Sunset Advisory Commission

Texas Department of Criminal Justice
Board of Pardons and Paroles
Correctional Managed Health Care Committee

Staff Report
October 2006

Sunset Advisory Commission

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

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Summary

Summary

The State's criminal justice system is at a crossroads. After the huge building cycle just more than 10 years ago that tripled the size of the prison system to more than 154,000 beds, the State can expect the prison population to exceed capacity by more than 11,000 beds in less than five years under current conditions and projections.

To house and deal with these offenders, the Texas Department of Criminal Justice (TDCJ) is requesting funding from the Legislature both to build new prisons and to expand rehabilitation and diversion programs with the hope of reducing future incarcerations. The Legislature will need to decide how far in either direction it wishes to go.

The Sunset review of TDCJ, the Board of Pardons and Paroles (Parole Board) and the Correctional Managed Health Care Committee (the Committee) occurred at this crossroads, which ultimately gave direction to the unique approaches Sunset staff pursued. Initial review efforts to focus on the traditional aspects of the agencies' structures and functions found that after years of operating under court orders and evolving under the criminal justice umbrella, the agencies generally have the needed infrastructure in place to effectively operate the system.

For the Sunset review to be meaningful, then, it had to include consideration of TDCJ's ability to divert offenders from prison and to rehabilitate those in prison to better prepare them for life in society. The review also had to include an assessment of the need for objective information to help guide criminal justice policies regarding what works in the system and an examination of impediments to the efficient functioning of the system. As a result, staff's review of the State's criminal justice agencies took a different approach than is traditional.

The State is at a crossroads regarding the future of its criminal justice system.

Sunset staff concluded that TDCJ needs more money, through the appropriations process, to fund additional diversion and rehabilitation programs for offenders. The Legislature also needs better information with which to assess the direction and performance of the criminal justice system. The Parole Board needs to finally fix its parole guidelines and use them as the tool intended for improved parole decision making. The State also needs to address the funding anomalies that may actually shift community supervision efforts away from where they are most needed.

Sunset staff also evaluated the Committee, concluding that while the partnership between TDCJ and the university providers for delivering prison health care is accepted and working for the parties, the Committee's does not lend itself to an objective recommendation either to abolish or to continue. Therefore, although the Committee should be allowed to continue, its structure should no longer be subject to Sunset review. Other recommended changes would clarify the Committee's statutory responsibilities, remove limitations on TDCJ's ability to monitor prison health care, and improve transparency within the healthcare system. Future Sunset reviews of TDCJ could evaluate the healthcare system, but the need for the Committee structure would no longer be subject to such judgment.

In presenting this report, Sunset staff acknowledges that much deliberation by the Sunset Commission and the Legislature is needed regarding the proposed recommendations. The

recommendations provide an opportunity for this deliberation, with a goal of improving the criminal justice system to continue to protect the citizens of the state while helping offenders become more productive members of society.

The following material summarizes the Sunset staff's recommendations to improve the criminal justice system.

Issues and Recommendations

Issue 1

By Not Adequately Addressing Offender Rehabilitation Needs, the State's Criminal Justice Efforts May Not Deter Recidivism, Increasing the Prison Population.

Key Recommendations

- The Sunset Commission should recommend that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.
- TDCJ should conduct routine program evaluations of all rehabilitation programs designed to reduce reincarcerations and revocations, and report the findings to the Legislature.

Issue 2

Lawmakers Do Not Have the Information Necessary to Effectively Manage the State's Criminal Justice System and Plan for Its Future.

Key Recommendation

- Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.

Issue 3

The Board of Pardons and Paroles Has Not Adequately Updated and Used Required Parole Guidelines to Help Ensure the Most Consistent, Appropriate Release Decisions.

Key Recommendations

- Require the Board of Pardons and Paroles to annually report and explain to the Legislature its efforts to meet the parole guidelines.
- Require the Board of Pardons and Paroles to annually review and update the parole guidelines.
- Require parole panel members who depart from the guidelines to provide specific reasons explaining the deviation.

Issue 4

Supervising Low-Risk Probationers Who Could Be Released From Probation Early Diverts Limited Resources From Probationers Needing More Intensive Supervision.

Key Recommendations

- Require CSCDs to identify and recommend offenders appropriate for early termination.
- Authorize TDCJ to adjust funding methods to minimize the loss of funds to CSCDs resulting from early termination of probationers.
- The Sunset Commission should recommend that the Legislature change its method of funding CSCDs to maintain a constant funding level even if the number of probationers declines because of early termination.

Issue 5

Keeping Low-Risk Offenders on Parole and Mandatory Supervision Who Could Be Released Early Can Divert Limited TDCJ Resources From Best Use.

Key Recommendation

- Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.

Issue 6

Current Law Limits the Use and Effectiveness of Medically Recommended Early Release of Offenders, Increasing State Medical Costs.

Key Recommendations

- Authorize judges to permit the early release of state jail confinees who pose no risk to public safety due to their medical conditions.
- Require the Texas Correctional Office on Offenders with Medical or Mental Impairments to identify and recommend state jail confinees eligible for early medical release.

Issue 7

Current Law Does Not Hold All Parole Decision Makers to the Same Standards of Objectivity and Independence.

Key Recommendations

- Expand conflict of interest provisions concerning financial and personal interests to include parole commissioners.
- Expand restrictions on previous employment with TDCJ to include parole commissioners.

Issue 8

Texas Has a Continuing Need for the Texas Department of Criminal Justice.

Key Recommendation

- Continue TDCJ for 12 years.

Issue 9

Due to Its Unusual Structure and Function, the Correctional Managed Health Care Committee Should Be Allowed to Continue, Removed from Sunset Review.

Key Recommendations

- Remove the separate Sunset date and continue the Committee.
- Update the statutory direction for the Committee.
- Require the Chair of the Committee to be a public physician member.
- Remove limitations on TDCJ's ability to monitor the quality of health care provided to offenders.

Issue 10

Offenders and the Public Have Limited Access to Information About Correctional Health Care, Leading to a Lack of Transparency in the System.

Key Recommendations

- Require the Committee to make information about offender health care readily available to the public.
- Require TDCJ to make information about healthcare services readily available to offenders.
- TDCJ's Health Services Division and the university providers should provide more useful information in response to offender grievances.

Fiscal Implication Summary

Several of these recommendations would have a fiscal impact to the State, but the actual amount of the impact will depend on how the recommendations are implemented. The fiscal impact of the recommendations is discussed below:

- Issue 1 – Appropriating additional funds to TDCJ for offender treatment and rehabilitation programs would result in a cost to the State. However, funding these programs would reduce recidivism, creating additional capacity that could generate millions in cost avoidance for the State. The Legislature, through the appropriations process, would determine the amount of funding and therefore the actual impact to the State. The fiscal impact would not be reflected in the fiscal note for the TDCJ Sunset bill.

- Issue 2 – Establishing a Criminal Justice Legislative Oversight Committee would result in a cost to the State. However, the actual fiscal impact will depend on how the Committee structures its staff support.

- Issue 4 – Any state money that would have been used to supervise early terminating offenders should be redirected and used to supervise new probationers and higher-risk offenders.

- Issue 5 – Any savings realized from reduced parole supervision caseloads would be used to supervise high-risk offenders on parole or mandatory supervision.

- Issue 6 – Authorizing the release of medically eligible state jail confinees would result in a savings to the General Revenue Fund, but the savings cannot be determined because TDCJ cannot estimate how many confinees would be eligible and approved for release.

Issues

Issue 1

By Not Adequately Addressing Offender Rehabilitation Needs, the State's Criminal Justice Efforts May Not Deter Recidivism, Increasing the Prison Population.

Summary

Key Recommendations

- The Sunset Commission should recommend that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.
- TDCJ should conduct routine program evaluations of all rehabilitation programs designed to reduce reincarcerations and revocations, and report the findings to the Legislature.

Key Findings

- Several factors, including recidivism, have caused Texas' prisoner population to exceed prison capacity.
- Treatment and prison diversion programs have been shown to reduce recidivism and result in savings for the State.
- Without adequate resources, TDCJ cannot successfully implement treatment and diversion programs to meet existing needs.
- Building prisons without investing in treatment programs is not the most cost-effective or sustainable solution to prison population growth.

Conclusion

The Texas criminal justice system is at a crossroads. The State's prison population has been steadily increasing and is expected to exceed capacity by more than 11,000 beds in 2011. Facing the prospect of prison overcrowding, the State must either increase prison capacity or reduce the number of offenders in the system.

Offender recidivism plays a central role in fueling prison population growth. In recent years, the Texas Department of Criminal Justice (TDCJ) has developed offender rehabilitation programming to help prevent probationers from entering the prison system, and to keep former offenders out of the system once they are released. In particular, TDCJ has concentrated on developing treatment programs which are demonstrated to reduce offender recidivism. However, TDCJ does not currently have enough funding to meet programming needs.

In the near future, the Legislature will have to invest in more prisons or more programs, or some combination of the two. By targeting funding toward programming, the State can reduce the number of offenders in prison, potentially lessening the need for building more prisons. In addition, programs aimed at reducing recidivism improve public safety and help offenders become more productive members of society, which benefits all Texans.

Support

Several factors, including recidivism, have caused Texas' prisoner population to exceed prison capacity.

In Texas, offenders revoked from probation or parole comprise the majority of new prison admissions.

- Currently, more offenders are entering Texas' criminal justice system than are being released, resulting in significant population growth. According to most recent prison population projections, the adult correctional population will continue to increase, resulting in a predicted prison population of 161,990 in 2011. TDCJ's operating capacity is currently 150,834. By 2011, the prison population will exceed capacity by 11,156, or 7.4 percent.[1]

- The current capacity crisis results from two main factors, more offenders are being admitted into the prison system, and offenders are serving more time than in the past. Between 1988 and 2002, TDCJ admissions grew 78 percent, primarily due to changes in sentencing policies and rising conviction rates.[2] During this period more offenders, especially drug offenders, were arrested and successfully convicted than in previous years. Despite rising conviction rates, the overall crime rate did not increase during this period.

  In addition to the increase in prison admissions, offenders now remain in the system longer due to certain sentencing and parole policies. During the same timeframe, the average amount of time served by offenders increased by 83 percent, mainly due to legislation requiring offenders to serve greater percentages of their sentences.[3] At the same time, parole approval rates declined. As a result, offenders face longer sentences and serve more of the total sentence than in previous years.

- Offender recidivism contributes significantly to the increasing prison population, as described in the textbox, *Recidivism and Revocation Rates*. Many Texas offenders cycle in and out of prison repeatedly throughout their lifetimes. Offenders can be returned to prison for new violations of the law, or by having their parole revoked. In Texas, approximately 30 percent of offenders released from prison will be re-incarcerated within three years. In addition, offenders on probation may be sent to prison for the first time by having their probation revoked. In recent years, parole and probation revocations accounted for between 55 and 60 percent of annual prison admissions.

> ***Recidivism and Revocation Rates***
>
> Generally, recidivism refers to an offender's return to criminal activity after earlier criminal involvement. The State calculates recidivism rates for offenders placed on probation, offenders released from prison, and offenders on parole. Rates are typically calculated over a three-year period because this is the period in which offenders are most likely to recidivate. Parolee and probationer recidivism is frequently measured through revocation rates, or the number of offenders who are revoked from parole or probation to prison due to violations of law or the terms of supervision.

In response to the impact to the system of offenders returning to prison, the Legislature, through TDCJ, has focused resources on reducing recidivism through in-prison and community-based programs, as well as efforts to

reduce parolee and probationer revocations for violations of supervision conditions, as opposed to violations of the law.

- Faced with this growing offender population, the State needs to determine the most efficient and cost-effective way to alleviate this capacity crisis – either through building additional prisons or reducing the overall prison population, or a combination of the two. Previously, the State has responded to prison population growth by increasing TDCJ's capacity and developing programs.

  Between 1980 and 2002, the State increased TDCJ's total capacity by 127,000 beds to meet population growth and federal overcrowding requirements, at a cost of $2.3 billion. More recently, the State has authorized TDCJ to contract for temporary beds in county jails in lieu of building new prisons. In May 2006, TDCJ's contracted capacity was 1,418.

  TDCJ began to develop programming specifically targeted toward reducing recidivism in the early 1990s. Currently TDCJ provides rehabilitational, educational, and vocational programs for offenders in prison and in the community.

In the future, Texas will have to build new prisons or reduce the prison population.

Treatment and prison diversion programs have been shown to reduce recidivism and result in savings for the State.

- During the last two decades researchers have studied correctional programming to determine "what works" to reduce offender recidivism. Numerous studies have demonstrated that treatment programs that target specific dynamic risk factors associated with criminal activity, such as drug or alcohol addiction, reduce offender recidivism.[4] The textbox, *Risk Factors for Future Criminal Behavior,* identifies dynamic risk factors associated with criminal conduct.

Risk Factors for Future Criminal Behavior

- Anti-social peer associations
- Substance abuse
- Lack of problem solving and self-control skills
- Lack of education, job, and vocational skills
- Behavior regarding employment

  TDCJ has several in-prison rehabilitation programs to help address these risk factors including, educational, vocational, and rehabilitation tier programs, which provide intensive treatments for offenders with substance abuse or sex offense histories. Appendix G describes these programs in more detail. The two programs with the greatest impact, the In-Prison Therapeutic Community (IPTC) for prisoners, and Substance Abuse Felony Punishment facility (SAFP) program for probationers and parolees, have been shown to reduce recidivism rates from the 20 to 30 percent range to 5 percent for offenders who complete the program, compared to similar offenders who did not complete programming.[5]

  A recent evaluation of rehabilitation tier programs noted that the total impact of these programs on recidivism has been limited by low program completion rates, ranging from 43 to 63 percent.[6] Since this 2003 evaluation, TDCJ has

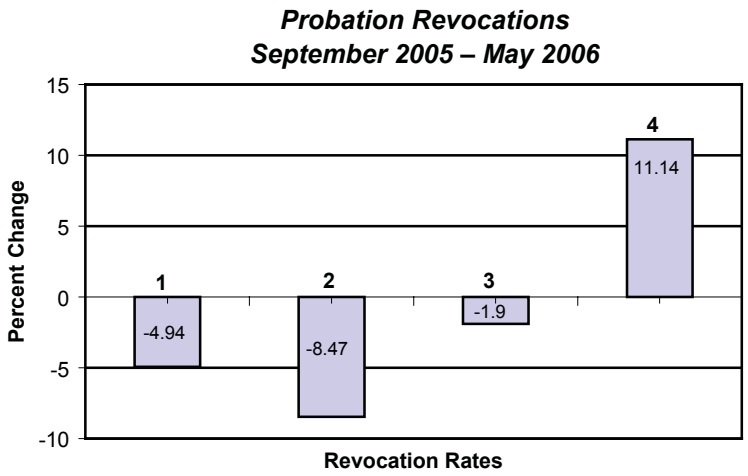
made efforts to improve in-prison screening processes, as well as supervision resources available to local communities. These efforts should help TDCJ better identify participants who are most likely to complete and benefit from programming. TDCJ has not conducted formal program evaluations since 2003, however, completion rates appear to have improved. According to TDCJ program data, in fiscal year 2005, 5,426 offenders participated in the SAFP program and 5,017 offenders completed the program, indicating a completion rate of more than 90 percent. Likewise in 2005, more than 90 percent of IPTC participants completed the program. These higher completion rates bode well for the success of these programs in reducing recidivism and re-incarceration.

TDCJ works with local probation departments to improve supervision and reduce probation revocations.

- The Windham School District provides in-prison educational and vocational services to offenders who are incarcerated in TDCJ. In fiscal year 2005, 75,667 incarcerated offenders participated in Windham literacy, life skills, and career and technology programs. A 2000 Criminal Justice Policy Council (Policy Council) study of Windham programs indicated that prison education, particularly literacy education, helps reduce recidivism rates for offenders who improve their education levels.[7] Specifically, high-risk offenders, including young offenders with property convictions, who learned to read, had reincarceration rates 37 percent lower than offenders who did not learn to read.

- In addition to treatment programs in prison, TDCJ works with local Community Supervision and Corrections Departments (CSCDs) to implement supervision models for probationers, including programs which help reduce the flow of offenders into prison. Currently, 37 of Texas' 121 CSCDs use a progressive sanctions supervision model, designed to allow community supervision officers to individualize responses to offender violations, maximize compliance with the law, and reduce the need for incarceration. The model tailors supervision and treatment to specific offender needs.

  In 2005, TDCJ awarded $14 million to 26 CSCDs using a progressive sanctions model. This funding allows CSCDs to reduce officer caseloads and develop additional community corrections facilities to support the use of progressive sanctions. TDCJ has not conducted a comprehensive study of revocation rates for CSCDs using progressive sanctions because the models have not been in place long enough. However, CJAD tracks felony revocation rates, as demonstrated in the chart, *Probation Revocations*. While CSCDs that declined the additional progressive sanctions funding had probation revocations increase by more than 11 percent, the larger CSCDs that participated had their rates go down, driving down revocation rates statewide by almost 5 percent. In fiscal year 2006 to date, CSCDs who received progressive sanctions funding revoked 1,037 fewer offenders to prison than in fiscal year 2005.



1. Statewide
2. CSCDs Receiving Funding for Progressive Sanctions
3. CSCDs Declining Funding
4. CSCDs Not Receiving Funding

CSCDs rely on both inpatient and outpatient treatment programs to support supervision and provide rehabilitation for offenders on probation. Offenders will typically be required to participate in treatment if they violate drug or alcohol conditions during probation. A TDCJ evaluation of the Treatment Alternatives to Incarceration Program indicated that outpatient treatment is effective in reducing reincarceration for offenders in the program. Only 10 percent of offenders completing the program were reincarcerated in TDCJ within two years compared to 36 percent for offenders not completing treatment.[8]

Inpatient and outpatient treatment programs can reduce the likelihood of recidivism.

In 2002, the Policy Council issued a report on recidivism rates related to residential programs. The Policy Council estimated that 75 percent of offenders sent to residential facilities would have been revoked to prison if the facilities were not available. After program completion, participating offenders had four-year recidivism rates of between 33 and 46 percent, depending on the program. The Policy Council also estimated that for every 100 beds, community-based Substance Abuse Treatment Facilities could produce 113 prison diversions.[9]

- In recent years, the Legislature has designated specific funding for pre-trial diversion programs for offenders with mental illnesses. TDCJ uses this funding to contract with community-based vendors to provide mental health services. Mentally ill offenders have significantly higher recidivism rates than the general offender population, with recidivism estimates ranging from 40 to 90 percent. However, as a recent CJAD study demonstrates, when mentally ill offenders on community supervision received services including case management, psychiatric and medication support, rehabilitation, and residential treatment, recidivism rates declined to 13 percent.[10]

Judges are required to release certain mentally ill offenders, but do not due to limited community resources.

Currently, state law requires judges to release certain mentally ill offenders who are incarcerated before trial.[11] However, judges have been reluctant to release these offenders without appropriate treatment available. This funding for treatment allows judges to more safely release offenders to supervision, saving the counties the cost of incarceration. In addition, by stabilizing these offenders before they go to trial, judges can properly assess whether or not they are candidates for community supervision, as opposed to incarceration. Offenders receiving services are more likely to be allowed to remain on community supervision, instead of being sent to prison or state jail, saving the State the cost of incarceration.

- Like probationers, offenders on parole may be required to participate in substance abuse programming as a condition of parole, and reduce the likelihood of reincarceration. TDCJ's Parole Division offers outpatient substance abuse programming, as well as residential treatment through Intermediate Sanction Facilities (ISFs) and SAFPs. Offenders are sent to ISFs for parole violations in lieu of being revoked to prison. In 2006, TDCJ began offering intensive substance abuse treatment at two of the State's five ISFs. While no recidivism data is yet available, ISF programming uses a curriculum similar to the successful SAFP program, and TDCJ expects to see a reduction in the recidivism rate. These ISFs will serve 3,780 offenders annually.

- Reducing recidivism through treatment and supervision is highly cost-effective for the State. Programs to reduce recidivism keep people out of prison, reducing the need for new prisons, while also protecting the public by reducing crime. They also help offenders become contributing members to society, maintaining jobs and paying obligations such as taxes, restitution, and child support. Community-based treatment, particularly treatment in response to parole or probation violations, can allow offenders to learn skills while remaining out of prison, at considerably lower costs than if they were incarcerated. The table, *Offender Costs Per Day,* provides a sample of the daily costs to supervise and treat offenders.[12]

Offender Costs Per Day (2005)

	Program	Cost
Incarceration	Prison	$40
	Prison, Privately Operated	$34
	State Jail	$34
	Substance Abuse Felony Punishment Facility	$48
Community Treatment Programs	Court Residential Treatment Center	$68
	Intermediate Sanction Facility, Privately Operated	$33
	Substance Abuse Felony Punishment, After-care	$27
Supervision	Parole	$3.15
	Probation	$2.27

Without adequate resources, TDCJ cannot successfully implement treatment and diversion programs to meet existing needs.

- The State dedicates a small percentage of TDCJ's annual budget to in-prison and community-based programs designed to reduce recidivism. In 2005, less than 10 percent of TDCJ's $2.5 billion budget supported offender treatment programs. The table, *TDCJ Rehabilitation Programs as a Percentage of Total Budget,* shows the percent of TDCJ's budget each program comprises.

TDCJ Rehabilitation Programs as a Percentage of Total Budget
FY 2005

	Program	Purpose	Program Budget (million)	Percent of Total Budget
In-Prison	Correctional Industries	♦ vocational training for offenders ♦ cost avoidance for TDCJ through production of supplies for prisons	$64.7	2.64%
In-Prison	Substance Abuse Treatment	♦ programs including: IPTC, SAFP, after-care, PRTC, PRSAP	$34.2	1.40%
In-Prison	Other Treatment	♦ sex offender treatment ♦ mentally ill and mentally retarded releasee services	$13.5	0.55%
In-Prison	Project RIO	♦ employment readiness for exiting offenders	$3.1	0.13%
In-Prison	Post Secondary	♦ academic and vocational training, and certification for offenders	$2.4	0.10%
Parole[13]	Substance Abuse, Outpatient	♦ community-based substance abuse counseling and services	$2.3	0.09%
Parole[13]	Substance Abuse, ISF	♦ residential substance abuse and other treatment	$2.0	0.08%
Probation	Diversion Programs	♦ residential literacy, substance abuse, and other probationer programming	$61.7	2.51%
Probation	Community Corrections	♦ community-based treatment programming	$42.6	1.74%
Probation	Treatment Alternatives to Incarceration Program	♦ substance abuse assessment, referral, and treatment for indigent offenders	$14.6	0.60%

While correctional industries is included as a rehabilitation program because of the jobs and work skills it provides, it also functions to provide low cost goods for the prison system and for state agencies, giving less regard to the rehabilitative effects of its activities. In addition to programs listed, Windham School District received $57.6 million through appropriations of the Texas Education Agency (TEA).

- As the offender population continues to grow, funding for TDCJ's treatment programs has either declined in real terms, or has actually been cut, especially for programming. In 2003, budget shortfalls resulted in cuts for parole, probation, and in-prison rehabilitation programming. While the State has since restored funding for probation and parole treatment, TDCJ's budget for in-prison treatment is still down $12.2 million or 21 percent for those programs, resulting in a loss of 1,250 substance abuse program beds, substance abuse counseling and groups, and religious services. The Windham School District also received cuts totaling $13.5 million or 19 percent of its previous budget, resulting in reductions in administrative staff, teachers, and classes.

- TDCJ cannot address current treatment demands with existing resources. In 2005, TDCJ identified 59 percent of prisoners as chemically dependent. However, with limited resources, TDCJ admits only 5 percent of potential program participants to substance abuse programs each year. TDCJ uses a prioritization system to connect prisoners to programs, but even the highest priority offenders do not necessarily receive treatment. The textbox, *Priorities for Program Placement,* lists the criteria TDCJ uses to place offenders into programs.

Priorities for Program Placement

Once TDCJ establishes program need, placement is prioritized based on the following factors.

- Parole approval requires program completion
- Projected release date
- Level of need
- Custody level
- Age
- Space availability
- Whether the program is available on the offender's unit

Of primary importance is whether or not the Parole Board requires an offender to complete a program before being paroled. In 2005, only 45 percent of offenders required to complete a six-month substance abuse program were enrolled in the program. Likewise, only 53 percent of offenders were enrolled in required sex offender programming.

TDCJ cannot meet treatment demands with existing resources.

As a result of limited program capacity, even the highest risk offenders may be enrolled in less intensive programs, or placed on waiting lists for required programs. While TDCJ's rehabilitation programs each have long waiting lists, some up to half a year or more, these lists significantly undercount existing program demand. Many appropriate offenders never make it into needed programs, but are instead referred to less intensive programs. Further, when waitlists surpass three to four months for the IPTC program, TDCJ will ask the Parole Board to stop voting offenders into the program, limiting rehabilitation options for offenders who happen to be parole eligible during those periods. For example, while just more than 1,000 offenders completed the IPTC program in 2005, more than 28,000 parole-ready offenders completed the much less intensive life skills program, CHANGES, which is not proven to reduce recidivism. Thus, current program capacity either results in offenders being delayed in their release to society, or being not as well prepared for reentry due to less effective programming.

- For offenders on community supervision, treatment resources are equally scarce. In 2005, 50 percent of probationers on direct supervision were on probation for drug or alcohol offenses. TDCJ records indicate that drugs or alcohol played a role in the offenses of 69 percent of probationers. However, of the 187,054 offenders whose alcohol and/or substance abuse played a role in their crime, only 17,204 (9 percent) received residential substance abuse treatment, and only 30,605 (16 percent) received outpatient treatment.

- The success of rehabilitation programs is likely to be affected by resource shortages. For example, the poor recidivism outcomes for SAFPs in previous years, which the Policy Council attributed to the limited use of intermediate sanctions and a high percentage of technical violations, could relate as much to resource shortages as it does to the decision-making approaches by judges and CSCDs.[14] With proper resources, SAFPs could benefit from a policy oriented to treating relapses rather than revoking probation at the initial violation. In this regard, funding for progressive sanctions and community-based programs, and the assurance of continuity for those programs would help not just to keep offenders from going to prison but also from returning to prison.

The majority of offenders have drug or alcohol abuse histories, yet very few receive treatment.

- Resource shortages also affect TDCJ's ability to determine whether or not programs are successful. For example, the last evaluation of TDCJ's rehabilitation tier programs occurred in 2003. Since the abolishment of the Policy Council, no one has evaluated the impact of TDCJ programs on offender recidivism. Furthermore, several of these programs changed significantly in response to budget cuts in 2003. To date, TDCJ does not know how these cuts may have affected program performance. Without the resources to evaluate programs, the State cannot ensure that the programs are effective.

Building prisons without investing in treatment programs is not the most cost-effective or sustainable solution to prison population growth.

- For the last several years, Texas has faced a particularly tight fiscal climate. In 2003, budgets of most state agencies, including TDCJ, were significantly reduced to meet the statewide budget shortfall. Entering the next Legislative session, the Governor's Office and the Legislative Budget Board have requested that agencies submit their proposed budgets including a 10 percent cut from current spending levels. Given this fiscal climate, TDCJ may not receive the appropriations necessary to build enough beds to satisfy capacity needs.

Building additional capacity will also result in significant long-term costs.

- While building additional capacity will allow TDCJ to limit crowding on a temporary basis, it will also result in significant long-term costs for Texas. Texas prisons require millions in annual funding to support staff and maintenance. TDCJ's 2008 – 2009 Legislative Appropriations Request (LAR) includes requests for $440.6 million to construct three new prisons

to house approximately 5,080 offenders, to meet capacity demands. This construction would also require approximately $711.5 million in debt service payments over the 20 years following construction. In addition, the operation and staffing of three new prisons would cost the State approximately $72 million annually.

Prison construction may temporarily relieve crowding, but does not address the causes of population growth.

- Recruiting, hiring, and retaining enough employees to run several new prisons will be difficult for TDCJ. Currently, TDCJ faces significant staffing shortages at many prisons. In July 2006, the TDCJ officer shortage was 2,746 officers, down from a high of 3,406 in October 2001. TDCJ's LAR anticipates that the State would operate two of the three new prisons and contract with a private vendor for the third. If the State runs two of the three new prisons, it will have to hire an additional 1,050 employees. Since TDCJ cannot fill existing vacancies, the agency would likely have difficulty filling newly created positions.
- Construction only acts as a temporary solution and does not address the causes of the capacity crisis. Adding beds will allow TDCJ to moderate the current capacity situation, but will not help the State to address the causes of increased capacity needs. Without addressing population growth drivers such as recidivism, the State's investment will do little to ensure that a similar crisis will not occur again in the future.

Additional construction does not create incentives to address the causes of increasing capacity; instead it may encourage prison population growth. If the State continues to add beds, history shows that those beds will quickly be filled. As the prison construction boom of the 1990s demonstrated, as soon as prison beds exist, they are filled.

Recommendations

Change in Appropriations

1.1 The Sunset Commission should recommend that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.

This recommendation would express the will of the Sunset Commission that the Legislature appropriate additional funding, as described below, for treatment and rehabilitation programs for offenders on probation, in prison, and on parole. By targeting risk factors for recidivism, these programs could reduce the number of incoming offenders and potentially lessen the need to build new prisons, promote public safety, and encourage offenders to become productive members of society. The recommendation is not intended to be a comprehensive assessment of overall need for offender treatment and diversion programs in the criminal justice system.

Based largely on needs identified by TDCJ in its 2008-2009 LAR, the recommendation is intended to promote discussion about the State's approach to incarceration as it again reaches the crossroads of the supply and demand of prison beds. The recommendation does not address the overall need for capacity,

which TDCJ has identified and should pursue on its own. However, no meaningful evaluation of the State's criminal justice agency can occur without giving some consideration to its role in preventing offenders' return to prison and ultimately preparing them for life outside of prison. The following provides some detail on the various program categories and suggested funding.

In-Prison Treatment: $62.9 million (construction); $8.4 million (treatment)

This funding would provide $2.4 million annually to support using 200 existing beds for the IPTC program. The IPTC is a six-month program that provides intensive substance abuse and reentry services for parole eligible offenders. Offenders who complete IPTC and are released from prison participate in 15 months of community-based after-care treatment. Based on rates of program completion in 2005, approximately 1.9 offenders completed programming per IPTC bed. With 200 extra beds, an additional 380 offenders might complete the IPTC program annually. By accommodating an additional 380 offenders in this program each year, TDCJ could potentially experience a reduction in the number of offenders reincarcerated from 86 to 19, based on past recidivism studies. The cost avoided by not having to incarcerate the larger number of offenders could be approximately $978,200 annually.

This recommendation would also provide $62.9 million to construct a 1,000 bed medium security facility, with 500 beds designated for offenders with Driving While Intoxicated (DWI) convictions. The treatment cost for these beds would be $6 million annually. A facility of this size would cost approximately $11 million per year in staffing and operating expenses; however, TDCJ anticipates using appropriations designated for temporary capacity beds to fund this expenditure. While this provision would add capacity to TDCJ, it would also expand treatment for offenders with DWI convictions, which would be expected to reduce recidivism rates along the same lines as for IPTC. Expanded treatment for DWI offenders would also increase the likelihood of parole for low-risk offenders, resulting in shorter sentences for these offenders. While TDCJ's specific approach to DWI programming is currently unknown, the DWI program could be structured similar to an IPTC. Assuming TDCJ created a six-month program, and completion rates were similar to the IPTC as noted above, 950 offenders could complete programming annually. The number of reincarcerations could potentially decline from 214 to 48, resulting in 166 fewer offenders in prison. The cost avoided by not incarcerating 166 offenders could be approximately $2.4 million annually.

Parole and Probation Treatment: $31.5 million

This funding would provide an additional $24.8 million annually to support probation services. Specifically, $5.6 million would provide 250 additional residential treatment beds for inpatient substance abuse and mental health services. Another $10 million in funding would go to basic supervision, for reducing probation officer caseloads. This funding would also provide $9.2 million for outpatient substance abuse treatment through contracted community-based providers. This recommendation would increase the total funding for CSCDs above the amount appropriated in 2005 to encourage departments to continue to implement progressive sanctions models, which have been shown to reduce the number of probation revocations. Funding provided to CSCDs in fiscal year 2005 has thus far resulted in 1,016 fewer probation revocations than during the same time period in the previous fiscal year. With 1,016 fewer offenders in prison, the State benefits from approximately $14.8 million in annual cost avoidance.

This recommendation also includes an additional $6.7 million to increase SAFP capacity by 250 beds. Based on the number of SAFP beds and the total number of SAFP completers in 2005, TDCJ could expect approximately 1.5 offenders to complete the program per year, per bed. An additional 250 beds would enable approximately 375 more offenders to complete SAFP annually. Assuming the most recent recidivism rates for SAFP, the addition of 250 SAFP beds could result in 93 fewer reincarcerations, with a possible avoided cost of incarceration of $1.4 million.

Pre-Trial Diversion: $5 million

This recommendation would provide $5 million for additional pre-trial diversion treatment, allowing TDCJ to contract with various community-based providers to deliver treatment services to mentally ill offenders awaiting trial. Following arrest, offenders receive mental health screenings through the county jail intake process. If services are in place, mentally ill offenders could be released after intake instead of being incarcerated pending trial. TDCJ estimates that this funding would serve 1,500 offenders. Since this funding provides pre-trial treatment, and sentencing occurs at the presiding judge's discretion, TDCJ has had difficulty determining how many of these offenders might be diverted from prison or state jail. However, similar probation programs have reduced reincarceration rates, indicating the success of this type of initiative in treating, stabilizing, and lowering recidivism for mentally ill offenders.

Literacy Education: $6 million

This funding would provide $6 million for additional literacy education programming in TDCJ prisons. Additional funding would be appropriated through TEA and the Windham School District. This money would allow Windham to provide literacy education to an additional 7,670 high-risk offenders annually, who are likely to experience the largest reduction in recidivism. Windham can provide literacy education to these offenders without adding to classroom capacity. According to the most recent data available, re-incarceration rates for these offenders could potentially drop from 30 percent to 19 percent, resulting in 844 fewer offenders in prison and $12.3 million in annual cost avoidance.

Management Action

1.2 TDCJ should conduct routine program evaluations of all rehabilitation programs designed to reduce reincarcerations and revocations, and report the findings to the Legislature.

Under this recommendation TDCJ should perform routine program evaluations of all its rehabilitation programs to ensure that these programs reduce offender re-incarcerations and revocations. TDCJ should coordinate its evaluative efforts with the legislative oversight committee recommended in Issue 2 to evaluate the effectiveness of correctional programs, if such a body is established. However, TDCJ would still be responsible for conducting its own evaluation. While not intended to be a statistically validated study, TDCJ should be able to calculate the number of persons returned to prison or revoked based on assumptions that it must identify, such as the population being evaluated, the length of time under evaluation, and any other factors TDCJ deems necessary.

All evaluation findings should be presented to the Legislature in support of additional legislative appropriations requests. These findings would provide better information on which to make budget decisions.

Fiscal Implication

These recommendations would result in a cost to the State of $107.8 million in 2008, and continuing program costs of approximately $50.9 million in the following years. Additional program capacity would reduce recidivism and could potentially result in an estimated 2,186 fewer annual incarcerations. Fewer incarcerations could generate approximately $31.9 million in annual cost avoidance for the State, once all programs are operational. TDCJ will require one to two years to expand and reconfigure programs, indicating that any savings to the State would likely not be realized until fiscal year 2010. Fewer prisoners would alleviate some of TDCJ's capacity pressures, and could save the State the cost of building a medium-sized prison, or at least delay the need for building such a prison. TDCJ currently gathers and reviews statistics on offender program completions, releases, and reincarcerations. TDCJ should use existing resources to meet administrative or other costs that result from on-going program

evaluations. The fiscal impact of these recommendations would not be reflected in the fiscal note for the TDCJ Sunset bill. Instead, if the Legislature adopts these recommendations, their fiscal impact will ultimately be reflected in TDCJ's bill pattern in the appropriations bill passed by the Legislature in 2007.

Fiscal Year	*Cost to the General Revenue Fund (million)*	*Potential Cost Avoidance (million)*	*Potential Total Cost to the State (million)*	*Potential Diversion of Offenders*
2008	$107.8	$0	$107.8	0
2009	$50.9	$0	$50.9	0
2010	$50.9	$31.9	$19.0	2,186
2011	$50.9	$31.9	$19.0	2,186
2012	$50.9	$31.9	$19.0	2,186

[1] The Legislative Budget Board, *Adult and Juvenile Correctional Population Predictions, Fiscal Years 2006-2011* (Austin, Texas, June 2006).

[2] Watson et. al, "A Portrait of Prisoner Reentry in Texas", *Urban Institut*e (Washington, DC, March 2004), p. 3.

[3] Ibid.

[4] Joan Petersilia, "What Works in Prisoner Reentry? Reviewing and Questioning the Evidence," *Federal Probation,* vol. 68, no. 2, pp. 4-8; and Edward Latessa, "From Theory to Practice," *State of Crime and Justice in Ohio* (2004), pp. 170-171.

[5] Criminal Justice Policy Council, *The Second Biennial Report on the Performance of the Texas Department of Criminal Justice Rehabilitation Tier Programs* (Austin, Texas, February 2003), pp. 16-17.

[6] Ibid., p. 11.

[7] Criminal Justice Policy Council, *Impact of Educational Achievement of Inmates in the Windham School District on Recidivism* (Austin, Texas, August 2000).

[8] Texas Department of Criminal Justice, Community Justice Assistance Division, Research and Evaluation, *Outcome Evaluation of the Treatment Alternatives to Incarceration Program* (Austin, Texas, September 2004), p. 10.

[9] Criminal Justice Policy Council, *Recidivism Rates and Issues Related to TDCJ Substance Abuse Treatment Programs* (Austin, Texas, March 13, 2002).

[10] Texas Department of Criminal Justice, Community Justice Assistance Division, Research and Evaluation, *Outcome Evaluation of Mental Health Initiative* (Austin, Texas, May 2005), p. 11.

[11] Texas Code of Criminal Procedure, sec. 17.032.

[12] The Legislative Budget Board, *Current Correctional Population Indicators, Criminal Justice Uniform Cost Report Tables* (Austin, Texas, 2005).

[13] Residential substance abuse treatment through ISFs, and follow-up community-based treatment, began in fiscal year 2006. Costs listed in the chart, *TDCJ Rehabilitation Programs as a Percentage of Total Budget,* are estimates.

[14] Criminal Justice Policy Council, *The Second Biennial Report on the Performance of the Texas Department of Criminal Justice Rehabilitation Tier Programs,* pp. 16-17.

Issue 2

Lawmakers Do Not Have the Information Necessary to Effectively Manage the State's Criminal Justice System and Plan for Its Future.

Summary

Key Recommendation

- Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.

Key Findings

- The Texas criminal justice system is expansive, expensive, and facing significant challenges.
- Currently, no entity exists to provide comprehensive and ongoing analysis of the criminal justice system to determine its effectiveness and help plan for its future.
- The individual criminal justice agencies cannot effectively evaluate the entire criminal justice system on their own.
- The State uses legislative oversight committees to monitor, analyze, and report on other statewide systems to help guide policymaking.

