eligible for federal entitlements, such as Medicaid, which can be used to offset general revenue costs.

Due to the success of the model’s “carrot and stick” approach to supervising and treating these offenders, expansion of the program warrants consideration.

Texas Juvenile Probation Commission

TJPC is also a partner with TCOOMMI on the Mental Health/Criminal Justice initiative. Similar to the adult model, TJPC funds specialized probation officers who work in

cooperation with the case managers funded by TCOOMMI. However, there are significant differences between the adult and juvenile systems that should be noted. Within the adult system where specialized officers carry a 45 to 1 caseload, juvenile probation officers only work with 12 to 15 juveniles. Similarly, the adult mental health component allows a 30 to 1 caseload, compared to a 10 to 15 caseload size per each case manager in the juvenile system. Finally, diagnostic eligibility in the juvenile system is much broader than (schizophrenia, bi-polar and major depression) the adult system.

The differences reflect the emphasis of intensive interventions for juveniles with the expected result of diversion from the adult system. Also, as minors, the juvenile system must expend considerable time with parents and/or immediate family members in order to facilitate positive change within the home environment in which the juvenile resides.

During testimony provided by local juvenile probation officials, criticism of TCOOMMI was heard from several witnesses. The primary issue appeared to be related to the qualifications of staff hired by contract providers (local MH/MR Centers) to provide counseling or case management services to juvenile probationers. The extent that this issue has on the program's quality is not known. Until an evaluation of recidivism is conducted, similar to that of the adult study, no conclusions can be drawn as to the concerns raised.

Texas Youth Commission

The Texas Youth Commission has historically reported a high prevalence rate of youth with an emotional disorder. Based on recent prevalence rates, the Committee reports that 49% of its population is diagnosed with an emotional disorder. Mental health treatment and support services are provided to youth within TYC, but due to resource limitations, a more comprehensive approach to the targeted population is not possible.

TYC is also a partner in the MH/CJ initiative and reports a very positive collaboration on providing pre and post-release services to parolees referred to TCOOMMI-funded programs. Prior to the MH/CJ initiative, access to the mental health system was oftentimes a frustrating experience involving long waits for intake and service provision. With the targeted TCOOMMI funds, aftercare services are scheduled prior to release, which results in no interruption of mental health treatment upon the youth's release from TYC.

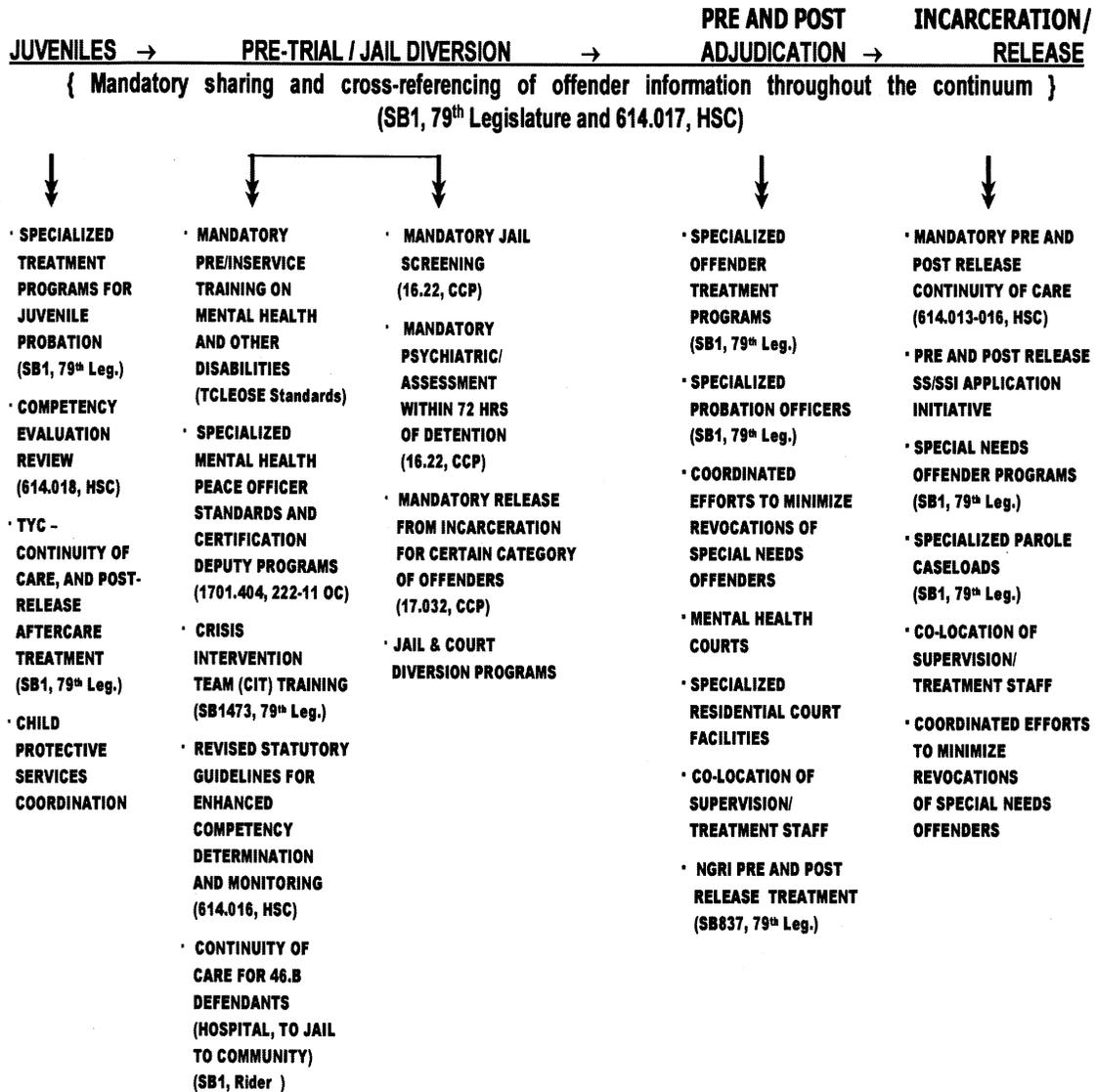
Recommendations

Offenders with mental illnesses present special challenges to the Criminal Justice system. With the implementation of the Mental Health/Criminal Justice initiative, the availability of targeted supervision and mental health treatment has significantly improved the state's response to these high risk offenders. **However, the major issue is to provide adequate funds to provide the appropriate level of service and treatment required at each element of the State's Continuum of Care (attached flow chart) for mentally ill**

offenders. Based upon the testimony and reports provided by agency and interested parties, the following recommendations are offered by the committee:

1. The DSHS should collect monthly data on the length of time 46.B defendants are held in local jails waiting for state hospital commitment. In addition, DSHS should explore other options for competency restoration, particularly for misdemeanors, that can be implemented in the community by the local MHMRA's.
2. The process for cross-referencing the TDCJ offender database against the state mental health agency's client registry should be conducted on a more frequent basis. There appears to be no established time period to generate reports, therefore important information regarding an offender's prior or current mental health service history is not provided in a timely manner.
3. Continued efforts to improve the identification of mentally ill offenders at time of arrest and incarceration in local jails must be a priority. The earlier the identification is made, the earlier the courts can make more informed decisions on sentencing options and thus impose conditions reflecting the offender's need for specialized supervision and mental health treatment.
4. Current statutory requirements for DSHS and local MHMRA's to report prevalence rate information to TCOOMMI should be strengthened. Based on preliminary reports received by TCOOMMI on implementation activities, there is minimal compliance to the Rider's requirements for local MHMRA's to provide quarterly reports to TCOOMMI on cross-referencing activities with local jails.
5. An evaluation of the juvenile mental health program should be conducted to determine its impact on recidivism. This evaluation could be assigned to the Legislative Budget Board's (LBB) evaluation unit for a completion date by the 81st Legislative session.

Continuity of Care Flow Chart



Interim Charge Number Two

Study the expenditure patterns and identify trends in the community supervision and corrections departments' use of state and local monies, known collectively as the Judicial Districts Trust Funds. Ascertain the percentages spent on direct supervision of probationers and identify notable policy decisions. Provide recommendations for improvements and methods of maximizing the use of these funds.

Introduction

Local judicial agencies establish the provision of probation services in Texas known as community supervision and corrections departments (CSCDs). In conjunction with the local agencies, state oversight is conducted by the executive branch of the Texas Department of Criminal Justice's (TDCJ) Community Justice Assistance Division (CJAD). CJAD is tasked by Texas Government Code, Section 493.003 to determine minimum standards and funds for programs, facilities, and services provided by CSCDs. Since 1979, state general revenue funds have flowed to local CSCDs through legislative appropriations to TDCJ-CJAD.

Texas Government Code, Section 76.002 provides that the district judge, district judges, or statutory county court judges who try criminal court cases in their county or counties establish the CSCDs. This section also tasks these judges with approving the CSCD budget and community justice plan. During the 79th Legislature, House Bill 1326 amended this section to provide judicial immunity for judges who comply with these mandates, while also limiting their personnel appointments to the department director and fiscal officer.

Background

Texas Government Code, Section 509.001 provides the conditions and processes for the payment of state aid to local CSCDs. If CJAD determines that the CSCD has complied with CJAD standards and has submitted an acceptable community justice plan with supporting documentation, CJAD will then approve state aid payments from legislative appropriations for:

- **Basic Supervision Funds** which cover the basic operating cost of the department in providing service to offenders. The amount of funding received depends on the number of direct felon probationers, direct misdemeanor probationers and pretrial felons supervised.
- **Community Corrections Program Funds** which is a set formula based on the ratio of felons placed on supervision to the population of the county or counties in the judicial district.
- **Diversion Program Grants** which are competitive monies awarded to select department for programs that divert offenders from incarceration.

- **Treatment Alternative to Incarceration Program Grants (TAIP)** which are awarded to select departments to provide substance abuse treatment to offenders who do not qualify for, or cannot afford, any other treatment.

Texas Government Code, Section 509.011(e) requires CSCDs to deposit all state aid received from CJAD in a special fund of the county treasury. These funds are to be used solely for the provision of services, programs, and facilities as allowed. This fund has been known generally as the Judicial District Trust Fund. Additional supervision funds, commonly known as offender fees, are also deposited in this special fund, pursuant to the Texas Code of Criminal Procedure, Section 19(a).

Before the state began providing funds for probation services in 1979, county government bore the total cost of the probation departments that had been developing under the judiciary during the 1960s. Since the arrival of state aid, funding responsibilities have been separated—today this is governed by the Texas Government Code, Section 76.008. This statute provides that counties are responsible for funding physical facilities, equipment, and utilities for their CSCDs. It requires CJAD to establish a minimum level of support and monitor the support provided by the county or counties. Texas Government Code, Section 509.012 authorizes the use of sanctions where non compliance is noted.

As state aid to probation services has grown over the years, legislatures have provided a certification system that allows CSCDs the ability to expend state aid on facilities, utilities, and equipment. Should a county (or counties) find it lacks sufficient resources to accommodate the growth of CSCD personnel required to meet workload needs, it must declare so in accordance with Section 76.09 of the Texas Government Code.

Funds available during FY 2006 for use for probation services include:

• Basic Supervision	\$98 million
• Diversion Programs	\$89 million
• Community Corrections	\$43 million
• TAIP	\$11 million
• State total	\$241 million
• Supervision fees	\$127 million
• Program Participation fees	\$15 million
• Total offenders fees	\$142 million⁹

Of the \$383 million available for the day to day operations of probation services, approximately 64% is provided by state aid. The Board of Judges Trying Criminal Cases approve local CSCD budgets in the county or counties they provide services for. At the discretion of the CSCD and oversight judges, 74% of the \$383 million operational funds for fiscal year 2006 were expended with 26% allocated on competitive grant process and

⁹ *Community Supervision and Corrections in Texas*, Presentation to the House Committee on Corrections, March 22, 2006

conditions. CSCDs and their oversight judges have significant discretion in spending the majority of funds available to them. The major limitation on this discretion is that CSCDs must abide by TDCJ-CJAD Standards, the Contract Management Manual and the Financial Management Manual. However, it should be noted that these manuals do not establish minimums or maximums on various items, such as employee salaries.

In addition, counties provide an estimated \$30 million in facilities, utilities, and equipment to CSCDs.

