
TEXAS BOARD OF CRIMINAL JUSTICE
Hilton Austin Hotel
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November 29, 2007

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**MINUTES OF THE
TEXAS BOARD OF CRIMINAL JUSTICE**

Meeting No. 134

The Texas Board of Criminal Justice convened into regular session at 1:00 p.m., adjourned into executive session on Thursday, November 29, 2007, and reconvened into regular session at 1:38 p.m. on November 29, 2007, at the Hilton Austin, Austin, Texas.

Chairman Crain stated that the Board is committed to providing the opportunity for public presentations on topics within its jurisdiction as well as public comments on topics posted on the meeting agenda in accordance with Board Rule 151.4, Public Presentations and Comments to the Texas Board of Criminal Justice. She reviewed the requirements for speaker registration. One (1) speaker registration card was received by Board staff by the required deadline. As the presentation is germane to an agenda item, it would be heard prior to the Board taking action on that topic. The presentation time was set at three (3) minutes per individual. Any documentation submitted by the presenter would be handled in accordance with guidelines set forth in Board Rule 151.4. Chairman Crain also reviewed the guidelines for conduct and decorum for the presenters when addressing the Board.

Recognitions

Chairman Crain recognized Allen Sapp, who has served the State and the Agency with distinction and commitment to the criminal justice system. In honor of his services and his departure from the Correctional Managed Health Care Office, she read a Resolution of Commendation highlighting Mr. Sapp's career and accomplishments. Mr. Sapp thanked Chairman Crain for her kind remarks. He stated that it had been an honor and a privilege to serve the various Boards and executive staff over the past 28 years. Brad Livingston, Executive Director of the Texas Department of Criminal Justice (TDCJ or Agency), remarked that he worked often with Mr. Sapp over several years and depended on Mr. Sapp's advice and recommendations. Mr. Livingston praised Mr. Sapp for the credibility that he has brought to correctional managed health care, which is always critical in the legislative process.

John Moriarty, Inspector General, recognized Mike Earp, Deputy Assistant Director for the Investigative Service Division of the United States Marshal's Service. Mr. Moriarty noted the long partnership existing between the TDCJ Office of Inspector General and Mr. Earp. Mr. Earp has assisted in key events such as the Kenneth McDuff case, which changed the criminal justice system in Texas. He also assisted in identifying offenders from Louisiana during Hurricane Katrina, evacuating Texas offenders during Hurricane Rita, as well as providing daily assistance involving parole violators. Mr. Moriarty emphasized that he could not be as effective in his position without the partnership with Mr. Earp and the U.S. Marshal's Service. He presented Mr. Earp with several tokens of the TDCJ's appreciation, including a flag flown over the State Capitol in honor of Mr. Earp's assistance to the State of Texas. Mr. Earp stated that his office and TDCJ have a tremendous partnership and great friendship. Chairman Crain thanked Mr. Earp for all his efforts on behalf of the Agency and the State of Texas.

Mr. Moriarty recognized Terry Cobbs as the Commander of the Special Operations Group and Fred Rhea on his promotion to Lieutenant while assigned to the Fugitive Task Force.

Chairman Crain acknowledged Susan Dow, Legislative Budget Board staff representative and Kyle Mitchell, Office of the Governor, who were in attendance and expressed appreciation for their interest in the Board and Agency.

Celeste Byrne, Director of the Private Facility Contract Monitoring and Oversight Division, recognized Cathy Drake as the Deputy Director of Program Monitoring and Bobby Lumpkin as the Deputy Director of Operations Monitoring.

Stuart Jenkins, Director of the Parole Division, recognized Jay Patzke as the Deputy Director of Field Operations.

