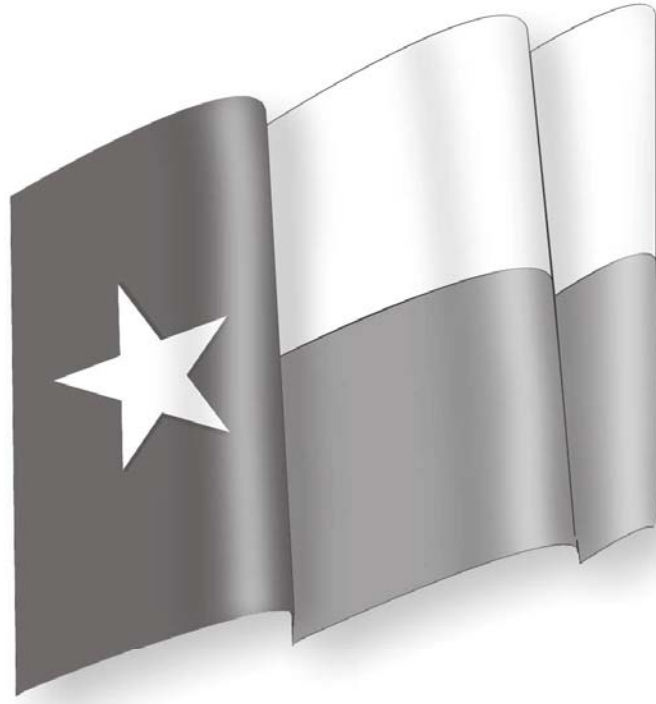


Summary of Sunset Commission Recommendations



Criminal Justice Agencies

February 2007





Criminal Justice Agencies

Texas Department of Criminal Justice

Board of Pardons and Paroles

Correctional Managed Health Care Committee

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.

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

- ◆ providing for confinement and reintegration 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.



*For additional information,
please contact Jennifer
Jones at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, TDCJ operated with a budget of \$2.6 billion. Approximately 80 percent of TDCJ’s budget supports the incarceration of offenders. In fiscal year 2006, the Parole Board operated with a budget of \$9 million and the Committee’s budget was \$376 million.
- ◆ **Average Daily Costs.** The average daily cost associated with housing an offender was \$37.90 in fiscal year 2006. Supervising offenders on parole cost \$3.51 per day and \$2.55 for offenders on probation during this same year. Health care for offenders cost an average of \$7.64 per offender per day in fiscal year 2006.
- ◆ **Offender Population.** In fiscal year 2006, TDCJ incarcerated approximately 153,000 offenders in 106 prisons located throughout the state. TDCJ also provided funding and support for about 431,000 offenders on probation in 121 Community Supervision and Corrections Departments (CSCDs), and TDCJ’s Parole Division supervised approximately 77,000 offenders released on parole and mandatory supervision.
- ◆ **Staffing.** TDCJ employs approximately 38,000 staff, of which 23,500 are correctional officers. The Parole Board employs about 175 staff, and the Committee has four employees.

Board Members

Texas Board of Criminal Justice (9)

Christina Melton Crain, Chair (Dallas)
Pierce Miller, Vice Chair (San Angelo)
Patricia A. Day, Secretary (Dallas)
Adrian A. Arriaga (McAllen)
Oliver J. Bell (Austin)
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Board of Pardons and Paroles (7)

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(Huntsville)
Jose Aliseda, Jr. (San Antonio)
Charles Aycock (Amarillo)
Conrith W. Davis (Huntsville)
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Correctional Managed Health Care Committee (9)

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Ed Owens (Huntsville)
Ben G. Raimer, M.D. (Galveston)
Lawrence E. Revill (Galveston)
Desmar Walkes, M.D. (Bastrop)