Expenditures

The available funds support 121 individual CSCDs serving 254 counties and providing supervision to 429,559 probationers.¹⁰ CSCDs employ a total of 6,725 paid staff employees. Of that total, 3,528 are paid full-time Community Supervision Officers (CSO), along with 14 paid part-time CSOs. The number of paid full-time non CSOs employed is 2,988, along with another 195 paid part-time non CSOs.¹¹

The size of CSCDs in Texas varies greatly, with the smallest having 2 paid employees, and the largest having 801 paid employees. To review the individual budgets of all 121 CSCDs and develop ranges for individual expenditures, the following designations have been assigned:

- **Large CSCDs** have over 9,500 direct, indirect, and pretrial offenders under supervision. 10 CSCDs fall within this category. Cases supervised by these CSCDs ranges from 9,817 to 54,039.
- **Medium CSCDs** have less than 9,500 but more than 3,500 direct, indirect, and pretrial offenders under supervision. 22 CSCDs fall within this category. Cases supervised range from 3,545 to 7,835.
- **Small CSCDs** have less than 3,500 direct, indirect, and pretrial offenders under supervision. 89 CSCDs fall within this category. Cases supervised range from 205 to 3,302.¹²

Personnel expenditures are commonly the greatest percentage of any government organizations' total budget; the State of Texas uses 60% of its total operating budget on this.¹³ An operating budget review of the various CSCDs reveal ranges for manager compensation. Within the 10 CSCDs in the large category, the range of salary for Director is \$87,547 to \$152,141. The range for Assistant/Deputy Directors is \$67,604 to \$101,057. Within the 22 medium CSCDS the range of compensation for Directors is \$66,445 to \$118,170. The Assistant/Deputy Director range in these CSCDs is \$50,196 to \$79,857. In the 89 small CSCDs the range for Director is \$41,499 to \$115,674, and for Assistant/Deputy Director the range is \$39,420 to \$78,506. For comparison purposes, the

¹⁰ July 2006 Statewide Summary Report by TDCJ-CJAD

¹¹ Ibid

¹² CJAD report on Variation in Size of CSCDs, to Senate CJ Committee, September 2006

¹³ A Biennial Report on the Total Compensation Package for State of Texas Employee, SAO Report No. 07-701, September 2006

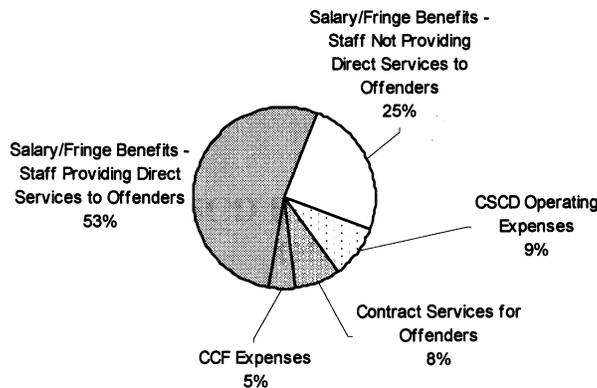
salary level for TDCJ-CJAD Directors and Parole Divisions is \$90,465. A Deputy Director at either division has a salary level of \$70,920.

A review of certified officer positions within CSCDs reveal a range of salaries in large CSCDs from \$27,504 to \$53,949. In medium CSCDs the range for officers is \$25,005 to \$62,218. In small CSCDs the officer range is from \$21,882 to \$58,100. State Parole officers have a range of \$27,662 to \$32,881.

Overall, the FY 2006 operating budgets for CSCDs include 3,773 CSO positions at a cost of \$139 million—which accounts for 36% of the \$383 million available total funds. It should be noted that utilization of the State Parole Officer salary range would yield 4,212 similar positions.

Fiscal Year 2005 CSCD Expenditures for Direct Services to Offenders

To ascertain the percentage of available funds spent on direct supervision of probationers, TDCJ-CJAD conducted an analysis of fiscal year 2005 expenditures¹⁴. During fiscal year 2005, CSCDs reported expenditures totaling \$341.8 million. In addition, approximately \$22 million in state aid was set aside in order to provide state health insurance for CSCD staff. Also, state aid in the form of general revenue appropriations accounted for 60% of available monies for CSCDs, with the remaining 40% coming from offender fees and payments.



According to the review, 66% of expenditures were spent on direct services to offenders, including the following items:

¹⁴ FY 2005 CSCD Direct Services to Offenders, TDCJ-CJAD, October 16, 2006

- Contract services for offenders
- Salary and fringe benefits for community supervision officers and other department staff who provide direct services to offenders
- All expenditures associated with operating a community corrections facility

The remaining 34% of expenditures were spent on non direct services to offenders. These include the following items:

- Salary and fringe benefits for CSCD staff who do not supervise offenders at least 50% of their time
- CSCD Operating Expenses: travel/transportation, professional fees, supplies, facilities, utilities, and equipment

There is a significant difference between those CSCDs that operate residential programs from those that do not. This is because residential programs are more expensive to operate than regular or street probation. This discrepancy is reflected in the following chart.

Percent of Expenditures Expended on Direct Services to Offenders

CSCD Size	CSCDs with Residential Facility	CSCDs with No Residential Facility	Total
Small	75.5%	51.5%	58.3%
Medium	72.6%	59.8%	67.2%
Large	70.1%	60.1%	69.0%
Total	71.2%	55.7%	66.0%

In this analysis, all costs associated with operating a residential facility are treated as direct services to offenders. Discrepancies between CSCDs with residential facilities and those with no residential facilities are due to the increased costs associated with operating a residential facility.

Recommendations

To ensure that state general revenues provided for adult probation services, are expended in compliance with legislative intent, it is recommended that the legislature:

- Continue to utilize the Diversion Program Funds for additional increases, rather than the formula funding line items.
- Continue to use appropriation riders to direct and provide controls of the expenditure of these funds.
- Instruct TDCJ-CJAD to review its allowable expenditures with emphasis on improving the consistency of expenditures among the individual CSCDs.

Interim Charge Three

Examine the allegations of abuse and neglect within the Texas Youth Commission (TYC) facilities and the appropriateness of TYC response. Include an analysis of factors that may be affecting the safety of inmates and staff and make recommendations for Legislative actions to improve the safety of inmates and staff at these facilities.

Introduction

Recent events occurring at Texas Youth Commission (TYC) facilities have created concerns about the commission's policies toward inmates, commonly known as 'students.' Increasing reports of disturbances and allegations of abuse have brought TYC's policies under considerable scrutiny. In order to improve upon the safety of staff and students, the success of TYC's programs, and the welfare of the general public, certain aspects of the organization require external examination.

The Texas Youth Commission is the state's juvenile corrections agency, providing for the care, custody, and rehabilitation of Texas' most chronically delinquent or serious juvenile offenders. Only 3 percent of youth handled by the juvenile system are committed to TYC and they represent a particularly repetitive or dangerous group, usually having failed in other community-based programs.¹⁵ Commonly their offenses are at a felony level, and the offenders range in age at the time of the offense from 10 to 17. They may remain in TYC custody or jurisdiction until the age of 21. TYC draws authority from Title 3 of the Human Resources Code (61.011).

Background

Youth that enter the TYC system begin at the Marlin Unit for assessment and evaluation. Here they undergo a general orientation and assessment for special needs, these can include sex offender behavior, emotional disturbance, chemical dependence, and violent behavior. Most, approximately 85%, leave Marlin for secure correctional facilities according to TYC's annual report. Others enter halfway houses and contract care programs.¹

Incidents of concern include multiple allegations of mistreatment and disturbances at the Evins facility in south Texas and San Saba facility in central Texas. Allegations of abuse, however, have increased sharply in all but a few facilities over the past 3 years.³ Not unrelated are substantial increases in worker compensation claims by staff, most acutely, claims resulting from student aggression. TYC staff have expressed in surveys and testimony that they fear for their own safety, as students have become increasingly aggressive.

Recently the Texas Youth Commission has come under federal scrutiny from the Department of Justice. The DOJ is investigating operations at the Evins Unit in south

¹⁵ TYC Annual Report FY 2004

Texas. The findings of the investigation have not been released as it is not expected to be complete for a few months.¹⁶

TYC Policy

The definition of restraint, according to TYC's General Administrative Policy, is 'restricting a youth's freedom of action by using various restraint methods, including manual restraint, mechanical restraint, OC spray and full-body restraint.'¹⁷

The restraint policy is designed to maximize youth and staff safety, enabling staff to protect themselves or others from imminent harm. Other circumstances of authorized force are the prevention of property damage, attempted escape, or youth resistance to removal from a dangerous or disruptive situation.

Specific methods of restraint are prohibited and include chokeholds, hitting, kicking, dragging, or lifting a youth by the hair. Force is prohibited as a form of punishment or a matter of convenience.³

TYC adheres to Family Code definitions of abuse, neglect and exploitation as abuses the Commission is mandated to investigate. When an incident of abuse is reported the report is forwarded to the Inspector General of TYC's Office of General Counsel and to state or local law enforcement. TYC's Inspector General then gathers evidence of abuse or violation of agency policy, and a deputy reviews the report for accuracy and statutory compliance. Once a report is considered sufficient, and findings are issued and there are opportunities for victims or the respondents to appeal to the executive director. Confirmed reports of abuse are reviewed by the TYC Board of Directors.

Findings of Abuse

Rates of abuse have more than doubled in the past three years at TYC facilities, according to *confirmed* reports by TYC inspector generals¹⁸:

Year	Rate of abuse per 100 kids.
2002	0.8
2003	1.2
2004	2.4
2005	2.9

¹⁶ TYC Press Releases July 18, 2006 and September 11, 2006

¹⁷ TYC General Administrative Policy 97.23

⁴ TYC Data, excludes allegations of sexual abuse, neglect and narcotics investigations.

TYC data also indicates that abuse often starts when a youth breaks a rule, and commonly takes the form of choking or violent restraint, some cases are unprovoked (no rules were broken by youth) and many injuries have occurred *after* the youth are handcuffed.

Most often the abuser is a JCO, Juvenile Correctional Officer, and punishments for abuse range from counseling to termination. Few JCO's repeat the offense, 16 percent of 389 confirmed cases of abuse from 1999 to 2005 involved an employee with a history of disciplinary action taken against them.

The Evins Unit Incident:

On October 30, 2004 at 6:45 a.m. a group of boys took control of a room in the Evins facility. Using mattresses to barricade the outer doors and shaving cream to block out security cameras they then flooded the floor. Guards in the facility attempted to take the room back unsuccessfully with targeted use of tear gas, but the boys resisted by wrapping their faces with wet t-shirts. An hour later security staff were able to enter the room with riot equipment and canisters of tear gas, they subdued the boys one at a time and retook control of the room. No serious injuries occurred. Several boys were sent the Hidalgo County Jail, on the way they boasted that further rioting would occur.

In the aftermath of the event Strategic Tactics and Response Teams (STAR) were called to the facility from other TYC Units in an attempt to get the Evins facility back under control. Lockdown was enforced and strict rules were in place to prevent more violence, however, many allegations of excessive use of force were confirmed. Over the next weeks alleged abuses include boys being restrained and forced to lay in fire ants, ribs bruised from being thrown into walls, and a boy thrown head first onto the ground resulting in a sprained neck and a head injury. Another boy was used as a human battering ram, taken outside and thrown to the ground, the guard ground his face into the cement until it was raw and he temporary lost the use of his right eye.¹⁹

Through regular TYC policy and investigative findings, seven TYC staff were found to be involved with abuse during or after the disturbance in October 2004. After extended investigation, four were recommended for termination. According to TYC officials, the majority of abuse allegations are reported to local law enforcement at city and county levels, but added, they rarely have the resources to pursue criminal charges. Under current law, an inspector general does not have the ability to bring criminal charges.

Of the many TYC Units the Marlin Unit is the most abusive, some 32 confirmed cases of abuse were found in the first nine months of 2005. More cases than the

¹⁹ Texas Observer Article, citing Court filings and TYC Documents.

previous 3 years combined.²⁰ The largest increase of physical abuse is the first stop in the system, all youth pass through Marlin for orientation and assessment.

Contributing Factors

While many factors contribute to an environment where abuse can occur, three major culprits seem to stand out in the Texas Youth Commission. First, the staff to student ratio is decreasing significantly in TYC. Average staff to student ratios in TYC facilities are one staff member to 24 offenders, this is a far cry from the goal ratio of one to 15 offenders. This can become a vicious circle, staff turnover is 90% in the first 6 months due to the demanding nature of the job. Personal risk, unpaid overtime, and psychological stress are all major factors for staff loss, factors that might all be alleviated by more staffing.

Secondly, the training period for staff prior to facility placement is only 2 weeks. JCO's must only be 18 years old and have a GED or better. Prior child care or social work experience is not required. According to TYC officials, the shortened training period is primarily the result of funding cuts from the 2003 legislative session.

Another serious concern affecting the safety of all interested parties, staff, students, and the general public, is the age of students in TYC facilities. A student may be housed in TYC until his or her 21st birthday. Often times these older students are in regular contact with their younger counterparts, a circumstance that seriously increases incidents of student on student abuse.

The structure and setup of some facilities may also be aggravating the situation. Funding issues have led some facilities to house students in a large barracks-like setting, with many students housed in a single large area. This setting leaves much to be desired when compared to separate rooms where students have one or two roommates. Not only are offenders easier to control in small numbers, but they can be grouped in ways that minimize dangerous interaction; by age, for example.

Recommendations

Funding issues at TYC have significantly hindered the agency's ability to operate safely and effectively. Facilities are understaffed, suffer from extremely high turnover rates, and staff are poorly prepared for the demanding nature of the job. An increased training period may decrease turnover and improve interaction with students.

The legislature must also improve the manner in which students are currently housed, some age requirement should be established and applied that regulates interaction

²⁰ TYC Data, excludes allegations of sexual abuse, neglect and narcotics investigations.

between students with significant differences in age. This effort would be served by limiting the number of beds to a room.

Although abuse is reported to law enforcement, resources limit the ability of local and county police to pursue most incidents. The TYC inspector general should have the capacity to bring criminal assault charges so reports of abuse will no longer end with the termination or resignation of the employee, and staff will feel more protected from student aggression. When staff feel endangered, they are more likely to overreact to intense situations.