Nathaniel Quarterman, Director of the Correctional Institutions Division, stated that he was proud to announce eight (8) facilities have received their initial accreditation from the American Correctional Association (ACA) in August 2007. A total of 72 TDCJ units and facilities have received accreditation by the ACA. Rodney Cooper, Deputy Director of Prison and Jail Operations, presented the following awards to the unit representatives:

Central Unit – Ernest Guterrez, Jr.
Clemens Unit – Kenneth Reagans
Dalhart Unit – Eddie Wheeler
Gatesville Unit – Rita Thomas and Becky Adams (former Warden)
Goree Unit - Charles Williamson
Huntsville Unit – Charles O'Reilly
Hutchins State Jail – John Rupert
Jester IV Unit – Jeffrey Marton

Chairman Crain congratulated the units' staff on a job well done.

Chairman Crain recognized the TDCJ employees, who have achieved 25, 30 and 35 years of service with the State of Texas during the months of October and November, 2007. The Board, along with Executive Director, Mr. Livingston, expressed their deepest gratitude for the continued service of these employees who represent the commitment of the Agency's staff. To each of these employees, the Board offered congratulations and thanks for their unwavering loyalty and dedication to the citizens of Texas. As a symbol of appreciation, these individuals will receive a board certificate along with a personal letter of gratitude.

Discussion, Consideration and Possible Action Regarding Consent Items

Chairman Crain stated that the Consent Items included an approval of an excused absence for Patricia Day for this meeting. She asked if there were any further amendments or objections to the Consent Items as proposed. There being none, the Consent Items were approved as presented.

1. Hazardous Duty Pay Authorization Requests
2. Multiple Employment Authorizations
3. Personal Property Donations
4. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
5. 133rd TBCJ Meeting Minutes
6. Excused Absences

Election of Board Officers

Chairman Crain stated that in accordance with Board Rule 151.3, Texas Board of Criminal Justice Operating Procedures, the Board must elect a Vice Chairman and a Secretary each odd numbered year. The Vice Chairman shall preside over meetings in the Board Chairman's absence and the Secretary shall provide any necessary execution of documents. By unanimous vote, Pierce Miller was selected to serve as Vice Chairman and Oliver Bell was selected to serve as Secretary. Chairman Crain offered her congratulations to Mr. Miller and Mr. Bell. She also thanked Ms. Day for her many years of service with the Board, noting Ms. Day's unwavering support as the Board's Secretary and as a friend.

Report from the Presiding Officer, Texas Board of Pardons and Paroles (BPP)

Rissie Owens, Presiding Officer of the BPP, reviewed the Fiscal Year 2007 Statistics for the BPP. An overview was provided regarding the duties and responsibilities of the BPP. She noted that during 2007, the BPP voted on over 74,000 cases, ending the year with a 29.84% considerations rate. The BPP voted on 18,131 Discretionary Mandatory Considerations, with a 52% release rate. Ms. Owens explained that the BPP receives and reviews Medically Recommended Intensive Supervision cases recommended by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). These cases concern Texas prison system offenders who are determined to be mentally ill, mentally retarded, terminally ill, physically handicapped and elderly. Ms. Owens noted that the BPP guidelines were scrutinized during the 80th Legislative Session. An overview of parole approval rates by guidelines level for FY 2007 and a comparison of parole approval rates by guidelines level FY 2002-FY 2007 were provided in the report. She also explained the decisions involving the different types of revocations.

Chairman Crain asked if the Board had any questions or comments. Mr. Bell remarked that decisions regarding technical violations are often distorted by the media and asked Ms. Owens if she would expand her comments regarding the offenders who receive revocation decisions. Ms. Owens explained that there are graduated sanctions within the Parole Division, usually beginning with a verbal reprimand, then a written reprimand as well as other actions taken by the Parole Division. These individuals may be placed in the intermediate sanction facilities three (3) or (4) times before the BPP revokes their parole. She assured the Board that several graduated sanctions by the Parole Division and the BPP take place before a revocation happens. Mr. Bell thanked Ms. Owens for her comments. Chairman Crain also thanked Ms. Owens for her report.

Report from the Chairman, Judicial Advisory Council (JAC)

Judge Larry Gist, Chairman of the JAC, reported that the JAC has several new appointments, which are as follows: Daniel K. Hagood, Leighton Iles, the Honorable Gregory Brewer, the Honorable Rose Guerra Reyna and William R. Turner. The Honorable Sharon Keller was also reappointed to the JAC.