Agency Heads

Texas Department of Criminal Justice

Brad Livingston, Executive Director
(936) 437-2101

Board of Pardons and Paroles

Rissie Owens, Presiding Officer
(936) 291-2161

Correctional Managed Health Care Committee

The Honorable Allen Hightower,
Executive Director
(936) 437-1972

Recommendations

1. Request that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.
2. Establish a Criminal Justice Legislative Oversight Committee to provide objective research, analysis, and recommendations to help guide state criminal justice policies.
3. Require the Board of Pardons and Paroles to annually review and update its parole guidelines, and report and explain to the Legislature its efforts to meet them.
4. Require CSCDs to identify and recommend probationers appropriate for early termination, and encourage TDCJ and the Legislature to adjust funding methods to minimize the loss of funds to CSCDs resulting from these early terminations.
5. Require TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders early from parole and mandatory supervision.
6. Authorize judges to permit the early medical release of state jail confinees who pose no risk to public safety due to their medical conditions.
7. Expand conflict of interest provisions and previous employment restrictions for Parole Board members to apply to parole commissioners.
8. Require the Board of Pardons and Paroles to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process.
9. Require TDCJ to identify and provide information and interventions to women offenders at risk of having an alcohol-exposed pregnancy.

10. Require TDCJ to study the option of using electronic GPS tracking and monitoring devices for people on parole, and report the findings to the Legislature.
11. Continue TDCJ for 12 years.
12. Require the Correctional Managed Health Care Committee to make information about offender health care readily available to the public and offenders.
13. Allow the Correctional Managed Health Care Committee to continue, but update its statutory direction and remove its separate Sunset date.

Issue 1

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

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.

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 17,000 beds in 2012. 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. 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. TDCJ has concentrated on developing treatment programs that are demonstrated to reduce offender recidivism. However, TDCJ does not currently have enough funding to meet programming needs.

Recommendations

Change in Appropriations

1.1 Request that the Legislature appropriate significant additional funds to TDCJ for offender treatment and rehabilitation programs proven to reduce recidivism.

This recommendation expresses the will of the Sunset Commission that the Legislature appropriate additional funding 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.

Based largely on needs identified by TDCJ in its 2008-2009 Legislative Appropriations Request, 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. 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 In-Prison Therapeutic Community (IPTC) program; 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 2006, approximately 1.7 offenders completed programming per IPTC bed. With 200 extra beds, an additional 340 offenders might complete the IPTC program annually. By accommodating an additional 340 offenders in this program each year, TDCJ could potentially experience a reduction in the number of offenders reincarcerated from 77 to 17, based on past recidivism studies. The cost avoided by not having to incarcerate the larger number of offenders could be approximately \$931,600 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. Assuming TDCJ created a six-month program, and completion rates were similar to the IPTC as noted above, 850 offenders could complete programming annually. The number of reincarcerations could potentially decline from 191 to 43, resulting in 148 fewer offenders in prison. The cost avoided by not incarcerating 148 offenders could be approximately \$2.3 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 Community Supervision and Corrections Departments (CSCDs) above the amount appropriated in 2006 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 2006 resulted in 1,155 fewer probation revocations than during the same time period in the previous fiscal year. With 1,155 fewer offenders in prison, the State benefits from approximately \$17.9 million in annual cost avoidance.

This recommendation also includes an additional \$6.7 million to increase Substance Abuse Felony Punishment (SAFP) program capacity by 250 beds. Based on the number of SAFP beds and the total number of SAFP completers in 2006, TDCJ could expect approximately 1.6 offenders to complete the program per year, per bed. An additional 250 beds would enable approximately 400 more offenders to complete SAFP annually. Assuming the most recent recidivism rates for SAFP, the addition of 250 SAFP beds could result in 100 fewer reincarcerations, with a possible avoided cost of incarceration of \$1.6 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. This money would allow the Windham School District 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, reincarceration rates for these offenders could potentially drop from 30 percent to 19 percent, resulting in 844 fewer offenders in prison and \$13.1 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.

This recommendation directs TDCJ to perform routine program evaluations of all its rehabilitation programs to ensure that these programs reduce offender reincarcerations 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, regardless of the outcome of that recommendation. 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.

Issue 2

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

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.

Although faced with growing prison capacity concerns and given the size and complexity of the State's criminal justice system, lawmakers do not have access to independent, objective information and analysis to help determine and prioritize the long-range needs of the system. Without this information, the State cannot know if the system is operating efficiently or effectively, and lawmakers cannot make informed decisions on criminal justice policies and plan for the future of the State's criminal justice 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 the Legislative Budget Board previously assumed from the Criminal Justice 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 to identify whether or not the system is working. The Committee would 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.

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 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.

In 1987, the Legislature required the Board of Pardons and Paroles 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 approval rates continue to show significant departure from the expected parole rates established by the Parole Board, especially for offenders judged to be at lower risk of re-offending and who committed less severe offenses.