Interim Charge Four

Monitor the implementation of legislation relating to reducing the production and abuse of methamphetamine, including the predicted impact of methamphetamine's increased availability on state resources and criminal justice populations, and make recommendations for additional programs for further reductions in abuse and production.

Introduction

Methamphetamine abuse and production is one of the most heavily talked about issues in the State of Texas. Concerns abound that the population is increasing in our prisons and putting pressure on other social services. Legislation passed in the 79th legislative session moved certain products behind the counter at pharmacies and drug stores. Since the law has gone into effect the number of mobile methamphetamine lab busts has dropped significantly. The state has not, however seen a significant drop in abuse or incarceration for possession because the product now comes from Mexican "super labs" that produce a more pure type of the drug.

Though recent legislation has reduced the existence of so-called "mom and pops" meth labs, there is still a serious methamphetamine problem in Texas. This is partly due to the alternative suppliers from Mexico, and to the failure of the state to enforce all facets of the 2005 law.

Background

The anti-meth law has four distinctive requirements:

- Customers must show ID and sign for the purchase of drugs containing pseudoephedrine.
- Stores are prohibited from selling a customer more than two packages of drugs in a single transaction.
- Pharmacies may not sell more than 9 grams of medicine, or 300 30-milligram tablets, to a single customer within a 30 day period.
- Convenience stores must obtain certificates from the State Department of Health Services to sell drugs that contain pseudoephedrine and record the buyer's name and number of his driver's license or state ID card.

The 'epidemic' of methamphetamine abuse in this state shares many traits with other types of drug abuse, but also, the situation is marked by several important distinctions. Meth addiction is known to exist in a much broader demographic than most other drugs, though it is not the most commonly used, and though many believe

meth addiction to be more difficult to treat, studies suggest treatment is as effective for methamphetamine abuse as with other addictive drugs.²¹

In 2005, the federal government estimated that more than 12 million Americans have tried meth and 1.5 million are regular users. This is less than other drugs such as cocaine and marijuana. However, statistics in some large urban areas suggest methamphetamine use may be replacing abuse of other drugs, especially cocaine.

Health Affects

Meth comes in a variety of forms including powder, pills, crystals, and rocks. It is commonly referred to as crank, ice, or "tina". Long-term methamphetamine abuse has many damaging consequences. In addition to addiction to methamphetamine, chronic methamphetamine abusers exhibit symptoms that can include violent behavior, anxiety, confusion, and insomnia. They may also display a number of psychotic features, including paranoia, auditory hallucinations, mood disturbances, and delusions (for example, the sensation of insects creeping on the skin, known as "formication"). The paranoia can result in homicidal as well as suicidal thoughts²².

Methamphetamines are a powerful stimulant to the central nervous system (CNS). Actions that result from taking even small amounts of methamphetamine include increased wakefulness, increased physical activity, decreased appetite, increased respiration, hyperthermia, and euphoria. Other CNS effects include irritability, insomnia, confusion, tremors, convulsions, anxiety, paranoia, and aggressiveness. Hyperthermia and convulsions can result in death. Methamphetamine also causes increased heart rate and blood pressure.

Methamphetamine can cause cardiovascular problems including rapid heart rate, irregular heartbeat, increased blood pressure, and irreversible, stroke-producing damage to small blood vessels in the brain. Meth overdoses commonly cause hyperthermia (elevated body temperature) and convulsions and, if not treated immediately, can result in death.

Chronic methamphetamine abuse can result in inflammation of the heart lining, and among users who inject the drug, damaged blood vessels and skin abscesses. Methamphetamine abusers also can have episodes of violent behavior, paranoia, anxiety, confusion, and insomnia. Heavy users also show progressive social and occupational deterioration. Psychotic symptoms can sometimes persist for months or years after use has ceased.²³

²¹ The Sentencing Project: The Next Big Thing? Methamphetamine in the United States.

²² www.MethResources.gov

²³ <http://www.drugabuse.gov/>

Recent Legislation

The 79th Legislature enacted in 2005, HB 164, which amended the Health and Safety Code to regulate the over-the-counter sales of products containing ephedrine. The product must move behind the counter or in a locked case within 30 feet of and in direct line of sight of staff. Businesses without pharmacies must apply for a certificate of authority from the Texas Department of State Health Services in order to sell the products. As mentioned before, the customer must:

- Produce identification indicating that they are 16 years of age or older.
- Sign for the purchase and include the date, item, and quantity.
- May not purchase more than 6 grams of the products containing ephedrine, pseudoephedrine, and norpseudoephedrine.

Businesses must maintain the records for at least two years and face stiff penalties for any violations of the restrictions.

Impact

Meth lab busts are down in the state. Since 2003 meth lab busts have dropped by more than half, from 688 to 269 in 2005. However, according to the U.S. Drug Enforcement Administration, The availability of both Mexican methamphetamine and locally produced methamphetamine in the Houston Division is increasing. Mexican methamphetamine is the primary type found in the Division. In the Dallas/ Ft. Worth Division the availability of Mexican methamphetamines is also rising.

Also, there is risk that the success of recent legislation will be short-lived if enforcement is not improved. While pharmacies and drug stores that sell cold medicines containing pseudoephedrine have complied with the law requiring the products be moved behind the counter and purchases logged, no authority checks or monitors these logbooks. Currently, the books are only used occasionally for investigations usually triggered by other circumstances. Though the logbooks seem to act as a deterrent for users, that alone is not sweeping or permanent enough to be a solution. A more comprehensive system and electronic database is necessary, as the current paper logs allow a user to visit multiple locations.

Statistics also indicate that while local production of methamphetamines is decreasing, abuse of the drug is unchanged and may be increasing. Texas poison control reported in 2006 that calls involving meth exposure had increased from 144 in 1998 to 423 in 2004. Admission to treatment programs rose from 5% of all admissions in 2000 to 13% in 2005.

Currently, data is not available to reliably predict the impact of methamphetamine abuse on our criminal justice populations. It is safe to assume, however, that increasing numbers of meth addicts in state jails and prisons will have a

disproportionate effect on healthcare costs, as methamphetamine use carries with it many serious medical complications.

Recommendations

Due to media attention, the methamphetamine 'epidemic' has produced widespread beliefs that have little evidentiary support, or have been exaggerated in the hopes of deterrence. A particularly damaging claim is that methamphetamine addiction does not respond to treatment. Studies suggest that methamphetamine addiction responds as effectively to treatment as most addictive substances. Also, It should be noted that figures indicate that meth use among teenagers has decreased in recent years.

Although retailers have complied with log book laws, authorities do not monitor the books. A comprehensive, electronic system is necessary, as the current paper logs allow a user to visit multiple locations.

Interim Charge Five

Study and make recommendations for methods to reduce kidnapping and violence along the Texas Border, focusing on reducing drug-related crime.

Introduction

In recent months the issue of violence and crime along the Texas/Mexico border has been heavily publicized. Border security is not a new issue to Texas, but some reports suggest the violence on the border is escalating. The Texas border with Mexico is the operational focus of Mexican drug cartels transporting their products to the rest of the United States. State and national efforts to confront this issue are ongoing, the state faces a particular conflict with trying to secure a border that also serves as a major economical and cultural center for both nations.

Background

Mexican drug cartels dominate the U.S. market for illegal drugs. They commonly use large metropolitan areas to organize shipments, these organizations, which also deal heavily in human smuggling, have begun to hire ex-military personnel to operate their business. They use local and trans-national gangs to move and protect products and these gangs have become increasingly ruthless. Some of the known criminal organizations include the Texas Syndicate, Mexican Mafia, MS-13/MS-18, and Tango Blast.

These gangs are known for their violent behavior and disregard for law enforcement. In the past, a person transporting drugs would usually abandon their shipment if confronted by law enforcement, but now some agencies are finding the people they encounter are protecting their shipments aggressively. Recently, known gang members have opened fire on law enforcement, killing or wounding officers to protect a drug shipment.

Governor Perry has ordered the Texas Department of Public Safety (DPS) to conduct a series of operations in coordination with border Sheriff's departments and local law enforcement.²⁴ It is the goal of these operations to disrupt the criminal activity of the cartels and their criminal associates. The effectiveness of the operation has yet to be revealed, as early reports of success are sometimes contradicted by analysis. The grants will be examined closely in this report.

The Texas Border Sheriff's association was formed in May of 2005 as a response to, according to public testimony, a desire to prevent potential terrorism and weapons of mass destruction from entering the country. Testimony further adds that the sheriffs are not tasked with the prevention of illegal border crossings, and refer such incidents to federal authorities.

²⁴ Press releases from the Office of the Governor.

"Sherriff's along the border have assumed the task, based on our priority, to identify possible terrorists, immigrants coming into the country from countries of special interest to the United States, and known criminals, in order to prevent them from committing other criminal activities in our counties, this state, or the nation."²⁵

Mexican drug cartels operate along the Texas border to move their product into the U.S. Testimony of DPS law enforcement professionals suggests that drug trafficking organizations have developed into major families of organized crime that dominate the smuggling market. These organizations conduct weapons, substance, and human smuggling operations. They have also expanded their business from mere smuggling to production and distribution of illegal substances such as heroin, cocaine, methamphetamines and marijuana. The market for human smuggling is equally as lucrative, with prices to bring people into the country ranging from \$2,000 to \$50,000 a head.²⁶

These organizations employ former Mexican military commandos known for ruthless violence. The use of former military commandos is particularly destructive in the community of Nuevo Laredo, where a competition between families for the I-35 corridor threatens the community. DPS testimony asserts that in the past, when confronted by law enforcement, smugglers would commonly abandon their shipments or surrender. Apparently, that behavior is no longer tolerated by the families, and they now expect the aggressive protection of cargo.

Operation Rio Grande

Governor Perry dedicated a total of \$10 million in funds to combat border crime in the beginning of FY 2006. The funds supported Operation Linebacker, an initiative developed by the Texas Border Sheriff's Association, a group of 16 departments located in counties along the border. The program focused on an increase of law enforcement presence along the Texas-Mexico border. The funds were distributed evenly among 16 counties, each receiving \$376,500 and later, an additional \$223,000.

The bulk of Operation Linebacker funding came from the federal Edward Byrne Memorial Justice Assistance (JAG) Program. Other funds came from the state criminal justice planning funds. The grants have been criticized on several points:

- Each county received the same amount of money without regard for size.
- Little restriction or qualifications were placed on the money or its use.
- There are no measures for quality control.

²⁵ Public testimony of Sheriff Sigifredo Gonzalez, Jr. at the Senate Criminal Justice Hearing on Aug. 30, 2006.

²⁶ DPS Testimony

The majority of the funds were used to increase border patrols with overtime pay. Officers received no new arresting authority, and no change to their ability to conduct immigration activities. The departments cannot arrest people for immigration violations. Also, some communities report that the increased patrols have done little to combat crime and much to intimidate Hispanic communities.

San Elizario:

According to testimony, sheriff deputies in San Elizario used Linebacker funds to enforce immigration law, a task for which they have little or no authority, even going so far as to set up roadblocks in and out of neighborhoods to check for legal status. Concerns about the violation of human rights persist and the Sheriff suspended the program after residents compiled a petition with over 3,000 names calling for his resignation.²⁷

Operation Rio Grande is made up of multiple smaller programs:

- Operation RIO GRANDE Phase I Overview
 - Operation DEFENSIVE LINE
 - Operation LINEBACKER
 - Operation STRONG SAFETY
 - Operation FREE SAFETY

- Border Sector Operations
 - Operation DEL RIO
 - Operation LAREDO
 - Operation EL PASO
 - Operation BIG BEND
 - Operation VALLEY STAR

Grants to support Operation Linebacker were provided to the following counties:

El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Dimmitt, Webb, Zapata, Starr, Hidalgo, and Cameron.

DPS Rangers were also ordered to the region and conducted a series of operations designed to disrupt the operations of smugglers. They report the confiscation of drugs, recovery of stolen vehicles, and contact with illegal aliens. Its difficult, however, to attest to the lasting success of the program in such a short period of time.

Arrest Information

²⁷ Public testimony received by the Senate Committee on Transportation and Homeland Security

Arrest records reinforce the concern that Operation Rio Grande is more focused on immigration than actual crime. Over the course of the operation sheriff's deputies reported 4,756 undocumented immigrants to border patrol, 1,076 of them in El Paso. Though the program is reported to reduce terrorism, no terrorist-related arrests have been made. On average, sheriffs reported 7 undocumented immigrants for every one arrest made.²⁸

Recommendations

Future grants to border operations should be made through a fiscally accountable state agency. The method of distribution did not account for population size, department size, or crime rates. There was no measure for success or failure built into the program, and an alarming lack of stipulations on the use of the money.

²⁸ Operation Linebacker Reports, as reported by the El Paso Times.

Interim Charge Number Six

Monitor the expenditure of funds for adult probation services dedicated to lowering revocations to state prisons and state jails. Examine the compliance with, and effectiveness of, the associated budget riders and make recommendations for future funding needs.