Judge Gist noted that with regard to the emergency procedures for the local Community Supervisions and Corrections Department (CSCD), a committee has been working in cooperation with the Criminal Justice Center of Sam Houston State University. He was pleased to report that the committee was close to presenting a statewide plan so that any CSCD that suffers some kind of catastrophe will have procedures and assistance in place to help identify and supervise individuals.

Judge Gist stated that during the recent Sentencing Conference, it was decided that the conference would become biennial. The conference provides the necessary connections to build a uniform response approach to crime in Texas.

Judge Gist discussed New York's Diversion Treatment Alternative Prison Program (DTAP). This program involves non-violent offenders who have repeatedly been in prison for drug offenses. The prosecutor offers the offender a two (2) year residential treatment plan followed by intensive supervision. Upon completion of the program, the offender's case would be dismissed. According to the DTAP agreement, if the offender violates the conditions of the program, he would receive a substantial sentence. The lengthy sentence acts as a deterrent to violating the terms of the DTAP agreement. New York's DTAP has a 75% success rate. Judge Gist advised the Board that he was hopeful that a similar program would be available in Texas.

Report from the Executive Director, Texas Department of Criminal Justice (TDCJ)

Brad Livingston, Executive Director of the TDCJ, had no report.

Report from the Chairman, Correctional Managed Health Care Committee (CMHCC)

Allen Hightower, CMHCC Executive Director, reported on behalf of the Committee in the absence of Dr. James Griffin, CMHCC Chairman. He noted that the departure of Mr. Sapp was a tremendous loss to the CMHCC. In order to make the staff as competent as it had been and should be, the CMHCC hired Lynne Webb, who has a background in accounting in addition to auditing free world hospitals. Mr. Hightower stated that the Sunset Bill made several changes to the correctional managed health care program. One (1) of the bill's provisions is that the CMHCC will make quarterly reports on the committee's decisions, financial status, and corrective actions taken on developing statewide policies for the delivery of care, maintaining the contracts, communicating with the Board and the legislature on financial needs of the system, allocating funding made available by legislative appropriation, and monitoring expenditures of the two (2) universities for compliance with statutory and contractual requirements. The CMHCC will also serve as a dispute resolution forum, address the problems found through monitoring to include corrective actions, and identify and address the long-term needs of the health care system. Mr. Hightower stated that there is an established CMHCC website, which provides easy access to information by the public. As the quarter was ongoing, he advised the first quarter statistics report would be provided at the Board's January meeting.

Mr. Hightower recognized David McNutt as a member of the CMHCC. Mr. McNutt's rapport with TDCJ and the legislative family, as well as his credibility with the members of the legislature are important to the CMHCC.

Mr. Hightower assured the Board that the CMHCC would fully comply with the Sunset Commission's recommendations. He pledged that CMHCC would be an open and approachable partner with TDCJ and the universities in addition to delivering a

timely and adequate health care system to the offender population. Chairman Crain thanked Mr. Hightower for his comments.

Report from the Chairman, Advisory Committee on Offenders with Medical or Mental Impairments (ACOOMMI)

Judy Briscoe, Chairman, ACOOMMI, had no report.

Internal Audit Report for Fiscal Year 2007 and Fiscal Year 2008

Raymond Pyeatt, Director of the Internal Audit Division, presented the Internal Audit Status Report for Fiscal Year 2007 & 2008. The following are highlights from his update:

FY 2007 Internal Audit Plan

- **0701 – Human Resources Division, Equal Employment Opportunity:** The final report was issued on November 16th.
- **0704 – Parole Division, Interstate Compact:** The draft report was released on November 19th.
- **0705 – Board of Pardons and Paroles, Hearings:** The report is being written. There will be a few weeks delay in the audit.
- **0708 – Texas Correctional Office on Offenders with Medical or Mental Impairments, Continuity of Care:** The final report was issued on November 16th.
- **0709 – Human Resources Division, Application Processing:** The final report was issued on October 19th.
- **0712 – Facilities Division, Resources Management:** The draft report was issued November 15th and staff responses are due December 6th.
- **0713 – Office of the General Counsel, Claims Administration:** The audit is behind schedule. Fieldwork will continue over the next few weeks.
- **0715 – Correctional Institutions Division, State Ready Intake Processing, Offender Mail System:** The proposed final report is completed and an exit conference was held on November 27th. The report has been sent to the Chief of Staff.
- **0718 – Business and Finance Division, Agribusiness, Land and Minerals, Maintenance:** The draft report should be released on December 3rd.
- **0722 – Business and Finance Division, Anti-Fraud Coordination:** The audit is still in fieldwork and is behind schedule.

FY 2008 Internal Audit Plan

- **0801 – Correctional Institutions Division, Correctional Officer Training:** The audit start date was delayed due to the work being done on Audit 0722. It should be assigned by December 1st.
- **0802 – Information Technology Division, Offender Information Management System (OIMS):** The audit start date may be reevaluated. The State Auditor's Office (SAO) is conducting an audit on violations and revocations, which include the OIMS. Depending on the results of the SAO, the Internal Audit Office will assess the need to conduct this audit.
- **0805 – Human Resources Division, Employee Grievance Procedures:** The audit is in control assessment.
- **0809 – Correctional Institutions Division, Security Threat Group Management Office:** The audit was assigned on November 6th and is currently in the background phase.
- **0810 – Parole Division, Specialized Programs:** The audit was assigned on November 26th and is in the background phase.
- **0812 – Health Services Division, Office of Mental Health Monitoring and Liaison:** Staff are conducting fieldwork. The target date for the release of the draft report was revised to December 14th. An interim exit conference was held on November 26th.
- **0815 – Community Justice Assistance Division, Accounting Unit:** The audit was assigned on November 9th.
- **0816 – Rehabilitation and Reentry Programs Division, Volunteer Services Program:** Staff are conducting fieldwork. The audit is behind schedule due to a change in the lead auditor.
- **0819 – Manufacturing and Logistics Division, Warehousing and Supply:** This audit was impacted by a delay in another audit. The audit should be assigned by December 15th.
- **0824 – Administrative Review and Risk Management Division, Ombudsman Program:** The audit is in the control assessment phase. The audit is on schedule.
- **0825 – Business and Finance Division, Public Funds Investment Act; Windham School District, Business and Administrative Services:** The final report was released on November 16th.

- **0827 – Walk Throughs:** On November 1st, a walk through has been assigned regarding land access. The walk through is ongoing.

Mr. Pyeatt stated he would be pleased to answer any questions the Board may have. There was none.

Discussion, Consideration and Possible Action Regarding Purchases and Contracts over One (1) Million Dollars

APPROVED

Charles Marsh, Chief Financial Officer, reviewed the purchase of an interagency contract with the Department of Information Resources, which is a five-year contract for \$2.4 million per year. The contract provides maintenance and upgrade of equipment and software for the Agency's wide area network. Mr. Marsh added that the contract has been in place for a number of years.

Discussion, Consideration and Possible Action Regarding Annual Review of Board Policy 14.01, "Texas Department of Criminal Justice Investment Policy" and Resolution Adopting the Investment Policy

APPROVED

Jerry McGinty, Deputy Chief Financial Officer, stated that this policy has been in place since 1996, noting that the Public Funds Investment Act requires that the Board review the policy annually. Minor revisions have been incorporated, however there have been no substantive changes made to the policy since last year's review.

Discussion, Consideration and Possible Action Regarding Annual Review of Administrative Directive, AD-03.76, "Offender Disciplinary Procedures"

APPROVED

Melinda Bozarth, TDCJ General Counsel, noted that BP-01.01, "Texas Board of Criminal Justice Responsibilities," requires the Board to annually review and approve any amendments to this directive. For the most part, the revisions were non-substantive, updated ACA standards and changed the Applicability Section to be specific with the divisions as currently named. Section IV allows the posting of the Disciplinary Rules and Procedures on the Agency website, which is the current practice.