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, Criminal Justice Legislative Oversight Committee recommended in Issue 2, 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 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

not 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.

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.

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. Providing more information regarding departure from the guidelines would increase transparency and public confidence in the parole process.

Issue 4

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

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.

Both the State and TDCJ's Community Justice Assistance Division's funding practices discourage early termination of offenders on probation, depriving the State of the benefit of allowing an early end of supervision of low-risk offenders and the refocusing of limited resources on higher-risk offenders. The system also fails to provide incentives for good behavior for probationers. Judges have the statutory authority to grant early termination; however, very few probationers discharge early.

Recommendations

Change in Statute

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

This recommendation would require Community Supervision and Corrections Departments (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.

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

This recommendation would amend the statutory funding formula for basic supervision to give TDCJ more flexibility in the way it funds CSCDs. TDCJ would be authorized to restructure the funding formulas for CSCDs to ensure they 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.

Change in Appropriations

4.3 Request 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.

This recommendation reflects the will of the Sunset Commission that the Legislature adjust its method of appropriating funds for TDCJ's probation and community-based programs. Currently, the amount of state probation funding for TDCJ 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.

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 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.

Once released on parole or mandatory supervision, offenders must serve the remainder of their sentence under supervision, which requires significant resources. TDCJ has 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.

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 immediately preceding the review showing successful supervision without any violation of the rules or conditions of release.

Offenders eligible for early release would be identified and reviewed annually. Parole officers would evaluate the offender's risk of recidivism and efforts to comply with the conditions of supervision. Early release would be a privilege, not a right.

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

Issue 6

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

Key Findings

- ◆ To significantly reduce state medical costs, 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.

TDCJ has authority to release state prison offenders who no longer pose a threat to public safety due to their medical conditions. However, district judges, who retain authority over state jail confinees throughout their incarceration, lack clear authority to consider the release of 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.

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.

This recommendation would specifically allow district judges to grant early medical release to state jail confinees. 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, this recommendation would help provide for more consistent application of this program statewide.

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

This recommendation would require the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) to develop a process to facilitate judges' consideration of Medically Recommended Intensive Supervision for state jail confinees, following the same process currently used for offenders in prison. Specifically, TCOOMMI would:

- ◆ work with the Correctional Managed Health Care Committee and the university healthcare providers to identify medically eligible confinees;
- ◆ develop a case summary and medical report for each eligible confinee, and present that information to the 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.

Issue 7

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

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.

To ensure objectivity and prevent bias, the Legislature enacted provisions affecting the eligibility of appointments to the Board of Pardons and Paroles. 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 TDCJ, which is directly affected by parole decisions. Parole commissioners, who have comparable decision-making authority to Parole Board members in parole determinations, are not subject to the same conflict of interest provisions and previous employment restrictions. 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.

Recommendations

Change in Statute

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

This recommendation would make both Parole Board members and commissioners subject to the same conflict of interest provisions. 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 all future parole commissioners as well. Any 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.

Issue 8

Deceased Victims Have Limited Representation In the Parole Review Process.

Current law only allows a close relative of a deceased victim to represent the victim in the parole review process. The definition of close relative is limited to the victim's spouse, parent, or adult sibling or child. If these close relatives are deceased or incapacitated, this definition does not allow any other relatives such as aunts, uncles, or cousins, to represent the deceased victim in the parole review process, leaving the victim without representation.

Recommendation

Change in Statute

8.1 Require the Board of Pardons and Paroles to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process.

This recommendation would expand the definition of close relative to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process only if the victim's spouse, parent, and adult sibling or child are deceased or incapacitated due to physical illness or infirmity. By including the nearest relative by consanguinity, this provision would allow aunts, uncles, and cousins, related by blood, to participate in the parole review process.

Issue 9

The State Has Not Made Sufficient Efforts to Inform Women Offenders of the Health Risks of Drinking Alcohol During Pregnancy.

Fetal Alcohol Syndrome, caused by maternal consumption of alcohol during pregnancy, is one of the leading known preventable causes of mental retardation and birth defects.¹ Women in the criminal justice system tend to be of childbearing age and often have substance abuse problems. As a result, the State has an opportunity to educate women in prison about the health effects of drinking alcohol during pregnancy and thus help prevent fetal alcohol disorders.