Introduction

Community Supervision (adult probation) services within the State of Texas have been the subject of numerous interim charges, prior to the 78th and 79th Legislative Sessions, conducted by both the Senate Committee on Criminal Justice and the House Corrections Committee. These studies focused on how to improve and strengthen community supervision programs in ways that lessen the demand for additional prison capacity. Recommendations from these interim charge reports include:

- Reducing caseloads for Community Supervision Officers. The average caseload of 116 direct supervision probations was considered ineffective.
- Increasing residential treatment and sanction resources for prison diversions and increasing outpatient services for probationers needing substance abuse treatment. It was observed that the alternatives to incarceration (i.e. the number of community corrections beds) had declined by 41% (4,751 to 2,800) from 1995 to 2004.
- Developing a system of progressive sanctions to address technical revocations to the state prisons. 54% of offenders who have been sent to prison as a result of having their probation revoked were merely guilty of technical violations. Technical violations are those which are administrative in nature and have nothing to do with the probationer violating a substantive law. For example, failure to pay one's supervision fee would constitute a technical violation.

The 79th Legislature addressed these issues by composing and passing House Bill 2193. In conjunction, the appropriations process included additional funding of \$27.7 million a year for community supervision and corrections. These monies are distributed to local Community Supervision and Corrections Departments (CSCD) through the Texas Department of Criminal Justice (TDCJ). Although House Bill 2193 was subsequently vetoed, the money remains intact for use in a system implemented through the TDCJ's Community Justice Assistance Division (CJAD).

Background

The legislature attached a series of appropriation riders to these funds in order to ensure that they were used to strengthen community supervision by; reducing case loads, utilizing progressive sanction models, and providing more community supervision options by funding residential treatment and aftercare.

The new general revenue funds were attached to the TDCJ-CJAD budget strategy A.1.2 Diversion Programs and divided among the previously stated intents. The specific appropriation riders are:

- **Appropriation Rider 71. Caseload Reduction.** Out of the funds appropriated to the above TDCJ-CJAD strategy, \$14,092,422 in fiscal year 2006 and \$14,092,422 in fiscal year 2007 shall be used to fund additional community supervision officers to reduce caseloads consisting of medium and high risk offenders.
- **Appropriation Rider 72. Progressive Sanctions Model.** It is the intent of the Legislature that TDCJ's CJAD shall encourage community supervision and corrections departments to employ the progressive sanctions community supervision model. To the maximum extent possible and from funds appropriated to the above TDCJ-CJAC strategy, CJAD shall give preference to CSCDs using the progressive sanctions community supervision model to make a positive impact on the criminal justice system.
- **Appropriation Rider 73. Residential Treatment and Sanction Beds Funding.** Out of the funds appropriated in the above strategy, \$13,637,500 shall be expended in fiscal year 2006 and \$13,637,500 shall be expended in fiscal year 2007 for additional residential treatment and sanction beds. In distribution of these funds CJAD shall give preference to CSCDs having access to currently existing, unfunded residential treatment and sanction beds. The CJAD shall also give preference to CSCDs that have higher rates of community supervision technical revocations in order to maximize the positive effect on the criminal justice system.

An additional fourth rider was included that requires TDCJ to develop an accountability system to track the positive impact of these funds on the criminal justice system.. Specifically, the rider states:

- **Appropriation Rider 79. Monitoring of Community Supervision Diversion Funds.** From funds appropriated above, TDCJ shall develop a specific accountability system for tracking community supervision funds targeted at making a positive impact on the criminal justice system.

In a September, 2004, report to TDCJ (report No. 05-002), the State Auditor's Office recommended an increase in the accuracy and completeness of information used to allocate funds for adult probation services and to improve the monitoring agreements made with the CSCDs. In addition to this recommendation, the agency shall implement a monitoring system so that the use of funds appropriated in Strategies A.1.2., A.1.3., and A.1.4. can be specifically identified.

The agency shall produce on an annual basis, detailed monitoring, tracking, utilization, and effectiveness information on the above mentioned funds. This information shall include data on the impact of any new initiatives. Examples include, but are not limited to, number of offenders served, number of

residential beds funded, number of community supervision officers hired, and caseload sizes. The agency shall provide documentation regarding the methodology used to distribute the funds. In addition to any other request for information, the agency shall report the above information for the previous fiscal year to the Legislative Budget Board and the Governor's Office by December 1st of each year.

TDCJ-CJAD issued the first report in compliance with appropriation rider 79 on December 1, 2005. The report titled, *Report to the Governor and the Legislative Budget Board on Monitoring of Community Supervision Funds*, documented the methodology established for allocating these funds to CSCDs and the accountability system established to monitor the impact of these funds on the criminal justice system for fiscal year 2006.

Caseload Reduction Funding Fiscal Year 2006

In addition to the requirements for funding CSCDs established by Appropriation Rider 71 and 72, (reduction from medium and maximum caseloads, target of 95 cases per officer, and that the CSCD must use a progressive sanction model) TDCJ-CJAD further required that the CSCDs establish a revocation reduction goal of at least 10%.

CJAD reviewed the average caseload size of CSCDs and ruled that those with a caseload size of 95 or less would be ineligible for these funds. CSCDs with average caseloads above 95 were allocated funds in proportion to the number of officers they would need to accomplish the caseload reduction goals. However, CJAD recognized that due to the variations in salary, benefits, and the amount available, that the funds allocated to each CSCD may not be sufficient to reduce caseloads to 95 in all departments that received funding.²⁹

Out of 121 total CSCDs, 26 were ruled eligible for funding from this category. Upon submission of their proposals for the utilization of the funds and documentation compliant with requirements, each eligible CSCD received a portion of \$14,092,422.

CJAD conducts periodic average caseload size reports, which have demonstrated a gradual reduction in direct average caseload sizes. In the September, 2005, report, the average regular caseload was 121 probationers per Community Supervision Officer (CSO), and specialized caseloads were 42 probationers per CSO. In January, 2006, the report showed a decrease in the average regular caseload size to 112 probationers per CSO, with specialized caseloads still at 42 probationers per CSO. The latest report conducted in April, 2006, indicates a continuing decrease in the size of regular caseloads, (with 106 probationers per CSO) as well as specialized caseloads (41 probationers to CSO). It is projected that the full impact of these new monies will not be demonstrable until the second year of funding in fiscal year 2007.

²⁹ *Report to the governor and the Legislative Budget Board on Monitoring of Community Supervision Diversion Funds*, TDCJ-CJAD December 1, 2005

Residential Treatment Beds Funding Fiscal Year 2006

Appropriation Rider 73 gave preference for the allocation of these funds to CSCDs that:

- Have currently existing, yet unfunded residential treatment and sanction beds available.
- Have a higher rate of community supervision technical revocations

CJAD attached grant conditions similar to those used in the caseload reduction grants:

- CSCDs must establish a local progressive sanctions system (based on rider 73).
- CSCDs must establish revocation reduction goals of at least 10% annually to meet legislative intent of reducing revocations.

To avoid the loss of federally funded Residential Substance Abuse Treatment (RSAT) beds that were not fully funded for fiscal year 2006-2007, \$2.9 million was allocated to maintain 135 of the 277 RSAT beds that would have been closed due to federal funding reductions. In two CSCDs, aftercare treatment for substance abuse treatment of medium and high risk probationers also received funds. Six CSCDs that provided 623 residential treatment beds received \$13,437,500.

Monitoring, Accountability and Evaluation

To address the requirements mandated within Appropriation Rider 79, TDCJ-CJAD established eight evaluation criteria to demonstrate the impact of the new diversion funding on the criminal justice system. The evaluation criteria are:

1. Change in Felony Probation Placement compared to fiscal year 2005
2. Average Community Correctional Facility Population (CCF) compared to fiscal year 2005
3. Numeric Increase in Community Supervision Officers Employed compared to fiscal year 2005
4. Numeric Reduction in Caseload Size compared to fiscal year 2005
5. Percent Reduction in Felony Revocations compared to fiscal year 2005
6. Percent Reduction in Felony Technical Revocations compared to fiscal year 2005
7. Percent Reduction in Felony Termination Revocation rate compared to fiscal year 2005
8. Percent Increase in Felony Early Discharges compared to fiscal year 2005

To provide the State and CSCDs information on progress concerning the new diversion funding, a monitoring and accountability website has been developed. A comparison with the baseline date and each quarter of the next fiscal year is available for viewing at www.tdcj.state.tx.us. After entering the site, click on the "Adult Probation" Quick Link and then on the icon labeled "Monitoring of Community Supervision Diversion Funds."

Audits for Compliance by TDCJ-CJAD

To ensure compliance with the new diversion grant, TDCJ-CJAD developed three new audit procedures:

- Caseload reduction audits
 - Determine the extent to which the CSCD has reduced its caseload for medium and high-risk offenders
 - Determine the accuracy of caseload reports submitted to TDCJ-CJAD
- Progressive sanctions audits
 - Determine if departments meet all requirements of progressive sanctions model
 - Determine the extent to which the progressive sanctions model has been implemented.
- Aftercare program audits
 - Review compliance with aftercare caseload program

The top seven CSCDs scheduled to receive caseload reduction funding were audited in the fall of 2005. The goals of the audit were to determine the accuracy of caseload data submitted in December 2004. Ensuring the accuracy of this data is vital because it is the basis for allocating caseload reduction funds. However, no substantive discrepancies were discovered in the audits.

Additional caseload reduction and aftercare caseload audits are being conducted: this accounts for 84% of the \$14,092,422 allocated for caseload reduction funding.

Effectiveness Observed During Fiscal Year 2006

In the first quarter of FY 2006, felony revocations to TDCJ declined by 11.69% when compared to the first quarter of FY 2005. This translates into 737 fewer revocations to TDCJ in the first quarter of FY 2006 when compared to FY 2005. While the total number of revocations to TDCJ has continued to fall, the rate of decline has slowed. In FY 2006, by the end of the third quarter there was a total of 887 fewer revocations to TDCJ when compared to the end of FY 2005's third quarter. This represents an overall reduction of 4.94% in revocations when comparing fiscal year 2006 to fiscal year 2005.

Departments receiving reduction funding have continually attained the desired levels of revocation reduction. Those departments that were ineligible for, or declined funding primarily account for the slowing of the revocation reduction rate. For instance, funded departments have accounted for 1,037 fewer revocations in fiscal year 2006 compared to fiscal year 2005. During the same period, however, this reduction was offset by an increase of 221 revocations in departments who declined funding. The results prior to implementation of a majority of the funded residential beds are:

- **Revocations declined by 8.47% in funded departments**

- **Revocations declined by 1.90% in departments not eligible for funding**
- **Revocations increased by 11.14% in departments declining funding**

The initial decline in revocations was achieved primarily through a system of local progressive sanctions: this was required of departments who received new funding. The impact of caseload reduction funding and residential treatment beds represent long-term improvements in the system, which will only get better as more officers are employed and trained and new treatment beds become available. **The impact of this funding will take longer to demonstrate results than the first nine months of this 24 month long project.**

Progressive sanctions can quickly bring about substantial reductions in revocation—offenders who previously would have been revoked to prison upon initial violation are systematically sanctioned in a methodology designed to reduce supervision violations without revocation. This methodology has resulted in preventing the revocation of some offenders, but may also only delay revocations for those offenders who persistently violate supervision conditions. Despite this, in cases involving persistent violators, once a department has exhausted all available sanctions, they may be left with no alternative other than revocation. Over time, this has caused the revocation reduction rate to slow.

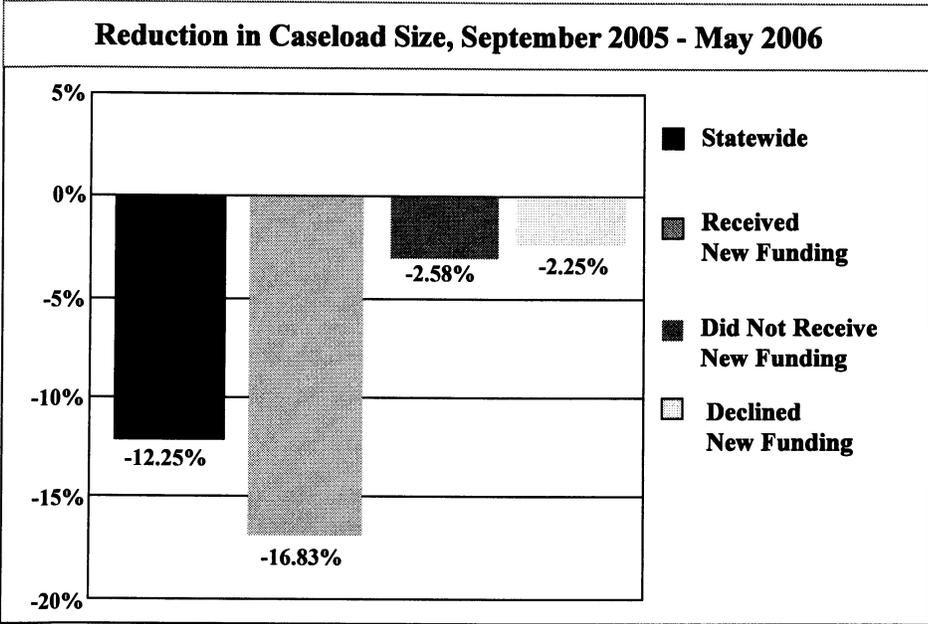
As detailed in the graphs below, funded departments have exceeded unfunded departments on the most significant evaluation criteria associated with the new diversion funding:

- **Funded departments have the highest reductions in caseloads**
- **Funded departments have the highest reductions in felony revocations**
- **Funded departments have the highest reductions in technical revocations**
- **Funded departments have the highest increases in early discharges**

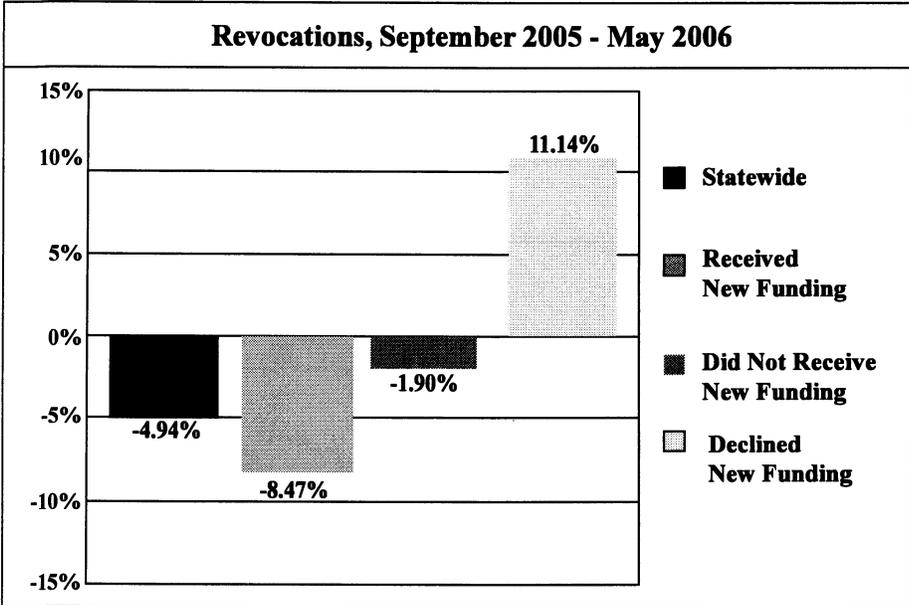
Reduction in Caseload Size

Type	September 2005	May 2006
Statewide	121.25	106.40
Funded	128.95	107.25
Not Funded	102.50	99.85
Declined	117.05	114.42

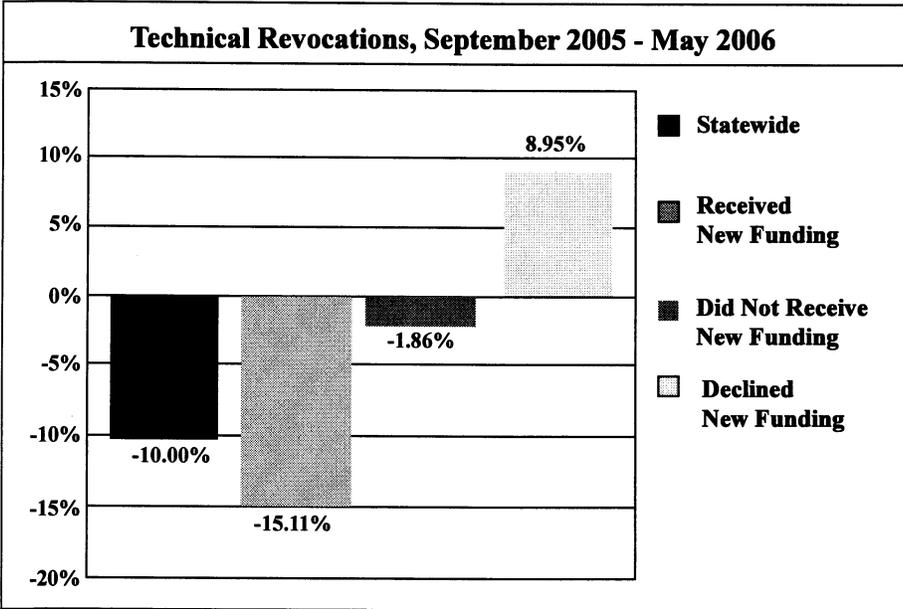
Impact of New Diversion Program Funding



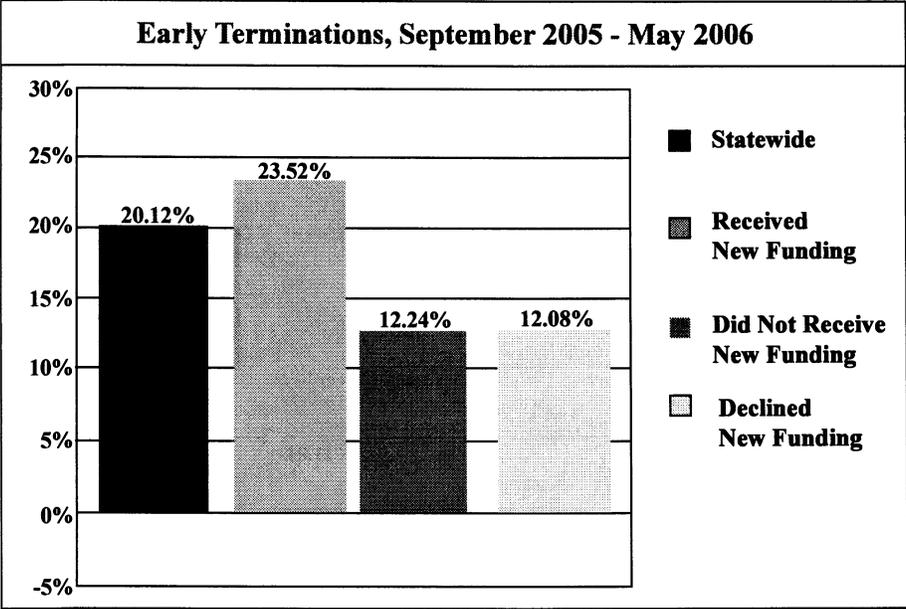
Impact of New Diversion Program Funding



Impact of New Diversion Program Funding



Impact of New Diversion Program Funding



Challenges to Caseload Size Reduction

While caseloads for Community Supervision Officers (CSOs) have been reduced from 121 in September 2005 (before allocation of caseload reduction funding) to 106 in May 2006, the targeted goal of 95 has not yet been achieved. This is true for officers supervising regular caseloads and excludes specialized caseloads with average caseloads of 40. A number of factors have contributed to this:

- When the request for caseload reduction funding was developed in August 2004 for the FY 2006-2007 LAR, caseload size was based on an estimated caseload of 116 offenders per regular officer (the latest data available at that time). The request to reduce caseload size estimated that an additional 391 officers would be required to reduce caseload size from 116 to 95.
 - The September, 2005, baseline caseload survey indicated that the average caseload for regular officers had grown to 121, which would have required an additional 93 officers, or a total of 484 officers to reduce caseload size to 95.
- The salary and fringe benefit estimate used to determine the exceptional item request for caseload reduction officers was based on a salary of \$28,720 and benefits of \$8,372 for a total of \$36,042 to employ an entry level officer. Again, this was based on salary information available in August 2004. FY 2006 salary data for entry level officers indicates a salary and fringe benefits of \$41,206.
 - This difference in salaries from the LAR request and FY 2006 data indicates that 39 fewer officers could be employed with caseload reduction funding.
- The appropriation rider requiring more focused supervision for medium and high-risk offenders caused some departments use more experienced officers for these caseloads. As one might expect, these more experienced officers enjoyed higher salaries than the projected entry level funding for caseload reduction officers. No estimate of this impact is available.
- Departments indicated that they could employ 247 officers at funded levels. This level has not been achieved due to difficulties in employing and maintaining CSOs. Staffing shortages and turnover is not unique to CSCDs. As of July, 2006, TDCJ had a shortage of 2,746 correctional officers. Other agencies have experienced similar difficulties in employing staff for funded positions.

Challenges to Adding Community Corrections Facilities Beds

Harris County CSCD was given a grant to fund 300 additional residential treatment beds, and Bexar County CSCD was given a similar grant for 100 beds. This represents a significant amount of the new diversion funding for residential beds. These beds were delayed, however, due to local government requirements, relocation of existing programs,

renovation of facilities, and safety code requirements. Detailed information is provided below:

Harris County CSCD:

Harris County identified the Peden facility as the location of their 300 bed residential facility. To utilize this facility, the Harris County CSCD Sex Offender Reporting Unit had to be relocated. In September, 2005, the CSCD worked out a tentative agreement to move the Sex Offender Unit to a county owned building located on Lockwood Street, subject to approval by the county commissioner's court.

However, in January, 2006, the commissioner's court did not approve the Sex Offender Unit's move to a different site due to lack of community support and other complications.

The CSCD determined that they could move the Sex Offender Unit to a different building. In March, 2006, the commissioners' court approved the move of the Sex Offender Unit and the retro-fitting needed at the Peden building. The contract for the treatment vendor was awarded on April 6, 2006.

The first 20 residents were admitted on June 13, 2006. As of 10/5/2006, the Peden Facility (SATF-4) had 176 male residents. They continue to admit residents each week and anticipate being up to full capacity (300 residents) within 3 to 4 months.

Bexar County CSCD:

In October, 2005, Bexar County CSCD contacted the Health and Human Services Commission (HHSC) to request a public benefit lease for a building to house the SATF on San Antonio State Hospital grounds. The lease agreement was approved and signed by HHSC on February 1, 2006. To bring the building up to code, however, the lease agreement specified that a fire safety water sprinkler system had to be installed before the building could be utilized.

Due to delays in determining the actual cost of the sprinkler system, the agreement could not be presented to the commissioner's court until May 16, 2006, at which time it received approval. The contract for the installation of the sprinkler system was awarded on June 2, 2006, with work beginning the following day. The facility opened on September 18, 2006.

Because the opening of these residential facilities was delayed, these departments were allowed to apply unexpended funds to contract residential treatment services.

Challenges to Revocations Reductions

As detailed earlier, the initial reduction of 11.69% in felony revocations has slowed. The delay of adding new residential capacity may have contributed to the slowing of the revocation reduction rate.

In recent months, CSCD directors have noted that jail overcrowding necessitates increased efforts to expedite case processing, including felony revocations. Exacerbating this impact on felony revocations is the three month Substance Abuse Felony Punishment (SAFP) program waiting list. Efforts to utilize the SAFP program as a progressive sanction—quite often the last available sanction—are undermined by the SAFP waiting list. Consequently, offenders opt for revocation to State Jail in lieu of SAFP treatment. The fact that it often takes less time for an offender to serve a State Jail sentence than complete SAFP treatment often makes State Jail revocation preferable to SAFP as a progressive sanction.

Fiscal Year 2007

FY 2006 the new diversion funding provided by the 79th Legislature will have been in effect for 12 months. As TDCJ-CJAD and CSCDs gain experience in efficient usage of this new funding, as new officers gain experience in working with offenders and using progressive sanctions, and as the new residential capacity begins to expand sanction options for CSCDs and judges, additional gains are expected in revocation reductions.

Recommendations

The additional resources to the community supervision segment of the criminal justice system have demonstrated a positive impact on the utilization of incarceration alternatives. Expanding this initiative to non-funded CSCDs may result in additional benefits in reducing revocation and lowering the recidivism rate for probationers.

It is recommended that community supervision funding be maintained and expanded. The best means of allocating this funding is through the diversion line item of the TDCJ-CJAD budget, along with the controlling appropriation riders.

Interim Charge Seven

Study the feasibility of the State of Texas establishing or contracting with a private prison facility in the country of Mexico in order to house non-violent Mexican Nationals currently being housed in Texas prisons.

Introduction

The Legislative Budget Board (LBB) projects that Texas will need approximately 7,400 beds before the end of the next biennium and almost 11,200 beds by 2011.³⁰ These statistics force state lawmakers to address the severe and costly issue of prison overcrowding in the Texas Department of Criminal Justice (TDCJ).

As of March 2006, TDCJ reported approximately 7,822 offenders claiming Mexican nationality of that 2,281 had final orders for deportation.³¹ These numbers prompt the creation of new ideas in order to reduce the costs of providing prison services for those foreign inmates, freeing prison space and services for those who remain.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE OFFENDERS CLAIMING FOREIGN CITIZENSHIP AS OF MARCH 31, 2006

OFFENSE	OFFENDERS CLAIMING MEXICAN NAT'L	PAROLE ELIGIBLE	NOT ELIGIBLE FOR PAROLE
ASSAULT	1,102	619	483
HOMICIDE	923	371	552
KIDNAPPING	101	36	65
ROBBERY	790	408	382
SEX ASSAULT	1,432	586	846
TOTAL: VIOLENT OFFENSE	4,348	2,020	2,328
ARSON	25	21	4
BURGLARY	500	396	104
FORGERY	22	9	13
FRAUD	14	7	7
LARCENY	78	30	48
STOLEN VEHICLE	46	15	31
TOTAL: PROPERTY OFFENSE	685	478	207
DRUGS	1,327	927	400
TOTAL: DRUG OFFENSE	1,327	927	400
ESCAPE	13	10	3
FAMILY OFFENSE	15	8	7
OBSCENITY	0	0	0

³⁰ Adult and Juvenile Correction Population Projections: Fiscal Years 2006-2011. Legislative Budget Board (June 2006).

³¹ Texas Department of Criminal Justice. Offenders with Final Orders for Deportation as of March 31, 2006. Executive Services (June 2006).