Discussion, Consideration and Possible Action Regarding Annual Review of Personnel Directives

1. PD-71, "Selection Systems Procedures"
2. PD-75, "Applicants with Pending Criminal Charges or Prior Criminal Convictions"

Chairman Crain stated that the Board would pass on these items.

Discussion, Consideration and Possible Action Regarding Board Policy 13.69, "State Counsel for Offenders" (SCFO)

APPROVED

Ms. Bozarth stated that the policy had been revised to be consistent with the format in Board Policy-01.07 concerning the Office of the Inspector General. She noted that Section III.A provides that the SCFO shall provide legal services to both current and former indigent offenders in TDCJ who are civilly committed as sexually violent predators pursuant to House Bill 2034, which passed during the last legislative session. Additionally, Ms. Bozarth requested that in Section IV.F at the end of the last sentence, a clause be added as follows, "and the Chairman shall inform the Board."

Chairman Crain called on Rhonda Taylor, advocating on behalf of Offender Kevin Gordon, who would address her concerns regarding the policy. She reminded Ms. Taylor that the presentation could not exceed three (3) minutes. Ms. Taylor stated that she was speaking on behalf of her son, Kevin Gordon, who is incarcerated at the Hodge Unit and is assigned to the structured Mentally Retarded Offender Program (MROP). She alleged that the SCFO is operating in violation of the 14th Amendment under the equal protection clause as it relates to mentally impaired inmates' constitutional rights. Ms. Taylor claimed that the Director of the SCFO has failed to maintain policies and procedures for inmates who are treated in the structured MROP and function with a low intelligence quotient (IQ). This practice keeps the inmates from accessing legal services. In order for an inmate to get legal services through the SCFO, the inmate must first seek assistance from the unit law library staff and then read the *Inmate Legal Handbook* published by the SCFO. The policy also does not accept inquiries from friends or family members. Ms. Taylor noted that due to the segregated confinement of her son under the conditions of

the structured MROP, he is unable to access legal services available under TDCJ policy. The program continues to provide inadequate medical health care and leaves the inmate untreated and mistreated. Ms. Taylor stated that the SCFO discrimination against the mentally impaired inmates has caused them to endure cruel and unusual punishment. She further noted that the inmates' requirements necessary to access legal services are considered prison barriers based on the inmates with a low IQ, which causes an inability to function, think, concentrate or comprehend what they have read. Ms. Taylor further asserted that the SCFO is in violation of Texas mental health laws as it relates to access to legal services for inmates who suffer from mental impairment and are treated under the structured MROP. Additionally, the SCFO is another program within the Agency that has blind eyes for justice and righteousness toward mentally impaired inmates. Chairman Crain thanked Ms. Taylor for her remarks.

Discussion, Consideration and Possible Action Regarding Proposed Amendments to Board Rules, Title 37, Texas Administrative Code (TAC)

1. §163.31, Sanctions, Programs and Services (37 TAC §163.31) *APPROVED*

Ms. Bozarth noted that all the revisions to this Board Rule were non-substantive and requested that the Board approve the publication of these proposed amendments in the Texas Register for public comment.

2. §163.36, Mentally Impaired Offender Supervision (37 TAC §163.36) *APPROVED*

Ms. Bozarth noted that the revisions to this Board Rule were non-substantive and requested that these proposed amendments be posted in the Texas Register for public comment.

3. §163.39, Residential Services (37 TAC §163.39) *APPROVED*

Ms. Bozarth noted the Director for the Community Justice Assistance Division reviewed the proposed revisions in the Community Corrections Committee earlier in the day. The amendments clarify state law and incorporate provisions of state law that passed in the 79th and 80th Legislative Sessions. The most extensive revision was to the section covering medical care and the access to medical care for offenders who are incarcerated in community correctional facilities. Ms. Bozarth requested that the Board approve the publication of this rule in the Texas Register for comments from the public.