Conclusion

Faced with growing prison capacity concerns and given the size and complexity of the State's criminal justice system, lawmakers need access to independent, objective information and analysis to help determine and prioritize the long-range needs of the state criminal justice system.[1] The State needs this information to know if the criminal justice system is operating efficiently, and more importantly, effectively. Without this information, lawmakers cannot make informed decisions on criminal justice policies and effectively plan for the future of the State's criminal justice system.

Support

The Texas criminal justice system is expansive, expensive, and facing significant challenges.

- The State spends more than $8.5 billion each year, 6.2 percent of all state appropriations, to provide public safety and criminal justice services in Texas. Ten state agencies and commissions administer adult and juvenile criminal justice and law enforcement programs to provide public safety and criminal justice services in Texas.[2]

- The Texas Department of Criminal Justice (TDCJ) is the largest of these 10 state agencies and commissions. TDCJ's biennial $5.1 billion budget alone makes up 4 percent of the state budget and accounts for 7 percent of the State's $69.7 billion General Revenue and General Revenue-Dedicated funds.[3] TDCJ incarcerates about 153,000 offenders, supervises about 76,000 offenders on parole supervision, and provides funding and support for approximately 430,000 offenders on probation in Texas.

The State will soon be facing a prison capacity crisis and have to decide whether or not to increase capacity.

- Texas has the largest prison population in the United States and its offender population is currently exceeding the State's prison capacity.[4] According to the Legislative Budget Board (LBB), the adult incarceration population is projected to increase significantly in the next several years, surpassing the State's prison capacity by almost 10,000 offenders by 2010.[5] To help manage this population increase, TDCJ currently contracts with counties for 1,818 temporary beds, and a considerable portion of TDCJ's 2008-2009 Legislative Appropriations Request includes funding to build two additional prison units and one additional treatment facility, and several hundred additional treatment beds.[6]

  When previously faced with prison capacity pressures, the State has increased TDCJ's capacity. Between 1980 and 2002, the State increased TDCJ's total capacity by 127,000 beds to meet population growth and federal overcrowding requirements at a cost of $2.3 billion. Based on recent estimates, the State will soon be facing a prison overcrowding crisis and have to decide whether to simply increase capacity again, or look for other ways to address the growing offender population.

Currently, no entity exists to provide comprehensive and ongoing analysis of the criminal justice system to determine its effectiveness and help plan for its future.

- Before 2003, the Criminal Justice Policy Council (Policy Council) was responsible for providing overall evaluation of policies affecting the State's criminal justice system. The Legislature created the Policy Council in 1983 as an independent agency to identify and analyze criminal justice problems and advise the Governor and the Legislature in developing strategies to solve those problems.

The Policy Council generated thorough research, planning, and evaluation the information necessary to develop and monitor policies for improving the effectiveness of the state criminal justice system. The Legislature also gave the Policy Council several additional responsibilities listed in the textbox, *Policy Council Statutory Duties*. However, in 2003, the Policy Council ceased to operate when, pursuant to a veto resolution, the Governor vetoed its appropriation.

Policy Council Statutory Duties[7]

- Conduct an in-depth analysis of the criminal justice system
- Determine long-range needs of the criminal justice system and recommend policy priorities for the system
- Identify critical problems in the criminal justice system and recommend strategies to solve those problems
- Assess the cost-effectiveness of the use of state and local funds in the criminal justice system
- Recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice system
- Advise and assist the legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system
- Evaluate the rehabilitative capabilities of a state-administered sex offender treatment program and, based on that evaluation, determine if the program is necessary
- Make computations of daily costs and compare interagency costs on services provided by agencies that are a part of the criminal justice system
- Make population computations for use in planning for the long-range needs of the criminal justice system
- Determine long-range information needs of the criminal justice system and acquire that information
- Cooperate with the Crime Victims' Institute by providing information and assistance to the institute

- In March 2004, LBB established the Criminal Justice Data Analysis Team to take over some of the Policy Council's tracking and reporting duties. LBB's Criminal Justice Data Analysis Team helps monitor Texas' adult and juvenile correctional populations, as shown in the textbox, *Criminal Justice Data Analysis Team Core Functions*. The team also conducts interim research projects based on significant legislative actions that may affect correctional populations. However, LBB did not take over the Policy Council's evaluative duties and therefore does not provide analysis of the criminal justice system as a whole or make recommendations on how to improve the system.

Criminal Justice Data Analysis Team Core Functions

- Project adult and juvenile correctional populations
- Perform fiscal and criminal justice impact analysis of proposed legislation
- Calculate recidivism rates for adult and juvenile correctional populations
- Calculate cost-per-day information for criminal justice populations

- Without the Policy Council, most oversight, analysis, and policy development related to the criminal justice system has become the responsibility of the Senate Criminal Justice Committee and the House Corrections Committee, as well the Senate Finance and House Appropriations Committees. These committees have authority over the individual criminal justice agencies and therefore must use the information provided by each of the agencies to try

and develop an overall picture of the criminal justice system. However, having four different committees evaluating information coming from several different criminal justice agencies does not provide consistent, comprehensive information on which to base future criminal justice policy decisions.

In addition, these committees do not have the staff, resources, or expertise necessary to research and analyze the effectiveness of the entire state criminal justice system. As a result, they end up developing plans, programs, and proposed legislation affecting policy and funding for this vast system largely without information showing what works and what does not. When the prison system was not at capacity, this lack of information was not so critical. At the crossroads of the looming prison capacity situation, however, this lack of information about what works in the criminal justice system can affect efforts to develop and implement diversion and treatment programs for offenders that may reduce the need for new prisons.

Information on the effectiveness of criminal justice programs and their impact on recidivism is no longer being collected or reported.

The individual criminal justice agencies cannot effectively evaluate the entire criminal justice system on their own.

- Individual criminal justice agencies cannot provide independent, objective analysis of the criminal justice system. Generally, research and analysis needs to be performed by an entity that does not have a stake in the results of the research. State criminal justice agencies, including TDCJ, have an inherent conflict of interest in presenting evaluative information about the criminal justice system. As a result, information provided by the agencies responsible for implementing the State's criminal justice policies and programs does not have the same credibility as an independent entity that can maintain impartiality. Having an independent entity evaluate the performance of the criminal justice system, including the implementation of criminal justice programs and policies ensures the needed objectivity in this process.

- Information necessary to determine the effectiveness of individual agencies' criminal justice programs no longer exits. Criminal justice agencies are responsible for implementing programs designed to help educate and rehabilitate offenders with the overall goal of helping them successfully reintegrate into society and ultimately reduce recidivism. However, tracking the performance and impact of these programs was the responsibility of the Policy Council, not the agencies administering the programs. Without the Policy Council, information on these programs' effectiveness and impact on recidivism is no longer being collected or reported. As a result, the agencies, lawmakers, and others do not have the information necessary to determine if the programs and the funds spent on them are cost effective.

  For example, although TDCJ implements several rehabilitation and reentry programs, the agency doesn't track the information necessary to determine which of these programs are actually meeting their intended purpose of helping reduce recidivism. Because it recognized the Policy Council's responsibility to track program effectiveness and the pitfalls of objectively

assessing the success of its own programs, TDCJ has not historically had the staff resources or expertise necessary to perform this type of analysis. Therefore, the last evaluation of TDCJ's rehabilitation and reentry programs occurred in 2003.[8] Additionally, the Windham School District, which provides educational services to incarcerated offenders, does not evaluate whether its services have an effect on recidivism or successful reentry.

- The collection of accurate information within the criminal justice system is an essential function for state government. However, separate state and local criminal agencies maintain and submit information without any overall coordination. Although these individual agencies collect and report information about the offender populations they serve, no single entity or organization exits to coordinate this information and analyze it to present a picture of the system overall. Without this information, legislators and others don't have a clear idea what issues are affecting the State's criminal justice system, or how to address them.

The State uses legislative oversight committees to monitor, analyze, and report on other statewide systems to help guide policymaking.

- Legislative oversight committees help monitor, investigate, and review specific government functions and activities to help the Legislature determine if the laws related to these areas are being carried out as intended, or if any changes need to be made to improve their effectiveness. Additionally, legislative oversight committees help identify any problems related to their specified areas of oversight. Based on their research and evaluation, these committees often make recommendations for legislative action to improve the functions and activities.

- The Legislature has established several legislative oversight committees for these purposes. For example, the Legislative Oversight Committee on Workers' Compensation (1989-1995) was created to review the workers' compensation system to seek improvement. Using research and professional studies from the Texas Workers' Compensation Research Center, the Committee issued a statutorily required annual report that identified problems in the Texas Workers' Compensation system and recommended solutions; provided a status report on the effectiveness of the system; and made recommendations for legislative action. In 1995, the Committee and the Research Center were merged to create the Texas Research and Oversight Council on Workers' Compensation which became the Workers' Compensation Research Group in 2003.

  The Legislative Oversight Committee on Higher Education monitored and regularly reported to the Legislature on each higher education institution's compliance with tuition deregulation, and made recommendations for legislative action necessary to meet tuition deregulation and to improve higher education affordability and access.

Although individual agencies collect and report criminal justice information, no entity exists to analyze the information and present an overall picture of the system.

Recommendation

Change in Statute

2.1 Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.

This recommendation would create a Criminal Justice Legislative Oversight Committee. The Committee would consist of six members as follows:

- the Chair of the Senate Committee on Criminal Justice;
- the Chair of the House Committee on Corrections;
- two members of the Senate appointed by the Lieutenant Governor; and
- two members of the House of Representatives appointed by the Speaker of the House of Representatives.

The Lieutenant Governor and the Speaker of the House of Representatives should give first consideration to members of the Senate Finance Committee and the House Appropriations Committee when making the appointments. The Lieutenant Governor and the Speaker would appoint the presiding officer of the Committee on an alternating basis. The presiding officer would serve a two-year term, expiring February 1 of each odd-numbered year.

The Committee would be charged to:

- conduct an in-depth analysis of the criminal justice system;
- assess the cost-effectiveness of the use of state and local funds in the criminal justice system;
- identify critical problems in the criminal justice system and recommend strategies to solve those problems;
- determine long-range needs of the criminal justice system and recommend policy priorities for the system; and
- advise and assist the Legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the criminal justice system.

The Committee would not be responsible for the tracking and reporting functions that LBB previously assumed from the Policy Council, including prison population and cost projections. Instead, the Committee would be focused on providing more broad-based oversight of the criminal justice system, analyzing the system through statistical analysis and research to identify whether or not the system is working. The Committee would not oversee the actual inner workings of a prison and therefore would not perform inspections or on-site monitoring like other oversight approaches. Instead, the Committee's purpose would be to provide statistical research, analysis, and reporting necessary to know whether or not the system is effectively providing public safety, promoting positive change in offender behavior, and helping to successfully reintegrate offenders into society.

The Committee would be able to hire its own staff, but would also be authorized to contract with universities or other entities to carry out its duties. Allowing the Committee to contract out for these services would ensure that it would not have to develop the expertise necessary to perform these functions. However the Committee, with its legislative membership, would be the entity best suited to

advise the Legislature in developing plans, programs, and legislation to improve the overall effectiveness of the State's criminal justice system.

Fiscal Implication

The fiscal impact of this recommendation would depend on how the Committee structures its staff support, which will most likely be a combination of in-house staff and contracts for outside expertise. The budget of the Criminal Justice Policy Council, when it was functional, was $1,250,000 annually. The actual cost of re-creating this function would be determined through the legislative appropriations process.

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[1] Legislative Budget Board, *Adult and Juvenile Correctional Population Projections Fiscal Years 2006-2011* (Austin, Texas, June 2006), p. 3.

[2] Adjutant General's Department, the Alcoholic Beverage Commission, the Department of Criminal Justice, the Commission on Fire Protection, the Commission on Jail Standards, the Juvenile Probation Commission, the Commission on Law Enforcement Officer Standards and Education, the Texas Military Facilities Commission, the Department of Public Safety, and the Youth Commission.

[3] The 2006-2007 State biennial budget totals $138.2 billion. Legislative Budget Board, *Fiscal Size Up 2006-2007 Biennium* (Austin, Texas, December 2005), p.1.

[4] Bureau of Justice Statistics Bulletin, *Prison and Jail Inmates at Midyear 2005,* by Paige M. Harrison and Allen J. Beck, Ph.D., (May 2006). (Note: The Bureau of Justice population count includes certain parolees and convicted offenders and parolees in county jails.)

[5] Legislative Budget Board, *Adult and Juvenile Correctional Population Projections Fiscal Years 2006-2011* (June 2006), p. 3.

[6] Texas Department of Criminal Justice, *Fiscal Years 2008-2009 Legislative Appropriations Request* (Austin, Texas, August 2006), pp. iii-iv.

[7] Texas Government Code, sec. 413.009.

[8] Criminal Justice Policy Council, *The Second Biennial Report on the Performance of the Texas Department of Criminal Justice Rehabilitation Tier Programs,* (Austin, Texas, February 2003).

Issue 3

The Board of Pardons and Paroles Has Not Adequately Updated and Used Required Parole Guidelines to Help Ensure the Most Consistent, Appropriate Release Decisions.

Summary

Key Recommendations

- Require the Board of Pardons and Paroles to annually report and explain to the Legislature its efforts to meet the parole guidelines.
- Require the Board of Pardons and Paroles to annually review and update the parole guidelines.
- Require parole panel members who depart from the guidelines to provide specific reasons explaining the deviation.

Key Findings

- The Legislature required the Board of Pardons and Paroles to develop parole guidelines to provide objective criteria to help determine whether to grant or deny parole.
- Parole panels continue to deviate from the parole guidelines, despite repeated documentation of noncompliance.
- By not using the guidelines, parole panels do not take advantage of the best tool for deciding the most appropriate parole candidates for release.

Conclusion

In 1987, the Legislature required the Board of Pardons and Paroles (the Parole Board) to develop and implement parole guidelines to provide objective criteria to assist in decision making, and help make parole decisions more consistent. Despite numerous reports citing the Parole Board's lack of adherence to the guidelines, parole panels continue to deviate from the established guidelines. Parole approval rates show a significant departure from the adopted parole probability rates, further demonstrating the parole panels' reluctance to use this tool as it was intended by the Legislature.

Sunset staff evaluated the Parole Board's use of the parole guidelines, and found inconsistent approval rates among parole panels for comparable guideline scores. In addition, staff found that the Parole Board has not complied with the adopted parole approval rates since the inception of the guidelines. Periodic evaluation and reporting, along with consistent use of clear, objective decision-making criteria would provide greater uniformity and fairness in parole decisions, increase legislative accountability, and enhance the public's confidence in the parole process.

Support

The Legislature required the Board of Pardons and Paroles to develop parole guidelines to provide objective criteria to help determine whether to grant or deny parole.

The Legislature required the Parole Board to develop and implement parole guidelines as the basic criteria for making parole decisions.

- In Texas, the Board of Pardons and Paroles decides whether to approve or deny early release for offenders from prison on parole or mandatory supervision when they have served the required portion of their sentence. The Legislature required the Parole Board to use parole guidelines in 1987 as the basic criteria for making parole decisions.[1] Six years later, concerned that parole decision makers were not using the guidelines as directed, the Legislature required them to provide a brief explanation in the parole file when they deviated from the guidelines. That same year, the Legislature directed the Criminal Justice Policy Council (Policy Council) to monitor the Parole Board's use of the guidelines.

- Six parole panels, each composed of one Parole Board member and two parole commissioners, make parole determinations for offenders incarcerated in Texas.[2] The panels do not meet to make these decisions – instead, using the guidelines, panel members perform a desk review of the parole file, record their vote, and forward the file to the next panel member. In fiscal year 2005, parole panels reviewed 71,207 offender files, and approved 19,582 offenders for parole.[3]

- Revised and adopted by the Parole Board in 2001, the guidelines provide a score based on risk factors and the severity of the offense. The risk factors help predict the offenders' likelihood of successfully completing parole and not returning to prison.[4] Each offender undergoes a risk assessment based on several factors, such as age at first commitment, prior revocations, or disciplinary history. An offender can be assigned points relating to these factors, and the higher the score, the greater likelihood the offender presents for a successful parole.

  For offense severity, the Parole Board has assigned a rating to each felony offense, and an offender's most serious active offense is assigned a severity rating according to the established list. For example, capital murder is considered a highest severity offense, while forgery is considered a low severity offense. Offense severity ratings are static, and cannot be changed or reduced.

  The two components of the parole guidelines are merged into a matrix that creates the offender's parole guideline score, illustrated in the table, *Risk / Offense Severity Matrix*. Offenders with low scores have severe offenses and pose a high risk of a poor parole outcome, while offenders with high scores have less severe offenses and indicate a lower risk for a poor parole outcome.

Risk / Offense Severity Matrix

Offense Severity Class	Risk Level: Highest	High	Moderate	Low
Highest	1 (0% – 5%)	2 (6% – 15%)	2 (6% – 15%)	3 (16% – 25%)
High	2 (6% – 15%)	3 (16% – 25%)	4 (26% – 35%)	4 (26% – 35%)
Moderate	2 (6% – 15%)	4 (26% – 35%)	5 (36% – 50%)	6 (51% – 75%)
Low	3 (16% – 25%)	4 (26% – 35%)	6 (51% – 75%)	7 (76% – 100%)

Statute requires panel members who deviate from the guidelines to provide a brief explanation for the departure.

- Although guideline scores are not intended to produce a strict recommendation for or against parole, the matrix developed by the Parole Board provides a range of probable approval rates for each score.[5] For example, offenders classified as low-risk with low offense severity have the highest probability (76 to 100 percent) of being granted parole. Conversely, offenders classified as highest-risk with highest offense severity have the lowest probability (0 to 5 percent) of parole approval. This structure permits panels to have discretion in each case, but also establishes cumulative benchmarks for making parole decisions that can be monitored to determine if the panels are following their own guidelines.[6]

- To ensure discretion, the guidelines allow panel members to deviate from the expected approval rates. However, if a panel member deviates from the guidelines, statute requires the member to write a statement describing the circumstances of the departure from the guidelines.[7] With this provision, the Legislature sought to allow parole panels to retain discretion in unique circumstances, while providing a mechanism to encourage the Parole Board to comply with its own guidelines.

Parole panels continue to deviate from the parole guidelines, despite repeated documentation of noncompliance.

Parole panels do not meet more than half of the guideline approval rates.

- Despite legislative mandates to develop and apply parole guidelines, the Parole Board continues to depart from established parole guidelines. For example, as early as 1996, the Policy Council reported that the Parole Board was not fully and consistently using the parole guidelines as intended.[8] Eight years later, after updating the guidelines to unify consideration of risk and offense severity, the Senate Criminal Justice committee noted approval rates continued to fall outside the adopted approval ranges.[9] A full history of the Parole Board's indifference to the guidelines is described in the textbox, *History of Texas Parole Guidelines*.

- Despite the fact that the Parole Board adopted the proposed approval rates in 2001, parole panels are still not meeting the approval rates for more than half of the guideline levels, specifically for offenders at the lowest risk and offense

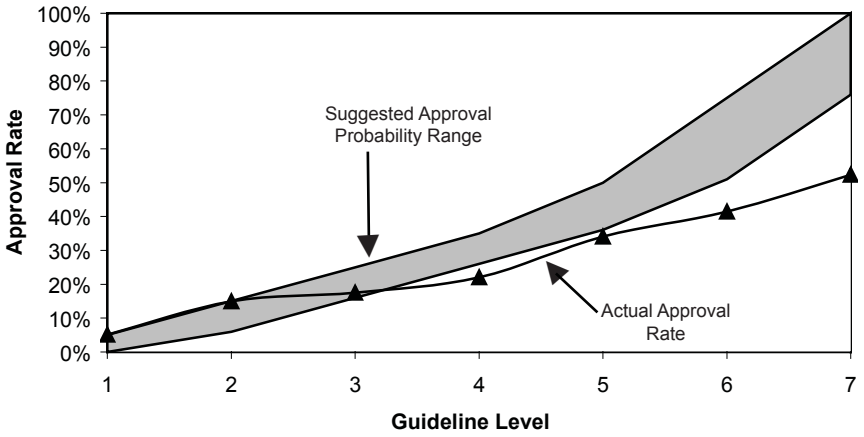
History of Texas Parole Guidelines

1987	The Legislature required the Parole Board to develop and implement parole guidelines, and the Parole Board formally adopted parole guidelines to assist in decision making.
1993	The Legislature directed the Policy Council to monitor the use of the guidelines, and required the Parole Board to provide a written explanation for deviations from the guidelines.
1994	The Policy Council could not report on the use of the guidelines due to lack of Parole Board data for analysis.
1996	The Policy Council reported that the Parole Board was not fully and consistently using the parole guidelines to assist them in their parole decisions as mandated by law.
1997	The Policy Council reported that the Parole Board had not updated the guidelines, and had not submitted a report to the leadership identifying strategies, timelines, and resources needed to update and implement the guidelines.
1998	A National Institute of Corrections assessment recommended a fundamental reexamination and redesign of the guidelines.
1999	Security Response Technologies completed the new parole guidelines, incorporating offense severity and risk into one scoring instrument.
2001	The Parole Board adopted the new parole guidelines.
2003	The Policy Council reported that parole panel approval rates for certain guideline levels were below the rates suggested in the guidelines.
2004	The Senate Committee on Criminal Justice reported that the parole panels were not following the approval probability rates for certain guideline levels.

severity levels, as shown in the chart, *Parole Approval Rates by Guideline Level*.[10] In fact, the Parole Board has not complied with the recommended approval rates since the inception of the guidelines in 2001.[11]

Parole panel approval rates vary greatly by region of the state.

Parole Approval Rates by Guideline Level
FY 2005



- Though the guidelines provide the basis for consistent scoring, regional parole panels continue to apply the same scores very differently. The table, *Average Approval Rates by Region*, shows the inconsistent approval rates for highest-risk, highest offense severity offenders with a score of one, as well as

low-risk, low offense severity offenders with a score of seven, among the six parole panels. For example, the San Antonio parole panel approved parole for almost 15 percent of offenders with a guideline score of one, while the Palestine parole panel approved less than 1 percent of offenders with the same parole guideline score.

Average Approval Rates by Region[12]
FY 2005

Parole Panel	Average Approval Rate for Guideline Score of 1	Average Approval Rate for Guideline Score of 7
Amarillo	8.02%	42.96%
Angleton	4.53%	54.47%
Gatesville	4.52%	38.29%
Huntsville	2.93%	45.71%
Palestine	0.45%	57.58%
San Antonio	14.79%	53.14%

- The Parole Board has continued to deviate from the guidelines even as processes have been implemented to improve their reliability. A 2003 report by the Policy Council noted problems with data coding of guideline information, specifically the discrepancies in offense coding between TDCJ and the Department of Public Safety (DPS), and coding input errors by institutional parole officers.[13] The Parole Board has since addressed these problems, minimizing errors by ensuring consistent offense coding between TDCJ and DPS and providing frequent training to institutional parole officers on the parole guidelines.

- Despite a statutory requirement to periodically review the guidelines, the Parole Board merely updates the offense severity ranking, and has not changed or updated the criteria contained in the guidelines since they were initially adopted in 2001. While the Parole Board's Parole Guidelines Committee reviews current offense severity rankings and ranks new offenses on an ongoing basis, no similar effort evaluates how the guidelines will work overall to assist in making preliminary offender assessments, and if any changes should be made.

  In 2003, the Policy Council noted the deviation between guideline approval probability and actual approval rates, and recommended the Parole Board periodically review and update the risk factors based on recidivism studies.[14] Specifically, the Policy Council noted the need for further study regarding participation in TDCJ rehabilitation programs. The Policy Council also noted the need to consider other factors such as the amount of sentence served, time spent on parole, and how to address an offender returning to prison for a technical violation as opposed to a new offense. Without periodic review of these guidelines, the Legislature is unable to monitor their use and effectiveness.

Without periodic review, the Legislature is unable to evaluate the use and effectiveness of the guidelines.

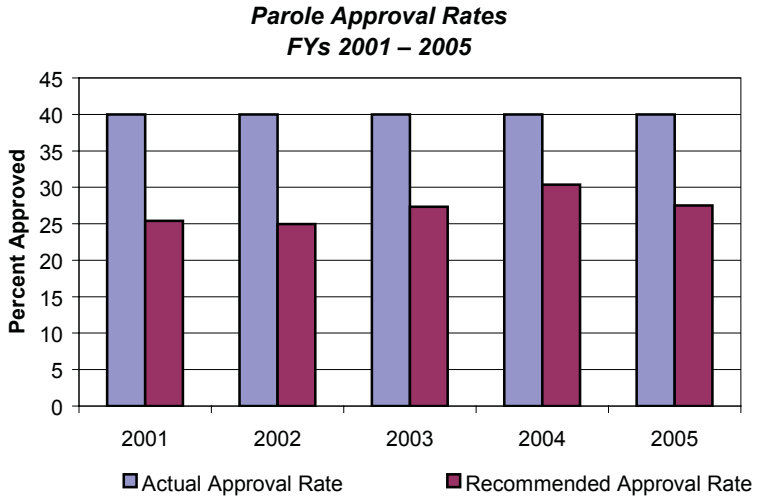
- When parole panels deviate from the guidelines, they typically use the same standard explanations for denying parole, which do not relate to the guidelines and thus do not explain the departure from the expected parole probability rate. For example, one denial reason relates to the nature of the offense and the use of a weapon – though this explains the decision to deny parole, it does not explain why the panel member deviated from the guidelines. Though the Parole Board may issue a narrative to fully explain parole denial or deviation from the guidelines, this rarely occurs.

By not using the guidelines, parole panels do not take advantage of the best tool for deciding the most appropriate parole candidates for release.

- The Policy Council and the Senate Criminal Justice Committee noted that parole guidelines would enable parole panels to readily and more quickly evaluate cases according to risk level and avoid releasing high-risk offenders too early or low-risk offenders too late. Effective use of the guidelines could provide parole panels more time to evaluate remaining cases where a decision might be tougher to reach.[15]

- When the Parole Board adopted the guidelines in 2001, the expectation was for overall approval rates to be about 40 percent.[16] Despite five years of experience with the guidelines, the Parole Board has never achieved the expected approval rate, as shown in the chart, *Parole Approval Rates*. For example, the overall parole approval rate for fiscal year 2005 is only 28 percent.[17] The Parole Board has shown little improvement since 2003, when the Policy Council reported the overall approval rate was 25 percent. Having the overall parole approval rate fall below the recommended benchmark indicates a reluctance by the Parole Board to use its own tool for determining the best candidates for release.[18]

The Parole Board has never achieved the expected parole approval rate of 40 percent.



- By not reflecting the guidelines, parole panel decisions may actually be skewed in favor of higher offense severity and higher-risk offenders. As the table *Parole Approvals Using Adopted Minimum Approval Rates* shows, offenders with the lowest three guidelines scores in 2005 were approved in numbers above the minimum rate indicated by the guidelines. For example, panels approved 805 more offenders with a score of two than provided by the minimum approval rate. While this number is still within the approval range established by the guidelines, that has not always been the case. In 2003 and 2004, parole panels released more high-risk, high offense severity offenders than even the maximum rate would provide.

Parole Approvals Using Adopted Minimum Approval Rates

Guideline Level	Approval Rate Minimum	Total Reviewed	Total Approved Using Minimum Rate	Actual Total Approved
1	0%	757	0	37
2	6%	9,236	554	1,359
3	16%	8,940	1,430	1,547
4	26%	22,949	5,966	5,034
5	36%	9,018	3,246	3,068
6	51%	11,705	5,969	4,847
7	75%	4,965	3,723	2,593
Total		**67,570**	**20,888**	**18,485**

Many low-risk, low offense severity offenders remain incarcerated longer than the guidelines indicate they should.

- While parole panels approve few high-risk, high offense severity offenders beyond the maximum rate, the approvals stand in contrast to the way parole panels make decisions for low-risk, low offense severity offenders. As the table shows, parole rates for these offenders have consistently fallen well below even the minimum rates that the guidelines would provide. For example, though the guidelines envision a parole approval rate of 76 to 100 percent for offenders with a guideline score of seven, in 2005, parole panels granted parole for these offenders only 52 percent of the time. As a result, many of the low-risk, low offense severity offenders do not receive parole, staying incarcerated longer than the guidelines indicate they should.

  If parole panels had adhered to the minimum approval rates for offenders with scores of six and seven, an additional 2,252 offenders would have been released. Further, when considering the minimum parole approval rates for each guideline score, parole panels could have released almost 1,000 fewer high-risk offenders with scores of one to three, and still released 2,403 more low-risk offenders than were released in 2005.

Recommendations

Change in Statute

3.1 Require the Board of Pardons and Paroles to annually report and explain to the Legislature its efforts to meet the parole guidelines.

This recommendation would require the Parole Board to report to the Lieutenant Governor, Speaker of the House, and the substantive committees of each house responsible for overseeing criminal justice, regarding its efforts to meet its own guidelines for making parole decisions. The report should provide a brief explanation of the guidelines, including how the Parole Board defines the risk factors and offense severity levels, and how it determines the probable parole approval rates for each guideline score.

The Parole Board would monitor the actual approval rates for individual parole panel members, regional offices, and the state as a whole, and compare these rates with the expected rates under the guidelines. The report would specifically highlight areas where the Parole Board's actual parole approval rates do no meet the expectations established under the guidelines, explaining these variations and detailing actions the Parole Board has taken or will take to meet the guidelines.

The recommendation would not require the Parole Board to adhere to the parole approval ranges in the guidelines, nor would it provide for penalizing parole panel members for failure to meet the guidelines. As a result, this recommendation would not impede panel discretion or affect members' ability to decide each case individually. The recommendation would, however, require the Parole Board to focus more attention on the way parole panels make parole decisions, and whether the process provides enough objectivity and consistency, as well as flexibility and accountability, to adequately protect the public.

3.2 Require the Board of Pardons and Paroles to annually review and update the parole guidelines.

Under this recommendation, the Parole Board would meet each year to perform an internal assessment in which it would review and discuss how its guidelines serve the needs of parole decision making. The assessment should focus not just on how well the guidelines reflect parole panel decisions, but also how well they predict successful parole outcomes. The Parole Board would have the authority to enlist experts, as needed, to assist with the review. Through these assessments, the Parole Board could seek to update its guidelines by including new risk factors, as well as changing the values of offense severity or risk factor scores. If actual parole approval rates significantly differ from the recommended rates in the guidelines, the Parole Board could also modify the benchmark rates. To help ensure candid internal discussion about how these guidelines can best serve the Parole Board's needs, and to improve parole decision making, the Parole Board would not be required to conduct these assessments in an open meeting. The adoption of any changes to the guidelines, however, would occur in a public meeting.

3.3 Require parole panel members who depart from the guidelines to provide specific reasons explaining the deviation.

This recommendation would require parole panel members to produce a written statement describing in detail the specific circumstances regarding departure from the guidelines. The approval and denial reasons currently used for parole determinations would not be sufficient, requiring greater specificity. The statement would be provided to the offender and placed in the parole file for future review. Providing more information regarding departure from the guidelines would increase transparency and public confidence in the parole process.

Fiscal Implication

Based on the current guidelines, these recommendations would not have a direct fiscal impact to the State. However, if the Parole Board updates the guidelines and parole panels come closer to meeting the established approval ranges for each guideline score, additional offenders could be released from prison earlier. In fiscal year 2005 for example, compliance with minimum approval rates could have released 20,888 offenders, compared to the 18,485 offenders actually released, which would have resulted in more than $32 million in costs avoided on an annual basis. In addition, in terms of prison capacity, reduction of the prison population by 2,403 offenders could help prevent the necessity to build a new prison unit, at a cost of nearly $300 million, with ongoing costs of $35 million each year.

[1] Texas Government Code, sec. 508.144.

[2] Texas Government Code, sec. 508.0458(a).

[3] Texas Board of Pardons and Paroles, *Fiscal Year 2005 Annual Report* (Austin, Texas, 2005), p. 25.

[4] Security Response Technologies, Inc., *TDCJ Board of Pardons and Paroles Final Report* (Middleton, Mass., 2001). Adopted in full by the Parole Board in September 2001.

[5] Ibid., p. 30.

[6] Criminal Justice Policy Council, *An Overview of Texas Parole Guidelines* (Austin, Texas, 2001), p. 7.

[7] Texas Government Code, sec. 508.144(b).

[8] Criminal Justice Policy Council, *Evaluation of the Use of Parole Guidelines by the Texas Board of Pardons and Paroles* (Austin, Texas, 1996), p. 15.

[9] Senate Criminal Justice Committee, *Interim Report to the 79th Legislature* (Austin, Texas, 2004), p. 42.

[10] Texas Board of Pardons and Paroles, *Fiscal Year 2005 Annual Report*, p. 29.

[11] Texas Board of Pardons and Paroles, *Fiscal Year 2002 Annual Report* (Austin, Texas, 2002), p. 50; Texas Board of Pardons and Paroles, *Fiscal Year 2003 Annual Report* (Austin, Texas, 2003), p. 36; Texas Board of Pardons and Paroles, *Fiscal Year 2004 Annual Report* (Austin, Texas, 2004), p. 27; and Texas Board of Pardons and Paroles, *Fiscal Year 2005 Annual Report*, p. 29.

[12] Texas Board of Pardons and Paroles, *Fiscal Year 2005 Annual Report*, pp. 30-33.

[13] Criminal Justice Policy Council, *Biennial Report to the Governor and the 78th Texas Legislature* (Austin, Texas, 2003), pp. 12-13.

[14] Ibid., p. 17.

[15] Criminal Justice Policy Council, *An Overview of Texas Parole Guidelines*, p. 3; and Senate Criminal Justice Committee, *Interim Report to the 79th Legislature*, p. 42.

[16] Security Response Technologies, Inc., *TDCJ Board of Pardons and Paroles Final Report*, p. 35.

[17] Texas Board of Pardons and Paroles, *Fiscal Year 2005 Annual Report*, p. 27.

[18] Security Response Technologies, Inc., *TDCJ Board of Pardons and Paroles Final Report*, p. 35.

Issue 4

Supervising Low-Risk Probationers Who Could Be Released From Probation Early Diverts Limited Resources From Probationers Needing More Intensive Supervision.

Summary

Key Recommendations

- Require CSCDs to identify and recommend offenders appropriate for early termination.
- Authorize TDCJ to adjust funding methods to minimize the loss of funds to CSCDs resulting from early termination of probationers.
- The Sunset Commission should recommend that the Legislature change its method of funding CSCDs to maintain a constant funding level even if the number of probationers declines because of early termination.

Key Findings

- Texas has the largest adult probation population in the United States, with longer sentences than most states.
- Although judges have authority to terminate or reduce probation sentences, the current supervision funding system discourages early termination.
- Not granting early termination causes the State to use limited resources to supervise low-risk offenders, and restricts good behavior incentives for probationers.

Conclusion

The Texas Department of Criminal Justice (TDCJ) ensures public safety through incarceration and supervision of offenders. A review of TDCJ's Community Justice Assistance Division (CJAD) revealed that its current funding processes discourage early termination of offenders on probation, a process that could benefit the State by allowing TDCJ to end supervision of low-risk offenders and focus limited resources on higher-risk offenders.

Although judges have statutory authority to grant early termination, very few probationers discharge early. Without a coordinated process to recommend early termination for appropriate offenders, the State may be missing an important opportunity to focus resources toward high-risk offenders, and to provide incentives for good behavior for probationers.

Support

In Texas, adult probation is a shared responsibility between state and local governments.

Texas has the largest adult probation population in the United States.

- Adult probation in Texas is carried out by local Community Supervision and Corrections Departments (CSCDs), which are jointly supervised by the State, through CJAD, and by local judges. CSCDs receive state funding and must comply with CJAD's statewide standards. However, the district judge or judges who preside over criminal cases in each judicial district have direct authority over each area's CSCD. These judges appoint CSCD directors who hire community supervision officers and administrative staff. CSCD staff are employees of the judicial district, paid with state funds and fees assessed on the probationers, and are eligible for state health benefits.
- Offenders on probation may be placed on either direct or indirect supervision. Offenders on direct supervision live or work in the supervising jurisdiction and must meet with a Community Supervision Officer (CSO) at least once every three months. CSOs conduct routine assessments of all direct supervision offenders to ensure that those offenders receive appropriate levels of supervision. Offenders on indirect supervision may live or work outside of the jurisdiction, be incarcerated or supervised elsewhere, or have absconded from supervision. With the exception of absconders, these offenders report by mail instead of meeting regularly with a CSO.

Texas has the largest adult probation population in the United States, with longer sentences than most states.

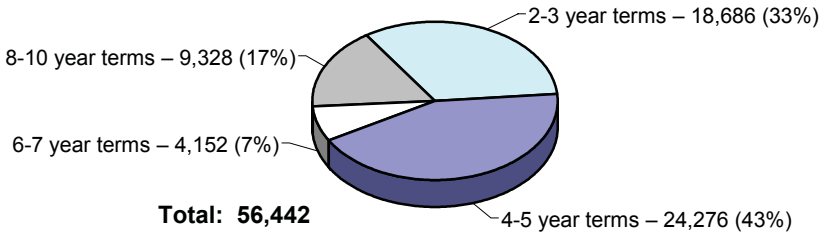
- Texas has approximately 238,000 felony and 192,000 misdemeanor probationers, the largest probation population of any state. Probationers comprise 60 percent of the correctional system population, and Texas has 2.8 times as many probationers as incarcerated offenders. The table, *Community Supervision Populations in the Five Most Populous States,* compares Texas' probation population to those in other large states.[1]

Community Supervision Populations in the Five Most Populous States

State	Total Number of Offenders Currently on Community Supervision	Community Supervision Population per 100,000 Residents
California	384,852	1,463
Texas	428,773	2,643
New York	122,027	833
Florida	281,170	2,099
Illinois	143,871	1,518

- Probationers in Texas serve longer probation sentences than probationers in other states. The average probation term in Texas is 59 months, compared to an average of 38 months for all other states.[2] The maximum period of supervision for misdemeanants is two years and the maximum period for felons is 10 years. The pie chart, *Length of Probation Terms for Offenders Placed on Felony Probation,* shows approximately 24 percent of offenders sentenced to probation in 2005 received terms of six years or more.

Length of Probation Terms for Offenders Placed on Felony Probation FY 2005



- The large number of probationers, combined with long supervision terms, leads to high caseloads for CSOs. In fiscal year 2005, the average community supervision officer directly supervised 116 probationers and indirectly supervised 36 probationers. With this caseload, a CSO has approximately one hour of supervision time per offender, per month.[3]

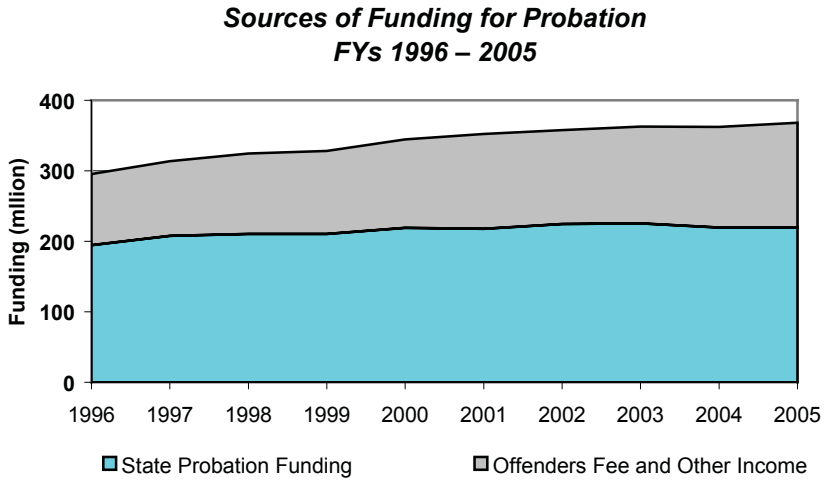
Although judges have authority to terminate or reduce probation sentences, the current supervision funding system discourages early termination.