OFFENSE	OFFENDERS CLAIMING MEXICAN NAT'L	PAROLE ELIGIBLE	NOT ELIGIBLE FOR PAROLE
OBSTRUCTION OF JUSTICE	78	18	60
PUBLIC ORDER CRIME	52	28	24
SEX OFFENSE	463	228	235
TRAFFIC/DWI	772	619	153
WEAPON	50	37	13
OTHER/UNCLASSIFIED	19	9	10
TOTAL:			
OTHER OFFENSE	1,462	957	505
GRAND TOTAL	7,822	4,382	3,440

Information provided by Executive Services

During the 74th regular legislative session, State Senator John Leedom proposed a constitutional amendment to allow contracting with other countries so that Texas convicts may be transferred to those countries for incarceration.³² The legislation did not pass but was the first noted measure to export criminals from Texas. During the 79th regular legislative session, Senate Bill 1119 was introduced. It too authorized TDCJ to contract with private vendors to build a facility in Mexico; however, it would exclusively house inmates who are foreign Mexican Nationals. The session concluded with SB 1119 left in committee.

Texas Constitution

The Texas Constitution states that "[n]o person shall be transported out of the State for any offense committed within the same."³³ Based on this statute, the question not only becomes whether Texas can establish or contract with private prison facilities in Mexico, but whether Texas inmates can be transferred out of the state to another country.

Under the plain language of this provision, the State's Constitution expressly prohibits the transportation of an offender out of Texas for an offense committed within its borders. However, a 1985 amendment provides an exception to the prohibition.³⁴ The amendment maintains that an agreement between states for confining Texas inmates in the penal or correctional facilities of another state was allowable under the exception. The amendment, unfortunately, is silent on the transfer of Texas inmates to another country.

The State of Texas, based on this article, could house its inmates in another state; however, one could derive from the language on the face of this statute that the transfer of any prisoners to another country for an offense committed within this State is outside the scope of this exception and is therefore prohibited by the Texas Constitution.

³² SJR 15. 74(R) (1995). Since 1982, Texas had spent almost \$2 billion for the construction of correctional facilities while prison operating costs have increased almost 10 times during that period from \$147 million to a projected \$1469 million in 1997. SJR 15 was seen as a way to save the State money by contracting with a foreign nation to construct and operate prison facilities within their borders to house Texas prisoners.

³³ T.X. Const. art 1, §20.

³⁴ *Id.*

Based on the Texas Constitution alone, the State of Texas could not transport let alone establish or contract with a private prison facility in Mexico in order to transfer and house non-violent Mexican nationals currently in Texas prisons for an offense occurring in this state.

United States Prisoner Transfer Treaties

Under U.S. Law 18 U.S.C. §§4100-4115, foreign nationals convicted of a crime in the United States, and U.S. citizens or nationals convicted of a crime in a foreign country, may apply for a prisoner transfer to their home country if a treaty providing for such transfer is in force between the United States and the foreign country involved. The U.S. has twelve bilateral prison transfer treaties in place with Bolivia, Canada, France, Hong Kong S.A.R., Marshall Islands, Mexico, Micronesia, Palau, Panama, Peru, Thailand, and Turkey. The United States is also a party to two multilateral prisoner transfer treaties: the Council of Europe Convention on the Transfer of Sentenced Persons and the Inter-American Convention on Serving Criminal Sentences Abroad (or OAS Convention).³⁵ Under these treaties, the consent of the United States government, the foreign government, and the prisoner is required for each transfer for persons convicted of a federal offense. However, if the person was convicted of a crime by a state in the U.S. and is serving a sentence in that state facility, consent of the state is also required provided that the state has enacted appropriate legislation. Article 42.17 of the Texas Code of Criminal Procedure authorizes the State to transfer convicted offenders who are citizens or nationals of foreign countries to their country of nationality. Under these provisions, a state inmate of Texas may be transported out of the country for an offense committed within this State.

With this said, there is an apparent conflict between the Texas Constitution, the various treaties recognized between the United States and several countries, as well as the Texas Code of Criminal Procedure on the issue of transporting prisoners abroad.

Section 20, Article I of the Texas Constitution can be interpreted as prohibiting the State from transporting inmates out of Texas to any other country for a crime committed in Texas. Meanwhile, the United States Prisoner Transfer Treaties and Article 42.17, Texas

³⁵ The Council of Europe Convention is in force in the following countries: Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Bolivia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia (Former Yugoslav Republic of), Malta, Mauritius, Moldova, the Netherlands (including Netherlands Antilles and Aruba), Nicaragua, Norway (including Bouvet Island, Peter I's Island and Queen Maud Land), Panama, Poland, Portugal, Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, Ukraine, the United Kingdom (including Anguilla, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Ducie and Oena Islands, Falkland Islands, Gibraltar, Henderson, Isle Of Man, Montserrat, Pitcairn, St. Helena and Dependencies and the Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus), the United States and Venezuela. The Inter-American Convention on Serving Criminal Sentences Abroad (or OAS Convention) is in force in the following countries: Brazil, Canada, Chile, Costa Rica, Mexico, Nicaragua, Panama, Paraguay, the United States and Venezuela.

Code of Criminal Procedure expressly allow the transfer of federal and state inmates of foreign nationality to their home countries.

The Supremacy Clause establishes the Constitution, federal statutes, and treaties entered into by the United States as the "supreme law of the land."³⁶ The federal government, in exercising any of the powers enumerated in the Constitution, must prevail over any conflicting or inconsistent state exercise of power. Even without an express preemption provision, state law must yield to a congressional act if congress intends to occupy the field or to the extent of any conflict with a statute.³⁷

In order to determine if the Texas Constitution provides a sufficient obstacle to the accomplishment and execution of the federal treaties we must evaluate the treaties' purpose and its intended effects

The treaties, as stated previously, were specifically created to transport inmates of foreign nationality held in the United States to their home countries. The purpose of which is to relieve some of the special hardships that fall upon offenders incarcerated far from home and to facilitate the rehabilitation of those offenders.³⁸

The Texas Constitution is silent and in effect prohibits the transportation of Texas prisoners to foreign countries defeating the purpose of the established federal treaties. It is therefore superseded by the provisions in U.S. Prisoner Transfer Treaties which allow such actions.

Consequently, a Mexican national may be transferred from Texas to their home country based on these treaties. Nevertheless, the question remains whether the remainder of their sentence maybe served in a private prison facility established by Texas in Mexico.

Texas Establishment or Contracting of Private Prisons Abroad

According to the Inter-American Convention on Serving Criminal Sentences Abroad, when a prisoner is transferred to another country, the completion of the transferred offender's sentence is carried out in accordance with the laws and procedures of the receiving country.³⁹ Furthermore, the receiving country is responsible for all expenses arising from the transfer of the sentenced person as of the moment that person is placed in the receiving country's custody.⁴⁰

The United States-Mexico Treaty on the Execution of Penal Sentences, entered into in 1977, specifically addresses "[s]entences imposed in the United States of America on nationals of the United Mexican States may be served in penal institutions or subject to

³⁶ U.S. Const. art. VI, cl. 2.

³⁷ *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

³⁸ Department of Justice International Prisoner Transfer, International Prisoner Transfer Program Office of Enforcement Operations, available at <http://www.usdoj.gov/criminal/oeo/index.htm>.

³⁹ Inter-American Convention on Serving Criminal Sentences Abroad, art. 5(8), May 25, 2001.

⁴⁰ *Id.*

the supervision of the authorities of the United Mexican States in accordance with the provisions of [the] treaty."⁴¹

In applying the terms and language of these treaties, a Mexican national transferred to Mexico may not be transferred to a facility established by, or operated by a private entity under contract, with the sentencing country but must be transferred to a facility under the control and operation of the receiving country namely Mexico. Texas, therefore, may not establish or contract with a private prison facility in Mexico in order to house non-violent Mexican nationals currently being house in Texas prisons for offenses committed within this State.

Recommendations

1. Inter-American Convention on Serving Criminal Sentences Abroad and the United States-Mexico Treaty on the Execution of Penal Sentences both state that once a prisoner is transferred to the receiving country, that country assumes all responsibilities for the care of the prisoner. So long as these treaties are in effect, the State is obligated to follow the terms and conditions of them. Without further changes to these federal treaties, the Committee cannot recommend the State of Texas establish or contract with a private prison facility in the country of Mexico in order to house non-violent Mexican Nationals currently being housed in Texas prisons.

2. The language in the Texas Constitution can be interpreted as prohibiting the State from transporting inmates out of Texas to any other country for a crime committed in Texas. Meanwhile, the United States Prisoner Transfer Treaties and Article 42.17, Texas Code of Criminal Procedure expressly allow the transfer of federal and state inmates of foreign nationality to their home countries. Therefore, the Committee recommends the amending of Section 20, Article I, Texas Constitution to reflect allowances made by the U.S. Prisoner Transfer Treaties and Article 42.17, Code of Criminal Procedure.

⁴¹ United States-Mexico Treaty on the Execution of Penal Sentences, art. 1(2), November 25, 1976.

Interim Charge Number Eight

Review other states' correctional health care systems and make necessary recommendations to improve the effectiveness and efficiency of Texas' system.

Introduction

The policy decision to under take a large prison building program in early 1990, selecting mass incapacitation to deal with the crime rate, has resulted in a State prison capacity of over 154,702. On June 1, 2006, the Legislative Budget Board (LBB) released their projections for the future state prison population. The LBB estimates that by the time the legislature convenes in January, 2007, Texas will have a prison population of 153,101 inmates. State funds will be required to house, feed, and provide **constitutionally mandated health care** to the entire prison population. Texas currently spends over two billion dollars a year to maintain the state's prison, parole and probation systems.

Our state prison system has a permanent bed capacity of 154,702. According to LBB projections, when the 80th Legislature convenes in January '07, the prison system will be operating at 98.7% of that capacity. In addition the State will have temporary contracts for 3,000 beds to maintain our prisons at a 97.5 % operational level. The Texas Department of Criminal Justice (TDCJ) is required to maintain this level of operation for safety and classification purposes. **The increasing average inmate age and the increased presence of communicable diseases, along with longer sentences and time served all add to the need for increased funds required to maintain the current constitutional mandated level of services.**

The 80th Legislature will have to address and resolve, not only the immediate needs of the criminal justice system, but also the projected growth throughout the next biennium. The LBB projects that by August, 2009, the prison population will reach 158,162; a number that will totally overwhelm our total current prison capacity.

Consequently, while state Leadership has instructed most state agencies to plan for a budget decrease of 10% for FY 2008/2009, the Texas Department of Criminal Justice has been exempted from this requirement.

Background

The growing number of inmates under state supervision has lead to increased health care costs in accordance with court decisions that have effectively set state corrections policy and requires correction officials to provide adequate inmate health care.⁴² In 1972 *Newman v. Alabama* established the precedent for future cases involving adequate inmate health care: a federal district court found that the entire state correctional system was in violation of both the Eighth and Fourteenth Amendments because inmates were not provided with adequate medical care.⁴³

⁴² Correction Health Care Cost, the Council of State Governments, Kinsella, Jan. 2004.

⁴³ Ibid, page 5.

This court order to remedy these health care deficiencies was soon followed in 1976 by the landmark Supreme Court case *Estelle v. Gamble*, which set forth the major guidelines for correctional health care systems.⁴⁴ *Estelle v. Gamble* established that prisoner have a constitutional right to health care service and provides:

- that "Deliberate Indifference" (Knowing and disregarding an excessive risk to health and safety) is the standard of measure
- the right to medical care access
- the right to professional medical judgment
- the right to receive the medical care called for by professional medical judgment⁴⁵

Due to the aggressive prison building program of the early '90s, the state soon faced spiraling medical costs that were increasing at 6% a year and accounted for 10% to 14% of the prison system's total operating budget.⁴⁶ At that time TDCJ employed its own medical staff for primary care and contracted with local physicians and hospitals for specialized care. The legislature soon noted that this system lacked the incentive to contain cost.⁴⁷ Consequently in an effort to control these increasing costs and maintain a constitutional level of prisoner medical care, the 73rd Legislature (1993) established the correctional managed Health Care Committee (CMHCC). CMHCC was meant to design—in cooperation with the University of Texas Medical Branch (UTMB) and the Texas Tech University Health Science Center (TTUHSC)—a managed health program for the prison system.

The creation of the CMHCC allowed the state to coordinate the delivery of health care to prisons through two of the States medical schools. At the time, this was a major departure from the traditional approach to correctional medical services and remains relatively unique today. CMHCC contracts for services in designated areas with UTMB (which services approximately 80% of TDCJ prisons) and TTUHSC (which services approximately 20% of TDCJ prisons). CMHCC administers the contracts and establishes the specific capitation rate, while another element, the Health Services Division of TDCJ, monitors health care access.

One of CMHCC's major functions is to prevent two occurrences, both of which can result in negative litigation—first, it helps prevent correctional administrators from making medical decisions and, conversely, it prevents medical professionals from making security decisions.⁴⁸

⁴⁴ Ibid, page 5.

⁴⁵ *An overview of Correctional Managed Health Care*, Correctional Managed Health Care Committee, March 1, 2006.

⁴⁶ *Correctional Health Care in the Texas Department of Criminal Justice*, Raimer, Patterson, Govwest.com.

⁴⁷ Ibid, page 1.