Discussion, Consideration and Possible Action Regarding Adoption of Amendments to Board Rules

1. §151.71, Marking of State Vehicles of the Department of Criminal Justice *APPROVED*

Ms. Bozarth stated that the amendments to Board Rule 151.71, Marking of State Vehicles of the Department of Criminal Justice were published in the September 28, 2007, issue of the Texas Register. No comments were received.

2. §155.23, Site Selection Process for the Location of Additional Facilities *APPROVED*

Ms. Bozarth stated that the amendments to Board Rule 155.23, Site Selection Process for the Location of Additional Facilities, were published in the September 28, 2007, issue of the Texas Register. No comments were received.

Discussion, Consideration and Possible Action Regarding Rule Review of §163.3, Community Justice Assistance Division Objectives (37 TAC §163.3)

APPROVED

Ms. Bozarth stated staff reviewed the rule pursuant to the state law requirement that rules be reviewed every four (4) years. Staff found the rule was not obsolete and needed to continue without amendments. A notice of the rule review was published in the August 17, 2007, issue of the Texas Register. No comments were received.

Discussion Consideration and Possible Action Regarding Land Transactions

1. Land Exchange with the City of Huntsville on the Byrd Unit in Walker County, Huntsville, Texas

APPROVED

C.F. Hazlewood, Director of Agribusiness, Land and Minerals, requested that, as discussed earlier at the Business and Financial Operations Committee, the Board approve the proposed land exchange of 1.3 acres of property located at the Byrd Unit for 1.45 acres belonging to the City of Huntsville.

2. Pipeline Easement to Fasken Oil & Ranch, LTD on the Smith Unit in Dawson County, Lamesa, Texas

APPROVED

Mr. Hazlewood stated that Fasken Oil & Ranch, LTD requested a pipeline easement on the Smith Unit in Dawson County, Lamesa, Texas, for a three (3) inch pipeline running to a tank battery site.

3. Transfer of the Marlin and the San Saba Facilities from the Texas Youth Commission to the Texas Department of Criminal Justice

APPROVED

Mr. Hazlewood noted that pursuant to House Bill 1, General Appropriations Act, 80th Legislative Session, the Texas Youth Commission was directed to transfer facilities owned in Marlin, Texas, and San Saba, Texas, to the TDCJ.

Discussion, Consideration and Possible Action Regarding Facilities Division Construction Projects

1. Replace Boilers, Heat Exchangers and Storage Tanks at the Central Unit in Fort Bend County, Sugar Land, Texas

APPROVED

Frank Inmon, Director of the Facilities Division, noted that this project was previously discussed at the Business and Financial Operations Committee meeting. He requested the Board's approval for a total project amount of \$1,339,800.

2. Repair and/or Replace Roofs on Multiple Buildings at the Connally Unit in Karnes County, Kenedy, Texas

APPROVED

Mr. Inmon noted that this project was previously discussed during the Business and Financial Operations Committee meeting. He requested the Board's approval for a total project amount of \$5,702,900.

3. Replace Heating, Ventilation and Air Conditioning (HVAC) in Multiple Locations in the Wynne Unit in Walker County, Huntsville, Texas

APPROVED

Mr. Inmon stated that the project was discussed during the Business and Financial Operations Committee meeting. He requested the Board's approval for a total project amount \$1,004,500.

Discussion, Consideration and Possible Action Regarding Proposed New Board Rule §152.37, Addition to Capacity (37 TAC §152.37)

APPROVED

Ms. Bozarth explained that the new proposed Board Rule 152.37, Addition to Capacity, will set forth the capacities at the San Saba and Marlin facilities. She recommended that the Board authorize staff to publish the rule in the Texas Register for public comment.

Chairman Crain thanked all attendees for their interest and stated that the next meeting of the Board will be January 23, 2008, at the Hilton Austin.

Adjournment

There being no further business, Chairman Crain adjourned the regular session of the 134th meeting of the Board at 3:00 p.m.