- Through early termination, judges may end or reduce an offender's supervision before the sentence discharge date.[4] Any time after a probationer has satisfactorily completed one-third of the original supervision sentence, or two years of supervision, whichever is less, a judge may reduce or terminate the sentence. While local policies differ, the supervising CSCD may recommend a probationer for early termination. The presiding judge considers the recommendation and makes a final determination. In Texas, judges will typically consider probationers for release if they have complied with the law and with the terms of probation. However, many judges make allowances for offender indigence, and will permit termination if the offender has made good faith efforts to pay probation fees and fines.

- The current probation funding system discourages early termination. Texas' community supervision system has two primary sources of funding, the State and the individual offender. In 2005, the State, through CJAD, funded approximately $220 million or 61 percent of the cost of supervision. Community supervision fees and program participant payments totaled approximately $149 million, or 39 percent of the total cost of supervision.

On average, probation officers supervise each offender approximately one hour per month.

The chart, *Sources of Funding for Probation,* demonstrates that the State's share of probation funding has remained level while offender fees have continued to grow.



Currently, CSCDs lose needed funding when offenders are released from supervision early.

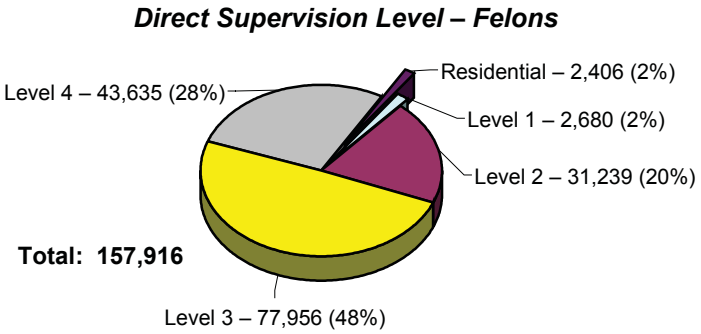
Because CSCDs receive both state funding and fees based on the number of offenders under supervision, neither CSCDs nor the judges have incentive to terminate supervision early, which would deprive those departments of both sources of funding. In addition, low-risk offenders who have served several years of successful probation and may be eligible for early termination, are typically less likely to recidivate, require less supervision, and are more likely to comply with conditions and pay fees. Keeping these offenders on probation permits a CSCD to continue to collect fees and state funds, but requires the CSCD to expend fewer resources to supervise the offenders.

- Since many judges do not routinely consider probationers for sentence reductions or early terminations, the number of offenders granted early termination remains low. In fiscal year 2005, judges early terminated only 7,726 probationers. In contrast, 107,286 probationers terminated as a result of discharging their sentences.

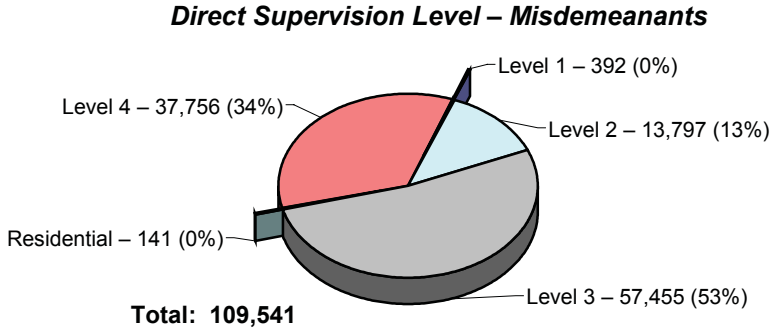
  Different CSCDs and judges use different termination policies, resulting in dissimilar results across the state. For example, early terminations ranged from 0 percent of total terminations in Ellis County, to 36 percent in Coryell County. According to TDCJ, in September 2006, approximately 54,888 probationers, or 34.4 percent of the direct felony probation population, had served either two years or one-third of their sentences, qualifying them for early termination consideration. However, TDCJ does not collect data on the number of offenders who have satisfactorily fulfilled the conditions of community supervision as required by statute for early termination.[5]

Not granting early termination causes the State to use limited resources to supervise low-risk offenders, and restricts good behavior incentives for probationers.

- Texas has a large population of low-risk probationers, requiring little supervision, and a large population of high-risk probationers, requiring intensive supervision. Using a risk assessment tool, CSCDs categorize all probationers according to risk levels one through four, with those at levels one or two considered high-risk offenders, requiring strict supervision. Probationers categorized as level four are the lowest risk offenders and require minimal supervision.



The pie charts, *Direct Supervision Level – Felons* and *Direct Supervision Level – Misdemeanants* show Texas probationers categorized by risk level. In fiscal year 2005, CSCDs identified more than 81,000 felons and misdemeanants as low-risk, and more than 48,000 probationers as high- and medium-high-risk. Of the 157,916 felons on direct supervision, 70 percent received probation for non-violent offenses including drug, alcohol, and property offenses.



- The factors that prevent judges and CSCDs from embracing the early termination of supervision of suitable probationers also make these CSCDs less able to focus on higher-risk offenders. By continuing to supervise low-risk offenders, deemed to be compliant while under supervision, CSCDs are not able to adjust CSO caseloads to allow officers to spend more time where it is needed with high-risk offenders. In 2005, legislators recognized that smaller caseloads are essential for successful supervision and allocated an additional $14 million to CSCDs to hire more officers and reduce caseloads.

- By not taking advantage of early termination as an incentive in its supervision strategy, the State loses a tool for encouraging good behavior. Offenders are more likely to successfully complete supervision when it incorporates incentives as well as sanctions.[6] The hope of early termination can encourage probationers to comply with terms of supervision, including payment of fees and fines, regular supervision meetings with an officer, abstention from drugs or alcohol, and attendance in classes or treatment.

In a recent survey, the majority of Texas judges supported early termination reviews.

Early termination has increasing support in Texas and throughout the United States.

- In 2005, CJAD used additional appropriations to encourage local CSCDs to develop early termination procedures. CJAD received additional biennial appropriations of $55.4 million to support strengthening probation practices across Texas. To be eligible to receive supplemental funding, CJAD required CSCDs to develop progressive sanctions models that would more consistently and effectively manage probationers. CJAD required that all progressive sanctions models include the option of shortened probation terms, with increased supervision during the earliest part of the term, and the possibility for early termination. Thirty seven of Texas' 121 CSCDs now use a progressive sanctions model of some kind.

- Texas judges, legislators, and researchers continue to support expanding the use of early termination. In 2004, results from TDCJ's Sentencing Survey revealed that 55 percent of judges support requiring judicial review of offenders eligible for early termination.[7] Bills filed during the Legislative Session in 2005, including House Bill 575, House Bill 2193, and Senate Bill 1266, included recommendations to require judicial review for the purposes of early termination. In recent years a large volume of published research has supported early termination both in Texas and nationally.[8]

- Other populous states, including California, New York, and Florida, permit and encourage early termination to reduce caseloads and promote better behavior from probationers. The table, *Eligibility Criteria for Early Termination,* details the early termination requirements in California, New York, and Florida.[9]

Eligibility Criteria for Early Termination

California	♦ Conditions: No violations of law or terms of supervision ♦ Fees and Fines: All fines must be paid ♦ Time: Terminate at any time ♦ Other: Offender must have a good reason (hardship, promise of early termination at sentencing) for termination
New York	♦ Conditions: No violations of law or terms of supervision ♦ Fees and Fines: Offender must have paid fines or made good faith effort ♦ Time: Terminate at any time, or after five years for a lifetime probation sentence
Florida	♦ Conditions: No violations of law or terms of supervision ♦ Fees and Fines: All fines must be paid ♦ Time: Terminate at any time

- At the federal level, in 2003 the Judicial Conference Committee on Criminal Law (Committee) created nine criteria to help federal probation officers properly identify offenders for consideration for early termination. Before establishing criteria, the Committee recognized that early terminations occur in various jurisdictions, but that practices vary considerably between districts. The criteria encourage probation officers to request offenders be released from supervision when they have demonstrated that they live law-abiding lives.

Recommendations

Change in Statute

4.1 Require CSCDs to identify and recommend probationers appropriate for early termination.

4.2 Authorize TDCJ to adjust funding methods to minimize the loss of funds to CSCDs resulting from early termination of probationers.

Change in Appropriations

4.3 The Sunset Commission should recommend that the Legislature change its method of funding CSCDs to maintain a constant funding level even if the number of probationers declines because of early termination.

These recommendations would require CSCDs to conduct early termination reviews of all felony and misdemeanor probationers who have served either two years or one-third of their sentences. This early termination review could coincide with CSCDs' routine offender assessments. If the review determines that probationers have complied with all probation conditions, and have not committed additional violations of the law or of probation conditions, they would be recommended to the district judge for early termination. The judge would retain full discretion to determine whether or not to grant early termination. While compliance with supervision conditions would be required, indigence, resulting in inability to pay all fees, should not prohibit offenders from early termination.

Under these recommendations TDCJ, in conjunction with the probation community, would be statutorily authorized to restructure the funding formulas for CSCDs to ensure CSCDs would maintain adequate funding while permitting early termination of low-risk offenders. TDCJ's new funding methods should provide funding and support for high-risk offenders, including newer probationers, while not penalizing CSCDs for releasing low-risk offenders. TDCJ could accomplish this by providing more funding for offenders in their first years of probation, when intensive services are most beneficial, and tapering funding after probationers have served several successful years of their sentences and require less intensive supervision. The funding formula in statute for basic supervision would be amended to give TDCJ flexibility to restructure the way it allocates funds to allow this front-loading in the early years of probation.

As part of these recommendations, the Sunset Commission should encourage the Legislature to adjust its method of appropriating for TDCJ's probation and community-based programs to maintain level funding in the event of increased early terminations. Currently, the amount of state probation funding for TDCJ and CJAD is determined by the number of offenders under direct supervision. If early terminations increase as a result of these recommendations, state probation funding would decrease, discouraging early termination. To minimize the disincentives against early termination, TDCJ

should maintain level funding for CSCDs, and direct them to target funding toward the highest-risk probationers. Increased early termination will result in the loss of offender fees; however, by adjusting both the State's method of appropriating money for probation programs, and TDCJ's formula for funding CSCDs, the Legislature could minimize the impact of this loss and encourage CSCDs to focus services towards higher-risk offenders.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. Increased early termination of low-risk offenders would reduce offender fee payments and state payments to CSCDs under current appropriations formulas. However, any state money that would have been used to supervise early terminating offenders should be redirected and used to supervise new probationers and higher-risk offenders. Adjustments to the probation appropriations formula could redirect funding to reflect new priorities and offset the lost funding, allowing departments to focus resources on higher-risk offenders.

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[1] National Institute of Corrections, Corrections Statistics, www.nicic.org. Accessed: August 30, 2006.

[2] Bureau of Justice Statistics, Criminal Sentencing Statistics, http://www.ojp.usdoj.gov/bjs/sent.htm. Accessed: September 1, 2006.

[3] House Committee on Corrections, Texas House of Representatives, *Interim Report* (Austin, Texas, January 2005), p. 14.

[4] Texas Code of Criminal Procedure, Art. 42.12, sec. 20.

[5] Ibid.

[6] Texas Department of Criminal Justice, Community Justice Assistance Division, *Attachment B: Progressive Sanctions Supervision Model,* provided to the Sunset Advisory Commission (August 2006); Tony Fabelo, The JFA Institute, *Organizational Assessment of Travis County Community Supervision and Corrections Department(CSCD) Facing the Challenges to Successfully Implement the Travis Community Impact Supervision (TCIS) Model* (Austin, Texas, August 2005).

[7] Texas Department of Criminal Justice, Community Justice Assistance Division, Research and Evaluation, *Summary of Responses to TDCJ-CJAD Sentencing Survey* (Austin, Texas, August 2004).

[8] See for example: American Civil Liberties Union, *Improving Policies and Practices of the Texas Department of Criminal Justice* (Austin, Texas, 2006); Criminal Justice Policy Council, *Trends, Profile, and Policy Issues Related to Felony Probation Revocations in Texas* (Austin, Texas, 2002); Texas Public Policy Foundation, *Laying the Foundation for Better Probation* (Austin, Texas, 2006); The Third Branch, *Good Behavior Rewarded,* vol. 36, no. 3 (March 2004).

[9] Florida Criminal Procedure and Corrections Code, Title XLVII, ch. 948.04; California Penal Code, sec. 1203.3; and New York Penal Law, sec. 65.10; New York Criminal Procedure Law, sec. 410.90.

Keeping Low-Risk Offenders on Parole and Mandatory Supervision Who Could Be Released Early Can Divert Limited TDCJ Resources From Best Use.

Summary

Key Recommendation

- Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.

Key Findings

- TDCJ does not use its statutory authority to grant early release from supervision to offenders on parole and mandatory supervision.
- Continuing to supervise low-risk offenders on parole and mandatory supervision can divert resources from high-risk offenders, and fail to reward good behavior.
- The United States Parole Commission uses early termination to release certain offenders from supervision.

Conclusion

Once released on parole or mandatory supervision, offenders must serve the remainder of their entire sentence under supervision, which requires significant resources. In 1989, the Legislature gave the Texas Department of Criminal Justice (TDCJ) the authority to grant early release from supervision for certain offenders who have completed half of their remaining sentence upon release, have not been revoked, and whose release would be in the best interest of society. Despite statutory authority, TDCJ has never granted early release to an offender.

Supervising minimum risk offenders, who have shown a pattern of compliance with the rules and conditions of supervision, and have been deemed to have adjusted to life in the free world, may divert attention and resources from offenders who need it most.

Early release from parole or mandatory supervision for certain eligible offenders could provide incentives for successful supervision, reduce supervision caseloads, and allow parole officers to focus on high-risk and newly released offenders, who need more frequent and intensive supervision.

Support

The Parole Division supervises more than 76,000 offenders released from prison on parole or mandatory supervision.

- Offenders released through mandatory supervision, discretionary mandatory supervision, or parole are supervised by TDCJ's Parole Division. The accompanying textbox, *Types of Release,* describes each type of release from prison.[1] In fiscal year 2006, the Parole Division supervised more than 76,000 offenders released from prison, as shown in the pie chart, *Current Supervision Population*.

Types of Release

Parole

Eligible offenders may be released on parole if approved by a parole panel.

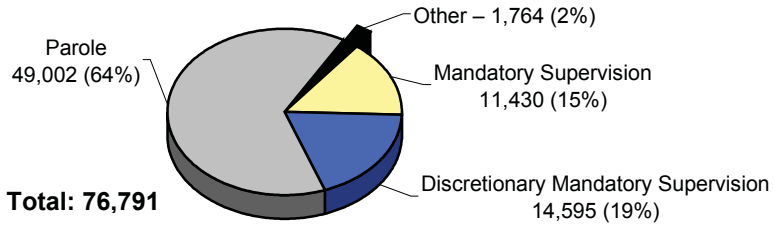
Mandatory Supervision

Offenders are automatically released to supervision by TDCJ when time served plus good time earned equals the length of their sentence.

Discretionary Mandatory Supervision

Offenders are eligible for release when time served plus good time earned equals the length of their sentence, but release to supervision must be approved by a parole panel.

Current Supervision Population FY 2006



- Offenders released on parole and mandatory supervision must abide by certain rules while in the community, and are subject to revocation or other sanctions for violation of the rules. These rules include regular reporting to the supervising parole officer, obtaining permission before leaving the state, payment of monthly supervision fees, and prohibitions on possession of firearms. To ensure compliance with rules and conditions of supervision, parole officers also frequently contact released offenders in addition to requiring them to report regularly.

- Offenders released on parole and mandatory supervision in Texas must serve the remainder of their original sentence under supervision.[2] For example, an offender released after serving four years of a 10-year sentence will remain under supervision for the remaining six years. The average length of supervision in Texas is 8.5 years, and approximately 2,000 offenders have discharge dates more than 50 years after their release date.

TDCJ does not use its statutory authority to grant early release from supervision to offenders on parole or mandatory supervision.

- In 1989, the Legislature authorized TDCJ to grant early release from supervision for certain offenders.[3] With this authority, TDCJ may allow offender released on parole or mandatory supervision to serve the remainder

of their sentence without supervision and without being required to report if the offender meets certain criteria, described in the textbox, *Eligibility Criteria for Early Release from Supervision*.[4] However, TDCJ retains the ability to require a released offender to resubmit to supervision and resume reporting at any time and for any reason.[5] Therefore, despite early release from supervision, TDCJ continues to maintain jurisdiction over the released offender through the remainder of his or her sentence.

TDCJ has never used its statutory authority to release offenders early from supervision.

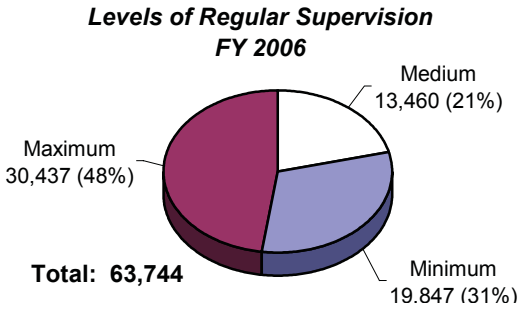
Eligibility Criteria for Early Release from Supervision

- The released offender has been under supervision for at least one-half of the time that remained on the sentence when the offender was released from prison;
- during the period of supervision the release has not been revoked;
- the released offender has made a good faith effort to comply with any restitution order imposed by a court; and
- TDCJ determines that allowing the released offender to serve the remainder of the sentence without supervision and reporting is in the best interest of society.

- Despite having early release authority, TDCJ has never used it. TDCJ's Parole Division estimates 19,847 released offenders are currently under minimum supervision, 11,151 of whom have completed two years of successful supervision. Of those offenders, 5,812 have completed at least half of their remaining sentence, making them eligible for early release. TDCJ has relaxed supervision requirements for some released offenders, allowing 806 to report annually and another 1,920 to report quarterly. However, no offenders have ever been released early from supervision. Instead, these eligible offenders continue to be supervised by parole officers, requiring significant time and resources.

Continuing to supervise low-risk offenders on parole and mandatory supervision can divert resources from high-risk offenders, and fail to reward good behavior.

- Offenders placed on the regular supervision caseload are assigned to various levels of supervision, based on a needs and risk assessment. The pie chart, *Levels of Regular Supervision,* details the number of offenders under various types of regular supervision, not including specialized supervision such as sex offender or substance abuse caseloads.[6] TDCJ expends too much effort supervising the nearly 20,000 offenders under minimum supervision. Parole officers must contact most of these offenders under minimum supervision at least once a month, verify employment and counseling attendance, and confirm the offender's place of residence. For regular supervision, the average parole officer supervises 75 different released offenders.



Continued supervision of low-risk offenders may not be the best use of TDCJ resources.

Based on this average caseload, simply monitoring minimum supervision offenders requires more than 250 parole officers. A 2001 consultant report noted that continuing to supervise low-risk released offenders is an inefficient use of state resources, and early release would allow resources to be more efficiently directed toward high-risk released offenders.[7]

- By not using early release from parole and mandatory supervision, TDCJ does not use a potential reward for good behavior. Despite continued compliance with conditions of supervision, many offenders remain under supervision for extended periods of time with no incentive for compliance, only the threat of possible revocation. Research suggests that a comprehensive and effective supervision strategy incorporates both sanctions and incentives, such as early release.[8] Use of early release would provide an incentive for released offenders to successfully comply with the terms of their supervision.

The United States Parole Commission uses early termination to release certain offenders from supervision.

- At the federal level, the United States Parole Commission can terminate supervision, and thus jurisdiction, over a released offender before the expiration of his or her maximum sentence.[9] Two years after release on supervision, and at least annually thereafter, the Commission must review the status of each released offender to determine the need for continued supervision.

Recommendation

Change in Statute

5.1 Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.

Under this recommendation, offenders on parole and mandatory supervision would become eligible for early release after completing one-half of their remaining sentence upon release, including two consecutive years of successful supervision without any violation reports pursuant to the violation action grid used by the Parole Division. Offenders eligible for early release would be identified and reviewed annually, and offenders denied early release would be reviewed each year thereafter.

Upon eligibility, district parole officers would review offenders to determine if a recommendation for early release would be appropriate. Specifically, parole officers would evaluate if an offender has a low risk of recidivism, and has made a good faith effort to comply with the conditions of release. Early release would be a privilege, not a right, and parole officers would have complete discretion to make early release recommendations.

Recommendations for early release would be forwarded to Regional Parole Supervisors for approval. Upon approval, offenders would be released from supervision, but would remain under TDCJ jurisdiction until the completion of their sentence. TDCJ would retain the authority to require an offender to resubmit to supervision at any time and for any reason. Granting early release to low-risk offenders would reduce parole officer caseloads, giving parole officers more time to effectively

supervise newly released and high-risk offenders, who require more frequent contact and oversight. This recommendation would also provide an incentive for released offenders to successfully complete supervision.

Fiscal Implication

This recommendation would not have a fiscal impact to the State. Any savings realized from reduced supervision caseloads would be used to supervise higher-risk offenders on parole or mandatory supervision.

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[1] Parole in absentia refers to offenders that are considered for parole, or considered processed for mandatory supervision release while confined in non-TDCJ facilities, such as federal prisons, another state's prisons, or county jails in Texas or other states.

[2] Texas Government Code, sec. 508.001(6).

[3] Texas House Bill 2335, 71st Legislature (1989).

[4] Texas Government Code, sec. 508.155.

[5] Texas Government Code, sec. 508.155(d).

[6] Numbers reflect supervision caseloads as of June 2006.

[7] Security Response Technologies, Inc., *TDCJ Board of Pardons and Paroles Final Report* (Middleton, Mass., 2001).

[8] Texas Department of Criminal Justice, Community Justice Assistance Division, *Attachment B: Progressive Sanctions Supervision Model*, provided to the Sunset Advisory Commission (August 2006); Tony Fabelo, The JFA Institute, *Organizational Assessment of Travis County Community Supervision and Corrections Department (CSCD) Facing the Challenges to Successfully Implement the Travis Community Impact Supervision (TCIS) Model* (Austin, Texas, August 2005).

[9] Federal Parole Rules, sec. 2.43(b). In addition, according to section 2.43(c), the U.S. Parole Commission must release an offender after five years of supervision unless it is determined that the released offender is likely to recidivate.

Issue 6

Current Law Limits the Use and Effectiveness of Medically Recommended Early Release of Offenders, Increasing State Medical Costs.

Summary

Key Recommendations

- Authorize judges to permit the early release of state jail confinees who pose no risk to public safety due to their medical conditions.
- Require the Texas Correctional Office on Offenders with Medical or Mental Impairments to identify and recommend state jail confinees eligible for early medical release.

Key Findings

- To significantly reduce State medical costs, state prison offenders with serious medical conditions may be released early through MRIS.
- Lacking clear statutory authority, local judges rarely and inconsistently approve state jail confinees for MRIS.
- By not specifically authorizing MRIS for state jail confinees, the State misses an opportunity to reduce medical costs.

Conclusion

As the State's primary criminal justice agency, the Texas Department of Criminal Justice (TDCJ) ensures public safety through the incarceration and supervision of felons. By statute, TDCJ currently has authority to release state prison offenders who no longer pose a threat to public safety due to their medical conditions. However, a review of TDCJ's state jail incarceration function found that district judges lack clear statutory authority to consider the release of state jail confinees for medical reasons. Without clear authority, TDCJ cannot develop a consistent process to ensure that eligible state jail confinees are reviewed and considered for early medical release, thereby maximizing the benefits of medical release and lowering state medical costs.

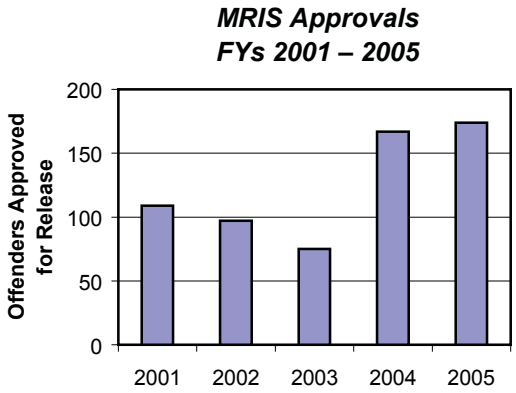
Support

To significantly reduce State medical costs, state prison offenders with serious medical conditions may be released early through MRIS.

MRIS significantly reduces the State's share of offender medical costs.

- In 1991, the Legislature created Medically Recommended Intensive Supervision (MRIS) to allow for the early release of non-violent offenders in state prisons who are not a risk to society due to their medical conditions. Generally, non-violent offenders who are elderly, physically handicapped, mentally ill, terminally ill, mentally retarded, or otherwise require long-term care are eligible for MRIS.[1] In 2003, the Legislature expanded MRIS to include certain violent offenders with terminal illnesses or long-term care needs. If an offender is deemed appropriate for early medical release, typically due to a combination of serious health problems and limited mobility, the offender will be placed at home or in a community-based residential facility to serve out the remainder of his or her sentence under supervision.

- The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) facilitates the release of MRIS offenders. TCOOMMI works with prison medical providers to screen eligible offenders, gathering medical and other information and developing cases for the Parole Board, which makes final decisions on early medical release from prison. Once approved, TCOOMMI secures placement and services in nursing homes or other residential options for MRIS releasees, and parole officers supervise them for the remainder of their sentences.



Between 1991 and 2005, the Parole Board approved the release of 1,066 offenders through MRIS. The chart, *MRIS Approvals,* demonstrates the recent increase in the number of MRIS approvals. In 2005, the Parole Board approved the release of 174 offenders. Compared to the total parole population, MRIS offenders have low revocation rates. The Parole Board has revoked 90 offenders, or 8 percent of the total MRIS population over the 14-year lifetime of the program. In contrast, the Parole Board revokes approximately 15 percent of offenders released on parole *annually*.

- MRIS significantly reduces the State's share of these released offenders' medical and incarceration costs. When released, an offender may be eligible for federal benefits, including Social Security Disability Insurance, Supplemental Security Income, Medicaid, Medicare, and veterans' benefits. For indigent offenders, Medicaid pays for approximately 64 percent of a released offender's care; the State, through the Texas Department of Aging and Disability Services, pays the remaining 36 percent.

Lacking clear statutory authority, local judges rarely and inconsistently approve state jail confinees for MRIS.

- Unlike offenders sentenced to prison, state jail confinees remain under the jurisdiction of local courts. The textbox, *State Jail Confinees,* describes state jail incarceration. The sentencing judge has sole discretion over early release of a state jail confinee and may approve or deny it for any reason. Anytime after the confinee's 75th day in custody, a judge may release the confinee on the judge's own motion, or on the motion of an attorney representing either the confinee or the State.[2]

  Despite this general statutory authority for early release, judges rarely release state jail confinees before the end of their sentences, and almost never for medical reasons. In fiscal year 2005 judges permitted 255 early releases from state jail. However, since 2001 judges have granted early release for only 14 state jail confinees for medical reasons.

> ***State Jail Confinees***
>
> Offenders convicted for non-violent crimes, such as drug and property offenses, serve their sentences in low-security state jails. State jail confinees serve between five days and two years and must serve the entire term of their sentence. Confinees are not eligible for parole. Currently, Texas houses nearly 14,500 state jail confinees.

- Statute does not specifically authorize MRIS for state jail confinees. As a result, local judges respond differently to requests for early medical release. When state jail confinees meet the criteria for early medical release, according to the same criteria used for state prison offenders, TCOOMMI sends informal release requests and supporting documentation to local jurisdictions. Responses from judges vary. Some judges indicate that they do not have the authority to permit MRIS, others refuse the requests, and most ignore the requests. As noted, only 14 requests for early medical release from state jail have actually been approved since 2001.

- Without clear authority to release state jail confinees through MRIS, judges treat confinees inconsistently. According to TCOOMMI, very few judicial districts have a set process for reviewing medically recommended early release requests. Therefore, a state jail confinee with a terminal condition may be granted MRIS release in one jurisdiction, while a confinee with similar characteristics in another jurisdiction is not even considered for release.

In 2004, the State spent approximately $1.5 million on medical care for a single offender.

By not specifically authorizing MRIS for state jail confinees, the State misses an opportunity to reduce medical costs.

- As originally instituted, MRIS in prisons facilitated the release of a few extremely costly, chronically ill offenders. According to the Correctional Managed Health Care Committee (the Committee), in 2005, the most seriously ill offenders were hospitalized for an average of 85 days at an average cost of $643 per day. The Committee estimates that hospitalization and outpatient treatment costs for these offenders average $62,500 per year. In 2004, the most expensive single offender cost TDCJ approximately $1.5 million in medical care.

Although state jail confinees are not housed in prisons, they receive the same health care as offenders, and can potentially result in the same costs for extraordinary medical care. In addition, the average annual incarceration cost for a state jail confinee is approximately $11,000.

- In fiscal year 2005, 467 state jail confinees met the statutory criteria for early medical release. While these confinees met the basic criteria, many were not good candidates for release because they could still be considered a threat to public safety. Through an informal review process TCOOMMI, working with the Committee and the university healthcare providers, identified some of these confinees who appeared to be good candidates for release and contacted local jurisdictions regarding those cases. However, only one confinee was ultimately released on MRIS.

Recommendations

Change in Statute

6.1 Authorize judges to permit the early release of state jail confinees who pose no risk to public safety due to their medical conditions.

6.2 Require TCOOMMI to identify and recommend state jail confinees eligible for early medical release.

These recommendations would specifically allow district judges to grant early medical release to state jail confinees. TCOOMMI would be required to develop a process to facilitate judges' consideration of MRIS for state jail confinees, following the same process for identifying and recommending state jail confinees as currently used for offenders in prison. TCOOMMI would work with the Committee and the university healthcare providers to identify medically eligible offenders. In addition, TCOOMMI would:

- develop a case summary and medical report for each eligible confinee, and present that information to the local judge with jurisdiction;
- create a continuity of care plan, including medical placement and services, for confinees approved for release;
- coordinate community supervision with local CSCDs; and
- make quarterly status reports to judges on released confinees.

Early release would be dependent upon TCOOMMI securing appropriate community placement. Once TCOOMMI places a confinee in the community, the local CSCD would be responsible for supervision. If an MRIS-approved state jail confinee's release is revoked, TDCJ would expedite the offender's return to TDCJ.

These recommendations would not affect judges' discretion to grant or deny release of state jail confinees under current law or for medical reasons. By clarifying the judge's authority to grant early release of confinees for medical reasons, these recommendations would help provide for more consistent application of this program statewide. The recommendations would also result in savings to the State.

Fiscal Implication

These recommendations would result in an annual savings to the General Revenue Fund beginning in fiscal year 2008. However, these savings cannot be accurately determined because TDCJ cannot estimate how many confinees would be eligible for release, or how many would be approved for release by judges. According to the Committee, the average hospitalization cost for the 14 offenders approved for MRIS was $72,247. This figure does not include outpatient costs associated with additional care at the offenders' units and is, therefore, conservative. If judges approve 5 percent of the 467 eligible confinees, 23 confinees might be released, and the State would benefit from $1.1 million in cost avoidance. Healthcare costs would be borne by the state and federal governments, as previously discussed, and not by individual counties. Since individual communities are unlikely to receive many releasees, local CSCDs' supervision costs could be met with existing resources.

[1] Texas Government Code, sec. 508.146.

[2] Texas Code of Criminal Procedure, Art. 42.12, sec. 6 and sec. 15(f)(2).

Issue 7

Current Law Does Not Hold All Parole Decision Makers to the Same Standards of Objectivity and Independence.

Summary

Key Recommendations

- Expand conflict of interest provisions concerning financial and personal interests to include parole commissioners.
- Expand restrictions on previous employment with TDCJ to include parole commissioners.

Key Findings

- The Board of Pardons and Paroles shares much of its decision-making authority regarding prison releases and parole revocations with 12 parole commissioners.
- Provisions to protect the objectivity and independence of parole decision making do not apply to parole commissioners.
- Other states, as well as other state agencies, apply certain provisions to decision makers to ensure impartiality.

Conclusion

To ensure objectivity and prevent potential bias, the Legislature enacted certain provisions affecting the eligibility of appointments to the Board of Pardons and Paroles (Parole Board). For example, conflict of interest provisions ensure Parole Board members do not have inappropriate financial or professional relationships with persons or entities that could unduly influence parole determinations. In addition, previous employment restrictions establish independence from the Texas Department of Criminal Justice (TDCJ), which is directly affected by parole decisions.

The Legislature changed the composition of parole panels in 2003 to include parole commissioners, who have comparable decision-making authority to Parole Board members in parole determinations. Despite the similar responsibilities, parole commissioners are not subject to the same conflict of interest provisions and previous employment restrictions as Parole Board members. Without application of similar provisions, commissioners may be susceptible to conflict, limiting the appearance of objectivity and decreasing the public's confidence in parole panel discretion.

Support

The Board of Pardons and Paroles shares much of its decision-making authority regarding prison releases and parole revocations with 12 parole commissioners.

Parole Board members and parole commissioners perform many of the same day-to-day functions, like making parole determinations and revocation decisions.

- In 2003, the Legislature reduced the number of Parole Board members from 18 to seven, and created 12 parole commissioner positions filled by the Presiding Officer of the Parole Board.[1] In addition, the Legislature required three-person panels, composed of one Parole Board member and two commissioners, to make most parole determinations.
- Although Parole Board members have additional policymaking duties, Board members and parole commissioners perform many of the same functions, comprising most of the day-to-day work performed. The textbox, *Parole Board Member and Commissioner Duties*, shows their respective responsibilities. In fiscal year 2005, Parole Board members and parole commissioners decided more than 70,000 parole and other release cases, and more than 30,000 revocation cases.

Parole Board Member and Commissioner Duties

Board Members:

- Adopt policies relating to parole decision making processes;
- Make executive clemency recommendations to the Governor; and
- Vote on parole matters for certain violent offenses.

Board Members and Commissioners:

- Determine which eligible offenders will be released on parole;
- Impose special conditions of release; and
- Review parole violations and make revocation decisions.

Provisions to protect the objectivity and independence of parole decision making do not apply to parole commissioners.

- Statute prohibits Parole Board members and their spouses from being employed by or having a direct financial stake in entities that benefit from the work of either TDCJ or the Parole Board. In addition, they cannot have close ties to criminal justice trade associations and lobby groups.[2] These conflict of interest provisions help ensure that Parole Board members do not have financial or professional connections to people or entities that could unduly influence Parole Board policy decisions or parole determinations. These provisions help prevent the appearance of impropriety and increase the public's confidence in Parole Board members' objectivity in parole decisions.

- To enhance the independence of the parole process and increase the discretion and impartiality of panel members, the State has kept the Parole Board separate from TDCJ, except for its administrative attachment. To ensure this separation, statute prohibits former TDCJ employees from serving on the Parole Board within two years of their termination of TDCJ employment. In addition, no more than three members of the Parole Board may be former TDCJ employees.

- None of the statutory provisions restricting membership on the Parole Board apply to parole commissioners. When the Legislature restructured the Parole Board, neither the conflict of interest provisions nor the employment restrictions were extended to the 12 new commissioners, who form two-thirds of each parole panel. Without these provisions, parole panels may be susceptible to conflicts which could affect the impartiality and discretion of the decision makers, such as having a financial interest in a private correctional entity operating an intermediate sanction facility that could potentially benefit from certain revocation decisions. Further, many parole commissioners are former TDCJ employees. Nine of the 11 current parole commissioners previously worked for TDCJ, including one commissioner who was employed by the Parole Board the same year he retired from TDCJ.

The statutory conflict of interest provisions and previous employment restrictions do not apply to parole commissioners, who comprise the majority of parole panels.

Other states, as well as other state agencies, apply certain provisions to decision makers to ensure impartiality.

- Other states have conflict of interest provisions relating to parole decision makers. For example, Florida prohibits any member or full-time employee of the Parole Commission to participate in any business or political activity during the term of service.[3] New York also prevents members from holding public office or affiliating with any political committee, organization, or association.[4]

- Conflict of interest restrictions are commonly applied to all agencies under Sunset review through across-the-board recommendations. These provisions, previously applied to the Parole Board, help prevent conflicts by statutorily requiring a clear separation between board members and influential groups, and prohibiting ties with professional trade organizations and other groups that may not be in the public interest. In addition, board or commission members cannot be involved in lobbying.

- Certain Texas state boards and commissions have restrictions on previous employment. For example, statute prohibits persons employed by a public utility to be a Commissioner for the Public Utility Commission until two years have passed since such employment.[5] Since the Public Utility Commission regularly reviews cases affecting utilities, the employment prohibition helps prevent any appearance of conflict.

Recommendations

Change in Statute

7.1 Expand conflict of interest provisions concerning financial and personal interests to include parole commissioners.

The conflict of interest provisions applicable to Parole Board members would be expanded to include parole commissioners. Parole commissioners would be prohibited from ownership or having a spouse who is an owner of an entity funded or regulated by TDCJ or the Parole Board. In addition, parole commissioners and their spouses could not be officers or paid representatives of a criminal justice trade association, and parole commissioners could not be registered lobbyists. This recommendation would be prospective, so any current parole commissioners would not be affected. Applying conflict of interest provisions to all parole decision makers would help prevent the appearance of impropriety, and increase public confidence in the objectivity of the parole process.

7.2 Expand restrictions on previous employment with TDCJ to include parole commissioners.

The employment restrictions currently applicable to Parole Board members would be expanded to include parole commissioners. This recommendation would be prospective, so any current parole commissioners previously employed by TDCJ would not be affected. Any future parole commissioner applicants would be ineligible to serve as commissioners until the second anniversary of the date the person terminated employment with TDCJ. Employment restrictions would strengthen the Parole Board's independence from TDCJ, and help prevent the appearance of bias in release and revocation decisions.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

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[1] Texas House Bill 7, 78th Legislature, 3rd called session (2003).

[2] Texas Government Code, sec. 508.033.

[3] Florida Criminal Procedure and Corrections Code, sec. 947.10.

[4] New York Executive Law, sec. 259-b(4).

[5] Texas Utilities Code, sec. 12.053(b)(1)(A).

Issue 8

Texas Has a Continuing Need for the Texas Department of Criminal Justice.

Summary

Key Recommendation

- Continue TDCJ for 12 years.