⁴⁸ *Self Evaluation Report*, CMHCC, August 19, 2005

In compliance with the court mandates of correctional care the CMHCC has established the following definitions for the provision of their services:

- *Health Care* - Health related action taken, both preventive and medically necessary, to provide for the physical and mental well being of the offender populations.
- *Medically Necessary* - Services, equipment or supplies furnished by a health care provider which are determined to be:
 1. *Appropriate and necessary* for the symptoms, diagnosis or treatment of the medical condition; and
 2. Provided for the *diagnosis or direct care and treatment* of the medical condition; and
 3. within *standards of good medical practice* within the organized medical community; and
 4. *Not primarily for the convenience* of the TDCJ offender Patient, the physician or another provider, or the TDCJ Offender Patient's legal counsel; and
 5. The *most appropriate* provision or level of service which can safely be provided.⁴⁹

At this committee's June 21, 2006, hearing, public testimony from family members of current inmates highlighted the inadequate access to medical care and showed that older, less effective pharmaceuticals were being used in an effort to cut costs. How the managed health care system implements the above definitions in practice, determines if the State is providing the mandated constitutional health care to its prisoners.

A Review of Other States Correctional Health Services

Few other States's adult correctional system provides an apple to apple comparison with the Texas Department of Criminal Justice (TDCJ) due to its size (bed capacity and over 100 facilities) and the geographic distribution. Print and internet research provides some general information on the approach utilized by thirty-five other states, including five inmate health care design types.

With thirteen states utilizing this design, the most common approach is to use a **comprehensive contract with a private vendor** for prison health services. Alabama, Delaware, Idaho, Illinois, Indiana, Maine, Maryland, Mississippi, Missouri, New Jersey, Pennsylvania, West Virginia and Wyoming all operate their prison health system as such. In all the above, a division of the state's department of correction is tasked with monitoring the contracts and assuring the delivery of services through a private prison health provider, such as Correctional Medical Services (CMS) or Prison Health Service, Inc (PHS).

⁴⁹CMHCC Overview, CMHCC, March 1, 2006, page 7

In 2004, Alabama—with a prison population of 27,000 plus—cancelled its prison health care contract with NaphCare Inc. At the time of cancellation, the contract was worth \$30 million a year, and provided for both general medical care and mental health care⁵⁰. In lieu of this, Alabama executed a \$143 million, three year contract with PHS, Inc. for general medical care and a \$29.2 million, three year contract with MHM Correctional Services Inc. for mental health care⁵¹. The Alabama Department of Corrections has been under United States District Court oversight pursuant to a 2002 federal lawsuit concerning medical care. The state settled in 2004.⁵²

During May, 2006, the Delaware General Assembly failed to pass a prison health care wholesale improvement bill, due to the cost associated with the proposed reforms. The bill would have added \$30 million to the existing \$28.8 million private health care contract the State has with CMS.⁵³ Delaware prison medical care is currently the subject of an investigation by the Civil Rights Division of the U.S. Department of Justice.⁵⁴

The second most common approach noted, with eleven states utilizing this design, is to use a **blend of state corrections department personnel and contracted service** through one of the national private prison health services, or local community health providers. Arkansas, Florida, Michigan, Minnesota, New York, North Carolina, North Dakota, Ohio, Oregon, Tennessee, and Virginia operate their prison health system using this design. Department personnel often maintain medical records and operate infirmaries at individual units with higher levels of medical care contracted out.

On August 22, 2006, a Detroit Free Press editorial called Michigan's prison health care system dangerously dysfunctional and sometimes even deadly. This has prompted Michigan Governor Granholm to order an independent review of the Department of Corrections entire prison health care system.⁵⁵ The allegations are that the state has neither met its constitutional duty to provide adequate medical care to its 50,000 plus prisoners nor its obligation to taxpayers, who spend \$190 million a year on an unaccountable system operated by CMS.⁵⁶

Texas is among four states that have developed a **managed prison health care design where the state contracts for medical services with a state university system**. Connecticut, Georgia, and Massachusetts are the other three states using this design—the major difference being that in other states, their department of correction (DOC) oversees the contracted services.

CMHCC staff reported that in recent months, a number of other states including Ohio, Connecticut, Mississippi, and California have examined the Texas model to determine if,

⁵⁰ *Prison Medical Contracts Blocked*, Mobile Register, Barrow, January 9, 2004

⁵¹ *Ibid*, page 2

⁵² *Alabama Department of Corrections Ask Federal Judge to Dismiss Contempt Motion Filed by HIV-Positive Inmates*, Medical News Today, May 2005.

⁵³ *No Money to Improve Del. Prison Health Care*, delawareonline.com, Jackson and Parra, May 19, 2006.

⁵⁴ *Ibid*.

⁵⁵ *Begin Cure of Prison Health Care*, Detroit Free Press, August 22, 2006.

⁵⁶ *Ibid*.

and to what extent, it could be employed within their programs. A special independent review of the California Department of Correction, commissioned by Governor Arnold Schwarzenegger, has recommended that California move to a university based health care delivery system similar to that of the Texas managed health care model.⁵⁷

Primary care in four states is **provided by departmental personnel in which contracts for services are only used when department personnel are unavailable**. Alaska, California, Colorado and Washington are found among this category. Again, when contracted services are utilized, they are contracted through and overseen by the state DOC. The contracts usually are for very specific services or locations where department services are not offered.

On July 1, 2005, U. S. District Judge Thelton Henderson ordered that a receiver take control of California's prison health care system, which he described as operating under deplorable conditions. The court required urgent action to stop the needless deaths of inmates due to malfeasance.⁵⁸ Although the state spends in excess of \$1.1 billion per year on inmate medical services, substandard care has contributed to the death of 64 inmates each year. The receiver reports to the Judge, not Schwarzenegger's administration and will have the power to order improvements regardless of how much it costs the taxpayers.⁵⁹

Only three states were noted for providing health care services at their state prisons **exclusively through departmental personnel**. Hawaii, Nevada and New Hampshire use this design. It is notable that Nevada is one of the few states which have no correctional vendors operating in the state. The two experiments with contracted private facilities and with private medical providers were both cancelled. The state then assumed operations with DOC staff because it was determined that the state could operate at a cost level under those sought by the private correctional provider.

Developing Issues with Texas Prison Health Care

Testimony before this committee and other related legislative committees sounded an early warning that additional resources will be required to maintain the state's constitutional medical care status. Dr. Ben Raimer, Vice President for Correction Health Care for the University of Texas Medical Branch at Galveston provided:

- Medical care under their system was approaching the line where the continuing degradation of the care delivered would be considered unconstitutional.
- Many of their prison clinics now operate with a skeleton staff, some are closed most of the time (UTMB operate medical services at approximately 80% of TDCJ units). In other clinics, as many as 17% of the authorized Doctor and or nurse positions are unfilled. Increased salaries are needed to recruit these professionals.

⁵⁷ cpr.ca.gov/report/indrpt/corr/index.htm.

⁵⁸ *U. S. seizes state prison health care Judge cites preventable deaths of inmates, depravity of system*, San Francisco Chronicle, Sterngold, July 1, 2005

⁵⁹ Ibid.

- Substandard and outdated dental and dialysis equipment, left over from when TDCJ operated its medical department, is currently being used on inmates; equipment a private doctor would refuse to use. Less than 50% of the old X-ray machines are working. These machines are so outdated that inoperative machines must be scavenged for parts to keep others operating.
- The contract rate no longer pays for prison health care services. UTMB projects that it will spend \$24 million more than it receives in FY 2007, and TTUHSC will spend \$7.8 million more than it receives, requiring a supplemental appropriation to be considered.
- That in FY 2006 UTMB spent \$9.5 million more than it was paid to perform services.
- UTMB hospital in Galveston is in serious need of external repair. Bricks are falling off of the exterior of the building, constituting a severe safety hazard.⁶⁰

Dr. Raimer summed up his information stating that without an infusion of funding, it will be difficult for the University of Texas' president and regents to continue to participate in the managed health care contract. He also asserts that under these conditions doctors cannot be expected to provide first-rate care. This sentiment was also supported by representatives from the TTUHSC.

At appearances before this and related legislative committees Allen Hightower, Executive Director of the State's Managed Correctional Health Care Committee provided rationalization and causes for the observed increases in prison health care:

- Prisoners older than 55 tend to have more chronic illnesses, making it more expensive to provide appropriate medical care. The number of inmates that are 55 or older in TDCJ prisons has grown from approximately 5500 in FY 2000 (growing at 10% per year) to almost 9000 in FY 2006.
- 5.4% (age 55 plus) of inmates accounts for 25% of the total hospitalization expenditures each year.
- Additional dental care expenses due to the impact of "meth mouth". An increase in popularity for methamphetamine could result in an increase of offenders sentenced to the TDCJ system who have abused this substance.
- Pharmacy costs are estimated to increase by 4% next year, along with newer and more expensive drugs for treatment of Hepatitis C and HIV patients.
- 28% of prisoners committed to TDCJ test positive for Hepatitis C, an estimated total of 20,000 inmates will require treatment for this disease, at a cost that can reach \$10,000 dollars per inmate. Currently an average of 400 inmates per year undergoes treatment. Next year the managed health care system plans to increase treatment to 800 inmates per year.⁶¹

⁶⁰ CMHCC Testimony to the House Appropriation Sub Committee on Criminal Justice, June 28, 2006.

⁶¹ Ibid.

To resolve the degrading movement toward an unconstitutional prison health care system, CMHCC has proposed within their FY 2008 - 2009 Legislative Appropriation Request increases of:

- Daily operations funds - \$47 million
- Retention of health care staff - \$21.8 million
- Hospital / specialty care cost - \$23.7 million
- Pharmacy costs - \$7.1 million
- Critical equipment replacement - \$6.3 million
- Supplies and services - \$5.8 million
- Galveston hospital repairs - \$10.4 million
- **Total new funds \$122.1 million⁶²**

Adding these requested new monies to the current level of financial appropriations would increase the cost of prison health care in Texas to just below \$400 million per year.

Mortality in Texas Prisons

CMHCC utilizes several sub committees to review and report back to their policy making board members. One is known as the Joint Morbidity / Mortality Review Committee which is comprised of 6 to 8 clinical representatives appointed by the medical directors for TDCJ, UTMB and TTUHSC. They are tasked with reviewing the health record and circumstances of every death that occurs within the system.⁶³ The purpose of the committee review is to determine whether there are policy issues or care issues related to the death that need to be further evaluated and referred for a formal peer review. Although a referral for a formal peer review does not indicate that substandard care was provided, it is a request for a complete review of the case for quality assurance purposes. A formal peer review could also be made in order to consider policy issues that may improve the delivery of health care at Texas prisons.⁶⁴

Allen Sapp, of CMHCC provided summary data from June 2005 to May 2006. The committee reviewed 369 deaths within the Texas prison system and made referrals for peer review evaluations as follows:

- Physician Peer Review - 10
- Nursing Peer Review - 12
- Physician and Nursing Peer Review - 2
- Physician and Mental Health Peer Review - 2
- Mental Health Peer Review - 3
- Utilization Review - 1

⁶² Ibid.

⁶³ Morbidity/Mortality review sub committee, email Allen Sapp, Sept. 15, 2006

⁶⁴ Ibid.

Peer reviews were ordered in 8.1% of the deaths within Texas prisons, over a twelve month time frame. However, the proceedings and findings are protected from disclosure under the provisions of the Health and Safety Code, Chapter 161.032 and 161.033 relating to medical review committees.⁶⁵ Any improvements or corrective actions that resulted from these formal peer reviews are unknown.

A review of the TDCJ Mortality Reports from March 2006 through August 2006 provides some insight into the deaths of inmates observed within the Texas prison system. During this time frame, 215 inmates died, an average of 35.8 inmate deaths per month. Of these deaths, 45 were identified as sex offenders. The Medically Recommended Intensive Supervision Program (MRIS) allows the Board of Pardons and Parole to consider the supervised release of certain offenders with medical or mental health conditions under the provisions of the MRIS law; sex offenders are not eligible for consideration. It was noted on the above reports that many of the noted sex offenders were included in the 118 inmates who were referred for MRIS consideration prior to their deaths.

Recommendations

The appropriate level of health care provided to Texas inmates must be addressed. As major problems exist in the five general types of health care systems in other states, improving the current Texas Managed Health Care Committee services is recommended.

Improvements to the system should consider, the increasing prison population, the aging of the offender population and the increase in commutable diseases among the incoming offender population. Efforts to reduce the impact of these known contributors should be utilized to the maximum and funded accordingly.

⁶⁵ Ibid.