Recommendations

Change in Statute

9.1 Require TDCJ to identify and provide interventions to women offenders at risk of having an alcohol-exposed pregnancy.

Under this recommendation, TDCJ would assess women serving sentences of two years or less and who are of childbearing age, meaning ages 18 to 44, for alcohol consumption and family planning practice to determine the risk of an alcohol-exposed pregnancy. Trained corrections personnel would administer and score an alcohol screening tool, and provide a brief intervention to women identified at risk for an alcohol-exposed pregnancy.

9.2 Require TDCJ to provide information about the health risks of drinking alcohol during pregnancy to women offenders.

This recommendation would require TDCJ to provide a brochure about the risks of drinking alcohol during pregnancy to all women during intake into the correctional system to help prevent alcohol-exposed pregnancies.

Issue 10

TDCJ and the Legislature Do Not Have the Information Necessary to Evaluate and Determine the Best Use of New Electronic Monitoring Devices.

TDCJ currently uses a two-piece, electronic device to monitor certain offenders on parole. New technology has resulted in one-piece, electronic monitoring devices that could be more cost effective and provide better monitoring capabilities than two-piece devices. However, TDCJ and the Legislature do not have basic information on the different types of electronic monitoring devices available, and therefore cannot compare the devices' ability to maintain public safety, as well as their cost-effectiveness and different monitoring capabilities.

Recommendation

Change in Statute

10.1 Require TDCJ to study the option of using electronic GPS tracking and monitoring devices for people on parole and report the findings to the Legislature.

This recommendation would require TDCJ to study different types of electronic monitoring devices and report the findings to the Legislature by January 1, 2009. The report would include recommended options for using the devices to monitor certain offenders on parole, any associated costs, and funding proposals for implementing these options.

Issue 11

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

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.
- ◆ As a constitutional agency, the Board of Pardons and Paroles is not subject to abolishment under the Sunset Act, but is subject to Sunset review concurrently with TDCJ.

The Texas Department of Criminal Justice'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. 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.

Recommendation

Change in Statute

11.1 Continue TDCJ for 12 years.

This recommendation would continue TDCJ for 12 years as an independent agency, responsible for providing public safety by confining, rehabilitating, and reintegrating 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.

Issue 12

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

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.

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.

Recommendations

Change in Statute

12.1 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 the 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;
- ◆ 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 and the two public universities that provide offender healthcare services, the University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (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.

12.2 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

12.3 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. This provision should result in more complete responses to these offender grievances, beyond the simple form-letter responses currently used.

Issue 13

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

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.

Texas benefits from the contractual relationship between TDCJ and two public universities, UTMB and Texas Tech, for the provision of offender healthcare services. However, this relationship is not a typical contractual relationship and the Committee, as the facilitator between the parties, is not a typical stand-alone state agency. While objective analysis of this structure would probably lead to the conclusion that the Committee is not needed as a semi-independent agency, the unique circumstances of the Committee make this conclusion impossible to draw. Certainly, no problems would be fixed by abolishing the Committee. Ultimately, the Committee defies the standard, objective assessment of need. Also, TDCJ is limited in its ability to monitor health care, thus preventing it from carrying out its responsibility of ensuring the well-being of offenders.

Recommendations

Change in Statute

13.1 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.

13.2 Update the statutory direction for the Committee.

In place of its current statutory responsibilities, 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 those that reflect the Committee's current functions.

13.3 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.

13.4 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 monitoring 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.

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 Summary

Several of these recommendations will 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, reducing the need for creating additional capacity, potentially generating millions of dollars in cost avoidance for the State. The recommendations suggest that more than \$100 million be appropriated. 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 3 – 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, resulting in significant cost avoidance for the State. For example, in fiscal year 2005, compliance with minimum parole approval rates could have resulted in the release of an additional 2,400 offenders, with more than \$32 million in costs avoided on an annual basis.

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.

Issue 9 – Requiring TDCJ to screen all women who enter the prison system each year and provide brief interventions to those at risk of an alcohol-exposed pregnancy would have a minimal cost for staff time and training, but these costs would not be significant.

¹ Centers for Disease Control and Prevention, Fetal Alcohol Spectrum Disorders: Fetal Alcohol Information, www.cdc.gov/ncbddd/fas/fasask.htm. Accessed: January 26, 2007.