Key Findings

- TDCJ provides public safety by assisting local governments with community supervision, and by confining offenders and providing for their reintegration into society.
- Texas has a clear and continuing need to support local community supervision and to operate a system for incarcerating and preparing offenders for release and reintegration into society.
- No other state, local, or private entity exists that can perform TDCJ's activities.
- TDCJ has made progress since its last Sunset review in 1999.
- While organizational structures vary, all other states use statewide agencies to provide for their criminal justice needs.

Conclusion

The Texas Department of Criminal Justice's (TDCJ's) responsibility to protect the public by assisting in community corrections, incarcerating felons, and supervising parolees continues to be needed and is important to Texas. Sunset staff evaluated the continuing need for these functions and concluded that beyond the need of protecting the public's safety, TDCJ's efforts in each of these areas are particularly important as the state faces a growing prison population, but with limited capacity.

By supporting community supervision of less serious offenders, TDCJ helps divert these offenders from traditional incarceration. For the more serious offenders, providing a secure environment as well as rehabilitative programs both in prison and under parole supervision helps ensure successful reintegration back into society rather than returning to prison. Additionally, the Board of Pardons and Paroles is subject to Sunset review concurrently with TDCJ. As a constitutional agency, however, the Parole Board is not subject to abolishment under the Sunset Act.

Support

The Texas Department of Criminal Justice provides public safety by assisting local governments with community supervision, and by confining offenders and providing for their reintegration into society.

- In 1849, the first Texas Legislature established the state prison system. Since then the State's criminal justice system has expanded to include not only incarceration, but probation, parole, and offender rehabilitation. Currently, TDCJ oversees these functions.

- The nine-member Texas Board of Criminal Justice oversees TDCJ and its 38,000 staff. In fiscal year 2006, TDCJ's appropriation was $2.6 billion of which about 80 percent was used to incarcerate offenders. General Revenue makes up 95 percent of TDCJ's appropriation. The remaining 5 percent comes from federal funds, interagency contracts, bond proceeds, and revenue generated from the sale of agricultural and manufactured products.

- TDCJ supports and oversees community supervision, or adult probation, in conjunction with 121 local Community Supervision Corrections Departments (CSCDs). The district judge or judges who preside over criminal cases in each judicial district have direct authority over each area's CSCD. TDCJ does not work directly with offenders; rather, it provides about $241 million to the CSCDs, to supervise approximately 430,000 offenders, including 238,000 felons and 192,000 misdemeanants on probation.

The Parole Board is not subject to abolishment under the Sunset Act.

- TDCJ incarcerates about 153,000 offenders in 106 state and privately operated correctional facilities located throughout the state. TDCJ's 27,000 security staff help manage and oversee these facilities. These facilities not only help protect the public, but also provide educational and rehabilitative programs designed specifically to help prepare offenders for reintegration into society.

- The Board of Pardons and Paroles (Parole Board) is an independent agency governed by a seven-member Board and administratively attached to TDCJ. The Parole Board operates six regional parole board offices and employs 163 staff. Established in the State Constitution, the Parole Board is not subject to abolishment under the Sunset Act, but is reviewed in the same time frame as TDCJ.

  While the Parole Board determines which offenders will be released on parole and the conditions of their parole, TDCJ supervises the early release of these offenders. Currently, about 76,000 offenders are on parole. Parole supervision is decentralized and administered through five distinct parole regions, with 66 district parole offices.

Texas has a clear and continuing need to support local community supervision and to operate a system for incarcerating and preparing offenders for release and reintegration into society.

- The State has a clear interest in protecting the public's safety. When criminal activity threatens the public safety, Texas provides sanctions against those found guilty of criminal wrongdoing. These sanctions may include monetary penalties and community supervision, as well as confinement in prison to deter and prevent further criminal activity.

- The State also has an interest in promoting community corrections through its support for 121 CSCDs statewide. The State provides almost two-thirds of the funding for these CSCDs, and in 2005, the Legislature appropriated an additional $28 million to reduce probation caseloads and $27 million for additional residential treatment and sanction beds. The local services and programs CSCDs provide with this funding are designed to divert offenders from traditional incarceration and allow them to serve their sentences in the community rather than prison.

- The Legislature has also endorsed the need to hold offenders in secure facilities where they may be separated from society and receive programming to prepare them for productive life in the free world. In 2005, the Legislature responded to projections of prison inmate population growth by appropriating additional funding to contract for temporary capacity. The Legislature also enacted legislation that made life without the possibility of parole a sentencing option in capital crimes. Prison provides a secure environment in which to control and incarcerate serious and violent offenders as well as a setting for delivering educational, vocational, spiritual, and rehabilitative programs to help prepare other offenders for successful reentry into society.

Prison provides a secure environment to incarcerate violent offenders and a setting to help rehabilitate offenders.

- Finally, successful reintegration of offenders under parole supervision is necessary to help ensure offenders are not revoked and sent back to prison, particularly as the state faces a growing prison population with limited capacity. Parole supervision makes certain that released offenders meet specific parole conditions designed to increase their chances for successful reintegration and that they serve out the remainder of their sentence without endangering the public.

No other state, local, or private entity exists that can perform TDCJ's activities.

- No other entity has the expertise or the capacity to assume responsibility for incarcerating Texas' 153,000 offenders. By comparison, county jails have a capacity of about 82,000, and private correctional facilities have a capacity of about 19,000.[1]

- Many of these county and private facilities are not built to the standards for holding offenders for long sentences. These facilities are generally built to house offenders either awaiting trial or ultimate transfer to TDCJ, or serving time for misdemeanors. Because of the shorter incarceration period, these facilities generally do not provide the rehabilitative programming that TDCJ does to help offenders change their behavior and eventually re-integrate into society successfully.

- TDCJ contracts with corporate vendors to operate seven private prisons and five private state jails. The Legislature allows these private facilities to house only lower risk offenders, relying on TDCJ to handle the high security offenders.

TDCJ has made progress since its last Sunset review in 1999.

- At the time of the agency's last Sunset review, TDCJ was still under federal oversight as a result of the *Ruiz* lawsuit that alleged unconstitutional conditions in the State's prisons. This lawsuit led to changes in almost every aspect of state incarceration, including combining the State's criminal justice functions into a single unified system and the expansion of the state prison system, nearly tripling capacity. On June 17, 2002, the long-standing *Ruiz* lawsuit was dismissed, releasing TDCJ from federal oversight.

- TDCJ has taken on several initiatives to improve its operations. For example, TDCJ has streamlined its organizational structure, consolidating several separate divisions into a single division to improve coordination and oversight. TDCJ also plans on having all its prison units accredited by the American Correctional Association by 2009. Currently, 48 of the 94 state-operated facilities are accredited, meaning that they meet national standards of correctional practice.

  In addition, TDCJ continues to develop and implement the Offender Information Management System that aims to convert the massive paper-based offender information into an electronic format so that offender information can be stored, accessed, and transferred electronically rather than manually. The first phase of the System which focuses on parole functions is currently being finalized. The next phase will include reengineering the offender intake and classification functions.

Texas Recidivism Rates vs. Other States[2]

State-Release Year	Three-Year Incarceration Rate
California - 2000	60.5%
Colorado - 1999	46.8%
National - 1994	51.8%
Pennsylvania - 2000	45.9%
Texas - 2000	31.2%
Texas - 2001	28.3%
Texas - 2002	28.2%

- TDCJ incarcerates offenders less expensively and with greater success than the national average. Currently, TDCJ incarcerates offenders at an average cost of $40 per day, well below the national average of about $69 per day.[3] TDCJ's three-year recidivism rate for 2000 – 2003 was also lower than the most recent national recidivism rate, as well as several other states, shown in the table, *Texas Recidivism Rates vs. Other States*. Also, TDCJ's recidivism rate, one of its key performance measures, has declined since fiscal year 2002.[4]

While organizational structures vary, all other states use statewide agencies to provide for their criminal justice needs.

- Every state incarcerates offenders at the state level, and provides some level of community supervision. Of the 10 most populous states, seven, including Texas, have consolidated the responsibilities of incarcerating offenders and overseeing some probation and parole in a single agency at the state level.[5] Two states, California and New Jersey, have a corrections agency responsible for incarcerating offenders and overseeing parole, but the counties administer and oversee probation. Of the 10 states, Pennsylvania is the only one that has a corrections agency responsible for incarcerating offenders and a separate agency responsible for probation and parole.[6]

Recommendation

Change in Statute

8.1 Continue TDCJ for 12 years.

The recommendation would continue TDCJ as an independent agency, responsible for providing public safety by confining, rehabilitating, and re-integrating offenders into society. Because the Board of Pardons and Paroles is not subject to abolishment, but is instead subject to review at the same time as TDCJ, it would also come under review in 2019.

Fiscal Implication

If the Legislature continues TDCJ using the existing organizational structure, the agency's annual appropriation of about $2.6 billion would continue to be required for its operations.

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1 Texas Department of Criminal Justice, *2005 Annual Review* (Austin, Texas, 2005).

2 Texas Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates* (Austin, Texas, January 2005). Online. Available: www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2005.pdf. Accessed: August 24, 2006.

3 U.S. Department of Justice, *Budget Trend Data From 1975 Through The President's 2003 Request To The Congress*, by Budget Management Staff (Spring 2002). Online. Available: www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/html/page117-119.htm. Accessed: August 4, 2006.

4 The recidivism rate is defined as the percentage of offenders released from the agency's correctional institutions division that are revoked and/or returned to the division within 36 months of release. Texas Legislative Budget Board, B*udget and Performance Assessments: State Agencies and Institutions, Fiscal Year 2005* (Austin, Texas, March 2006), p. 129.

5 In four of these states (Texas, New York, Illinois, and Michigan), probation functions are split between the state corrections agency and local probation agencies.

6 National Institute of Corrections, Corrections Statistics, www.nicic.org/StateCorrectionsStatistics. Accessed: August 22, 2006.

Issue 9

Due to Its Unusual Structure and Function, the Correctional Managed Health Care Committee Should Be Allowed to Continue, Removed from Sunset Review.

Summary

Key Recommendations

- Remove the separate Sunset date and continue the Committee.
- Update the statutory direction for the Committee.
- Require the Chair of the Committee to be a public physician member.
- Remove limitations on TDCJ's ability to monitor the quality of health care provided to offenders.

Key Findings

- Texas has a continuing need for professional healthcare providers to make healthcare decisions for incarcerated offenders in a secure prison environment.
- The arrangement between TDCJ and the universities for providing offender health care does not lend itself to objective analysis of whether or not the Committee should be continued.
- The Committee's statutory responsibilities need updating to better reflect its actual purpose.
- Because the Board of Criminal Justice relies on the Committee to oversee prison health care, it is too far removed from its responsibility to ensure offenders receive a constitutional level of health care.

Conclusion

Texas benefits from the contractual relationship between the Texas Department of Criminal Justice (TDCJ) and two public universities, the University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (Texas Tech), for the provision of offender healthcare services. However, this relationship is not a typical contractual relationship and the Correctional Managed Health Care Committee (the Committee), as the facilitator between the parties, is not a typical stand-alone state agency. TDCJ and the two universities favor the current approach.

While Sunset staff could not justify continuing the Committee as a separate agency, staff also could not identify problems that would be fixed by abolishing it. Staff concluded the Committee should be allowed to continue but removed from Sunset review, with its statutory responsibilities clarified. Also, limitations on TDCJ's ability to monitor health care should be removed so that the agency will be better able to carry out its responsibility of ensuring the well-being of offenders.

Support

Texas has developed a unique approach to providing health care for offenders in the prison system.

The Committee consists of nine members, including representatives of the universities that provide care.

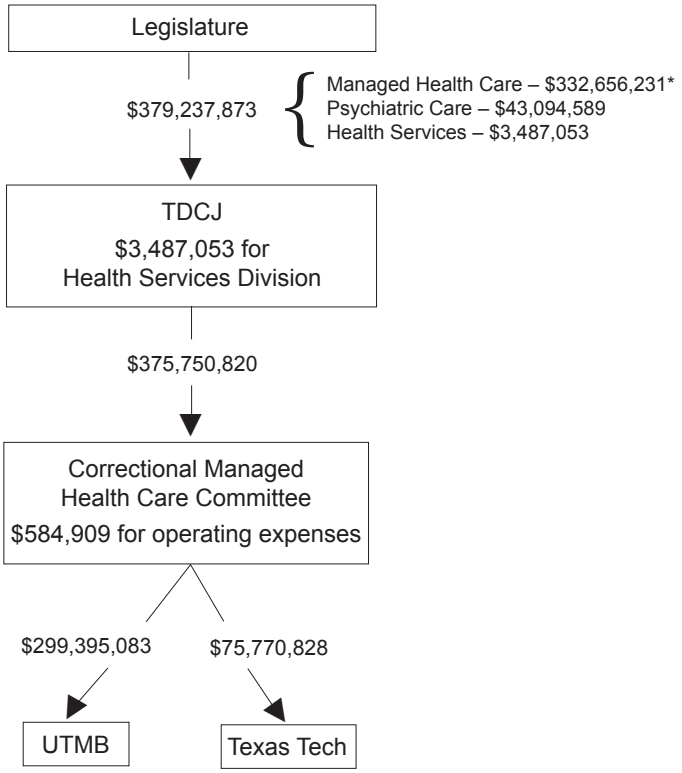
- In 1993, the Legislature created the Committee as an intermediary to oversee contracts for offender healthcare services. TDCJ contracts with the Committee, which contracts with two university providers, UTMB in Galveston and Texas Tech in Lubbock. The Committee's mission is to develop a statewide managed healthcare network that provides offenders with timely access to quality care while managing the cost of that care.
- The Committee consists of nine members, including representatives of the universities that provide care under the contract. The Presidents of UTMB and Texas Tech each appoint two members who are full-time university staff. TDCJ's Executive Director appoints two members who are full-time agency staff. One member from each entity much be a licensed physician. The Governor appoints three public members, two of whom must be licensed physicians. In total, five of the nine members must be physicians.
- The Committee has an annual operating budget of nearly $585,000 and four full-time staff, including an Executive Director, assistant director, financial analyst, and administrative assistant. UTMB provides administrative support for the Committee's staff, including maintaining all fund accounts, administering salary and benefits, performing purchasing and leasing functions, and providing information technology services.
- TDCJ's Health Services Division has an annual operating budget of nearly $3.5 million and 65 full-time employees, including two physicians and numerous nurses and other allied health professionals. The Division's main responsibilities include investigating grievances from offenders and complaints from the public regarding health care, conducting operational review audits of individual units to ensure they are in compliance with healthcare policies, and monitoring offenders' ability to access health care in a timely manner.

TDCJ's Health Services Division has an annual budget of $3.5 million and 65 employees.

- Offenders receive medical, dental, and mental health services on a continuum from basic care to surgery and other specialized treatments. To provide basic ambulatory care, the universities operate clinics at each facility. Offenders can also receive infirmary care at clustered facility locations throughout the state. When needed, offenders can receive higher levels of care at university-operated regional medical facilities. UTMB maintains regional medical facilities in units near Huntsville and Texas City, and provides advanced specialty care at the prison hospital in Galveston. Texas Tech operates a regional medical facility in Lubbock and contracts with local hospitals for advanced specialty care. UTMB serves units in the eastern half of the state, while Texas Tech provides care in the western half of the state.

- For fiscal year 2006, the Legislature appropriated $332.7 million for medical care and $43.1 million for psychiatric care. The universities provide care to nearly 152,000 offenders under TDCJ's authority. The Legislature appropriates money for offender health care through three strategies in TDCJ's appropriation. This money is passed through to the Committee, which keeps a portion for its operations, and then passes the rest on to the university providers, as depicted in the diagram, *Flow of Funds in the Correctional Health Care System*.

Flow of Funds in the Correctional Health Care System
FY 2006



*This amount includes a separate appropriation of $1,981,512 for health care at two private facilities.

Texas has a continuing need for professional healthcare providers to make healthcare decisions for incarcerated offenders in a secure prison environment.

The State of Texas has a constitutional duty to provide healthcare services to offenders.

- The State of Texas has a duty to provide healthcare services to offenders under the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment. Federal courts have established that offenders have the right to access medical care, receive a professional medical judgment, and receive the medical care called for by that professional medical judgment. However, to meet the constitutional standard of care, the prison system only has to provide care that is deemed medically necessary and not deliberately

indifferent to the offender's needs. This standard is lower than that typically expected in the free world through private health insurance or Medicaid. The prison system must provide offenders with health care that is appropriate and necessary and within standards of good medical practice, but it does not have to provide care that is primarily for the convenience of the offender.

- An important aspect of maintaining a constitutional level of care is allowing healthcare professionals to use their independent judgment to determine how healthcare services will be provided. The Texas system for providing correctional health care helps ensure this independent judgment by having physicians and nurses employed by UTMB and Texas Tech, rather than correctional officers and prison administrators, make healthcare decisions, giving the health and well-being of offenders at least the same consideration as security and cost concerns.

The universities have the necessary expertise and resources to provide care to 153,000 offenders.

- Given the complexity and enormity of providing health care to 153,000 offenders in the prison environment, Texas benefits from having two public medical schools performing this function. These schools are large institutions with the necessary resources to do the job with a thoroughness and skill that TDCJ was unable to provide with its own employees when the prison healthcare system was under court order in the 1980s and 1990s. These institutions are able to employ licensed professionals or contract with local hospitals to provide care, despite staffing shortages in some areas. Further, they have the infrastructure to support such a complex system.

- The confluence of interests in providing health care in the prison environment requires a venue for providing medical expertise, establishing policy direction, and resolving conflicts. Such a venue provides a platform for discussing complicated healthcare issues and for ensuring consistency, cooperation, and cost efficiency in the delivery of services.

  For example, when healthcare professionals work collaboratively with the prison system, they must decide on the appropriate level of care to provide within the given budget constraints. It also provides a forum for healthcare providers and prison officials to balance the need for independent medical judgment with the ultimate need for security in the controlled prison environment by discussing and resolving conflicts as they arise. The accompanying textbox lists the committees and workgroups that bring together the university providers and TDCJ to discuss and decide the various details of providing prison health care.

Correctional Managed Health Care Committees and Work Groups

- Joint Medical Director's Committee
- System Leadership Council
- Joint Policy and Procedures Committee
- Joint Pharmacy and Therapeutics Committee
- Joint Infection Control Committee
- Joint Morbidity/Mortality Review Committee
- Joint Mental Health Work Group
- Joint Nursing Work Group
- Joint Dental Work Group
- Joint Information Technology Work Group

The arrangement between TDCJ and the universities for providing offender health care does not lend itself to objective analysis of whether or not the Committee should be continued.

- The relationship between the Committee, TDCJ, and the university providers is not typical of state agency contractual relationships. While other state agencies may also enter into large and complex contracts for services, these contracts are typically with private companies, and they do not involve an intermediary like the Committee. Agencies enter into contracts and monitor the delivery of goods and services on their own, subject to oversight by the agency's policy body as the ultimate consumer under the contract.

  By contrast, in correctional health care, the Committee serves as an intermediary for the contract parties, entering into separate contracts with TDCJ, UTMB, and Texas Tech. Because the parties each have representation on the Committee and meet as equal partners to oversee the contracts, the universities are in the position of helping oversee the delivery of the very services they provide. This arrangement is unlike any other in state government. Other correctional agencies, including the Texas Youth Commission and the Federal Bureau of Prisons, contract with the same university providers without such an intermediary, although on a smaller scale.

The relationship between the Committee, TDCJ, and the universities is not typical of state agency contractual relationships.

- The Committee does not have the same requirements or responsibilities as other state agencies. It does not have rulemaking authority; instead it makes its decisions about offender health care through policy. The Committee does not have its own appropriation or strategic plan, but includes its legislative appropriations request within TDCJ's larger request and contributes to the development of TDCJ's strategic plan. The Committee takes few votes at its quarterly meetings, except to approve changes to healthcare policies, which are usually unanimous decisions.

- The unique approach of TDCJ and the universities working together through the Committee to provide offender health care appears to be successful. Texas has been able to provide low cost health care while avoiding the troubles concerning the constitutionality of care that have befallen other comparable states, such as California. In addition, the Committee has evolved since the early days of the managed care system. Adding public members to the Committee has diluted the perceived influence of the universities in overseeing the contracts. Recently implemented financial monitoring and reporting activities help ensure that the universities comply with statutory and contractual requirements. Also, as the parties have renegotiated the contracts over the years, provisions have been added that better define performance expectations and improve contract monitoring.

The unique approach of TDCJ and the universities working together through the Committee appears to be successful.

- TDCJ and the university providers like the current arrangement with the Committee operating as an intermediary between them. In this role, the Committee provides a forum for medical experts to discuss clinical issues, establish policy, ensure consistency, and resolve conflicts. The collaborative

nature of the Committee's interactions, unusual in standard contractual relationships, is of less concern because the parties are all state entities, accountable to the Legislature and Governor for their actions.

- While objective analysis of this structure would probably lead to the conclusion that the Committee is not needed as a quasi-independent agency, the unique circumstances of the Committee made this conclusion difficult, if not impossible, to draw. Certainly, objective analysis would not indicate the need to create such a structure if it did not already exist. Ultimately, however, no problems exist with the current structure to justify abolishing the Committee and risking unintended harm to the prison healthcare system. Sunset staff concluded it could not, in its judgment, recommend abolishment or continuation.

Sunset staff concluded it could not recommend abolishment or continuation of the Committee.

The Committee's statutory responsibilities need updating to better reflect its actual purpose.

- The Committee's main function is to make policy decisions about the delivery of health care and to coordinate the efforts of TDCJ and the universities. However, the Committee's statutory responsibilities do not reflect these roles. Further, several provisions in the Committee's statute refer to actions performed either by TDCJ or the universities, and not by the Committee or its staff. The table, *The Committee's Statutory Responsibilities*, shows that the Committee's role has been more as a facilitator and coordinator, and that the other entities actually perform many of the duties ascribed to the Committee. Two of these responsibilities are discussed in more detail in the following paragraphs.

- According to its statute, the Committee must determine a capitation rate that reflects the true cost of health care. However, the capitation rate the Committee typically quotes is nothing more than the mathematical calculation of legislative appropriation divided by the number of offenders, which may or may not be a true reflection of the universities' cost of providing care. The Legislature ultimately decides how much money to allocate for correctional health care, with input from the Committee and the universities. The Committee's staff works with the universities to develop the legislative appropriations request and to present that request to the Legislature. The Committee does not assess whether the universities are spending their money as efficiently as possible on healthcare supplies, equipment, or salaries, or whether the amount they request from the Legislature is reasonable. Ultimately, the universities must provide sufficient health care with whatever amount of money the Legislature decides to appropriate for that purpose.

The Committee does not assess whether the universities are spending their money as efficiently as possible.

- The Committee has statutory authority to enforce contract compliance by the university providers. However, it has never formally done so. The Committee is more likely to seek a cooperative approach to addressing problems rather than agreeing to any enforcement action against their employers. Further, the Committee is unlikely to assess penalties against

the universities for noncompliance because such an action would amount to one state entity withholding money from another, money that was meant to pay for offender healthcare services. While the Committee has not taken formal enforcement action, the Committee's staff will request the universities correct issues that staff find through financial monitoring activities.

The Committee's Statutory Responsibilities

Statutory Requirement[1]	Implementation Status
Develop the contracts for healthcare services in consultation with TDCJ and the healthcare providers.	The contracts were developed when the Committee was created in 1993. They have evolved as they are updated every two years, when the contracts are renewed, through negotiations between TDCJ and the universities. The Committee's staff act as facilitators among the three parties during the negotiations, work to achieve consensus on issues, and maintain records for future use in interpreting any contract concerns. Final decisions to accept the contracts are made by the governing boards of TDCJ and the universities.
Determine a capitation rate reflecting the true cost of correctional health care.	Determining the capitation rate is simply a matter of dividing the amount of money the Legislature appropriates for offender health care by the estimated population. The Legislature, with information from the Committee and the universities, decides how much money to appropriate for offender health care.
Monitor and develop reports on general quality of care issues.	TDCJ and the universities monitor and develop reports on quality of care issues. The Committee, on its own, does not monitor or develop reports. However, the Committee reviews the results of TDCJ's and the universities' monitoring efforts at each of its quarterly meetings.
Act as an independent third party in the allocation of money to inmate healthcare providers.	The Committee allocates the appropriations from the Legislature between UTMB and Texas Tech based on rates negotiated following a review of resource needs and available amounts of funding. These amounts are then incorporated into the contracts with each university. However, the Committee is not an independent third party since four of its nine members represent the universities receiving the money.
Act as an independent third party for the purpose of dispute resolution in the event of a disagreement relating to inmate health care between TDCJ and the universities or between UTMB and Texas Tech.	For the most part, disputes are handled informally as specified in the contracts. These contract provisions call for resolution through direct communication and informal means whenever possible. Should that mechanism fail, disputes are addressed by the medical directors of TDCJ and the universities. By contract, the Committee serves as the final arbiter of disputes as necessary to achieve resolution, however, disputes rarely reach the level of the Committee. Further, the Committee is not an independent third party since four of its nine members represent the universities receiving the money.
Enforce compliance with contract provisions, including requiring corrective action if care does not meet expectations as determined by quality of care monitoring activities.	A provision concerning remedies for non-performance was only recently added to the contracts after the State Auditor's Office recommended such language in 2004.[2] The Committee has never required corrective action by a formal vote. However, the Committee's staff have requested the universities take corrective action as a result of problems found through financial monitoring activities. Further, whether the Committee would require corrective action is debatable, considering that the Committee would have to decide to take action against its own members.

Because the Board of Criminal Justice relies on the Committee to oversee prison health care, it is too far removed from its responsibility to ensure offenders receive a constitutional level of health care.

The Board of Criminal Justice cannot contract away its responsibility for ensuring offenders receive adequate care.

- While the State benefits from having the universities provide health care, TDCJ still needs to question whether offenders are receiving adequate services. The Board of Criminal Justice is ultimately responsible for ensuring offenders receive care that meets constitutional standards. This responsibility cannot be contracted away to the university providers. Generally, the universities are liable for any illegal conduct on the part of their employees, and TDCJ is liable for any illegal conduct on the part of its employees. However, if healthcare policies or practices are found to be unconstitutional, everyone who took part in developing or approving them could face exposure to liability.

- TDCJ's ability to monitor the quality of care provided to offenders in its prisons is limited. According to statute, the agency's monitoring activities are limited to investigating medical grievances, ensuring access to medical care, and conducting periodic operational reviews of medical care provided at its units. While the statute directs TDCJ and the healthcare providers to cooperate in monitoring quality of care, it also requires the deferral to the healthcare providers to the greatest extent feasible for clinical oversight of quality of care issues. By deferring to the universities, TDCJ is less than a full partner in the monitoring of quality of care. The activities prescribed in statute are important to helping TDCJ ensure offenders receive access to care, but may not address whether a particular treatment or medication was appropriate. TDCJ also does not have monitors at its units to ensure the universities are providing adequate care on a day-to-day basis. While the universities should monitor their own employees and the care they give, TDCJ also needs to be able to monitor the healthcare system as it sees fit to address individual and systemic problems.

TDCJ's ability to monitor quality of care is limited.

- The Board's involvement in offender healthcare issues is limited. While the Board has a healthcare subcommittee, it has only met four times between January 2003 and August 2006. At its two most recent meetings in March and May 2005, the subcommittee did not discuss the correctional healthcare system. The Board does not receive reports at its quarterly meetings from the Committee. In fact, none of the Committee's staff or members representing the universities or public even attend the Board meetings. However, the Board's Chair regularly attends the Committee's quarterly meetings. The Board's most significant involvement occurs every two years, when it approves the contract for correctional healthcare services and the agency's legislative appropriations request, which includes funds for health care.

Recommendations

Change in Statute

9.1 Remove the separate Sunset date for the Committee and allow it to continue.

This recommendation would allow the Committee to continue, but it would not be scheduled for Sunset review in the future. The Legislature's decision to have such an entity to oversee the contracting relationship would not be the subject of future Sunset review. However, the Committee's role and responsibilities in the correctional healthcare system would be subject to review as part of future Sunset reviews of TDCJ.

9.2 Update the statutory direction for the Committee.

In place of its current statutory responsibilities, as listed in the table on page 73, the Committee would be responsible for:

- developing statewide policies for the delivery of offender health care;
- maintaining the contracts for healthcare services in consultation with TDCJ and the healthcare providers;
- allocating funding made available through legislative appropriations for correctional health care;
- identifying and addressing long-term needs of the correctional healthcare system;
- monitoring the universities' expenditures to ensure they are in compliance with statutory and contractual requirements;
- addressing problems found through monitoring performed by TDCJ and the universities, including requiring corrective action;
- serving as a dispute resolution forum in the event of a disagreement relating to offender health care between TDCJ and the healthcare providers or between UTMB and Texas Tech;
- communicating with TDCJ and the Legislature about the financial needs of the correctional healthcare system; and
- providing reports to the Board of Criminal Justice at the Board's quarterly meetings on the Committee's policy decisions, financial status, and corrective actions.

This recommendation would replace current statutory responsibilities with responsibilities that reflect the Committee's current functions.

9.3 Require the Chair of the Committee to be a public physician member.

This recommendation would require the Governor to choose one of the two public members who is licensed to practice medicine as the Chair of the Committee. Having a public member as the Chair would ensure that none of the parties to the correctional healthcare contracts are in charge of the Committee, thus emphasizing the balanced partnership that has evolved over the years. This recommendation would also institutionalize the recent positive change to the leadership of the Committee.

9.4 Remove limitations on the Texas Department of Criminal Justice's ability to monitor the quality of health care provided to offenders.

This recommendation would fully enable TDCJ to review the health care provided to offenders. Since TDCJ is ultimately responsible for the well-being of the offenders under its authority, it should be allowed to conduct any monitor activities it feels are necessary. Just as TDCJ and the universities have developed a cooperative relationship through the Committee, TDCJ and the universities should cooperate to the greatest extent feasible on quality of care monitoring. However, the scope of TDCJ's efforts should not be limited in statute. In addition, when TDCJ finds problems through its monitoring activities, it would be able to require the universities to take corrective action. The agency would report to the Board of Criminal Justice and the Committee all corrective actions required and whether the universities took appropriate action in response. Clarifying the scope of TDCJ's monitoring would allow the agency to hold the universities accountable for the care they provide and ensure the universities are properly addressing allegations of inadequate care. This recommendation does not require TDCJ to take on any specific new responsibilities or to become solely responsible for ensuring quality care is provided. Instead, TDCJ would be able to decide what new monitoring activities, if any, to perform. Further, this change would not affect the universities' ability and responsibility to conduct their own quality of care monitoring.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. Removing the Committee' Sunset date and realigning its statutory responsibilities will not significantly impact the operations of the Committee. Removing limitations on TDCJ's authority to monitor care provided to offenders could result in the agency deciding it needs to increase its budget for its Health Services Division. However, the agency could also decide to perform additional monitoring activities using its existing resources.

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[1] Texas Government Code, sec. 501.148 (a).

[2] State Auditor's Office, *An Audit Report on Management of Correctional Managed Health Care Contracts,* report no. 05-012 (Austin, Texas, November 2004), p. 7.

Issue 10

Offenders and the Public Have Limited Access to Information About Correctional Health Care, Leading to a Lack of Transparency in the System.

Summary

Key Recommendations

- Require the Committee to make information about offender health care readily available to the public.
- Require TDCJ to make information about healthcare services readily available to offenders.
- TDCJ's Health Services Division and the university providers should provide more useful information in response to offender grievances.

Key Findings

- Little information about correctional health care is readily available to the public or offenders.
- The lack of information about correctional health care fosters a perception of secrecy that clouds public confidence in the system.
- The Legislature and other jurisdictions have recognized the benefits of openness and improved information sharing regarding correctional health care.

Conclusion

Administering a constitutional correctional healthcare system requires that leaders make prudent decisions about health care in the challenging context of the prison environment. Clinical guidelines and community standards of care are constantly balanced against security and budgetary constraints.

Correctional healthcare administrators in Texas face these difficult decisions daily, but they make very little information available about the deliberative process or the resulting policies. This lack of readily available information can lead to frustration, and precipitate a sentiment of distrust. Sunset staff identified several actions that would better educate offenders and the public, and support a continued assurance in the constitutionality of the system.

Support

Correctional healthcare providers develop a wealth of information about how the offender healthcare system operates and performs.

- To provide health care for offenders, the Texas Department of Criminal Justice (TDCJ) contracts with the Correctional Managed Health Care Committee (the Committee) which then contracts with the University of Texas Medical Branch (UTMB) and Texas Tech University Health Science Center (Texas Tech). Every biennium, they negotiate new contracts outlining the responsibilities of each party. The contracts include key terms, such as the amount of money to be expended on offender health care, monitoring provisions, and performance measures. Attached to the contract is an Offender Health Services Plan. The plan reflects a collaborative effort among the parties to describe in general terms, the level, type, and variety of healthcare services made available to incarcerated offenders.

- The Committee meets quarterly to coordinate the efforts of the parties, to share information, and to reach consensus. Committee members and staff present information at the quarterly meetings to track the constitutionality of the system; alert the Committee members to problems; ensure consistent care through the adoption of system-wide policies, procedures, and clinical treatment guidelines; and contain costs by reviewing financial data.

  At each meeting, TDCJ's Medical Director reports on her office's monitoring activities, such as the results of recent unit medical facility audits, including items most frequently out of compliance; the number of complaints and grievances received from the public and offenders, and any corrective action taken as a result; and data measuring offenders' access to medical care. The medical directors of UTMB and Texas Tech present workload and information, such as the number of medical encounters for the quarter, the average length of stay for inpatient facilities, and data on staffing vacancy rates. The Committee's Financial Manager presents a report outlining the financial status of the university providers, including population indicators, and year-to-date expenditure data.

The Committee meets quarterly to coordinate efforts, share information, and reach consensus.

- The Committee has numerous subcommittees that meet monthly or quarterly to develop policies and address operational issues. For example, the Pharmacy and Therapeutics Committee maintains the Correctional Managed Care Formulary and disease management guidelines. All medications prescribed for offenders are listed in the formulary, which must be followed unless specific medical necessity exists for prescribing a non-formulary medication. This subcommittee also develops and updates disease management guidelines that outline a recommended treatment approach for certain illnesses and chronic diseases. Disease management guidelines are typically developed for high-risk or problem-prone diseases frequently encountered in the offender patient population.

In addition to the formulary and disease management guidelines, many other policies and procedures have been developed to support constitutional, consistent, and cost-effective correctional health care. These policies are compiled in the Correctional Managed Health Care Policies and Procedures Manual, and are maintained and reviewed annually by the Joint Policies and Procedures Committee. Other subcommittees, such as the Joint Dental Work Group and the Joint Mental Health Work Group, have primary responsibility for reviewing and recommending policies that pertain to their specialized subject matter. The Committee may also form ad hoc groups to review or recommend a policy relating to a particular issue of interest.

Little information about correctional health care is readily available to the public or offenders.

Although the Committee has a website, it is considered informal and is not accessible.

- Neither the Committee nor TDCJ provides useful information to the public through the standard means of presenting information. TDCJ's website only generally mentions the functions of the Health Services Division, and does not contain data or information to help the public understand how the healthcare system works or how it is performing. Although the Committee has a website, it is considered informal and is not accessible through common search engines, such as Google, or the main State of Texas website, where the public would normally go to locate a state agency.[1] The Committee's website is not included as a link on TDCJ's, UTMB's, or Texas Tech's websites.

  None of the partners publish booklets, pamphlets, or brochures for the specific purpose of providing healthcare information to the public or offenders. Similarly, no general information about the regulation and discipline of healthcare professionals is made readily available. For the public to obtain information about correctional health care in Texas, individuals must contact TDCJ or one of the partners and specifically request it. However, the public is not likely to know what information is available, and may not know what to ask for when they call.

- The unit law library is a standard information resource for offenders, but these libraries do not contain a copy of the Correctional Managed Health Care Policies and Procedures Manual, the formulary, or disease management guidelines. The Offender Orientation Handbook is also a resource for offender information, but the handbook only contains very general information about correctional managed care, such as how to access medical care, dental care, or mental health services; how to receive medications; and how to file a complaint.

Offenders receive little useful information in response to grievances, particularly if the grievance relates to quality of care.

- For offenders to raise concerns or request information about their health care, they must do so through TDCJ's grievance process. However, offenders generally receive little useful information in response to their grievances, particularly if the grievance relates to the quality of care. The process involves two steps. The first step is an attempt to resolve the issue at the unit level. If the unit level attempt at resolution proves inadequate,

the offender may file an appeal. TDCJ's Health Services Division processes and responds to all appeals of medical grievances. The Division reports that during fiscal year 2005, it received 5,870 appeals.

Among the most frequently grieved issues are complaints about "medical treatment" and "complaints regarding medical staff." Together, these two categories represent nearly 60 percent of all healthcare issues appealed. While the information Health Services provides in response depends on the specific nature of each inquiry, most inquiries about medical treatment receive a standard response stating that TDCJ will defer to the professional opinion of medical staff in regard to any diagnosis or subsequent care. The standard response for a complaint regarding medical staff is that no remedy is available through the grievance mechanism. According to the data provided by the Health Services Division, no further investigation occurs in virtually all of these cases, thereby ending the appeals process.[2]

Most inquiries about medical treatment receive a standard response stating that TDCJ will defer to the professional opinion of medical staff.

Offenders are told to direct complaints to the university provider, however doing so does not prove to be any more fruitful. If an offender sends a complaint directly to UTMB, for example, the offender receives a response stating that the concerns have been forwarded to his "District Practice Manager/Administrative Associate or their designated representative" and the offender is encouraged to "use the process on your unit to discuss health related concerns."

The lack of information about correctional health care fosters a perception of secrecy that clouds public confidence in the system.

- Lack of information about health care can lead to the impression that correctional health care has something to hide; calling into question whether systems are in place to meet the medical needs of offenders, to address legitimate grievances and complaints, and to monitor the system to see that it is working to properly ensure a constitutional level of care. Lack of information also gives credence to claims about deficiencies in the system; ultimately causing the public and the Legislature to question how money is being spent. This perception of mistrust has become a point of frustration for the leaders of the correctional healthcare system.[3]

Offenders are captive clients and should have information about the system designed to meet their constitutional right to health care.

- The lack of operational information precludes simple understanding of how the system works. Without reasonable access to contracts, policies and procedures, unit information, basic information the complaint process, and Committee meetings, the offenders and the public may not understand the basic responsibilities of the players in the system, and the remedies available, should the players not live up to their responsibilities. The lack of information about medical treatments and services, like the drug formulary and disease management guidelines, deprives offenders and the public information about the type and level of treatment they should expect. Offenders are captive clients of this system, and should have access to information about how the system is designed to meet their constitutional right to health care.

- The lack of statistical data makes it difficult for the public and policymakers to evaluate how well the system works. Data related to quality assurance efforts, offender deaths and diseases, and complaints and grievances can show the success or deficiency of the efforts undertaken to address offenders' healthcare needs. Combined with cost data, this information can also show the efficiency of the Texas system from a fiscal standpoint. Much of this information is currently presented to the Committee in public meetings, but is not otherwise readily accessible to those with interest in the system.

The Legislature and other jurisdictions have recognized the benefits of openness and improved information sharing regarding correctional health care.