Bibliography

Interim Charge 1:

- The Council of State Government, letter to Senator Whitmire, December 23, 2003
- *Criminal Justice/Mental Health Consensus Project*, Council of State Governments, June 2002
- *Prisons: Minnesota's New Asylums for the sick*, Stare Tribune Newspaper, February 11, 2002
- Ibid, page one
- The Council of State Government, letter to Senator Whitmire, December 23, 2003
- *Criminal Justice/Mental Health Consensus Project*, Council of State Governments, June 2002
- Testimony by Steven B. Schnee, Executive Director of MHMRA of Harris County, June 21, 2006

Interim Charge 2:

- *Community Supervision and Corrections in Texas*, Presentation to the House Committee on Corrections, March 22, 2006
- July 2006 Statewide Summary Report by TDCJ-CJAD
- CJAD report on Variation in Size of CSCDs, to Senate CJ Committee, September 2006
- A Biennial Report on the Total Compensation Package for State of Texas Employee, SAO Report No. 07-701, September 2006
- *FY 2005 CSCD Direct Services to Offenders*, TDCJ-CJAD, October 16, 2006

Interim Charge 3:

- TYC Annual Report FY 2004
- TYC Press Releases July 18, 2006 and September 11, 2006
- TYC General Administrative Policy 97.23
- TYC Data, excludes allegations of sexual abuse, neglect and narcotics investigations.
- Texas Observer Article, citing Court filings and TYC Documents.
- TYC Data, excludes allegations of sexual abuse, neglect and narcotics investigations.

Interim Charge 4:

- The Sentencing Project: The Next Big Thing? Methamphetamine in the United States.
- www.MethResources.gov
- <http://www.drugabuse.gov/>

Interim Charge 5:

- Press releases from the Office of the Governor.
- Public testimony of Sheriff Sigifredo Gonzalez, Jr. at the Senate Criminal Justice Hearing on Aug. 30, 2006.
- DPS Testimony
- Public testimony received by the Senate Committee on Transportation and Homeland Security
- Operation Linebacker Reports, as reported by the El Paso Times.

Interim Charge 6:

- *Report to the governor and the Legislative Budget Board on Monitoring of Community Supervision Diversion Funds*, TDCJ-CJAD December 1, 2005

Interim Charge 7:

- Adult and Juvenile Correction Population Projections: Fiscal Years 2006-2011. Legislative Budget Board (June 2006).
- Texas Department of Criminal Justice. Offenders with Final Orders for Deportation as of March 31, 2006. Executive Services (June 2006).
- SJR 15. 74(R) (1995). Since 1982, Texas had spent almost \$2 billion for the construction of correctional facilities while prison operating costs have increased almost 10 times during that period from \$147 million to a projected \$1469 million in 1997. SJR 15 was seen as a way to save

the State money by contracting with a foreign nation to construct and operate prison facilities within their borders to house Texas prisoners.

- T.X. Const. art 1, §20.
- The Council of Europe Convention is in force in the following countries: Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Bolivia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia (Former Yugoslav Republic of), Malta, Mauritius, Moldova, the Netherlands (including Netherlands Antilles and Aruba), Nicaragua, Norway (including Bouvet Island, Peter I's Island and Queen Maud Land), Panama, Poland, Portugal, Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, Ukraine, the United Kingdom (including Anguilla, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Ducie and Oena Islands, Falkland Islands, Gibraltar, Henderson, Isle Of Man, Montserrat, Pitcairn, St. Helena and Dependencies and the Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus), the United States and Venezuela. The Inter-American Convention on Serving Criminal Sentences Abroad (or OAS Convention) is in force in the following countries: Brazil, Canada, Chile, Costa Rica, Mexico, Nicaragua, Panama, Paraguay, the United States and Venezuela.
- U.S. Const. art. VI, cl. 2.
- *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).
- Department of Justice International Prisoner Transfer, International Prisoner Transfer Program Office of Enforcement Operations, available at <http://www.usdoj.gov/criminal/oeo/index.htm>.
- Inter-American Convention on Serving Criminal Sentences Abroad, art. 5(8), May 25, 2001.
- United States-Mexico Treaty on the Execution of Penal Sentences, art. 1(2), November 25, 1976.

Interim Charge 8:

- Correction Health Care Cost, the Council of State Governments, Kinsella, Jan. 2004.
- *An overview of Correctional Managed Health Care*, Correctional Managed Health Care Committee, March 1, 2006.
- *Correctional Health Care in the Texas Department of Criminal Justice*, Raimer, Patterson, Govwest.com.
- *Self Evaluation Report*, CMHCC, August 19, 2005
- *CMHCC Overview*, CMHCC, March 1, 2006, page 7
- *Prison Medical Contracts Blocked*, Mobile Register, Barrow, January 9, 2004
- *Alabama Department of Corrections Ask Federal Judge to Dismiss Contempt Motion Filed by HIV-Positive Inmates*, Medical News Today, May 2005.
- *No Money to Improve Del. Prison health Care*, delawareonline.com, Jackson and Parra, May 19, 2006.
- *Begin Cure of Prison Health Care*, Detroit Free Press, August 22, 2006.
- cpr.ca.gov/report/indrpt/corr/index.htm.
- *U. S. seizes state prison health care Judge cites preventable deaths of inmates, depravity of system*, San Francisco Chronicle, Sterngold, July 1, 2005
- CMHCC Testimony to the House Appropriation Sub Committee on Criminal Justice, June 28, 2006.
- Morbidity/Mortality review sub committee, email Allen Sapp, Sept. 15, 2006

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Wednesday, June 21, 2006

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, June 21, 2006, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Rodney Ellis
Senator Jon Lindsay
Senator Steve Ogden

The chair called the meeting to order at 9:00 a.m. The following business was transacted:

Invited testimony was heard regarding committee interim charges 1 and 8.

Public testimony was heard regarding committee interim charges 1 and 8.

The chairman postponed testimony regarding committee interim charge 4.

There being no further business, at 1:45 p.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

Ashley Horn, Clerk

Witness Order / Witness Format

Criminal Justice

June 21, 2006 - 9:00 AM

Brockman, Nancy Weatherford, TX

(Self)

Y ON: Interim Charge #1

Collier, Bryan Parole Division Director Austin, TX

(Texas Department of Criminal Justice)

Y ON: Interim Charge #1

DeShields, Denise Executive Medical Director El Paso, TX

(Texas Tech University)

Y ON: Interim Charge #8

Drymala, Alan San Antonio, TX

(Self)

Y ON: Interim Charge #1

Dupuy, Leslie Administrative Director of Mental Health Services Huntsville, TX

(University of Texas Medical Branch - Correction Managed Care)

Y ON: Interim Charge #8

Gilbert, Barry Juvenile Probation Officer Amarillo, TX

(Randall County Juvenile Probation)

Y ON: Interim Charge #1

Griffiths, Mike Chief Juvenile Probation Officer Dallas, TX

(Dallas County)

Y ON: Interim charge #1

Gusler, Bruce Deputy Director Conroe, TX

(Montgomery County)

Y ON: Interim Charge #1

Harris, Dwight Executive Director Austin, TX

(Texas Youth Commission)

Y ON: Interim Charge #1

Hightower, Allen Executive Director Huntsville, TX

(Correctional Managed Care)

Y ON: Interim Charge #8

Jeffords, Chuck Research Director Austin, TX

(Texas Youth Commission)

Y ON: Interim charge #1

Jenine, Boyd Chief Psychologist Richmond, TX

(Fort Bend County Juvenile Probation)

Y ON: Interim Charge #1

Kelly, Mike Director of Preventative Medicine Huntsville, TX

(Texas Department of Criminal Justice)

Y ON: Interim Charge #8

Kerss, Thomas Sheriff Nacogdoches, TX

(Sheriff's Association of Texas)

Y ON: Interim Charge #1

Leach, Ron Director Conroe, TX

(Montgomery County Juvenile Probation)

Y ON: Interim Charge #1

Long, Darren Major Austin, TX

(Sheriff Greg Hamilton)

Y ON: Interim charge #1

Lovelace, Joe Public Information Office Kerrville, TX

(Hill Country Mental Health Mental Retardation Center)

Y ON: Interim Charge #1

Lyon, Jennifer New Braunfels, TX

(Self)

Y ON: Interim Charge #1

Meade, Mike Chief Richmond, TX

(Fort Bend County Juvenile Probation)

Y ON: Interim Charge #1

Murray, Owen MD Galveston, TX
(University of Texas Medical Branch)
Y ON: Interim charge 1

Perez, Karen Director of Special Programs El Paso, TX
(El Paso County Juvenile Probation)
Y ON: Interim Charge #1

Porter, Nicole Project Director Austin, TX
(American Civil Liberties Union)
Y ON: Interim charge #8

Quintana, Diana Deputy Director - Health Services Division Houston, TX
(Harris County Juvenile Probation Department)
Y ON: Interim Charge #1

Raimer, Ben Vice President Galveston, TX
(University of Texas Medical Branch Corrections)
Y ON: Interim Charge #8

Reyes, Linda Deputy Executive Director Austin, TX
(Texas Youth Commission)
Y ON: Interim Charge #1

Sapp, Allen Assistant Director Huntsville, TX
(Correctional Managed Health Care)
Y ON: Interim Charge #8

Schnee, Steven Executive Director Houston, TX
(Mental Health and Mental Retardation Association of Harris County)
Y ON: Interim Charge #1

Shackelford, Wesley Special Counsel Austin, TX
(Task Force on Indigent Defense)
Y ON: Interim Charge #1

Spriggs, Vicki Austin, TX
(Texas Juvenile Probation Commission)
Y ON: Interim Charge #1

Strand, Shawna Deputy Director Amarillo, TX

(Randall County Youth Center of High Plains)

Y ON: Interim Charge 1

Vesowate, Joe Assistant Commissioner Austin, TX

(Texas Department of State Health Services)

Y ON: Interim Charge #1

Wells, Albert Dental Director Palestine, TX

(University of Texas Medical Branch)

Y ON: Interim Charge #8

White, Bonita Division Director Austin, TX

(Texas Department of Criminal Justice - Community Justice Assistant Division)

Y ON: Interim Charge #1

Wilson, Dee Director - TCOOMI Austin, TX

(Texas Department of Criminal Justice)

Y ON: Interim Charge #1

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Wednesday, August 30, 2006

9:30 a.m.

McAllen City Hall

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, August 30, 2006, in the McAllen City Hall

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Rodney Ellis
Senator Jon Lindsay
Senator Steve Ogden

The chair called the meeting to order at 9:30 a.m. The following business was transacted:

Invited testimony was heard regarding committee interim charges 3 and 5.

Public testimony was heard regarding committee interim charges 3 and 5.

There being no further business, at 3:30 p.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

Ashley Horn, Clerk

Witness Order / Witness Format

Criminal Justice

August 30, 2006 - 9:30 AM

Alfaro, Pete Chairman of the Board Austin, TX

(Texas Youth Commission)

Y ON: Interim charge 3

Alvarez, Manuel Juvenile Investigator Edinburg, TX

(Edinburg Police Department)

N ON: Interim charge 3

Anzaldua, David Correctional Officer Edinburg, TX

(Evins Juvenile Detention Center)

Y ON: Interim Charge 3

de los Santos, Ofelia Attorney at Law Edinburg, TX

(Texas Coalition Advocating Justice for Juveniles)

Y ON: Interim charge 3

Estevis, Jesus JCO 4 Edinburg, TX

(Texas Youth Commission)

Y ON: Interim charge 3

Gonzalez, Sigifredo Sheriff Zapata, TX

(Self; Texas Border Sheriff's Coalition)

Y ON: Interim charge 5

Gutierrez, Isela Coordinator Austin, TX

(Texas Coalition Advocating Justice for Juveniles)

Y ON: Interim Charge 3

Harrell, Will Executive Director Austin, TX

(ACLU)

Y ON: Interim charge 5

Y ON: Interim Charge 3

Harris, Dwight Executive Director Austin, TX

(Texas Youth Commission)

Y ON: Interim Charge 3

Hernandez, Juan Manuel Mission, TX

(Texas Youth Commission)

Y ON: Interim charge 3

Hinojosa, Ruben Congressman Washington, DC

(Self)

Y ON: Interim charge 5

Ibanez, Diana San Antonio, TX

(Texas Youth Commission)

Y ON: Interim Charge 3

Jeffords, Chuck Research Director Austin, TX

(Texas Youth Commission)

Y ON: Interim Charge 3

Leija, Juan Carlos Edinburg, TX

(Self)

N ON: Interim charge 3

Lopez, Maria Elena Program Specialist McAllen, TX

(Texas Youth Commission)

Y ON: Interim Charge 3

Martinez, Mary Jane San Antonio, TX

(Texas Youth Commission)

Y ON: Interim charge 3

Nash, Maxine Longoria Associate Judge Edinburg, TX

(Hidalgo County Juvenile Justice Court)

N ON: Interim charge 3

Nichols, Neil General Counsel Austin, TX

(Texas Youth Commission)

Y ON: Interim Charge 3

Perez, Noe Laguna Vista, TX

(Self)

Y ON: Interim charge 5

Ramos, Arnaldo Lieutenant Del Rio, TX

(Texas Department of Public Safety)

Y ON: Interim Charge 5

Rodriguez, Juan Captain McAllen, TX

(Texas Department of Public Safety)

Y ON: Interim Charge 5

Rodriguez, Victor Chief of Police McAllen, TX

(City of McAllen)

Y ON: Interim charge 5

Rosas, Rumaldo JCO IV Progreso, TX

(Texas Youth Commission)

W ON: Interim Charge 3

Salinas, Ana Luisa Home Owner Elsa, TX

(Self)

N ON: Interim Charge 3

Taylor, Debra Associate Psychologist Edinburg, TX

(Texas Youth Commission)

Y ON: Interim charge 3

Wang, Jason Edinburg, TX

(Self)

Y ON: Interim charge 3

Zarate, Manuel McAllen, TX

(Self)

Y ON: Interim charge 5