- Other states and the Federal Bureau of Prisons make better use of their websites to provide information on correctional health care. For example, Florida's Correctional Medical Authority website contains information about the history and mission of the Authority, provides information about landmark litigation for Florida's correctional healthcare program, and includes links to many useful reports and documents, including a detailed reports on the care provided at individual facility medical units.[4] The Federal Bureau of Prisons' website contains a section on healthcare resources and links to clinical practice guidelines for a number of commonly encountered illnesses and a link to the national correctional healthcare formulary.[5]

- Since the Legislature created the Committee in 1993, the public, the media, and the Legislature have been critical of the system for not revealing enough information. Increased legislative oversight in recent years has led to changes that have fostered openness. In 1999, the Legislature amended the Committee's statute to include the addition of three public members. In 2001, the Committee amended its contracts to add a requirement that the universities respond to offender grievances referred by TDCJ within 45 days. Increased financial monitoring and reporting, and a requirement that the universities notify the Committee of significant spending initiatives, resulted from recommendations from the State Auditor in 2004.

Recommendations

Change in Statute

10.1 Require the Committee to make information about offender health care readily available to the public.

The Committee's statute should be amended to ensure that the following information is accessible to public:

- Contracts between TDCJ, the Committee, and the universities, including the Offender Health Services Plan attachment;
- Correctional Managed Care Formulary;
- Correctional Managed Care Policies and Procedures Manual;

- Quality assurance statistics and data, to the extent permitted by law;
- General information about the costs of correctional health care, including, but not limited to quarterly and monthly financial reports, and aggregate cost information on items such as pharmaceutical costs, salaries and benefits, equipment, offsite medical services, and supplies;
- Aggregate, statistical information about offender deaths and disease prevalence;
- Description of the process for filing offender grievances;
- General statistics on the number and type of offender grievances filed during the previous quarter;
- Contact information for the public to file complaints or submit inquiries to TDCJ and the university providers;
- Information about the regulation and discipline of healthcare professionals and a link to the Health Professions Council website;[6]
- Unit data, including the most recent accreditation review date (if the unit has been accredited by a national accrediting body), hours of operation, a description of services available, general information on unit staffing, and statistics on offenders' ability to access care in a timely manner;
- Dates and agendas for quarterly Committee meetings; and
- Meeting minutes from past Committee meetings.

By improving the transparency of the correctional healthcare system, this recommendation would promote a greater understanding of how health care is delivered and would ultimately ensure greater public confidence in the system. This information should be made available on the Committee's website and should also be available in written form, upon request. The Committee should work with TDCJ, UTMB and Texas Tech to ensure that its website is linked to their websites, and that it is accessible through the State of Texas website, and is locatable through common search engines.

All of this information is already subject to disclosure under the public under the Public Information Act. This recommendation would not require disclosure of any information currently considered confidential under federal and state law, such as medical and other information relating to individuals. In determining the specific information to be made more readily available, the Committee should work with TDCJ to ensure that public disclosure would not pose a security threat to individuals or to the criminal justice system.

10.2 Require TDCJ to make information about healthcare services readily available to offenders.

Statute should be amended to ensure that the following information is available to offenders through the unit law libraries:

- Offender Health Services Plan;
- Correctional Managed Care Formulary;
- Correctional Managed Care Policies and Procedures Manual; and
- Description of the process for filing offender grievances.

By providing more information to offenders, the recommendation would promote a better understanding of the system among offenders and would ultimately improve accountability of the healthcare providers.

Management Action

10.3 TDCJ's Health Services Division and the university providers should provide more useful information in response to offender grievances.

When an offender appeals a grievance, TDCJ and the universities should more fully explain the major findings from the investigation, and provide an explanation of the specific reason or policy basis for dismissing the grievance, or a description of any corrective action that results.

In conjunction with Recommendation 9.4 removing the provision in statute preventing TDCJ from monitoring the quality of correctional health care, this provision would allow TDCJ to investigate and provide more complete responses to these offender grievances, beyond the simple form-letter responses currently used.

Fiscal Implication

These recommendation should not have a significant fiscal impact to the State. The Committee may incur some costs resulting from improvements to its website; however, the Committee should be able to cover the cost with its current operating budget. TDCJ may incur some cost associated with making information about correctional health care available in all unit libraries, but these costs should not be significant and should be absorbed within the agency's current operating budget. TDCJ or the universities may incur additional costs associated with providing more information in response to offender grievance, however due to recent changes made to the Patient Liaison Program within TDCJ's Health Services Division, sufficient resources should be available to handle any increased workload.

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[1] The Committee's website can be found at http://www.cox-internet.com/cmhcc/. The main State of Texas website can be found at www.state.tx.us, and www.texasonline.com.

[2] In fiscal year 2005, TDCJ's Health Service Division received 5,980 grievance appeals, 22 of which were forwarded to the universities for further investigation of the quality of care provided.

[3] Texas House Appropriations Committee, review of the Correctional Managed Health Care Committee, public hearing (Austin, Texas, June 28, 2006).

[4] The Florida Department of Health, Correctional Medical Authority, http://www.doh.state.fl.us/cma/. Accessed: September 18, 2006.

[5] The Federal Bureau of Prisons, healthcare resources, http://www.bop.gov/news/medresources.jsp. Accessed: September 18, 2006.

[6] The Health Professions Council, http://www.hpc.state.tx.us. Accessed: September 29, 2006.

Across-the-Board Recommendations

Texas Department of Criminal Justice

Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Already in Statute	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Board of Pardons and Paroles

Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Already in Statute	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Modify	8. Provide for public testimony at meetings of the policymaking body.
Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Modify	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Correctional Managed Health Care Committee

Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Already in Statute	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Modify	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Agency Information

Agency Information

Agencies at a Glance

In 1846, the Texas Legislature provided funding for the first Texas prison. Since that time the state criminal justice system has expanded to include probation, parole, and offender rehabilitation programming. The Texas Department of Criminal Justice (TDCJ) works with the Board of Pardons and Paroles (Parole Board), and the Correctional Managed Health Care Committee (the Committee) to perform these functions. Both the Parole Board and the Committee operate as semi-independent agencies and are responsible for making offender parole determinations and coordinating offender healthcare services, respectively.

On the Internet: TDCJ provides information about the state criminal justice system at www.tdcj.state.tx.us.

The Texas Department of Criminal Justice's major functions include:

- providing for confinement and re-integration of adult offenders;
- maintaining appropriate community-based supervision for offenders released on parole and mandatory supervision; and
- supporting community-based supervision and programs for offenders on probation.

Key Facts

- **Funding.** In fiscal year 2004, TDCJ operated with a budget of $2.5 billion. Approximately 80 percent of TDCJ's budget supports the incarceration of offenders. The textbox, *Average Daily Cost, Per Offender*, shows the average daily costs associated with housing, supervising, and providing health care for offenders.

Average Daily Cost, Per Offender – FY 2004

Prison Incarceration	$40.06
State Jail Incarceration	$33.78
Health Care	$7.40
Parole	$3.15
Probation	$2.27

- **Offender Population.** In fiscal year 2005, TDCJ incarcerated approximately 153,000 offenders in 106 prisons located throughout the state. TDCJ also provided funding and support for 430,000 offenders on probation in 121 Community Supervision and Corrections Departments, and TDCJ's Parole Division supervised approximately 76,000 offenders released on parole and mandatory supervision.
- **Staffing.** TDCJ employs approximately 38,000 staff, of which 23,500 are correctional officers. TDCJ faces a continuing correctional officer shortage based on staffing requirements at each facility. As of July 2006, the shortage was 2,746 officers, down from a high of 3,406 in October 2001.

Major Events in Agency History

1849 First Texas prison begins to house offenders.

1913 The Legislature establishes the adult probation system.

1926 Texas Prison Board begins oversight of the prison system.

1936 The Board of Pardons and Paroles is created by Constitutional Amendment. The Governor is given the authority to recommend parole and grant executive clemency.

1957 The Legislature creates the Division of Parole Supervision and appropriates funds to employ professional parole officers.

1977 In an effort to relieve prison overcrowding, the Legislature institutes mandatory release of offenders whose calendar time plus good conduct time equals their sentence.

The Legislature establishes the Texas Adult Probation Commission to distribute funding and create standards for local probation departments.

In 1989, the Legislature created TDCJ by consolidating the State's probation, incarceration, and parole functions into a single agency.

1980 Judge William Wayne Justice issues *Ruiz* opinion stating that the Texas Department of Corrections imposed cruel and unusual punishment. The ruling required the State to reduce overcrowding, improve prisoner rehabilitation and recreational programs, and refrain from practices deemed detrimental to prisoners' safety and welfare.

1983 A Constitutional amendment removes the Governor from the parole process and creates the Board of Pardons and Paroles as a separate agency responsible for approving and revoking parole, conducting hearings, and supervising offenders.

1989 The Legislature creates the Texas Department of Criminal Justice by consolidating the functions of three autonomous agencies: the Department of Corrections, Adult Probation Commission, and the Board of Pardons and Paroles. The Parole board retains authority to approve and revoke parole, but parole supervision authority is transferred to TDCJ.

TDCJ initiates its first large-scale private prison contracts with the opening of four 500-bed facilities.

1993 The Legislature establishes a system of state jails to house offenders who commit certain non-violent and non-sex offense felonies.

The Legislature creates the Correctional Managed Health Care Committee to oversee and manage healthcare contracts between TDCJ, the University of Texas Medical Branch (UTMB), and Texas Tech University Health Sciences Center (Texas Tech).

2002 Judge Justice dismisses the *Ruiz* case, which had become the longest running prisoner litigation in U.S. history.

2005 Senate Bill 60 makes life without parole a sentencing option for capital crimes.

Organization

Texas Board of Criminal Justice

The Texas Board of Criminal Justice governs TDCJ's operations, which includes oversight of all state prisons and jails, contracted private correctional institutions, select residential programs, and portions of the probation and parole systems of Texas. Statute establishes the Parole Board and the Correctional Managed Health Care Committee separately from the Board of Criminal Justice to administer parole and oversee health care for incarcerated offenders.

The Board of Criminal Justice consists of nine members appointed by the Governor to staggered, six-year terms. The Board members, all of whom represent the general public, must not include more than two individuals who live in the same area of the state. The Governor designates the Chairman of the Board. The chart, *Texas Board of Criminal Justice*, provides information on the Board members.

The nine-member Board of Criminal Justice governs TDCJ's operations and serves as the board for the Windham School District.

Texas Board of Criminal Justice

Member	City	Term Expiration
Christina Melton Crain, Chairman	Dallas	2007
Pierce Miller, Vice Chair	San Angelo	2007
Patricia A. Day, Secretary	Dallas	2003
Adrian A. Arriaga	McAllen	2007
Oliver J. Bell	Austin	2009
Gregory S. Coleman	Austin	2009
Pastor Charles Lewis Jackson	Houston	2011
Tom Mechler	Claude	2011
Leopoldo Vasquez III	Houston	2011

The Board's major duties include hiring TDCJ's Executive Director, establishing policies for TDCJ and the Board, approving TDCJ's budget, and creating advisory panels. The Board appoints an Inspector General, a Director of Internal Audits, and a Director of the State Counsel for Offenders, who report directly to the Board. In a separate capacity, the Board serves as the school board for the Windham School District, which provides education to incarcerated offenders and appoints the Windham Superintendent. The Board is required by statute to meet quarterly, but generally meets six times per year.

Board of Pardons and Paroles

The Parole Board consists of seven public members appointed by the Governor to six-year terms. The Governor designates a presiding officer. The presiding officer hires a Board Administrator to manage the day-to-day activities of the Parole Board, as well as 12 parole commissioners to serve on parole panels with Board members and make decisions regarding offender parole. The presiding officer assigns two commissioners and one Board member to each of the six regional Parole Board offices who serve as the regional parole panel. The parole panel for each region is charged with determining which offenders will be released on parole or discretionary mandatory supervision, under which conditions, and when the release should be revoked. In addition to general parole panel duties, Board members develop Board policy, serve as regional office administrators, recommend the resolution of clemency matters to the Governor, and conduct special parole reviews for certain violent offenders.

The chart, *Texas Parole Panel Members* contains information about the Board members and commissioners, including their assigned regional office.

Texas Parole Panel Members

Rissie L. Owens, Presiding Officer (term expires 2009)
AMARILLO
Charles Aycock, Board Member (term expires 2011)
James C. Poland, Parole Commissioner
Charles Shipman, Parole Commissioner
ANGLETON
Linda Garcia, Board Member (term expires 2007)
Pamela D. Freeman, Parole Commissioner
Lynn Ruzicka, Parole Commissioner
GATESVILLE
Juanita M. Gonzalez, Board Member (term expires 2009)
Elvis Hightower, Parole Commissioner
Howard A. Thrasher, Sr., Parole Commissioner
HUNTSVILLE
Conrith W. Davis, Board Member (term expires 2007)
Thomas G. Fordyce, Parole Commissioner
Gerald Garrett, Parole Commissioner
PALESTINE
Jackie DeNoyelles, Board Member (term expires 2011)
Tony Garcia, Parole Commissioner
James Paul Kiel, Jr., Parole Commissioner
SAN ANTONIO
Jose Aliseda, Jr., Board Member (term expires 2009)
Charles C. Speier, Parole Commissioner
Edgar Morales, Parole Commissioner

Correctional Managed Health Care Committee

The Committee consists of nine members. The Governor appoints three public members, of whom two must be physicians; TDCJ's Executive Director appoints two full-time TDCJ employees, including one physician; and the presidents of UTMB and Texas Tech each appoint two members who are full-time university employees, including one physician each. Committee members appointed by the Governor serve staggered, six-year terms, while the other members serve at the will of the appointing official. The Governor designates one of the physician members as Chairman. The chart, *Correctional Managed Health Care Committee*, provides more information on the Committee members.

Correctional Managed Health Care Committee

Member	Qualification	Term Expiration
James D. Griffin, M.D., Chairman	Public Member	February 2007
Elmo Cavin	Texas Tech Non-Physician	Not Applicable
Jean M. Frazier	Public Member	February 2009
Cynthia Jumper, M.D.	Texas Tech Physician	Not Applicable
Lannette Linthicum, M.D.	TDCJ Physician	Not Applicable
Ed Owens	TDCJ Non-Physician	Not Applicable
Ben G. Raimer, M.D.	UTMB Physician	Not Applicable
Lawrence E. Revill	UTMB Non-Physician	Not Applicable
Desmar Walkes, M.D.	Public Member	February 2011

TDCJ contracts with the Committee, which contracts with the universities to provide medical and mental and healthcare services for incarcerated offenders. The Committee administers the contracts and facilitates communication among the contracting parties in effort to adopt system-wide healthcare policies.

Staff

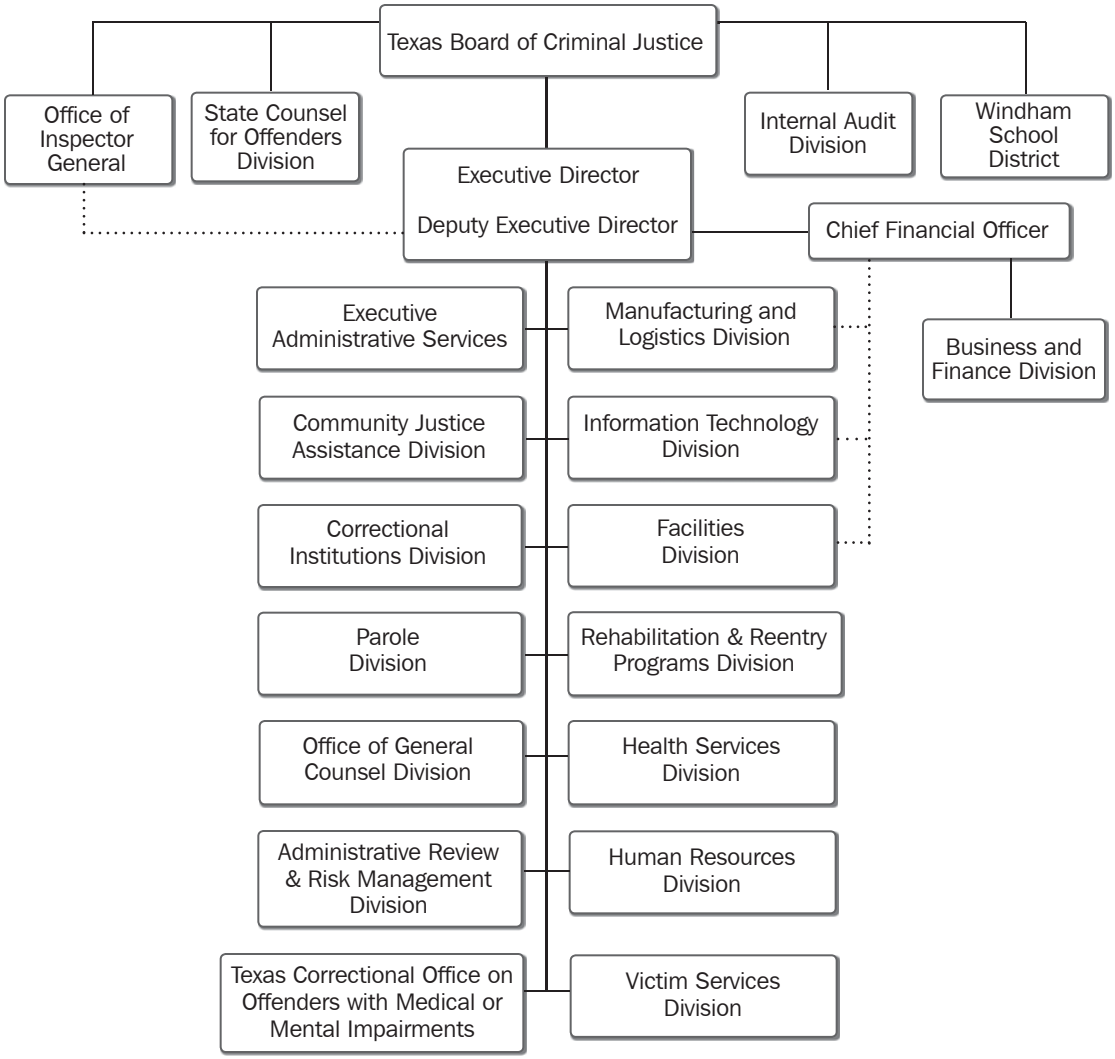
Texas Department of Criminal Justice

TDCJ employed 38,140 staff in fiscal year 2005, and has a full-time employee cap of 39,000 for fiscal years 2006 and 2007. Correctional officers represent 23,580, or almost two-thirds, of the agency's employees. The *Texas Department of Criminal Justice Organizational Chart* depicts the agency's structure. TDCJ staff works in central offices in Huntsville and Austin, as well as in correctional facilities and administrative offices throughout the state.

The Executive Director, with the help of the Deputy Executive Director, manages the daily operations of the agency, the implementation of Board policy, and the hiring of staff. According to statute, the Executive Director must have previous experience in corrections or in another large government agency.

Appendix A compares the agency's workforce composition to the minority civilian labor force. During the last three years, the percentage of staff the agency employed in most categories has generally met the percentages in the minority civilian workforce for African-Americans, but has generally fallen short of the civilian percentage for Hispanics and females.

Texas Department of Criminal Justice Organizational Chart



Board of Pardons and Paroles

In fiscal year 2005, the Parole Board employed about 175 staff. In addition to Board members and commissioners, the Parole Board employs parole analysts, who assist parole panels in making parole revocation determinations; hearing officers, who preside over parole revocation hearings; and clerical staff. The Parole Board has headquarters in Austin and six regional offices, as well as 19 hearing officer locations, across the state. As illustrated in Appendix B, with one exception, the percentage of minority staff the Parole Board employed in most categories generally met the civilian workforce percentages.

Correctional Managed Health Care Committee

The Committee staff, located in Huntsville, consists of an Executive Director, an assistant director for administrative services, a financial manager, and an administrative assistant. The staff coordinates the activities of the Committee; facilitates communication among TDCJ, Texas Tech, and UTMB; audits the

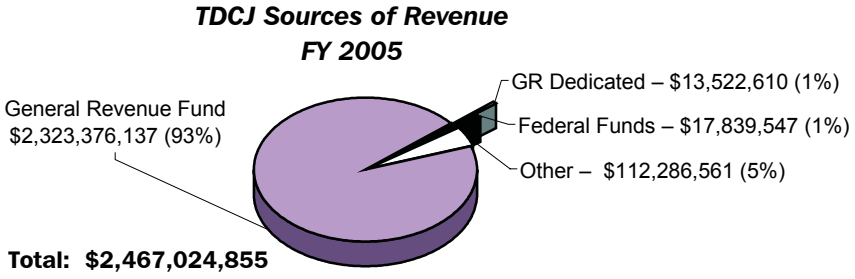
universities' financial records; and represents correctional health care before the Legislature. Because the Committee only has four employees, Sunset staff did not conduct trend analysis of the Committee's workforce for equal employment opportunity purposes.

Funding

Revenues

TDCJ received about $2.4 billion in initial funding in fiscal year 2005. This amount includes appropriations for the Parole Board and the Committee, but does not include appropriations for the Windham School District, which mainly come from interagency transfers from the Texas Education Agency.

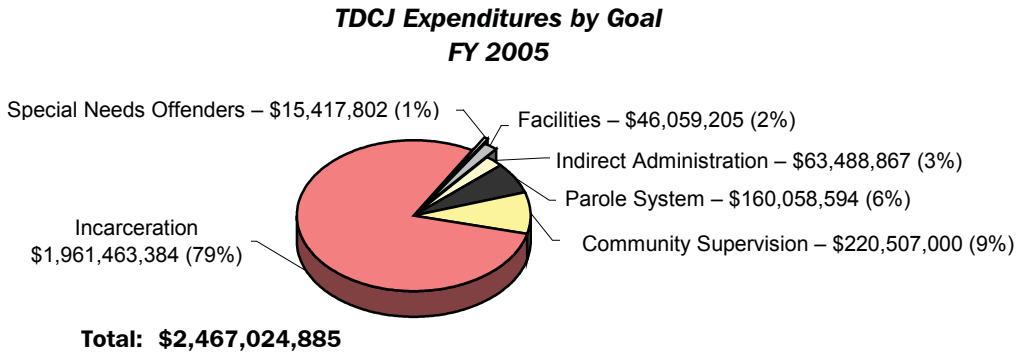
General Revenue accounts for nearly 93 percent of the agency's total revenue. The remaining 7 percent comes from other sources, including federal appropriations, funds to support the incarceration of aliens, and revenue generated from the sale of agricultural products and items manufactured by Texas Correctional Industries. The pie chart, *TDCJ Sources of Revenue*, details the agency's sources of revenue for fiscal year 2005.



In addition to $2.4 billion in initial funding for fiscal year 2005, TDCJ received $47.2 million in supplemental appropriations, of which, approximately 66 percent went to support correctional health care in the 2004 – 2005 biennium.

Expenditures

In fiscal year 2005, TDCJ's expenditures totaled more than $2.4 billion. Approximately 80 percent of TDCJ's expenditures support the incarceration of offenders. The pie chart, *TDCJ Expenditures by Goal*, details the agency's expenditures in fiscal year 2005.



Appendix C describes the agency's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2002 to 2005. While the agency generally falls short of the State's HUB purchasing goals, the agency does have a HUB action plan in place to try to address the shortfalls.

Agency Operations

TDCJ supports and oversees the adult correctional system in Texas. The agency accomplishes this through the following main functions:

- community-based supervision and programming for offenders on probation;
- confinement of offenders in state prisons, state jails, and contracted private correctional facilities;
- rehabilitative and re-entry programming;
- programming for crime victims;
- provision of offender health care; and
- community-based supervision of offenders on parole.

TDCJ oversees and provides funding to 121 CSCDs that supervise about 430,000 probationers.

Community Supervision

Community supervision, formerly known as adult probation, consists of a variety of services and programs designed to divert offenders from traditional incarceration and to allow them to serve their sentences in the community rather than prison.

Texas has 121 local Community Supervision Corrections Departments (CSCDs) that supervise approximately 430,000 probationers, including 238,000 felons and 192,000 misdemeanants. The judge, or judges, who preside over criminal cases in each judicial district, establish a CSCD and approve its budget and community justice plan. The judge, or judges, appoint a CSCD director who hires community supervision officers and administrative staff. CSCD staff are employees of the judicial district paid with state funds and fees assessed on probationers, and are eligible for state health benefits. Community supervision officers perform all supervision duties including meeting with probationers, developing supervision plans, and ensuring that probationers comply with the terms of their probation.

Community Justice Assistance Division

TDCJ's Community Justice Assistance Division (CJAD) oversees and supports local community supervision. CJAD provides funding to local CSCDs and related service providers, and monitors compliance with CJAD standards to ensure efficient and appropriate service delivery. CJAD distributes funding through a combination of formula and competitive grants. A combination of state funding and probation fees pays for program administration, including employee salaries and benefits. The chart, *CJAD Funding Programs,* describes the four programs CJAD funds.

CJAD Funding Programs

CJAD Program	Purpose / Method of Funding	FY 2005 Expenditures
Basic Supervision	Available to CSCDs only for felony and misdemeanor supervision. Funding is distributed based on the CSCD's percentage of the State's total number of offenders. CJAD funds felony supervision at approximately $1.40 per day; misdemeanor supervision at $.70 per day for up to 180 days.	$98,000,000
Community Corrections	Available only to CSCDs only to provide community-based correctional programs as alternatives to incarceration. CJAD calculates funding based on the most recent calendar year's direct felony offender count and the county's population from the latest census.	$43,000,000
Diversion Programs	Available to CSCDs and other local entities to pay for programming designed to divert offenders away from incarceration. Short-term diversion efforts include sentencing alternatives at the time of conviction and sanctioning alternatives for violations of the terms of supervision. Long-term diversion program include residential and non-residential programs. CJAD awards grants on a competitive basis.	$89,000,000
Treatment Alternatives to Incarceration Program (TAIP)	Provides funding to select CSCDs who offer substance abuse screening, assessment, and treatment to indigent offenders who commit drug and alcohol-related offenses. CJAD awards grants on a competitive basis.	$11,000,000
Total Community Corrections Expenditures		**$241,000,000**

In 2005, CJAD funding accounted for approximately 64 percent of the CSCDs' operating budgets. The remainder of community corrections funding comes from court-ordered supervision fees and other support from local governments. Counties are required to provide CSCDs with office space and equipment.

To receive CJAD funds, CSCDs must have a Community Justice Plan that outlines local programs and services; meet CJAD's minimum standards for programs, facilities, and equipment; and routinely measure and report on program performance and finances. During the funding cycle, CJAD audits programs to ensure compliance, provides required training and certification to all community supervision officers, and offers technical assistance.

Since local judges oversee CSCD operations, the Legislature created the Judicial Advisory Council (JAC) to advise CJAD and the Board of Criminal Justice on matters of interest to the judiciary. The textbox, *Judicial Advisory Council*, provides detail on JAC.

Judicial Advisory Council

The Legislature created JAC in 1989 to act as a liaison between the courts, TDCJ, and CSCDs; and provide advice to the Board of Criminal Justice on issues relating to community supervision. JAC has 12 members: six appointed by the Chief Justice of the Supreme Court, and six appointed by the presiding judge of the Texas Court of Criminal Appeals. All members serve staggered, six-year terms. Appendix D lists the current members of JAC.

Correctional Institutions Division

The Correctional Institutions Division (CID) provides safe and appropriate confinement and supervision of adult felons and manages correctional facilities according to constitutional and statutory requirements.

TDCJ Facilities

CID manages and oversees 106 correctional facilities, including both state and private facilities. The map, TDCJ-CID Facilities, located in Appendix E, provides a map that shows the locations of all CID facilities organized according to six geographic regions of the state. The chart, *TDCJ Correctional Facilities,* describes these facilities and the types of offenders they house.

TDCJ Correctional Facilities

Type	Number	Description
Prison	51 State 7 Private	Facilities that house offenders with capital, first, second, and third degree felony convictions; high level drug and property offenders; and violent offenders. Sentences range from two years to life.
State Jail	16 State 5 Private	Established in 1993, state jails provide an alternate place of incarceration for nonviolent offenders with relatively short sentences. State jails are generally low-security facilities that house offenders convicted of state jail felonies, which are mainly drug and property offenses. Sentences range from 75 days to two years. State jail offenders must serve the entire term of their sentence, are not eligible for parole, and may not have their sentences reduced for good behavior.
Transfer Facility	13	Facilities that house incoming offenders during intake and diagnostic processing who are awaiting assignment to a permanent TDCJ facility. Transfer offenders can be those convicted of first, second or third degree felony offenses. Transfer offenders can be housed in a transfer facility for up to two years.
Pre-release Facility	3	Facilities that provide an intensive six-month treatment program for offenders in a therapeutic community setting. Offenders within seven months of release receive pre-release services. The programs have three components: substance abuse treatment, educational/vocational, and cognitive restructuring.
Psychiatric Facility	3	Facilities that provide inpatient mental health treatment.
Mentally Retarded Offender Program	1	Facility that provides sheltered housing to offenders with mental retardation.
Medical Facility	2	Hospital Galveston and the Carole Young Medical Facility are specialized medical facilities managed by UTMB. These facilities provide impatient hospital care, acute care, and specialty clinics for offenders.
Substance Abuse Felony Punishment Facility	5	Facilities that provide an intensive six-month therapeutic community program for offenders with substance abuse problems. The program is nine months for special needs offenders. Offenders are housed in these facilities as part of their sentence, as a condition of community supervision, or as a modification of parole.

Offender Confinement

At the end of fiscal year 2005, TDCJ housed 152,217 offenders in its facilities. The table, *Offender Demographics,* details these offenders. Although TDCJ's state bed capacity is 154,702, TDCJ operates at 97.5 percent of this capacity which gives the agency flexibility to move offenders and comply with restrictions on housing certain types of inmates together. Therefore, TDCJ's operating capacity within its facilities is only 150,834 beds. Appendix F describes how TDCJ determines and measures capacity.

Offender Demographics FY 2005

Gender	Male	140,196	92%
	Female	12,021	8%
Race	Black	57,932	38%
	White	48,480	32%
	Hispanic	45,061	29%
	Other	744	0.5%
Average Age		36	
Offense*	Violent Offense	73,276	48%
	Property Offense	27,777	18%
	Drug Offense	29,686	20%
	Other Offense	18,253	12%

*Total offense categories do not add up to the total offenders due to 3,255 (2%) SAFP offenders. These offenders are incarcerated for a variety of offenses.

Intake & Diagnostics

Statutorily, TDCJ must accept all felony offenders from county jails within 45 days of being paper-ready, meaning that all processing required for transfer has been completed. Incoming offenders enter TDCJ through a transfer facility, diagnostic facility, state jail intake facility, or a substance abuse felony punishment facility (SAFP). While offenders who enter through a transfer facility may remain there for up to two years, offenders usually stay only a few weeks at a diagnostic unit. The chart, *Diagnostic Process,* details the steps in this process, which typically takes a few weeks before the offender is classified and assigned to a unit.

Diagnostic Process

Receiving and Screening	Incoming offenders undergo a search and property inventory; receive urgent medical care, state clothing, showers, and haircuts; and are interviewed to obtain basic information. Housing and facility assignments are based on security criteria.
Identification	TDCJ photographs, fingerprints, and examines offenders for identifying scars, marks, and tattoos.
Health Examination	Offenders undergo a medical, dental, and mental health examination. Healthcare staff identify offenders with special needs, but offenders must self-declare disabilities that need to be accommodated in accordance with the Americans with Disabilities Act.
Orientation	Offenders learn about TDCJ policies, rules, and programs.
Testing	Offenders are tested to determine their educational, psychological, and substance abuse treatment needs.
Sociological Interviews	Offenders detail their criminal, social, educational, employment, family, military, and drug and alcohol histories to verify information and help in the classification process.

Classification

TDCJ staff use information gathered through the diagnostic process to help place offenders in units according to their security and programming needs. Offenders do not have the right to choose their assigned unit. The State Classification Committee determines each offender's permanent housing

assignment. Once an offender arrives at his or her assigned unit, the Unit Classification Committee determines the offender's custody level based on the amount of supervision the offender needs and available staffing. An offender's custody level determines where and with whom the offender can live, how much supervision the offender will need, and what job the offender can be assigned to.

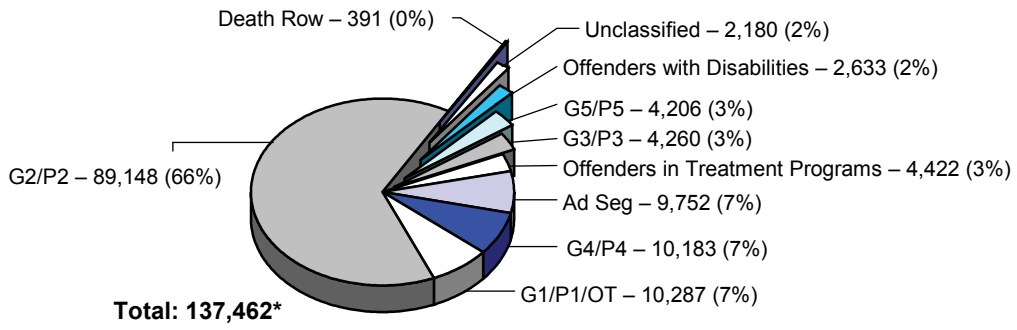
While the key elements in determining the custody level are an offender's current and previous institutional behavior, current offense, and length of sentence, other factors such as gang membership or a need for protection may be considered. The chart, *Offender Custody Levels,* explains the six main custody levels for institutional offenders and the pie chart, *Custody Level Population,* shows the number and percentage of offenders within each custody level for fiscal year 2005. TDCJ designates most offenders as G2 unless their sentence length or issues identified through the diagnostic process preclude this designation. Other custody levels include offenders with certain chronic medical conditions or mental retardation, offenders participating in mental health and substance abuse treatment, and death row offenders.

Offender Custody Levels

Administrative Segregation (Ad Seg)	The maximum level of security applied to offenders who pose a danger to other offenders or staff, or who are in danger of harm by other offenders. Certain gang members are routinely assigned to ad seg. Ad seg offenders live in single cells and usually only leave for showers and one hour of recreation per day.
General Population Level 5 (G5) / Safekeeping Level 5 (P5)*	Offenders with assaultive or aggressive disciplinary records who must be confined to cells instead of dorms. These offenders require direct, armed supervision in order to work outside the prison's security fence.
General Population Level 4 (G4) / Safekeeping Level 4 (P4)*	Offenders who must live in a cell, with few exceptions, and who may work outside the security fence only under direct, armed supervision.
General Population Level 3 (G3) / Safekeeping Level 3 (P3)*	Offenders who may live in dorms or cells inside the unit, and who may work outside the security fence only under direct, armed supervision.
General Population Level 2 (G2) / Safekeeping Level 2 (P2)*	Offenders who may live in dorms or cells inside the security fence, and who may work outside the security fence only under direct, armed supervision.
General Population Level 1 (G1) / Safekeeping Level 1 (P1)*	Offenders who may live in dorms outside the security fence, and who may work outside the security fence with periodic, unarmed supervision.
Outside Trusty (OT)	Offenders within 24 months of possible release who are assigned to live in a trusty camp outside the security fence, and who may work outside the security fence with periodic, unarmed supervision.

*Safekeeping offenders require housing separate from the general population for their safety.

Custody Level Population
FY 2005



*This total does not include 14,755 state jail offenders.

Good Time

Some offenders may shorten the amount of time necessary to become eligible for parole by earning good-conduct time, called "good time". Good time is a privilege, not a right. In addition to the offender's actual calendar time served, good time credits determine eligibility for consideration of parole or discretionary mandatory supervision, or in increasingly rare instances, for release to mandatory supervision. TDCJ awards good time based on an offender's offense date; compliance with all rules and regulations; and diligent participation in work, school, or treatment programs. All or some of an offender's good time can be taken away for disciplinary infractions.

TDCJ assigns all entering offenders the time-earning status of Line Class I. Offenders can work their way into a higher time-earning status or be placed in a lower time-earning status, depending on their behavior. The table, *Time Earning Categories,* shows the classification levels and how they correlate to different time-earning classes.

Time Earning Categories

Time Earning Category	Maximum Good Conduct Time Award Per 30 Days Served	Maximum Good Conduct Time Award with Work and School Credits (after 9-1-87)
State Approved Trusty I, II, and III	30	45
State Approved Trusty IV	25	40
Line Class I	20	35
Line Class II	10	25
Line Class III	0	0

Death Row

Individuals convicted of a capital offense and sentenced to death serve their time on death row, located at the Polunsky Unit near Livingston for male offenders, and at the Mountain View Unit in Gatesville for female offenders. Some offenders participate in work programs while others remain in their cells 23 hours per day. TDCJ places additional visitation, security and privilege restrictions on death row offenders. As of August 2006 the death row population consisted of 386 males and 10 females. In 2005, the State executed 19 death row offenders, including one female.

Housing and Support of Offenders

To support TDCJ's incarceration function, the agency produces crops, raises livestock, leases land, prepares food, provides laundry service, maintains offender housing, coordinates offender transportation, and oversees offender work programs.

Agriculture, Land, and Mineral Holdings

Currently, TDCJ operates more than 142,000 acres of land. TDCJ cultivates approximately 40,000 acres, uses approximately 69,000 acres for pasture land, and leases 15,000 acres through farming and grazing contracts. Agribusiness provides jobs for approximately 2,300 offenders and receives additional support from more than 5,000 offenders who assist in the field.

The chart, *Agribusiness Production,* details the specific agricultural operations. In addition to livestock and crop production, agribusiness oversees crop pest control, farm equipment maintenance, and the sale and lease of TDCJ land.

Agribusiness Production

Division	Products	Use
Livestock	Poultry, swine, equine, canine, and cattle	TDCJ consumption, for sale or use on units, and commercial sale
Food processing	Beef, pork, and canning plant	TDCJ consumption and food bank support
Field crops	Cotton, corn, milo, wheat, and oats	TDCJ consumption and use
Edible crops	27 varieties of vegetables	TDCJ consumption and food bank support

Laundry, Food Service, and Commissary

Operating TDCJ laundry facilities, unit commissaries, and unit kitchens provides jobs for approximately 27,800 offenders. Kitchens in 103 units prepare and serve more than 450,000 meals each day. Additionally, each unit operates a commissary to provide various foods and other sundry items not otherwise provided by TDCJ. Offenders are able to use their own money from their Inmate Trust Fund account to purchase commissary items, but are limited to spending no more than $75 dollars every two weeks. In fiscal year 2005, TDCJ commissary sales totaled more than $77 million, most of which goes to support the commissary.

In a given week, TDCJ transports about 10,000 offenders.

Offender Transportation

TDCJ transports offenders reassigned to other units, or for other off-site needs. Offenders can request reassignment, or TDCJ may reassign them for reasons of security, space, or a change in an offender's medical or program needs. TDCJ also transports offenders for more immediate needs such as medical attention and court appearances. Offender transportation is headquartered in Huntsville with five satellite offices located in Amarillo, Abilene, Tennessee Colony, Rosharon, and Beeville. In a given week TDCJ transports approximately 10,000 offenders.

Facilities

TDCJ maintains the 106 state-owned correctional facilities, as well as water and wastewater treatment systems. Altogether, TDCJ performs corrective and preventative maintenance on approximately 35 million square feet of facilities. Each unit has a unit maintenance supervisor, an office administrator, plumbers, carpenters, and air conditioning technicians, as well as offenders who work in unit maintenance and construction. While the number fluctuates according to need, as of July 2006, more than 2,700 offenders were assigned to support maintenance and construction.

Prison Industries

TDCJ operates a number of prison industries to reduce TDCJ costs and provide offenders with marketable job skills. Prison industries help to reduce TDCJ costs by manufacturing products for use by the agency, and producing goods for sale to state-supported agencies and political subdivisions. Approximately 6,000 offenders work in Texas Correctional Industries (TCI) factories. TCI sales totaled more than $78 million in fiscal year 2005. The chart, *TCI Divisions and Factories,* provides detail on the products TDCJ makes and the factories it operates.

TCI Divisions and Factories

Marketing and Distribution	Graphic	Garment	Metal	Furniture
♦ Sales ♦ Customer Service ♦ Operates TCI warehouses (Austin & Huntsville)	♦ Soap and detergent ♦ Print shop ♦ Box factory ♦ License plates ♦ Sticker plant ♦ Signs and plastics	♦ Shoe ♦ Sewing ♦ Officer and offender clothing, sheets, towels, gloves using 100 percent cotton grown by TDCJ. ♦ Mop and broom ♦ Mattress ♦ Textile mill	♦ Metal sign shop (TX DOT Signs) ♦ Metal fabrication ♦ Tire retreading ♦ Bus repair ♦ Stainless steel ♦ Sheet metal	♦ Furniture (for Capitol building and State agencies) ♦ Wood shop ♦ Modular furniture

In 1993, TDCJ developed the Prison Industry Enhancement (PIE) program. PIE allows private sector companies to hire offenders and pay them for their work. An offender's salary pays for room and board, restitution, victims programs, and family support, with the remaining portion going into the offender's trust account. Through fiscal year 2005, offenders had earned more than $27 million in wages though PIE, and TDCJ had been reimbursed over $10 million for room and board. PIE factories are not permitted in industries or localities with a surplus of labor in the free world, and statute limits PIE participation to 5,000 offenders. A 13-member Oversight Authority monitors the PIE program. In fiscal year 2005, TDCJ partnered with seven private companies to create PIE projects that employed 476 offenders.

Offender Security

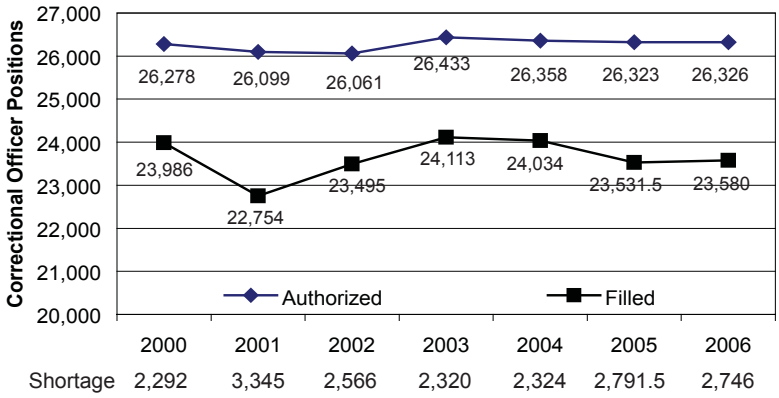
Security Personnel

TDCJ employs approximately 23,580 correctional officers. The military-style correctional officer ranks, from lowest to highest, are correctional officer, sergeant, lieutenant, captain, major, assistant warden, and warden. Wardens and assistant wardens perform multiple functions, acting as a prison unit's top security officers and head administrators.

All security personnel must go through TDCJ's pre-service and in-service training programs. The pre-service correctional officer academy consists of 200 hours of classroom instruction, practical instruction, and a competency exam, followed by on-the-job training and mentorship opportunities. TDCJ also conducts annual in-service training for all security employees throughout the state. All correctional officers must complete at least 40 hours of in-service instruction annually, including refresher courses on TDCJ policies and procedures.

The correctional officer shortage continues to challenge the agency. The chart, *TDCJ Correctional Officer Shortage,* shows the shortage since fiscal year 2000. This shortage is based on the staffing requirements at each facility, not the number of positions funded. However, TDCJ and the Legislature have taken several steps to help reduce this shortage.

TDCJ Correctional Officer Shortage
FYs 2000 – 2006



Most recently, the Legislature enacted a 4 percent state employee pay raise in fiscal year 2006 followed by an additional 3 percent pay raise in fiscal year 2007. The Legislature also adopted an increase in hazardous duty and longevity pay, and extended the 'Homes for Heroes' home loan program to employees drawing hazardous duty pay.

TDCJ has enacted several measures to assist recruiting and hiring efforts to help reduce the shortage. TDCJ converted six existing human resource positions to recruiter positions to conduct job seminars and attend job fairs throughout the state. In addition, TDCJ has increased the number and locations of correctional officer training academies, and allows prospective job candidates to apply online. TDCJ also uses the Executive Director's Recruiting Award, which offers a certificate signed by the Executive Director and a $100 U.S. Savings Bond to employees who recruit a correctional officer for the agency. Since its inception in 1999, more than 3,500 officers have been hired through the program.

As a result of these efforts, TDCJ employed 6,317 new correctional officers in fiscal year 2005, 391 more than the agency hired in fiscal year 2004. However, the year-end shortage of correctional officers increased from 2,324 in fiscal year 2004 to 2,792 in fiscal year 2005. As of July 31, 2006, the shortage of correctional officers was 2,746.

Office of the Inspector General

The Office of the Inspector General (OIG) acts as the primary investigative arm of TDCJ, essentially the agency's internal police force. OIG reports directly to the Texas Board of Criminal Justice. OIG's major functions include:

- investigating allegations of criminal violations or misconduct by employees at TDCJ facilities;
- investigating suspected criminal violations by TDCJ offenders;
- overseeing investigations of waste, fraud, and abuse of tax dollars in the agency; and
- participating in external Homeland Defense initiatives with the Governor's office and the Federal Bureau of Investigation.

In fiscal year 2005, OIG investigated 3,673 cases; 29 percent involved employee suspects, and 61 percent involved offender suspects. Many cases had multiple suspects or subjects. These cases resulted in 636 indictments and/or convictions in fiscal year 2005, as shown in the textbox, *OIG Indictments/Convictions*.

OIG Indictments/Convictions

Civilian	15
Inmate	560
Employee	59
Parolee	1
Ex-Employee	1

Use of Force

TDCJ security staff may use force when necessary to control offenders. The Board of Criminal Justice defines force as strength or energy used to persuade or cause someone to do something, and differentiates in its use of force standards between minor, major, and deadly force.[1] To prevent unnecessary or excessive use of force, TDCJ has adopted a Use of Force Plan that requires an officer to use the minimum level of necessary force, and prohibits using force as a disciplinary action.

According to these standards, a use of force incident occurs any time a TDCJ employee physically contacts an offender to control the offender or enforce behavior. The textbox, *Use of Force Definitions,* specifies the levels of force used by correctional officers. The Plan also details the documentation, reporting, and investigation required in response to use of force incidents. During fiscal year 2005, TDCJ had 6,100 Major Uses of Force. OIG investigates allegations of unnecessary and/or excessive use of force. In fiscal year 2005, OIG opened 221 administrative investigations, and as a result of these investigations, 17 criminal cases were referred for criminal prosecution.

Use of Force Definitions

Minor Use of Force

Physical contact by an employee with an offender to control his movement, to which the offender offers no resistance.

Major Use of Force

A measure of force when:

- an offender physically resists the application of restraints;
- chemical agents are discharged;
- batons or other instruments make contact with an offender in an effort to restore or preserve order;
- offensive or defensive physical contact is made, including but not limited to: one or more physical blows, hard pushes, or defensive holds; or
- anytime an offender is injured during a use of force, by way of bruise, contusion, or wound.

Deadly Use of Force

The intentional discharge of authorized firearms.

Offender Disciplinary Procedure

TDCJ correctional officers who witness offenders violating agency rules administer informal verbal reprimands. If an incident cannot be resolved informally, the correctional officer may file a disciplinary report, formally charging the offender

for the violation. Depending on the severity of the alleged rule violation, unit staff will conduct a disciplinary hearing to review the incident and assess punishment in the case of guilt. Punishments can include restrictions on recreational or visitation time, commissary privilege revocations or restrictions, forfeited good time, change in custody level, and up to 15 days of solitary confinement.

Grievances and Legal Matters

Offender Grievance Process

TDCJ uses a formal two-step grievance procedure that offenders must follow before they may take legal action regarding a complaint against the agency. The process provides a mechanism for offenders to seek resolution of almost any operational matter within the scope of TDCJ, including physical abuse, harassment, retaliation, facility policy, and health and safety issues. Grievances must relate to an issue that TDCJ can fix, and they must affect the filing offender. Offenders must first try to resolve the matter informally before filing an official grievance.

The Step 1 grievance process occurs on the unit where the offender lives and where the issue being grieved occurred. The offender fills out a grievance form and submits it to the unit grievance investigator, who screens the grievance for any emergency issues, and processes the grievance for investigation. Once the investigator determines the appropriate resolution, the warden signs the processed grievance, and grievance staff return it to the offender within 40 days of submission, with the provision for one 40-day extension if more time is needed to complete the investigation. Offenders are limited to one regular grievance every seven days.

If dissatisfied with the resolution of a Step 1 grievance, the offender may appeal by filing a Step 2 grievance. In this case, the grievance is sent to Huntsville for processing and investigation. Step 2 grievances must be resolved and returned to the offender within 35 days, with the provision for one 35-day extension.

During fiscal year 2005, TDCJ processed more than 213,000 grievances and appeals.

During fiscal year 2005, unit grievance staff processed 171,162 Step 1 grievances, and the central office processed 42,702 Step 2 appeals. At Step 1, most offender grievances concern unit operations (such as laundry, food service, and commissary), complaints against staff, disciplinary hearing appeals, and medical complaints. At Step 2, most grievances concern disciplinary appeals, complaints against staff, unit operations, and medical complaints. In fiscal year 2005, about 6 percent of Step 1 grievances and 3 percent of the Step 2 grievances resulted in corrective action.

State Counsel for Offenders

The State Counsel for Offenders (SCFO) provides legal assistance to indigent offenders confined within TDCJ. SCFO attorneys file necessary motions and pleadings and represent offenders in court appearances. Specifically, SCFO represents indigent offenders indicted for felonies committed while incarcerated within TDCJ; facing civil commitment as sexually violent predators; and involved in federal removal proceedings, formerly known as

deportation hearings.[2] SCFO also assists offenders with appeals regarding substantial errors leading to their current convictions or appeals of any subsequent convictions, as well as with resolving time credit disputes.

Offender Rehabilitation, Education, and Treatment Programs

TDCJ provides a number of educational, vocational, spiritual, and rehabilitative programs to offenders. Some programs are designed specifically to prepare offenders for re-entry into the free world, while others provide opportunities to offenders regardless of the length of their incarceration. Through the Windham School District, offenders can participate in a variety of classes ranging from basic literacy to college courses, vocational training, and job services. For offenders with special needs, including drug and alcohol rehabilitation, TDCJ offers several intensive residential programs for exiting offenders. Appendix G details TDCJ's educational, vocational, and rehabilitative programs.

Victim Services

Created in 1993, Victim Services focuses on the needs of crime victims and their families. Victim Services has three main functions: assisting victims of crimes; operating a victim notification system to inform victims of any change in a TDCJ offender's status, such as when the offender is eligible for parole; and training and educating criminal justice professionals on post trauma and victim sensitivity. Additional programs for crime victims include offender-victim mediation, execution witnessing, and victim impact panels.

Victim Services also operates the Texas Crime Victim Clearinghouse that provides information and referral services to victims and criminal justice professionals. Individuals may contact the Clearinghouse hotline for referrals to local mental health providers, counseling services and groups, and other victim-related services. Through the Clearinghouse, TDCJ also hosts an annual training conference on victim-related issues.

Offender Health Care

The State of Texas has a constitutional duty to provide healthcare services to offenders. Over the years, the constitutional standard for prison health care has evolved, as described in the textbox, *Constitutional Standard of Health Care*. Offenders receive medical, dental, and psychiatric services on a continuum from basic care in prison unit clinics, to surgery and other specialized treatments in prison medical facilities and hospitals.

Several entities play a role in offender health care. The State contracts with two public medical schools, the University of Texas Medical Branch (UTMB) in Galveston and Texas Tech University Health Sciences Center (Texas Tech) in Lubbock,

Constitutional Standard of Health Care

- Estelle v. Gamble (1976), a Texas case that went to the U.S. Supreme Court, set the national standard for correctional health care. The judgment held that deliberate indifference by prison personnel to an offender's serious illness or injury constitutes cruel and unusual punishment, and is a violation of the Eighth Amendment to the U.S. Constitution.
- Many other court cases, including the landmark Ruiz case, have further defined the level of care the prison system must provide offenders. Federal courts have established that offenders have the right to access medical care, receive a professional medical judgment, and receive the medical care called for by that professional medical judgment.
- However, to meet the constitutional standard of care, the prison system only has to provide care that is deemed medically necessary. This standard is lower than that typically expected in the free-world. The prison system must provide offenders with health care that is appropriate and necessary and within standards of good medical practice, but it does not have to provide care that is primarily for the convenience of the offender.

to provide healthcare services directly to offenders. The Correctional Managed Health Care Committee manages these contracts for TDCJ. The Health Services Division within TDCJ monitors offenders' access to care, and works in conjunction with the agency's security staff to ensure offenders are housed according to their health needs. The Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) works to overcome barriers throughout the criminal justice system so that offenders with special needs receive health care.

Correctional Managed Health Care Committee

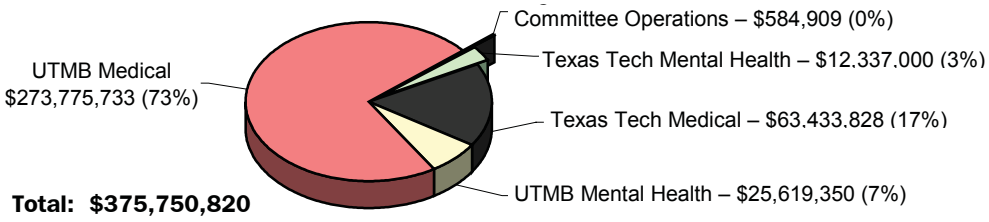
The Legislature established the current system of contracting with the universities to provide health care in 1993, when it created the Correctional Managed Health Care Committee (the Committee). The Committee's mission is to develop a statewide managed healthcare network that balances three goals:

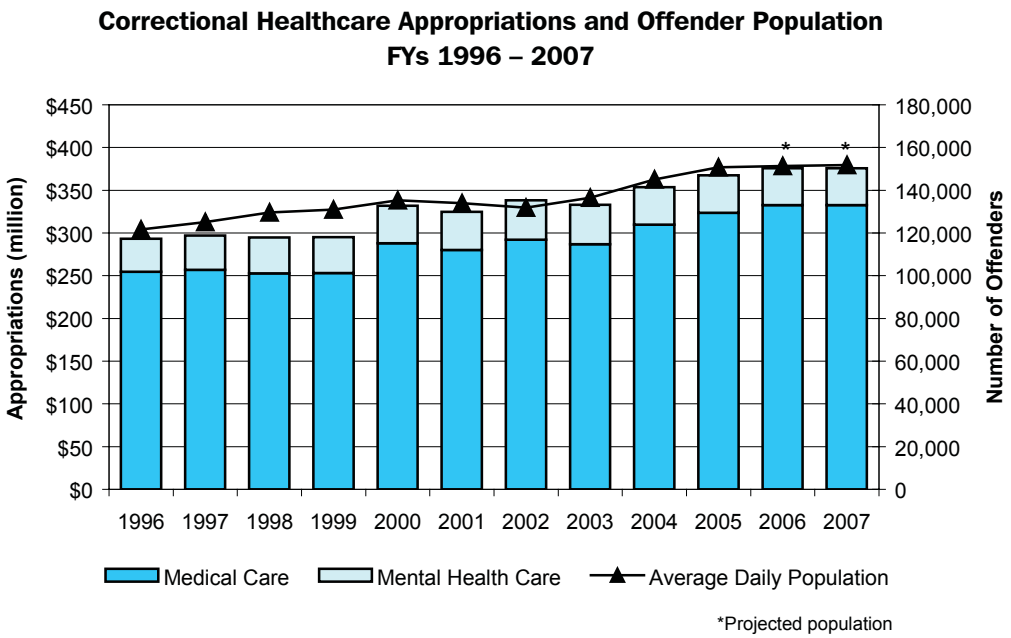
The Committee contracts with UTMB and Texas Tech for offender health care.

- providing offenders with timely access to care;
- maintaining a quality of care that meets constitutional standards; and
- managing the costs of delivering comprehensive healthcare services.

The Committee receives funding from TDCJ's appropriation and compensates each university for the services it provides based on a capitation rate specified in its contract. The capitation rate refers to the amount paid to the provider for healthcare services on a per-offender, per-day basis. The pie chart, *Correctional Managed Healthcare Allocations,* details how funding for offender healthcare services was divided among the providers in fiscal year 2006. During that year, the universities spent approximately $7.64 per offender, per day. UTMB's share of the funding is much greater than Texas Tech's because it provides services to a larger offender population. UTMB serves units in the eastern half of the state, where the majority of prison units are located, while Texas Tech provides care in the western half of the state. UTMB provides services to approximately 120,300 offenders, while Texas Tech serves approximately 31,500 offenders. The chart, *Correctional Healthcare Appropriations and Offender Population,* shows how the State's costs and the number of offenders have increased over the past 10 years.

Correctional Managed Healthcare Allocations
FY 2006





To provide basic ambulatory care, the universities operate clinics at each facility. Offenders can also receive infirmary care at clustered facility locations throughout the state. When needed, offenders can receive higher levels of care at university-operated regional medical facilities. UTMB maintains regional medical facilities in units near Huntsville and Texas City, and provides advanced specialty care at the prison hospital in Galveston. Texas Tech operates a regional medical facility in Lubbock and contracts with local hospitals for advanced specialty care. Each university also provides specialty services and operates telemedicine programs. Texas Tech has a program for aggressive mentally ill offenders. UTMB has specialized programs for mentally retarded, physically disabled, geriatric, and HIV-positive offenders. UTMB also offers hospice and obstetrics services.

Health Services is primarily responsible for monitoring access to care.

Health Services Division

TDCJ's Health Services Division works closely with the Committee and university providers to ensure that offenders receive their constitutional right to health care. The Health Services Division is primarily responsible for monitoring access to health care.

The Health Services Division is responsible for:

- investigating offender and third-party healthcare grievances;
- conducting operational review audits of each unit's medical facility;
- monitoring monthly access-to-care reports from each unit's medical facility;
- coordinating intake of offenders with special medical needs from county jails;
- coordinating unit reassignment for offenders who require medical transfer;

- performing health screening for offenders upon intake, transfer, and release;
- biannually auditing the mental health services provided to offenders housed in administrative segregation;
- maintaining offender databases for and reporting certain communicable/ infectious diseases; and
- participating in serious incident reviews, especially those incidences that result in offender death.

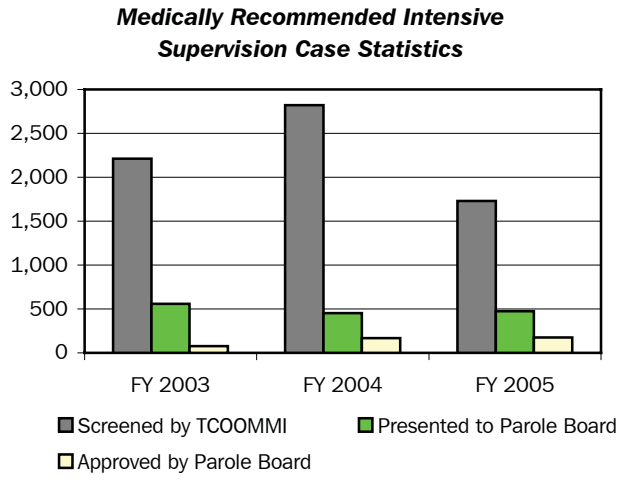
TCOOMMI addresses the problems of special needs offenders in the criminal justice system.

Texas Correctional Office on Offenders with Medical and Mental Impairments

The Legislature created the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) to address the problems of special needs offenders in the criminal justice system. Special needs offenders include those with mental illness, mental retardation, developmental disabilities, serious medical conditions, physical disabilities, or the elderly. While TCOOMMI is located within TDCJ, it coordinates with a variety of state and local entities to deal with issues involving both adult and juvenile offenders in all phases of the criminal justice system, from arrest, to county jail, to adjudication, probation, and parole. To achieve coordination among these entities, TCOOMMI works with the Advisory Committee on Offenders with Medical and Mental Impairments, which reports to the Board of Criminal Justice. Appendix H lists the 31 members of the Advisory Committee.

TCOOMMI contracts with state and local health and human services agencies and CSCDs to provide medical and mental health services to offenders who are awaiting trial in local jails, or on probation or parole. It also helps coordinate services and supervision for people who are found not guilty by reason of insanity once they are released from a state hospital. TCOOMMI provides funding to local programs that work to divert defendants with special needs from correctional institutions. In addition, TCOOMMI helps ensure offenders continue to receive the care they need as they move from the prison system back to the community. For example, TCOOMMI identifies special needs offenders who are nearing their parole eligibility or release date and begins their application process for federal entitlement benefits, such as Medicaid.

TCOOMMI also coordinates the Medically Recommended Intensive Supervision Program, which provides for the release of certain offenders not otherwise eligible for parole, if they are mentally ill, mentally retarded, elderly, terminally ill, or physically handicapped. The chart, *Medically Recommended Intensive Supervision Case Statistics,* provides data on the number of cases considered by TCOOMMI and ultimately approved by the Parole Board during the past three years.



Parole

Parole is the release of an offender from prison before the end of a sentence. To be eligible for parole, offenders must serve a statutorily designated portion of their sentence in jail or prison. Under current law, certain non-violent offenders become eligible for parole when the actual time served plus good conduct time earned equals one-quarter of their sentence. The required amount of actual time that must be served before attaining parole eligibility depends on the crime, as well as the date of the offense. For example, to attain parole eligibility, offenders convicted of certain aggravated offenses must earn time for one-half of the sentence served flat without credit for good time, and offenders convicted of capital murder must serve at least 40 calendar years without credit for good time.

Parole is considered a privilege, not a right.

Upon reaching parole eligibility, the Parole Board decides which offenders to release on parole, and may assign certain conditions relating to release. Parole is not a reduction of sentence or a pardon, and offenders must remain under supervision throughout their complete sentence term. Parole is considered a privilege, not a right. Even though an offender may be eligible for parole, he or she may remain incarcerated for many years.

Parole Operations

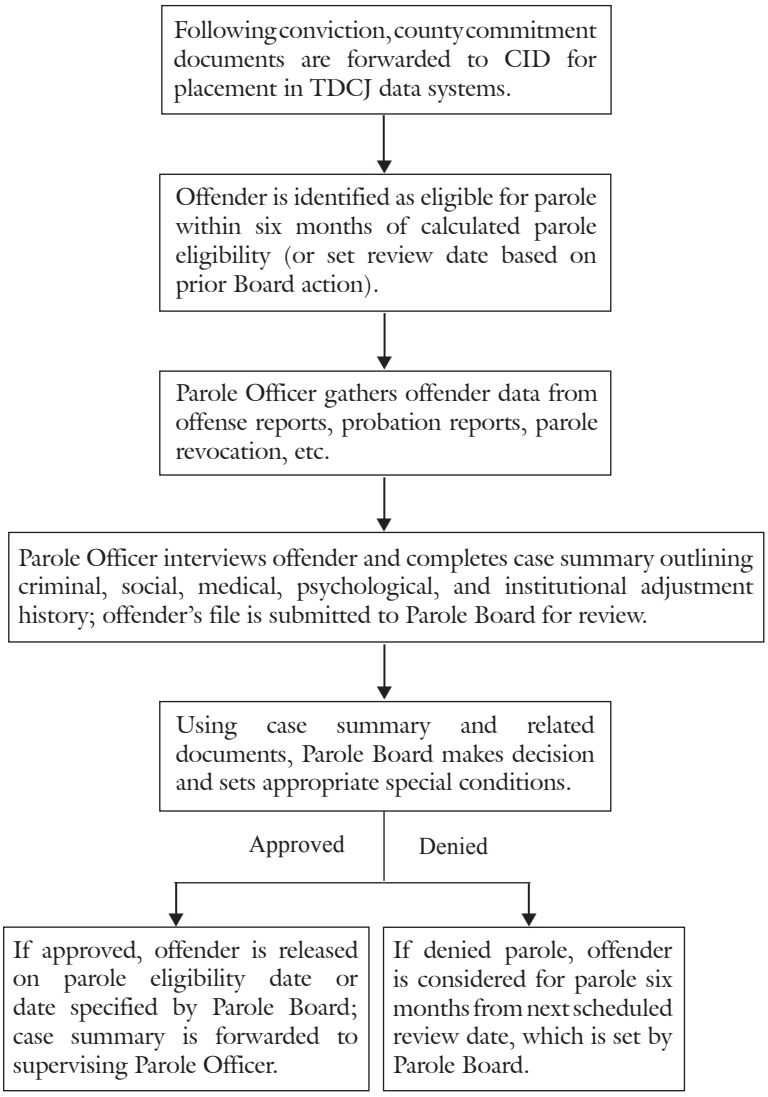
Both TDCJ's Parole Division and the Parole Board have a role in the parole process, as shown in the chart, *Parole Review Process,* on page 114. Although Classifications and Records calculates an offender's parole review date, the Parole Division interviews the offender, and completes a comprehensive parole case summary that details the offender's criminal history; alcohol and drug use; and social, psychological, and institutional adjustment. TDCJ's institutional parole officers also compute an offender's parole guideline score, which quantifies the offense severity and the risk posed by releasing the offender, and helps screen offender for rehabilitation program eligibility. The chart, *Risk Assessment Factors,* details the components of the offender risk assessment.

Risk Assessment Factors

Static Factors	Dynamic Factors
♦ Age at first admission to a juvenile or adult correctional facility ♦ History of supervisory release revocations for a felony offense ♦ Prior incarcerations ♦ Employment history ♦ The commitment offense	♦ Offender's current age ♦ Whether the offender is a confirmed security threat group (gang) member ♦ Education, vocational, and certified on-the-job training programs completed during the present incarceration ♦ Prison disciplinary conduct ♦ Current prison custody level

The institutional parole officer compiles the offender's file, including the case summary, parole guidelines score, and other pertinent information, such as the offender's release plan, victim impact statement, police reports, and reports on the offender's adjustment inside TDCJ. The file is forwarded to one of six Parole Board regional offices responsible for reviewing cases from offenders incarcerated in the region. Each office has one Board member and two commissioners who make determinations regarding parole, release to discretionary mandatory supervision, and conditions of supervision. These three-member parole panels do not formally meet, but rather perform a desk

Parole Review Process



review of the parole files. In most cases, two consenting votes determine the outcome. However, certain serious and violent offenses require two-thirds majority vote of the entire seven-member Parole Board.[3]

Parole panels vote to approve or deny parole. Parole panel members have two voting options in denying parole: a set-off or a serve-all. A set-off vote means the panel denied parole, but will conduct another review on a designated date, usually one year from the initial review. Violent offenders may be set-off for up to five years. A serve-all vote means the panel denied parole and will not schedule any future reviews. The panel may give a serve-all only to offenders within one year of their projected release date, or within five years of the projected release date for certain violent offenses.

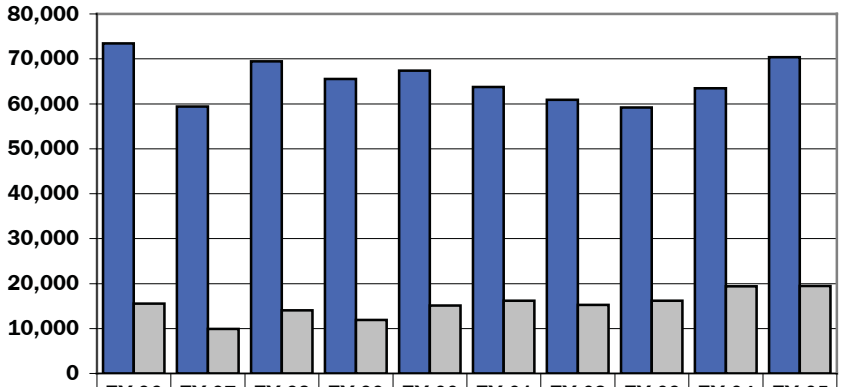
A vote to approve parole is known as an FI vote, which stands for further investigation. For example, under an FI-R vote, the approval of parole is contingent upon completion of certain rehabilitation programs. Parole may be withdrawn if the offender fails to complete the rehabilitation programs.

In fiscal year 2005, parole panels considered 70,394 parole cases and approved 19,482, or 27.6 percent. The chart, *Parole Considerations and Approvals,* shows the trend in parole review and approvals throughout the last 10 years.

Other Types of Release

In addition to parole, three other types of early release exist: mandatory supervision, discretionary mandatory supervision, and medically recommended intensive supervision. Mandatory supervision is the automatic release to supervision provided by law to certain offenders when time served plus good time earned equals the length of their sentence. Release does not require parole panel approval, but the panels can set conditions of release. Release to mandatory supervision was abolished in 1996 when a new process of discretionary mandatory supervision was established; however, offenders who entered prison before 1996 remain eligible for release to mandatory supervision.

Parole Considerations and Approvals
FYs 1996 – 2005



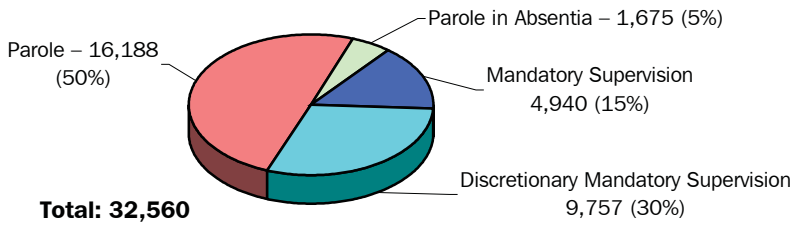
	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Total Cases Considered	73,419	59,419	69,472	65,495	67,396	63,765	60,875	59,179	63,433	70,394
Approvals	15,571	9,928	14,065	11,925	15,140	16,210	15,246	16,207	19,363	19,482

Discretionary mandatory supervision is similar to mandatory supervision, but the parole panel can approve or deny the offender's release to supervision. Non-violent offenders are eligible for discretionary mandatory supervision once actual time served and good time earned equals their length of sentence. Generally, approval rates for release on discretionary mandatory supervision are higher than parole rates, with an average approval rate of 52.4 percent in 2005, compared to 27.6 percent approval in parole cases. That same year, TDCJ released 9,757 offenders on discretionary mandatory supervision.

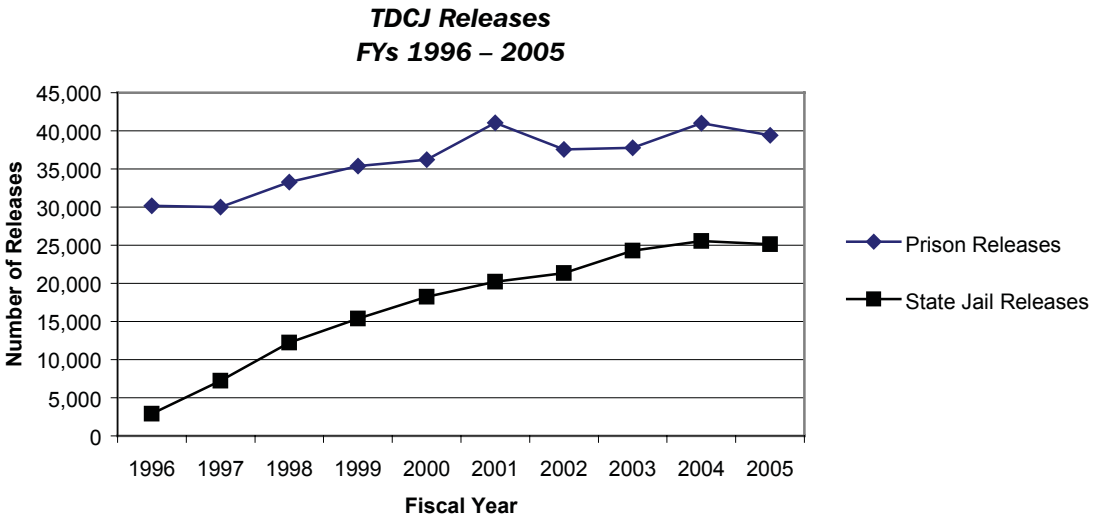
Parole panels may also release offenders through medically recommended intensive supervision (MRIS), which provides for the release of certain offenders not otherwise eligible for parole if they are physically disabled, elderly, terminally ill, mentally ill, or mentally retarded. As discussed earlier, TCOOMMI screens MRIS applications, and forwards eligible candidates to the Parole Board. In 2005, the Parole Board approved 174 MRIS cases.

The pie chart, *Releases to Supervision,* shows the total number of offenders released to supervision during fiscal year 2005. Parole in absentia refers to offenders that are considered for parole, or considered or processed for mandatory supervision release while confined in non-TDCJ institutions, such as federal prisons, another state's prisons, or county jails in Texas or other states.

Releases to Supervision
FY 2005



Including the early releases to supervision, TDCJ released a total of 64,512 offenders in fiscal year 2005 from prisons and state jails. Of these, 7,770 prison offenders had served their entire sentence and were not subject to supervision upon release. The chart, *TDCJ Releases,* shows the overall trend in releases from TDCJ for the past 10 years.



Parole Supervision

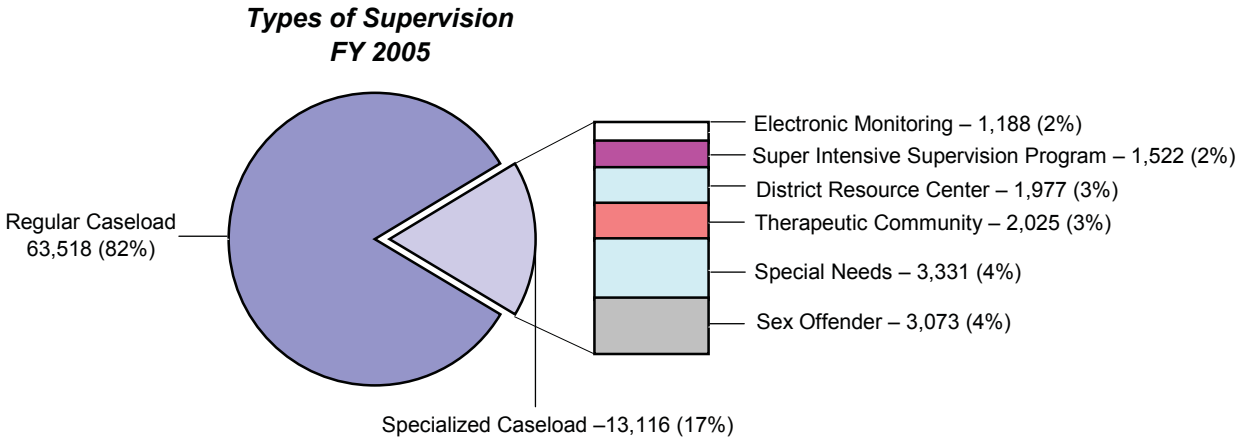
At the same time parole panels grant parole, they also establish the conditions by which released offenders must abide under the supervision of parole officers in TDCJ's Parole Division. Parole supervision is decentralized and administered through five distinct parole regions, with 66 district parole offices.

Upon release, an offender must contact a local parole office within 24 hours. Offenders may be subject to standard conditions of parole, such as frequent reporting, maintaining employment, and paying of certain fees, as well as special conditions of parole that are additional restrictions applied to select offenders based on the nature of their crimes and criminal histories. The textbox, *Special Conditions of Parole,* lists examples of the restrictions and requirements parole panels may apply to released offenders.

District parole offices throughout the state currently supervise more than 76,000 offenders. About 1,200 parole officers supervise an average regular caseload of 75 offenders. All offenders released to supervision are assigned to a regular or specialized caseload based on public safety considerations and an assessment of offender needs. The pie chart, *Types of Supervision,* shows the number of offenders by the type of supervision, including the six types of specialized supervision for fiscal year 2005.

Special Conditions of Parole

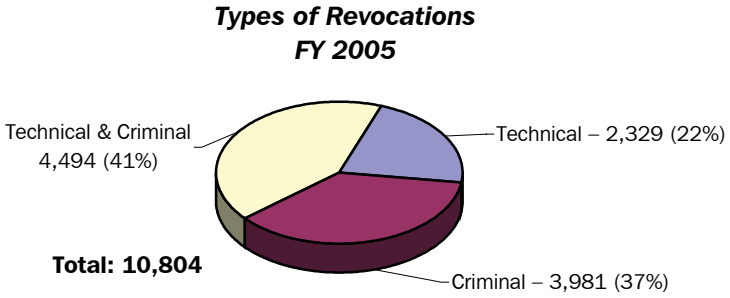
- Basic educational/vocational training
- Notify prospective employer of criminal history
- Sex offender registration
- Restitution payments
- Super Intensive Supervision Program
- Electronic Monitoring Program
- Victim contact prohibition
- Alcohol/controlled substance testing
- Post-secondary education reimbursement
- Child safety zone prohibition
- Community service
- No gang activity
- Prohibit use of drugs, narcotics, or controlled substances
- Anger control training/counseling
- Gainful employment
- Do not own/maintain/operate computer equipment



Parole Revocation

Offenders who violate the rules or conditions of parole face a range of sanctions. The parole officer may impose a minor sanction, such as requiring more frequent reporting or drug testing. Parole panels may also impose a more severe sanction, such as adding special conditions of release, or revoking parole and sending the offender back to prison to serve the remainder of their sentence. As an alternative to revocation, the parole panels may send the offender to an Intermediate Sanction Facility (ISF), similar to a detention center, that houses offenders who have violated the terms and conditions of their parole. Texas has five ISFs, housing up to 1,840 parole violators. The pie chart, *Types of Revocations,* details the number and type of parole revocation decisions in fiscal year 2005.

When TDCJ discovers that an offender has allegedly committed a new offense or a technical parole violation, thereby violating the terms of release, it may issue a warrant for the offender's arrest. Hearing officers, who are employees of the Parole Board, may conduct an administrative preliminary or revocation hearing following an offender's arrest. Eligible offenders may choose to waive those hearings and those waivers are presented to parole panels for disposition. Parole panels review hearing officers' reports and waivers, and decide whether or not to revoke an offender's parole. In fiscal year 2005, hearing officers conducted 19,311 hearings and an additional 11,689 cases were processed via waivers or transmittals to parole panels. Of these 31,000 pre-revocation decisions made by the Board, approximately 35 percent (10,804) resulted in revocation. The grounds for revocation consisted of 7,523 cases with new convictions and 3,281 cases with technical violations.



Executive Clemency

In addition to their other duties, Parole Board members make recommendations to the Governor regarding requests for clemency for persons convicted of criminal offenses. Under the Texas Constitution, only the Governor may grant executive clemency, but may do so only upon the written recommendation of a majority of the Parole Board.[4] Unlike parole determinations, parole commissioners cannot make clemency decisions. The chart, T*ypes of Clemency,* describes the various types of clemency currently available.

Types of Clemency

Pardon	Includes full pardon, restoration of firearm rights
Pardon for Innocence	Exoneration of the conviction
Conditional Pardon	Generally used to release an offender to another country, or to immigration officials for deportation
Commutation of Sentence	Sentence can be commuted from death to a life sentence, from a larger to a lesser term of years, credit for jail time, time out on reprieve, remainder of jail sentence, or fine after reprieve
Remission	Elimination of a fine or forfeiture
Reprieve	Postponement or cancellation of execution or punishment for offender or offender's family emergency medical condition, death of a family member, or to attend civil court proceedings
Restoration of Driver's License	Includes driver's, chauffeur's, or commercial operator's licenses
Restoration of Civil Rights of a Federal Offense	Restores any civil rights forfeited under Texas laws as a result of a federal conviction
Cases of Treason and Impeachment	May only be granted by the Governor with the advice and consent of the Legislature

In fiscal year 2005, the Parole Board reviewed 280 clemency cases and recommended 81 applications for clemency. Of the 81 applications submitted, the Governor approved 29.

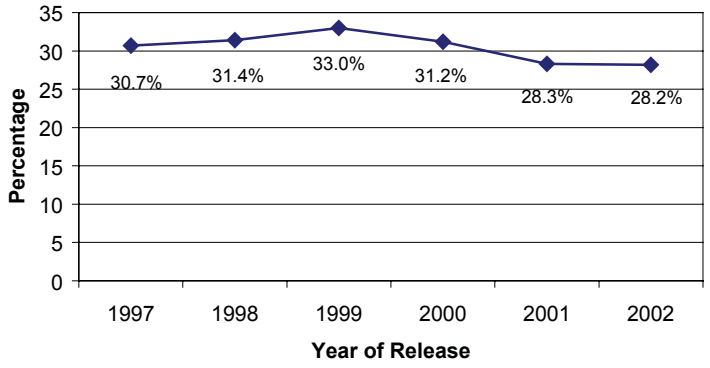
Recidivism

Recidivism refers to an individual's return to incarceration after having been released from prison. Recidivism rate data is primarily used to predict future prison populations.

LBB's Criminal Justice Data Analysis team is responsible for tracking recidivism rates in Texas. To determine a recidivism rate for Texas prisoners, LBB tracks a group of offenders released from prison for three years. The recidivism rate is calculated by dividing the number of offenders who are reincarcerated in prison or state jail, by the total number of offenders in the tracked group.

The most recent report tracking offenders released from Texas prisons in fiscal years 1997 to 2002 found that the percentage of offenders returning to incarceration after three years has dropped slightly in the last years for which data is available, and the average time out of custody before reincarceration is 19 months.[5] The chart, *Percent of Offenders Reincarcerated,* shows the trend in recidivism rates for offenders released from prison.

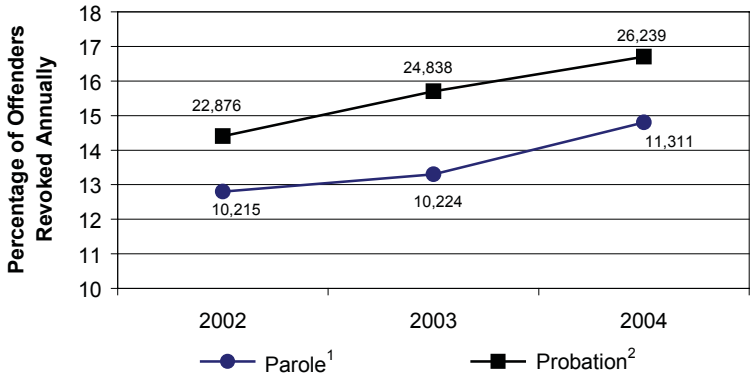
Percent of Offenders Reincarcerated [6]



Recidivism refers to an individual's return to incarceration after release from prison.

LBB also tracks the recidivism of offenders on probation and parole by the number of offenders who are revoked and subject to reincarceration. The chart, *Parole and Probation Revocation Rates,* details the change in revocation rates from fiscal year 2002 through fiscal year 2004.

Parole and Probation Revocation Rates
FYs 2002 – 2004



[1] The average annual parole population is 76,362

[2] The average annual direct supervision probation population is 157,222

[1] Texas Department of Criminal Justice Board Policy BP-03.46 (rev. 6), *Standards for the Use of Force*, p. 1.

[2] Texas Health and Safety Code, ch. 841.

[3] Senate Bill 45, 74th Legislature required an extraordinary vote of all Board members for the following offenses: capital felonies, indecency with a child, aggravated sexual assault, and persons required under section 508.145 of the Government Code to serve 35 calendar years before becoming eligible for parole.

[4] Texas Constitution, art. IV, sec. 11. Note: the Governor may grant a one time, 30-day reprieve of execution without Parole Board recommendation or approval.

[5] Texas Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates* (January 2005). Online. Available: http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Recidivism_Report_2005.pdf. Accessed: August 1, 2006.

[6] Ibid. Fiscal years 1997 – 1999 were computed by the Criminal Justice Policy Council. Fiscal years 2000 – 2002 were computed by the LBB.

Court Costs and Fees Study

Court Costs and Fees Study

Sunset Study of Court Costs and Fees

House Bill 1116, passed in 2005 by the 79th Legislature, required the Sunset Commission, as part of its review of criminal justice agencies, to study the purpose, collection, and use of certain criminal court costs and fees, and parole, probation, and community supervision fees.[1] In addition, the legislation required the Office of the State Auditor (SAO), Legislative Budget Board (LBB), Comptroller of Public Accounts (the Comptroller), and any other state agency to assist Sunset as necessary in conducting the study. The legislation directs the Sunset Commission to include any recommendations it considers appropriate in its report to the 80th Legislature.

The 79th Legislature required Sunset to perform a study of court costs and fees.

As noted below, both the Senate Jurisprudence Committee and LBB are currently performing similar court costs and fees studies. Therefore, Sunset staff limited the scope of this review to prevent any duplication of effort. The following includes an overview of court costs and fees; data and tables of state and local court costs, created and provided by LBB and the Office of Court Administration (OCA), detailing the various assessments for certain categories of offenses; and three case studies performed by Sunset staff that provide real-world examples of the types of court costs and fees certain offenders may face.

Overview of Court Costs and Fees

In Texas, municipal courts, justice courts, county courts, and district courts are authorized to hear certain types of criminal cases. Each of these courts must impose basic mandatory state and local court costs and fees on defendants, in addition to county-imposed court costs, fees, and fines. Generally, state court costs and fees are submitted to the Comptroller for deposit into state funds, and local court costs and fees are retained by the county or municipality. Court costs and fees generally pay for certain programs, such as those aimed at crime prevention, victim compensation, and training of court and law enforcement personnel.

The Comptroller and OCA provide direction and assistance regarding the collection of court costs and fees. The Comptroller is responsible for administering state court costs and fees. County and district courts must assess, collect, and report fees in accordance with Comptroller requirements. OCA provides technical assistance to local courts to improve the collection of these fees for the state. OCA also publishes court costs and fees handbooks for municipal courts, justice courts, and county and district clerks, and administers the Collection Improvement Program.

The Collection Improvement Program is a process designed to improve the collection of court costs and fees by creating a process for managing cases when defendants are not prepared to pay all court costs, fees, and fines, at the point of assessment and when time to pay is requested. OCA originally developed the program as a voluntary model in 1996. However, in response

to concerns and reports regarding uncollected and misused court costs and fees, the 79th Legislature expanded the program and required counties with a population greater than 50,000 and cities with a population greater than 100,000 to implement a court collection improvement program.[2, 3]

Currently, both the Senate Jurisprudence Committee and LBB are reviewing the Collection Improvement Program. The Senate Jurisprudence Committee is charged with monitoring the implementation of the Program, and evaluating improvements in the collection of criminal court fees, fines, and costs.[4] The Committee is required to make recommendations to increase the effectiveness of the Program, and determine if any statutory changes are necessary no later than December 1, 2006. LBB is providing information about the Collection Improvement Program and its implementation in the mandatory jurisdictions. The results of the review and evaluation will be included in LBB's *Article IV Primer*, scheduled to be published in January 2007.

Court Costs and Fees in Criminal Cases Sent to the State

Municipal Courts are authorized to hear only three types of criminal cases: municipal ordinance offense cases; Transportation Code, Title 7, Subtitle C offense cases; and Class C Misdemeanor offense cases. Justice Courts are authorized to hear only two types of criminal cases: Transportation Code, Title 7, Subtitle C offense cases and Class C Misdemeanor offense cases. County and District Courts are authorized to hear all types of criminal offense cases except municipal ordinance offenses. The courts impose basic mandatory state and local court costs and fees, as well as additional court costs and fees, as applicable. State court costs and fees are those submitted to the state Comptroller of Public Accounts for deposit into state funds, although a portion of some of those costs and fees are retained by the applicable local government. Local court costs and fees are those retained by the municipality or county, as applicable.

The dollar amounts in Tables 1A and 1B reflect only those criminal court costs and fees of which all or a portion are submitted to the Comptroller of Public Accounts. Those state court costs and fees are imposed in municipal, justice, county, and district courts. Municipal criminal court costs and fees are shown in Tables 2A, 2B, and 2C. All criminal court costs and fees that can be imposed are shown in Tables 3A, 3B, 3C, and 3D. Shaded rows indicate the types of offenses described in the following case studies.

Table 1A

Basic State Criminal Court Costs and Fees Imposed by Municipal, Justice, County, and District Courts

Offense / Description	State Consolidated Court Cost	State Jury Reimbursement Fee	State Judicial Support Fee	State Traffic Fine	State EMS Trauma Fund	State DNA Testing	Total State Court Costs and Fees
Municipal Ordinance (imposed and collected in Municipal Court only): Offenses other than parking or pedestrian	$40.00	$4.00	$4.00	N/A	N/A	N/A	$48.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road), Parking and Pedestrian	N/A	N/A	N/A	$30.00	N/A	N/A	$30.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road), Other Offenses	$40.00	$4.00	$4.00	$30.00	N/A	N/A	$78.00
Class C Misdemeanor: All Other Offenses (except violations of handicapped parking Trans. Code §681.011: not applicable)	$40.00	$4.00	$4.00	N/A	N/A	N/A	$48.00
Class A or B Misdemeanors: Transportation Code, Title 7, Subtitle C (Rules of the Road)	$83.00	$4.00	$4.00	$30.00	N/A	N/A	$121.00
Class A or B Misdemeanors: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	$83.00	$4.00	$4.00	N/A	$100.00	N/A	$191.00
Class A or B Misdemeanors: Penal Code, DNA Testing Offenses	$83.00	$4.00	$4.00	N/A	N/A	$50.00	$141.00
Class A or B Misdemeanors: All Other Offenses	$83.00	$4.00	$4.00	N/A	N/A	N/A	$91.00
Felonies: Transportation Code, Title 7, Subtitle C (Rules of the Road)	$133.00	$4.00	$4.00	$30.00	N/A	N/A	$171.00
Felonies: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	$133.00	$4.00	$4.00	N/A	$100.00	N/A	$241.00
Felonies: Penal Code, DNA Testing Offenses	$133.00	$4.00	$4.00	N/A	N/A	$250.00	$391.00
Felonies: All Other Offenses	$133.00	$4.00	$4.00	N/A	N/A	N/A	$141.00

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Sent to the State

Table 1B
Other State Criminal Court Costs and Fees Imposed by Municipal, Justice, County, and District Courts

Fee Type	Portion of Fee Submitted to State	Total Amount of Fee Imposed
Arrest Fee: For issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 percent ($1.00) is sent to the state.	$1.00	$5.00
Warrant Fee: For executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20 percent ($10.00) is sent to the state.	$10.00	$50.00
Failure to Appear Fee: If a city or county has contracted with the Department of Public Safety to provide information necessary for the department to deny renewal of driver's licenses, a fee is charged for (a) each complaint or citation reported to DPS under Transportation Code, Chapter 706, unless the person is acquitted of the charges for which the person failed to appear, or (b) failing to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders. The fee is due when (1) the court enters judgment on the underlying offense reported to the department; (2) the underlying offense is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrarnt was issued.	$20.00	$30.00
Time Payment Fee: From a person who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution. One-half ($12.50) is sent to the state. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10.00) is retained locally with no restrictions.	$12.50	$25.00
Judicial Fund Court Cost: Court cost on conviction of any criminal offense in statutory county courts and constitutional county courts only, including cases in which probation or deferred adjudication is granted. However, convictions arising under any law that regulates pedestrians or the parking of motor vehicles are not included.	$15.00	$15.00
Restitution Installment Fee: Imposed when the court requires defendant to make restitution in specified installments under Code of Criminal Procedure, Article 42.037. One-half ($6.00) is sent to the state. One-half ($6.00) is retained locally for costs incurred in collecting the installments.	$6.00	$12.00

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Table 2A
Basic Municipal Criminal Court Costs and Fees Imposed by Municipal or Justice Courts

Offense / Description	Traffic	Child Safety	Total Local Government Costs/Fees
Municipal Ordinance: Parking authorized by Transportation Code §542.202 – §542.203 (Powers of Local Authorities and Limitation on Local Authorities)	N/A	Note 1	Note 1
Municipal Ordinance: Pedestrian and Other Municipal Offenses	N/A	N/A	N/A
State Law: Education Code §25.093, Parent Contributing to Nonattendance and §25.094, Failure to Attend School	$0.00	$20.00	$20.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian in a School Zone	$3.00	$25.00	$28.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian outside a School Zone	$3.00	$0.00	$3.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – §545.066, Passing a School Bus	$3.00	$25.00	$28.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (in a School Crossing Zone)	$3.00	$25.00	$28.00
State Law: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (outside a School Crossing Zone)	$3.00	$0.00	$3.00
All Other Misdemeanors	N/A	N/A	N/A

Note 1: Up to $5.00 court cost for cities with population < 850,000 that have adopted appropriate ordinance, regulation, or order (optional). From $2.00 to $5.00 court cost for cities with population > 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 2B

Other Municipal Criminal Court Costs and Fees (if applicable); Fees for Services of Peace Officers under Code of Criminal Procedure, Article 102.011

Court Costs / Fees	Local Government Amount Retained
Arrest Fee: $5.00 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 percent ($1.00) is sent to the state. (Imposed by municipal, justice, county, or district court.)	$5.00 if local peace officer; $4.00 if state peace officer
Warrant Fee: $50.00 for executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20 percent ($10.00) is sent to the state. (Imposed by municipal, justice, county, or district court.)	$50.00 if local peace officer; $40.00 if state peace officer
Summoning a Witness: Fee of $5.00 for serving a subpoena. (Imposed by a municipal or justice court.)	$5.00
Summoning a Jury: Fee of $5.00. (Imposed by a municipal or justice court.)	$5.00
Service of a Summons (for a defendant or child's parents): Fee of $35.00 (Imposed by a municipal or justice court.)	$35.00
Other Costs: Actual for overtime paid for time spent testifying in the trial of a case or traveling to and from testifying in the trial of a case. (Imposed by a municipal or justice court.)	Varies

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Table 2C

Other Municipal Criminal Court Costs and Fees Not Associated with Peace Officer Services

Court Costs / Fees	Local Government Amount Retained
Driving Record Fee: Optional $10.00 fee for obtaining a copy of the defendant's driving record from the Texas Department of Public Safety. All (100 percent) is sent to the state. (Imposed by a municipal or justice court.)	$0.00
Special Expense Warrant Fee: Not to exceed $25.00 per warrant for failure to appear or violation of promise to appear if the governing body has passed the required ordinance. (Imposed by a municipal or justice court.)	$25.00
Municipal Court Building Security Fee: $3.00 if governing body has passed required ordinance. (Imposed by a municipal or justice court.)	$3.00
Municipal Court Technology Fee: Not to exceed $4.00 if governing body has passed required ordinance. (Imposed by a municipal or justice court.)	$4.00
Juvenile Case Manager Court Cost: Not to exceed $5.00 if governing body has passed required ordinance. (Imposed by a municipal or justice court.)	$5.00
Failure to Appear Fee: If a city or county has contracted with the Texas Department of Public Safety to provide information necessary for the department to deny renewal of driver's licenses, $30.00 for failure to appear or failiure to pay or satisfy a judgment; however, only $4.00 is retained locally. (Imposed by municipal, justice, county, or district court.)	$4.00
Jury Fee: $3.00 per conviction when conviction is by a jury or when a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of trial. (Imposed by a municipal or justice court.)	$3.00
Time Payment Fee: $25.00 from a person who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution; however, only $2.50 is retained locally for judicial efficiency and $10.00 is retained locally with no restrictions. (Imposed by municipal, justice, county, or district court.)	$12.50
Administrative Fees (for dismissing certain driving charges and for requesting a driving safety course): Not to exceed $10.00. (Imposed by a municipal or justice court.)	$10.00
Teen Court Fees: Optional fee not to exceed $10.00. (Imposed by a municipal or justice court.)	$10.00
Expungement Fee: $30.00 for each application filed. (Imposed by a municipal or justice court.)	$30.00

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 3A

Basic Criminal Court Costs and Fees; Imposed by Municipal, Justice, County, or District Courts

Offense / Description	State Consolidated Court Cost	State Jury Reimbursement Fee	State Judicial Support Fee	State Traffic Fine	State EMS Trauma Fund	State DNA Testing	Total State Court Costs and Fees	Municipal Traffic	Municipal Child Safety	Total Municipal Court Costs and Fees	Total Court Costs and Fees
Municipal Ordinance: Parking authorized by Transportation Code §542.202 – §542.203 (Powers of Local Authorities and Limitation on Local Authorities)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Note 1	Note 1	Note 1
Municipal Ordinance: Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Municipal Ordinance: Other Municipal Offenses	$40.00	$4.00	$4.00	N/A	N/A	N/A	$48.00	N/A	N/A	N/A	$48.00
Class C Misdemeanor: Education Code §25.093, Parent Contributing to Nonattendance and §25.094, Failure to Attend School	$40.00	$4.00	$4.00	N/A	N/A	N/A	$48.00	N/A	$20.00	$20.00	$68.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian in a School Zone	N/A	N/A	N/A	$30.00	N/A	N/A	$30.00	$3.00	$25.00	$28.00	$58.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Parking and Pedestrian outside a School Zone	N/A	N/A	N/A	$30.00	N/A	N/A	$30.00	$3.00	N/A	$3.00	$63.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – §545.066, Passing a School Bus [Amounts shown reflect Class C Misdemeanor, although this offense can be a Class A if serious bodily injury occurs or a State Jail Felony if this is a subsequent offense.]	$40.00	$4.00	$4.00	$30.00	N/A	N/A	$78.00	$3.00	$25.00	$28.00	$106.00
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (in a School Crossing Zone)	$40.00	$4.00	$4.00	$30.00	N/A	N/A	$78.00	$3.00	$25.00	$28.00	$106.00

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 3A (continued)

Basic Criminal Court Costs and Fees; Imposed by Municipal, Justice, County, or District Courts

Offense / Description	State Consolidated Court Cost	State Jury Reimbursement Fee	State Judicial Support Fee	State Traffic Fine	State EMS Trauma Fund	State DNA Testing	Total State Court Costs and Fees	Municipal Traffic	Municipal Child Safety	Total Municipal Court Costs and Fees	Total Court Costs and Fees
Class C Misdemeanor: Transportation Code, Title 7, Subtitle C (Rules of the Road) – Other (outside a School Crossing Zone)	$40.00	$4.00	$4.00	$30.00	N/A	N/A	$78.00	$3.00	N/A	$3.00	$81.00
Class C Misdemeanors: All Other Offenses (except handicapped parking violations, for which no costs or fees are applicable)	$40.00	$4.00	$4.00	N/A	N/A	N/A	$48.00	N/A	N/A	N/A	$48.00
Class A or B Misdemeanors: Transportation Code, Title 7, Subtitle C (Rules of the Road)	$83.00	$4.00	$4.00	$30.00	N/A	N/A	$121.00	N/A	N/A	N/A	$121.00
Class A or B Misdemeanors: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	$83.00	$4.00	$4.00	N/A	$100.00	N/A	$191.00	N/A	N/A	N/A	$191.00
Class A or B Misdemeanors: Penal Code, DNA Testing Offenses	$83.00	$4.00	$4.00	N/A	N/A	$50.00	$141.00	N/A	N/A	N/A	$141.00
Class A or B Misdemeanors: All Other Offenses	$83.00	$4.00	$4.00	N/A	N/A	N/A	$91.00	N/A	N/A	N/A	$91.00
Felonies: Transportation Code, Title 7, Subtitle C (Rules of the Road)	$133.00	$4.00	$4.00	$30.00	N/A	N/A	$171.00	N/A	N/A	N/A	$171.00
Felonies: Penal Code, Chapter 49 Offenses (Intoxication and Alcoholic Beverage Offenses)	$133.00	$4.00	$4.00	N/A	$100.00	N/A	$241.00	N/A	N/A	N/A	$241.00
Felonies: Penal Code, DNA Testing Offenses	$133.00	$4.00	$4.00	N/A	N/A	$250.00	$391.00	N/A	N/A	N/A	$391.00
Felonies: All Other Offenses	$133.00	$4.00	$4.00	N/A	N/A	N/A	$141.00	N/A	N/A	N/A	$141.00

Note 1: Up to $5.00 court cost for cities with population < 850,000 that have adopted appropriate ordinance, regulation, or order (optional). From $2.00 to $5.00 court cost for cities with population > 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Court Costs and Fees in Criminal Cases Retained by Municipality

Table 3B

Other Court Costs and Fees Imposed by Municipal, County, and District Courts

Court Cost / Fee	State Court Costs and Fees	Local Court Costs and Fees	Combined Total of Court Costs and Fees
Arrest Fee: For issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the state, 20 percent ($1.00) is sent to the state.	$1.00	$4.00	$5.00
Warrant Fee: For executing or processing an issued arrest warrant or capias. When service is performed by a peace officer employed by the state, 20 percent ($10.00) is sent to the state.	$10.00	$40.00	$50.00
Failure to Appear Fee: If a city or county has contracted with the Department of Public Safety (DPS) to provide information necessary for the department to deny renewal of driver's licenses, a fee is charged for (a) each complaint or citation reported to DPS under Transportation Code, Chapter 706, unless the person is acquitted of the charges for which the person failed to appear or (b) failing to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders. The fee is due when (1) the court enters judgment on the underlying offense reported to the department; (2) the underlying offense is dismissed; or (3) bond or other security is posted to reinstate the charge for which the warrant was issued.	$20.00	$4.00	*$30.00
Time Payment Fee: Imposed on a person who pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution. One-half ($12.50) is sent to the state. One-tenth ($2.50) is retained locally for judicial efficiency. Four-tenths ($10.00) is retained locally with no restrictions.	$12.50	$12.50	$25.00
Judicial Fund Court Cost: Court cost on conviction of any criminal offense in statutory county courts and constitutional county courts only, including cases in which probation or deferred adjudication is granted. However, convictions arising under any law that regulates pedestrians or the parking of motor vehicles are not included.	$15.00	N/A	$15.00
Restitution Installment Fee: Imposed when the court requires a defendant to make restitution in specified installments under Code of Criminal Procedure, Article 42.037.	$6.00	$6.00	$12.00

* $6.00 is paid to OmniBase Services of Texas, the vendor with which DPS contracts for services related to the Failure to Appear program.

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Combined State and Local Criminal Court Costs and Fees

Table 3C
Other Court Costs and Fees Imposed by Municipal Courts

Court Cost / Fee	State Court Costs and Fees	Local Court Costs and Fees	Combined Total of Court Costs and Fees
Summoning a Witness: Fee of $5.00 for serving a subpoena.	N/A	$5.00	$5.00
Summoning a Jury: Fee of $5.00.	N/A	$5.00	$5.00
Service of a Summons (for a defendant or child's parents): Fee of $35.00.	N/A	$35.00	$35.00
Other Costs Related to Services of Peace Officers under Code of Criminal Procedure, Art. 102.011: Actual for overtime paid for time spent testifying in the trial of a case or traveling to and from testifying in the trial of a case.	N/A	Varies	Varies
Municipal Court Building Security Fee: Imposed if governing body has passed required ordinance.	N/A	$3.00	$3.00
Municipal Court Technology Fee: Imposed if governing body has passed required ordinance. Not to exceed $4.00.	N/A	$4.00	$4.00
Juvenile Case Manager Court Cost: Imposed if governing body has passed required ordinance. Not to exceed $5.00.	N/A	$5.00	$5.00
Jury Fee: Imposed per conviction when conviction is by a jury or when a defendant requests a jury trial and withdraws the request within less than 24 hours of the time of the trial.	N/A	$3.00	$3.00
Administrative Fees: Imposed for dismissing certain driving charges and for requesting a driving safety course.	N/A	$10.00	$10.00
Teen Court Fees: Optional fee not to exceed $10.00.	N/A	$10.00	$10.00
Expungement Fee: Charged for each application filed.	N/A	$30.00	$30.00
Driving Record Fee: Optional fee imposed for obtaining a copy of the defendant's driving record from the Texas Department of Public Safety.	$10.00	$0	$10.00
Special Expense Warrant Fee: Not to exceed $25.00 per warrant, imposed for failure to appear or violation of promise to appear if the governing body has passed the required ordinance.	N/A	$25.00	$25.00

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Combined State and Local Criminal Court Costs and Fees

Table 3D

Other Court Costs and Fees Imposed by County and District Courts. (Costs and fees are collected by applicable court clerk and paid to retain locally by municipality or county, as appropriate.)

Court Cost / Fee	State Court Costs and Fees	Local Court Costs and Fees	Combined Total of Court Costs and Fees
Clerk's Fee	N/A	$40.00	$40.00
Records Management and Preservation Fee	N/A	$25.00	$25.00
Courthouse Security Fee: Misdemeanors in Municipal Court, County Court at Law, or District Court	N/A	$3.00	$3.00
Courthouse Security Fee: Misdemeanors in Justice Court	N/A	$4.00	$4.00
Courthouse Security Fee: Felonies	N/A	$5.00	$5.00
Fee for Services of Prosecutors: Misdemeanors and Gambling Offenses	N/A	$25.00	$25.00
Juvenile Delinquency Prevention Fee	N/A	$5.00	$5.00
Breath Alcohol Testing Court Cost	N/A	$22.50	$22.50
Visual Recording Fee	N/A	$15.00	$15.00
Cost of Evaluation Court Cost	N/A	Varies	Varies
Transaction Administrative Fee	N/A	$2.00	$2.00
Additional Court Cost Traffic Offenses	N/A	$3.00	$3.00
Jury Fee	N/A	$20.00	$20.00
Appealed Cases Deferred Special Expense	N/A	Not to Exceed Assessed Fine	Not to Exceed Assessed Fine
Juvenile Case Manager Court Cost: Imposed only if governing body has passed required ordinance.	N/A	$5.00	$5.00
Child Abuse Prevention Court Cost	N/A	$100.00	$100.00
Juvenile Probation Diversion Fund Court Cost: Imposed if a dispostion hearing is held; collected only if the child, parent, or other person responsible for the child's support is financially able to pay it.	N/A	$20.00	$20.00

Sources: Legislative Budget Board; Office of Court Administration, *County & District Clerks – Court Costs and Fees Handbook* (Austin, Texas, October 2005).

Case Studies

To illustrate the various fees assigned to certain criminal offenses, Sunset staff performed three case studies evaluating the various costs that could be attached to three different offenses: a Class C Misdemeanor municipal ordinance violation, such as a traffic ticket; a Class A Misdemeanor driving while intoxicated (DWI) offense; and a felony DNA testing offense, such as sexual assault. The following tables represent the maximum amount of court costs and fees that could be applied to each offense. In addition, the three offenses studied are shaded in the previous tables, *Court Costs and Fees in Criminal Cases Sent to the State* and *Court Costs and Fees in Criminal Cases Retained by Municipality*. As discussed earlier, state fees are mandatory and must be assessed, but the assessment of local fees depends on the particular jurisdiction.

Case Study 1: Class C Misdemeanor Municipal Ordinance Violation

Municipal ordinances, such as violation of a parking ordinance, are generally classified as Class C Misdemeanors. A person convicted of a municipal ordinance violation could face the following fees, in addition to the fine for the offense itself. Including the Consolidated Court Cost and other state fees, local jurisdictions can add fees to defray the cost of the services of the peace officer, as well as fees to provide local technology. The chart, *Class C Misdemeanor Municipal Ordinance Violation Fees*, details the type and amount of fees that could be assessed for this type of violation. The court costs and fees for a Class C Misdemeanor municipal ordinance violation would be at least $48, and could possibly be up to $63.

Class C Misdemeanor Municipal Ordinance Violation Fees

Date Added	Fee	State/Local	Amount
2005	Judicial Support Fee	State	$4.00
2005	Jury Reimbursement Fee	State	$4.00
2004	Jury Fee	Local	$3.00
2004	Fee for Services of Peace Officers	State/Local[5]	$5.00
2003	Juvenile Crime and Delinquency Program at Prairie View A&M University*	State	$0.49
2003	Comprehensive Rehabilitation*	State	$2.13
2001	Fair Defense*	State	$2.41
2001	Correctional Management Institute at Sam Houston State University*	State	$0.48
1999	Municipal Court Technology Fee	Local	$4.00
1997	TDCJ Fugitive Apprehension*	State	$4.84
1995	Law Enforcement Officers Standards and Education*	State	$2.00
1993	Municipal Court Building Security Fee	Local	$3.00
1991	DPS Breath Alcohol Testing*	State	$0.22
1989	Crime Stoppers Assistance*	State	$0.10
1987	Judicial and Court Personnel Training*	State	$1.93
1987	Operator's and Chauffeur's License Fund*	State	$4.46
1987	Law Enforcement Management Institute at Sam Houston Sate University*	State	$0.87
1979	Crime Victim Compensation Fund*	State	$15.05
1971	State Criminal Justice Planning*	State	$5.02
Total Fees Assessed			**$63.00**

*Part of the Consolidated Court Cost, discussed further in Appendix I.[6]

Case Study 2: Class A Misdemeanor Driving While Intoxicated Offense

A person convicted of a Class A Misdemeanor offense of driving while intoxicated could face the following fees. The total state court costs and fees would be $191. In addition, the offender faces additional fees upon conviction, such as the Judicial Fund Court Cost and the breath alcohol testing fee. If the offender requests a jury trial, more fees could be added, totaling $346.50, detailed in the chart, *Class A Misdemeanor Driving While Intoxicated Fees*. Finally, if this is the second DWI offense, the offender must pay an annual $1,500 surcharge for a driver's license under the Driver's Responsibility Program for three years, totaling $4,500. Therefore, for a second Class A Misdemeanor DWI offense, an offender could face more than $4,800 in court costs and fees.

Class A Misdemeanor Driving While Intoxicated Fees

Date Added	Fee	State/Local	Amount
2005	Jury Reimbursement Fee	State	$4.00
2005	Clerk's Fee	Local	$40.00
2005	Judicial Support Fee	State	$4.00
2005	Records Management and Preservation Services	Local	$25.00
2004	Jury Fee	Local	$20.00
2004	Fee for Services of Peace Officers	State/Local	$5.00
2003	Juvenile Crime and Delinquency Program at Prairie View A&M University*	State	$1.00
2003	Judicial and Court Personnel Training*	State	$4.01
2003	Comprehensive Rehabilitation*	State	$4.42
2003	EMS Trauma Fund	State	$100.00
2001	Fair Defense*	State	$4.99
2001	Correctional Management Institute at Sam Houston State University*	State	$1.00
1997	TDCJ Fugitive Apprehension*	State	$10.04
1997	Breath Alcohol Testing Court Cost	Local	$22.50
1995	Law Enforcement Officers Standards and Education*	State	$4.15
1995	Electronic Visual Recording Fee	Local	$15.00
1993	Courthouse Security Fee	Local	$3.00
1991	Breath Alcohol Testing*	State	$0.46
1989	Abused Children's Counseling*	State	$0.01
1989	Crime Stoppers Assistance*	State	$0.21
1987	Law Enforcement Management Institute at Sam Houston State University*	State	$1.80
1987	Operator's and Chauffeur's License Fund*	State	$9.25
1985	Fee for Services of Prosecutors	Local	$25.00
1979	Crime Victim Compensation Fund*	State	$31.24
1971	Criminal Justice Planning*	State	$10.42
Total Fees Assessed			**$346.50**

*Part of the Consolidated Court Cost, discussed further in Appendix I.

Case Study 3: DNA Felony Offense

A person convicted of a felony offense requiring DNA testing, such as sexual assault, would face the following state court costs and fees, totaling $391, and could face additional fees, increasing the total to $486. Felony offenses pay higher Consolidated Court Costs. For example, misdemeanor offenses pay $15-30 to the Crime Victims Compensation Fund, while felony offenses pay $50. Finally, certain offenses necessitating comprehensive DNA testing face a $250 state DNA testing fee. The chart, *Felony DNA Testing Offense Fees*, details the various fees that could be applied to this offense.

Felony DNA Testing Offense Fees

Date Added	Fee	State/Local	Amount
2005	Clerk's Fee	Local	$40.00
2005	Records Management and Preservation Services	Local	$25.00
2005	Courthouse Security Fee	Local	$5.00
2005	Jury Reimbursement Fee	State	$4.00
2005	Judicial Support Fee	State	$4.00
2004	Fee for Services of Peace Officers	State/Local	$5.00
2004	Jury Fee	Local	$20.00
2003	Juvenile Crime and Delinquency Program at Prairie View A&M University*	State	$1.62
2003	Judicial and Court Personnel Training*	State	$6.43
2003	Comprehensive Rehabilitation*	State	$7.08
2001	DNA Testing Fee	State	$250.00
2001	Fair Defense*	State	$8.00
2001	Correctional Management Institute at Sam Houston State University*	State	$1.61
1997	TDCJ Fugitive Apprehension*	State	$16.08
1995	Law Enforcement Officers Standards and Education*	State	$6.65
1991	Breath Alcohol Testing*	State	$0.73
1989	Abused Children's Counseling*	State	$0.01
1989	Crime Stoppers Assistance*	State	$0.34
1987	Law Enforcement Management Institute at Sam Houston State University*	State	$2.88
1987	Operator's and Chauffeur's License Fund*	State	$14.82
1979	Crime Victim Compensation Fund*	State	$50.05
1971	Criminal Justice Planning*	State	$16.70
Total Fees Assessed			**$486.00**

*Part of the Consolidated Court Cost, discussed further in Appendix I.

[1] Texas House Bill 1116, 79th Legislature (2005), Article 6.

[2] In 2002, SAO issued an audit report on funds collected as court costs, concluding that certain grantees, contractors, and award recipients that received court costs and fees from the Governor's Office, the Office of the Attorney General, and the Children's Trust Fund of Texas Council may not have always spent funds for the intended purposes. In addition, the report found that six court costs and fees do not have a specific purpose directing expenditure of funds. In 2005, OCA estimated that $397 million annually in court costs, fees, and fines is uncollected by local court jurisdictions for criminal offense convictions, $99 million of which would go to the state. State Auditor's Office, *Funds Collected as Court Costs* (Austin, Texas, 2002), p. 1.

[3] Texas Senate Bill 1863, 79th Legislature (2005).

[4] Lieutenant Governor David Dewhurst, *Senate Interim Committee Charges, 79th Legislature* (Austin, Texas, 2006), Jurisprudence Committee, charge no 4.

[5] When service is performed by a peace officer employed by the state, 20 percent ($1.00) is sent to the state, and the remainder retained locally.

[6] Fourteen different state criminal court costs and fees comprise the Consolidated Court Cost. The Consolidated Court Cost is a group of fees that require the Comptroller to deposit certain percentages of the monies received for each fee in specific accounts. Appendix I details the fees that comprise the Consolidated Court Cost, their purpose, and who administers the funds or accounts relating to each fee.

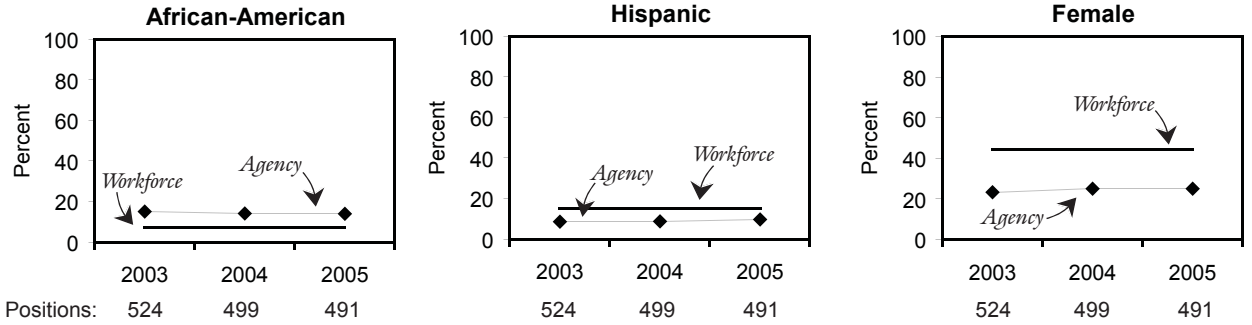
APPENDICES

Appendix A

Texas Department of Criminal Justice
Equal Employment Opportunity Statistics
2003 to 2005

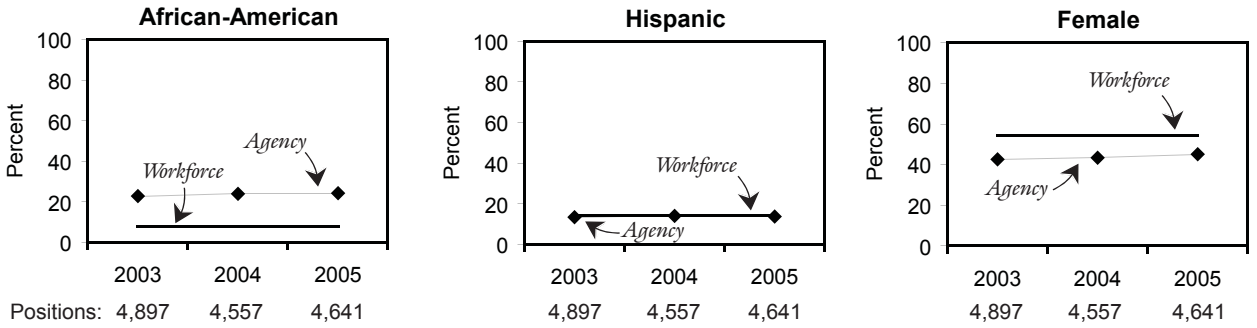
In accordance with the requirements of the Sunset Act, the following material shows trend information for TDCJ's employment of minorities and females in all applicable categories.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. The agency has fallen below the workforce percentages for Hispanics and females in most categories.

Administration



TDCJ exceeds the civilian workforce percentage for African-Americans in this category, but has fallen short for Hispanic and female representation.

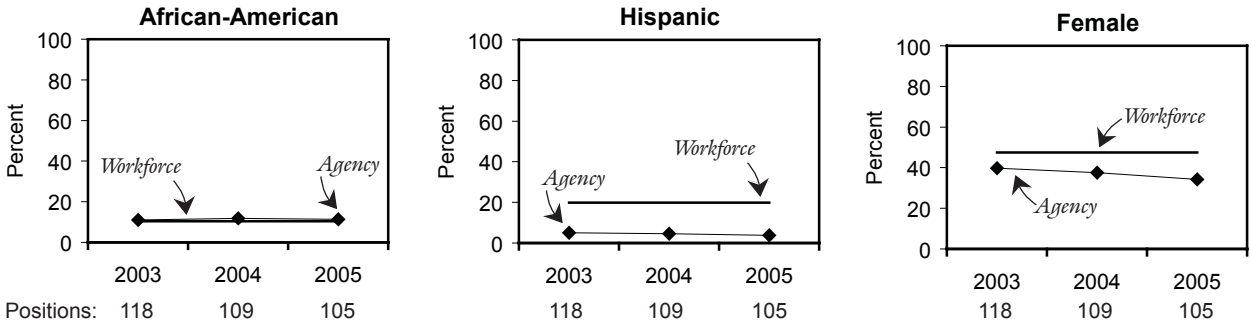
Professional



TDCJ has exceeded the civilian workforce percentage for African-Americans in this category, met the percentage for Hispanics, and fallen short for female representation.

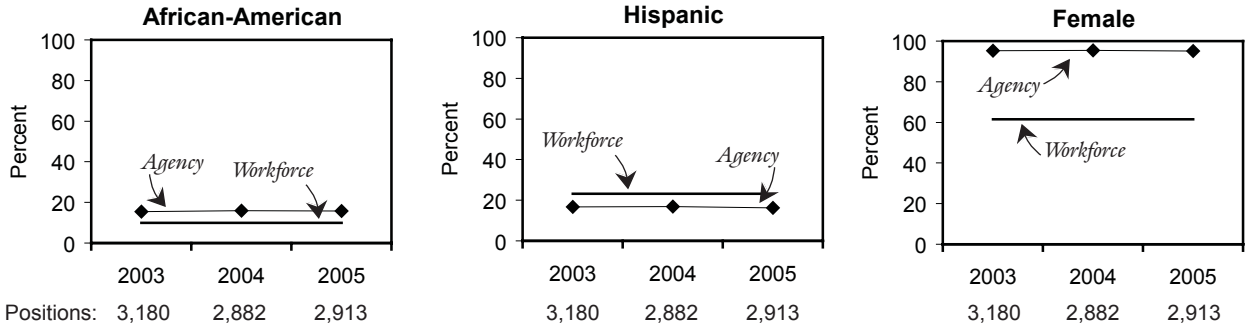
Appendix A

Technical



TDCJ has met the civilian workforce percentage for African-Americans in this category, but has fallen short for Hispanics and female representation.

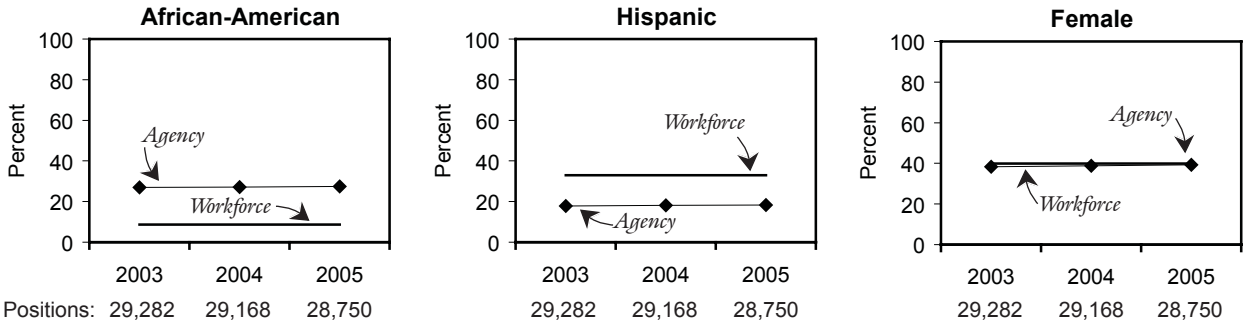
Administrative Support



TDCJ has exceeded the civilian workforce percentages for African-Americans and females in this category, but has fallen short on the percentage for Hispanics.

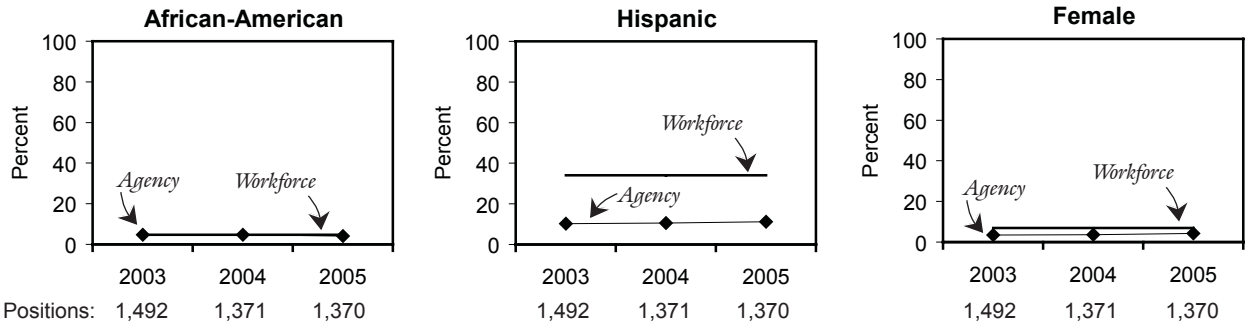
Appendix A

Service/Maintenance[3]



TDCJ has generally met or exceeded the percentage for African-Americans and females, but has fallen short in this category for Hispanic representation.

Skilled Craft



TDCJ has met the percentage for African-Americans, but falls short for Hispanics and females.

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1 Texas Government Code, sec. 325.011(9)(A).

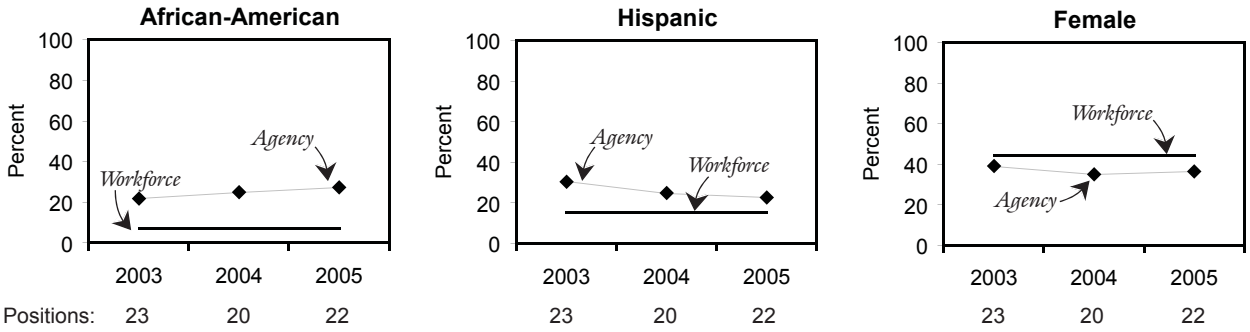
2 Texas Labor Code, sec. 21.501.

3 The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups. Examples of TDCJ positions in the Protective Services category include Correctional Officers and Safety Officers.

Board of Pardons and Paroles
Equal Employment Opportunity Statistics
2003 to 2005

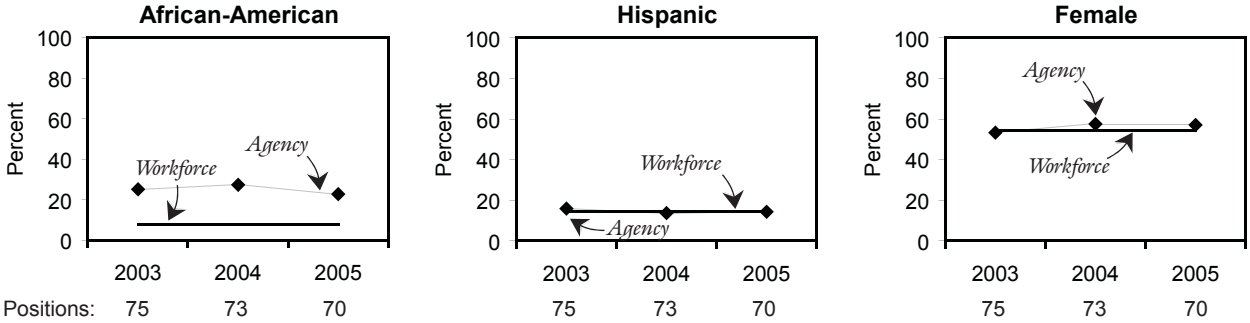
In accordance with the requirements of the Sunset Act, the following material shows trend information for Board of Pardons and Paroles' employment of minorities and females in all applicable categories.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. Because the Parole Board is administratively attached to TDCJ, the Parole Board does not maintain any technical, service/maintenance, or skilled craft employees. The agency has fallen below the workforce percentages for Hispanics and females in most categories.

Administration



The Parole Board exceeded the civilian workforce percentage for African-Americans and Hispanics in this category, but has fallen short for female representation.

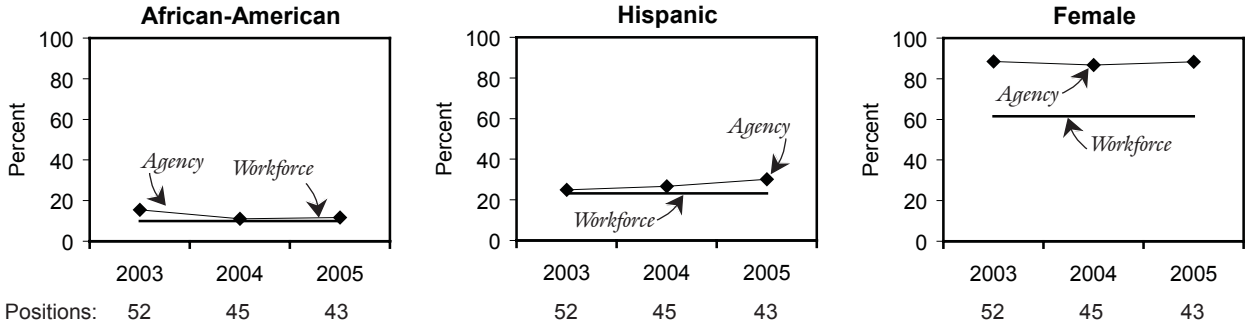
Professional



The Parole Board has met or exceeded the civilian workforce percentages in this category for all of the groups.

Appendix B

Administrative Support



The Parole Board has met or exceeded the civilian workforce percentages in this category.

[1] Texas Government Code, sec. 325.011(9)(A).

[2] Texas Labor Code, sec. 21.501.

Historically Underutilized Businesses Statistics

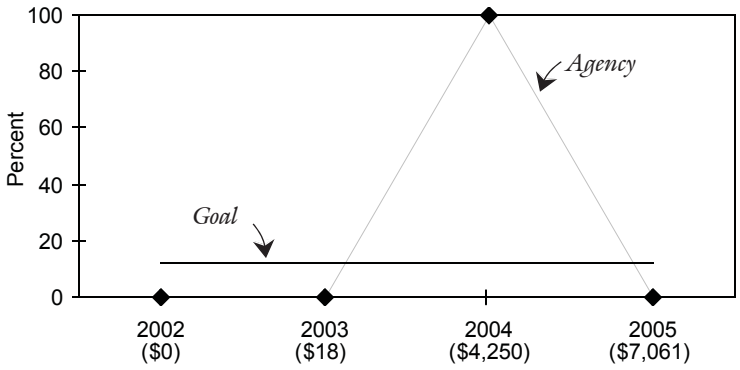
2002 to 2005

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1] The review of TDCJ found that the agency's purchasing continues to fall below the State's HUB goals. However, TDCJ does have a HUB coordinator and a HUB action plan to address performance short falls. Additionally, the agency has adopted the HUB subcontracting plan developed by the Texas Building and Procurement Commission.

The following material shows trend information for TDCJs use of HUBs in purchasing goods and services. Because TDCJ contracts on behalf of the Board of Pardons and Paroles, the information below captures HUB data for the Parole Board as well. The data does not reflect HUB figures for the Correctional Managed Health Care Committee because all health care contracting is done through the university providers.

The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.[2] In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2002 to 2005. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category with the exception of heavy construction in 2004. TDCJ has consistently fallen short of State HUB purchasing goals for the past four years.

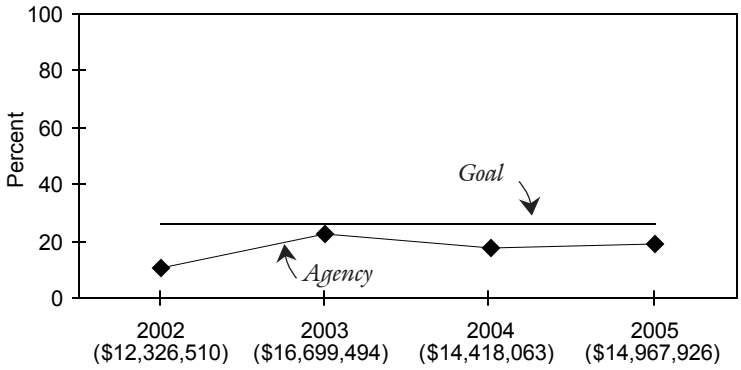
Heavy Construction



TDCJ has spent more in heavy construction in recent years, far exceeding the State goal for HUB purchases in 2004, but falling below it in 2005.

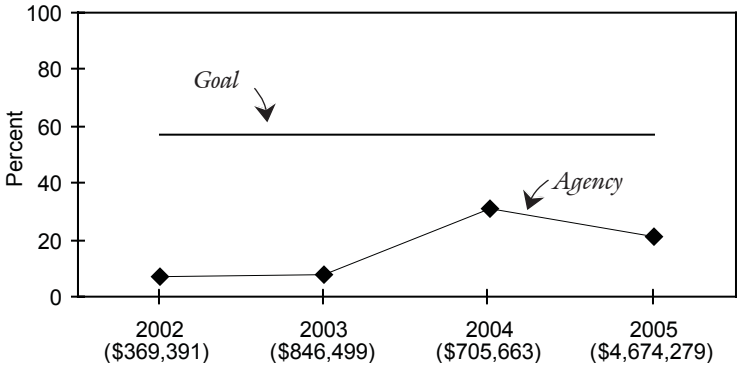
Appendix C

Building Construction



TDCJ fell below the State goal for HUB building construction purchases from 2002 to 2005.

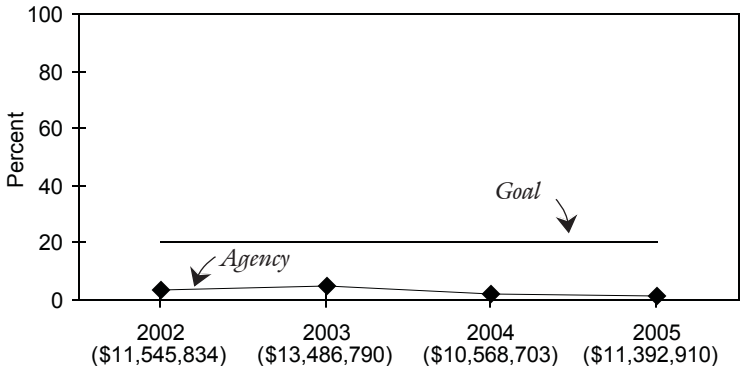
Special Trade



TDCJ consistently fell below the State goal for HUB purchasing of special trades from 2002 to 2005.

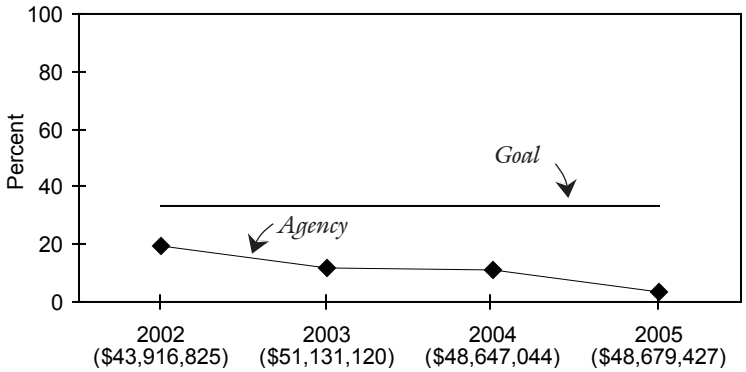
Appendix C

Professional Services



TDCJ has failed to meet the State goal for HUB purchasing of professional services for the past four years.

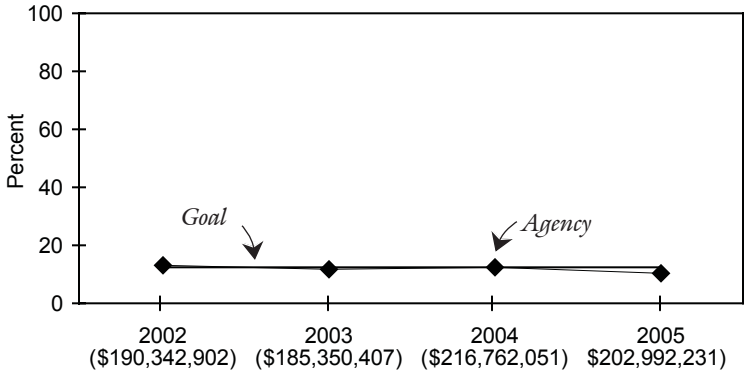
Other Services



TDCJ consistently fell below the State goal for HUB purchasing of other types of services from 2002 to 2005.

Appendix C

Commodities



TDCJ met the State goal for HUB commodities purchases from 2002 to 2004, but fell just short of the goal in 2005.

[1] Texas Government Code, sec. 325.011(9)(B).

[2] Texas Government Code, ch. 2161.

Appendix D

Judicial Advisory Council Members

Member	City	Term Expiration
Honorable Larry J. Gist, Chair	Beaumont	2011
Honorable Mary Anne Bramblett, Vice Chair	El Paso	2009
Richard Alan Anderson	Dallas	2007
Melvin Brown, Ph.D	Conroe	2010
Joan Buschor	Houston	2011
Honorable Caprice Cosper	Houston	2009
Honorable John Creuzot	Dallas	2007
Honorable Manuel R. Flores	Laredo	2011
Honorable E. Lee Gabriel	Denton	2011
Honorable Sharon Keller	Austin	2007
Ray Sumrow	Rockwall	2009
Honorable Carroll Wilborn	Anahuac	2009

Appendix E

TDCJ – CID Facilities

Region I

Diboll – 1
- Diboll Correctional Center (PF)
- Duncan Transfer

Huntsville – 2
- Byrd Unit
- Ellis Unit
- Estelle Unit
- Goree Unit
- Holliday Transfer
- Huntsville Unit
- Wynne Unit

Jasper – 3
- Goodman Transfer

Livingston – 4
- Polunsky Unit

Lovelady – 5
- Eastham Unit

Midway – 6
- Ferguson Unit

Woodville – 7
- Lewis Unit

Region II

Bonham – 8
- Cole State Jail
- C. Moore Transfer

Bridgeport – 9
- Bridgeport Correctional Center (PF)

Dallas – 10
- Dawson State Jail (PF)
- Hutchins State Jail

Henderson – 11
- Bradshaw State Jail (PF)

Jacksboro– 12
- Lindsey State Jail (PF)

New Boston – 13
- Telford Unit

Overton – 14
- B. Moore Correctional Center (PF)

Palestine – 15
- Beto Unit
- Coffield Unit
- Gurney Transfer
- Michael Unit
- Powledge Unit

Rusk – 16
- Hodge MROP Unit
- Skyview Psychiatric Unit

Teague – 17
- Boyd Unit

Venus – 18
- Estes Unit (PF)

Winnsboro – 19
- Johnston SAFP

Appendix E

Region III

Angleton – 20
Scott Unit

Beaumont – 21
Gist State Jail
LeBlanc Unit
Stiles Unit

Brazoria – 22
Clemens Unit

Cleveland – 23
Cleveland Correctional Center (PF)

Dayton – 24
Henley State Jail (Female)
Hightower Unit
Plane State Jail (Female)

Dickinson – 25
Young Medical Facility

Galveston – 26
Hospital Galveston

Houston – 27
Kegans State Jail

Humble – 28
Lychner State Jail

Richmond – 29
Jester I SAFP
Jester III Unit
Jester IV Psychiatric Unit
Vance Unit

Rosharon – 30
Darrington Unit
Ramsey Unit
Stringfellow Unit
Terrell Unit

Sugar Land – 31
Central Unit

Region IV

Beeville – 32
Garza East Transfer
Garza West Transfer
McConnell Unit

Cotulla – 33
Cotulla Transfer

Cuero – 34
Stevenson Unit

Dilley – 35
Briscoe Unit

Edinburg – 36
Lopez State Jail
Segovia Transfer

El Paso – 37
Sanchez State Jail

Fort Stockton – 38
Fort Stockton Transfer

Hondo – 39
Ney State Jail
Torres Unit

Kenedy – 40
Connally Unit

Raymondville – 41
Willacy County State Jail (PF)

San Antonio – 42
Dominguez State Jail

San Diego – 43
Glossbrenner SAFP

Region V

Amarillo – 44
Clements Unit
Neal Unit

Brownfield – 45
Rudd Transfer

Childress – 46
Roach Unit

Colorado City – 47
Wallace Unit
Ware Transfer

Dalhart – 48
Dalhart Unit

Lamesa – 49
Smith Unit

Lubbock – 50
Montford Psychiatric Unit

Pampa – 51
Jordan Unit

Plainview – 52
Formby State Jail
Wheeler State Jail

Snyder – 53
Daniel Unit

Tulia – 54
Tulia Transfer

Wichita Falls – 55
Allred Unit

Region VI

Abilene – 56
Middleton Transfer
Robertson Unit

Austin – 57
Travis County State Jail

Bartlett – 58
Bartlett State Jail (PF)

Breckenridge – 59
Sayle SAFP

Brownwood – 60
Havins State Jail (PF)

Bryan – 61
Hamilton Unit

Burnet – 62
Halbert SAFP (Female)

Gatesville – 63
Gatesville Unit (Female)
Hilltop Unit (Female)
Hughes Unit
Mountain View Unit (Female)
Murray Unit (Female)
Woodman State Jail (Female)

Kyle – 64
Kyle Correctional Center (PF)

Lockhart– 65
Lockhart Correctional Center (PF)

Marlin – 66
Hobby Unit (Female)

Navasota – 67
Luther Unit
Pack Unit

Private Facility (PF)

Capacity Within the Texas Department of Criminal Justice

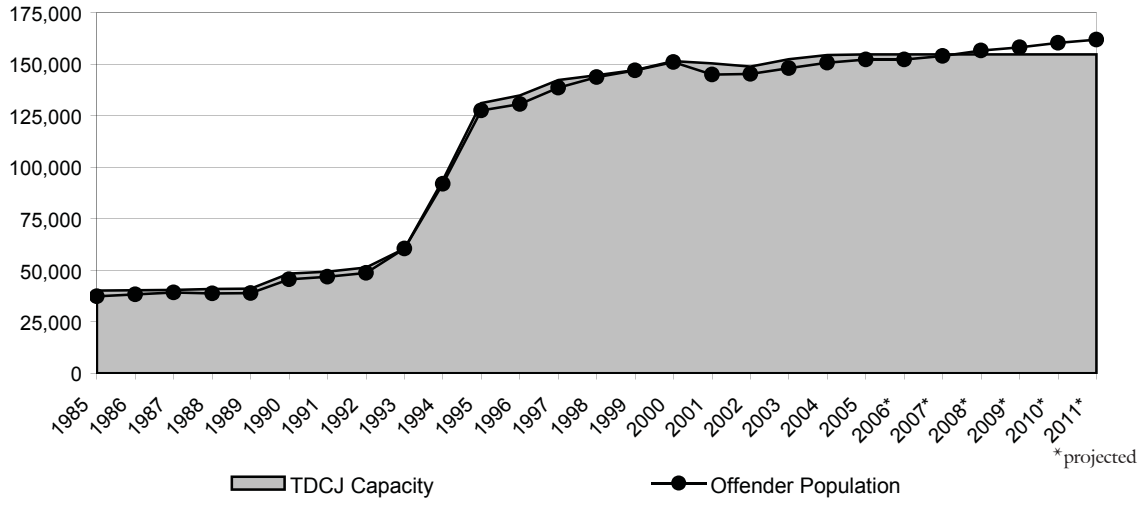
Currently, TDCJ's state bed capacity is 154,702. TDCJ determines capacity based on density standards, support requirements, and classification limits. Therefore, the total number of beds in the units does not determine capacity. Additionally, TDCJ operates at 97.5 percent of its total capacity; as a result, the state bed operating capacity is 150,834. The reserved portion of the total capacity gives TDCJ flexibility to move prisoners and comply with restrictions on housing certain types of inmates together. The chart, *TDCJ Total Capacity,* shows the number of TDCJ units and related populations and capacities.

TDCJ Total Capacity (August 31, 2005)

Type of Facility	Number of Units	Capacity	Population*
Prison	51	98,689	95,271
Private Prisons	7	4,078	4,068
State Jail	16	20,632	19,153
Private State Jail	5	7,297	7,186
Transfer	13	16,908	16,388
Pre-release	3	3,614	3,541
Psychiatric/Mentally Retarded Offender program	4	3,017	2,787
Medical	2	310	537
Substance Abuse	5	2,791	2,716
Less Adjustments	n/a	-2,634	n/a
Totals	**106**	**154,702**	**151,647**
*Population excludes offenders housed in temporary contract capacity.			

Projections indicate that TDCJ's population will continue to exceed its capacity as shown in the chart, *TDCJ Capacity vs. Offender Population*. To address this situation, TDCJ began contracting with county jails in 2005 to increase capacity. From July 2005 to March 2006, TDCJ has leased an additional 1,418 beds from county jails.

TDCJ Capacity vs. Offender Population



Offender Rehabilitation and Treatment Programs (FY 2005)

Program	Description	Eligibility Criteria
Chaplaincy Length: varies Participation: not tracked Completion: not applicable	TDCJ provides chaplain services in prisons to facilitate the exercise of freedom of religion by offenders. Chaplains provide religious services based on demand, need, and resources. Chaplaincy staff also facilitate numerous volunteer programs, as well as coordinate fundraising efforts to build chapels on prison facilities.	♦ All custody levels
Windham School District Length: varies Participation: 75,667 GEDs Awarded: 4,552 Vocational Certificates: 5,774 Industry Certificates: 2,802	Created in 1969 to educate offenders during their prison stays. Operating in prison and state jail facilities statewide, with funding from the Texas Education Agency, Windham offers courses from basic literacy and math to GED preparation, vocational training, and life skills classes. Windham also provides post-secondary academic and vocational programs, overseen by Windham's Continuing Education division, through contracts with colleges and universities located near prison units.	♦ General population offenders only ♦ Priority is given to offenders younger than 35 who have not earned a high school or General Equivalency diploma ♦ Offenders with high school educations may participate in post-secondary academic and vocational programs as available and as they align with the offender's individual treatment programs
Project RIO (Reintegration of Offenders) Length: varies Participation: 69,720 Completion: 32,861 released	Working with the Texas Workforce Commission, Windham School District coordinates Project RIO to assist offenders with job placement upon release. Project RIO staff develop an individual employment plan with the offender, identify a potential career path, and provide guidance and counseling regarding professional opportunities.	♦ General population offenders only ♦ All offenders within 18 months of release, and offenders younger than 35 within 36 months of release

Appendix G

Program	Description	Eligibility Criteria
Substance Abuse Felony Punishment Facility (SAFP) Length: 6-10 months Participation: 5,426 Completion: 5,017	An intensive therapeutic community program for offenders sentenced by a judge as a condition of community supervision, or as a modification of parole or community supervision. The program has three phases: Phase I: Orientation and assessment Phase II: Treatment, education, and skill-building Phase III: Re-entry and relapse prevention Aftercare: Once released, offenders must complete an aftercare component which includes 3 months of residential treatment, 6 to 9 months of outpatient aftercare, and up to 12 months of support groups and follow-up supervision.	♦ Offenders on parole or community supervision who are convicted of substance abuse related felonies ♦ No sex offenders eligible unless approved by sex offender treatment ♦ Current community supervision / parole has not been revoked ♦ 6-12 month sentence ♦ No signs or symptoms of acute withdrawal requiring detoxification
Pre-Release Substance Abuse Program (PRSAP) Length: 6 months Participation: 1,923 Completion: 1,781	Chemically dependent offenders receive treatment in a therapeutic community environment. The program has three phases and no aftercare requirement: Phase I: Orientation and assessment Phase II: Treatment, education, and skill-building Phase III: Re-entry and relapse prevention	♦ General population offenders only ♦ Must score chemically dependent on the Addiction Severity Index (ASI) ♦ Not currently enrolled in vocational or educational courses ♦ Required by the Parole Board to participate as a condition of parole
In-Prison Therapeutic Community (IPTC) Length: 6 months Participation: 1,070 Completion: 1,010	An intensive therapeutic community program with three phases: Phase I: Orientation and assessment Phase II: Treatment, education, and skill-building Phase III: Re-entry and relapse prevention Aftercare: Once paroled, offenders must complete an aftercare component which includes 3 months of residential treatment and 12 months of counseling.	♦ General population offenders only ♦ Must score chemically dependent on the ASI ♦ No sex offense or 3g offenders ♦ Required by the Parole Board to participate as a condition of parole

Appendix G

Program	Description	Eligibility Criteria
Pre-Release Therapeutic Community (PRTC) Length: 6 months Participation: 1,219 Completion: 995	Offenders with substance abuse histories or in need of pre-release services receive treatment in a therapeutic community environment. The program has three phases and no aftercare requirement: Phase I: Orientation and assessment Phase II: Treatment, education, and skill-building Phase III: Re-entry and relapse prevention	♦ Male ♦ General population offenders only ♦ Must score chemically dependent on the ASI ♦ Required by the Parole Board to participate as a condition of parole
Sex Offender Treatment Program (SOTP) Length: 18 months Participation: 334 Completion: 181	Provides sex offender evaluation, education and treatment in three phases. Phase I: Psychological evaluation and individual treatment plan development Phase II: intensive treatment, including cognitive restructuring and counseling Phase III: Re-entry training and societal re-integration. The program gives priority to: Individuals with a high risk of re-offending; discharging offenders who will receive no supervision; offenders serving for a sex offense versus offenders with prior sex offenses	♦ General population offenders only ♦ Offender has one or more sex offense convictions ♦ Required by the Parole Board to participate as a condition of parole ♦ Offenders within 18 months of release on parole, mandatory supervision or discharge
Sex Offender Education Program (SOEP) Length: 4 months Participation: 307 Completion: 272	Helps offenders build the necessary skills to begin the Sex Offender Treatment Program. SOEP also provides programming to lower risk offenders who do not require the more intensive Sex Offender Treatment Program.	♦ General population offenders only ♦ Offenders within 18 months of release ♦ Deemed low risk of re-offending ♦ Prior sex offense conviction, and are currently incarcerated on a non-violent or non-sex-related offense
Youthful Offender Program (YOP) Length: 9-12 months Participation: 289 Completion: 25	Provides community therapy and cognitive intervention for offenders convicted of a felony and certified as an adult.	♦ Age 14 to 17 ♦ Offenders may remain in the program until their 21st birthday

Appendix G

Program	Description	Eligibility Criteria
InnerChange Freedom Initiative (IFI) Length: 18-30 months Participation: 264 Completion: 44	Offers faith-based programming and life skills courses, mentorship, and aftercare to assist offenders in re-integrating upon release.	♦ Trusty status offenders only ♦ Offenders within 18-30 months of release on Mandatory Supervision ♦ Returning to Dallas or Houston area
Gang Renunciation & Disassociation Program (GRAD) Length: 2+ years Participation: 155 Completion: 102	Provides intensive programming to security threat group members to facilitate disassociation from gangs and release from administrative segregation to the general population.	♦ Male ♦ No offender or staff assaults, extortion cases, aggressive sexual misconduct cases, or weapons possession cases for a period of at least two years ♦ Must renounce membership in a security threat group ♦ Must request participation and sign a release form
Serious and Violent Offender Reentry Initiative (SVORI) Length: 18 months Participation: 106 Completion: 60	Provides pre-release in-cell programming, transitional services, and post-release supervision of administratively segregated offenders. The first phase of the program provides cognitive education through in-cell computers, while the second phase provides a continuum of care to ensure a smooth transition back into society.	♦ Male ♦ Administrative segregation custody level ♦ Age 18 to 35 ♦ Within 24 months of release to Bexar, Dallas, El Paso, Harris, Nueces, Tarrant, or Travis counties

Appendix H

Advisory Committee on Offenders with Medical and Mental Impairments

10 Gubernatorial Appointees

- four members with expertise in mental health, mental retardation, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;
- one judge of a district court with criminal jurisdiction;
- one prosecuting attorney;
- one criminal defense attorney;
- two members with expertise in the juvenile justice or criminal justice system; and
- one member whose expertise can further the mission of the committee.

21 State Agencies or Associations

Criminal Justice Agencies

- Texas Department of Criminal Justice
  - Correctional Institutions Division
  - Parole Division
  - Community Justice Assistance Division
- Board of Pardons and Paroles
- Correctional Managed Health Care Committee
- Texas Youth Commission
- Texas Juvenile Probation Commission
- Texas Commission on Law Enforcement Officer Standards and Education
- Texas Commission on Jail Standards

Health and Human Services and Education Agencies

- Health and Human Services Commission
- Department of Aging and Disability Services
- Department of Assistive and Rehabilitative Services
- Department of State Health Services
- Texas Education Agency

Associations

- Texas Council for Developmental Disabilities
- Texas Council of Community Mental Health and Mental Retardation Centers, Inc.
- Mental Health Association of Texas
- Texas Association for Retarded Citizens
- Parent Association for the Retarded of Texas, Inc.
- National Alliance for the Mentally Ill – Texas

Appendix I

Consolidated Court Cost[1]

Fee	Purpose	Administrator
Abused Children's Counseling	To provide counseling services to abused children.	General Revenue Fund
Breath Alcohol Testing	To implement, administer, and maintain the statewide certified breath alcohol testing program.	Department of Public Safety
Comprehensive Rehabilitation	To provide rehabilitation services to eligible individuals.	Department of Assistive and Rehabilitative Services
Correctional Management Institute	To establish and operate the Correctional Management Institute of Texas and Criminal Justice Center Account.	Sam Houston State University
Crime Stoppers Assistance	To fund crime stoppers organizations and operate a toll-free number for citizens in areas of the state not covered by crime stoppers organizations to report information about criminal acts.	Governor's Office, Criminal Justice Division
Crime Victims Compensation Fund	To reimburse out-of-pocket expenses to victims of violent crime and their families, operate the Crime Victim Institute, and fund victim-related services and assistance.	Office of the Attorney General
Criminal Justice Planning	To fund state and local criminal justice projects, and for costs of administering funds for the projects.	Governor's Office, Criminal Justice Division
Fair Defense	To help provide legal representation and other defense services to indigent defendants.	Task Force on Indigent Defense
Fugitive Apprehension	To apprehend and incarcerate certain individuals.	Department of Public Safety
Judicial and Court Personnel Training	To provide continuing legal education of judges and court personnel.	Court of Criminal Appeals
Juvenile Crime and Delinquency	To the establishment and operation of the Center for Study and Prevention of Juvenile Crime and Delinquency.	Prairie View A&M University
Law Enforcement Officers Administrative and Continuing Education	To train police management personnel.	Bill Blackwood Law Enforcement Institute of Texas
Law Enforcement Officers Administrative and Continuing Education	To fund Commission administrative expenses and train law enforcement personnel.	Commission on Law Enforcement Standards and Education
Operator's and Chauffeur's License	To defray expenses of administering the Safety Responsibility Law.	Department of Public Safety

[1] Office of Court Administration, *County and District Clerks - Court Costs and Fees Handbook* (Austin, Texas, October 2005), pp. 1-2.

Appendix J

Staff Review Activities

During the review of the Texas Department of Criminal Justice, Board of Pardons and Paroles, and Correctional Managed Health Care Committee, Sunset staff engaged in the following activities that are standard to all sunset reviews. Sunset staff worked extensively with agency personnel; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff performed the following activities unique to this agency:

- Visited 15 different TDCJ units across the State, including two private facilities and two state jails. Observed offender classification and disciplinary hearings, toured Windham School District programs, including Project RIO, and several prison industries, including a Prison Industry Enhancement program at the units.
- Attended meetings of the Board of Criminal Justice and met with its Chairman.
- Attended meetings of the Correctional Managed Health Care Committee and several of its subcommittees and workgroups. Met with the Committee's Chair and Committee members representing UTMB and Texas Tech. Met with UTMB correctional managed care staff in Galveston.
- Attended meetings of the Board of Pardons and Paroles, and met with the Presiding Officer and other members.
- Visited four Board of Pardons and Paroles district offices, and a District Resource Center. Observed parole panel voting.
- Toured the University of Texas Medical Branch's prison hospital in Galveston, central pharmacy operations in Huntsville, and Carol Young Medical Facility in Dickinson.
- Attended meetings of the Advisory Committee on Offenders with Medical and Mental Impairments.
- Visited a Substance Abuse Felony Punishment Facility, an Intermediate Sanction Facility, and a Halfway House.
- Observed various rehabilitation and re-entry programs, such as the Sex Offender Treatment Program, Gang Renunciation and Dissociation Program, Serious and Violent Offender Reentry Initiative, Youthful Offender Program, and a Pre-Release Therapeutic Community.
- Observed initial parole interviews, as well as several parole revocation hearings.
- Observed a drug court and met with the presiding judge.

Appendix J

- Reviewed numerous parole files, clemency files, civil commitment files, and medically recommended intensive supervision files.
- Visited community supervision and corrections departments.
- Attended Judicial Advisory Committee meetings, and met with the Chair and other members.
- Met with staff from the Office of the Attorney General, Office of Court Administration, and the Texas Youth Commission.

Sunset Review of the
Texas Department of Criminal Justice
Board of Pardons and Paroles
Correctional Managed Health Care Committee

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Special thanks to the Legislative Budget Board for information and assistance provided on the Court Costs and Fees Study included in this report.