
TEXAS BOARD OF CRIMINAL JUSTICE
Holiday Inn Town Lake, Austin Hotel
Austin, Texas

February 13, 2009

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

Meeting No. 141

Convene – Texas Board of Criminal Justice

Chairman Oliver Bell convened the 141st Meeting of the Texas Board of Criminal Justice (TBCJ or Board) on Friday, February 13, 2009, at 1:26 p.m., stated that a quorum was present and declared the meeting open in accordance with Chapter 551, Texas Government Code, the Open Meetings Act. Chairman Bell noted that during the regular session, the Board would conduct business from the agenda posted in the Texas Register.

Chairman Bell acknowledged the attendance of Kyle Mitchell, representative from the Office of the Governor, as well as, Chief Art Acevedo and Commander William Basto, from the Austin Police Department.

Chairman Bell stated that the Board is committed to providing the opportunity for public presentations on topics posted on the meeting agenda as well as public comments on topics within its jurisdiction in accordance with Board Rule 151.4, Public Presentations and Comments to the Texas Board of Criminal Justice. For today's meeting no speaker registration cards were received by Board staff prior to the required deadline. Therefore, no public presentations would be heard on posted agenda topics during this meeting.

Recognitions

Chairman Bell recognized Raymond Pyeatt, Director of the Internal Audit Division, for recently achieving 25 years of service with the State of Texas. He thanked Mr. Pyeatt for his leadership and dedicated work. Mr. Pyeatt was presented with his 25-year Service Award.

Chairman Bell recognized Chief Acevedo who thanked the Board for its commitment to keeping the public safe. He stated that science should be used to prove the innocence of people before they are imprisoned or die in prison. Chief Acevedo advised the Board to place emotion aside and use the science, remarking that DNA was the fingerprint of the 21st century. He stated his belief that the DNA project is making a difference in Texas and throughout the nation. Chief Acevedo thanked the Board for its commitment to the public's safety, which was also the goal of law enforcement throughout Texas. Chairman Bell thanked Chief Acevedo for his remarks. He stated that the Board provides oversight of the Texas Department of Criminal Justice (TDCJ) and that offenders in the Texas prison system receive adequate care as provided by statute and policy. Chairman Bell stated that the Board supports the use of scientific research evidence, such as DNA, to prevent innocent individuals from entering or staying in the Texas prison system.

Brad Livingston, Executive Director for the TDCJ, recognized Jackie Edwards, Director of the Administrative Review and Risk Management Division, for achieving 25 years of service with the State of Texas. Mr. Edwards was presented with his 25-year Service Award.

Chairman Bell recognized John Moriarty, Inspector General, for his completion of 20 years of service with the TDCJ. He thanked Mr. Moriarty for his leadership and dedication to duty. Mr. Moriarty was presented with his 20-year service award.

Chairman Bell recognized the TDCJ employees who have achieved 25, 30 and 35 plus years of service with the State of Texas during the months of December 2008 and January 2009. The Board, along with 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 Bell stated that the approval of the consent items would include the elimination of personal property donation from Bree Darwent, care of the Houston Rotary Club. He called for any other amendments or objections to the proposed consent items. Seeing none, the consent items posted for this meeting's agenda stand approved as amended.

1. Hazardous Duty Pay Authorization Requests
2. Personal Property Donations
3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
4. 140th TBCJ Meeting Minutes
5. Excused Absences

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

Rissie Owens, Presiding Officer of the BPP, had no report.

Report from the Chairman, Judicial Advisory Council (JAC)

Judge Larry Gist, Chairman of the JAC, had no report.

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

Mr. Livingston commented that the week following the Board meeting would mark the 81st Legislative Session as being 25% complete. The House and Senate Committees were announced last week. Representative Jim McReynolds chairs the House Corrections Committee. Representative Jim Pitts chairs the House Appropriations Committee. TDCJ staff will testify before the House Appropriations Committee during the following week. Senator Whitmire remains the Chairman of the Senate Criminal Justice Committee. Senator Ogden remains as the chair of the Senate Finance Committee. TDCJ will provide testimony to Senator Ogden and the Senate Finance Committee on February 19, 2009. The chairs of these House and Senate Committees are individuals who have a long-term working relationships with agency staff.

Mr. Livingston advised the Board that the correctional officer pay and the parole officer front-line packages remain the agency's highest priority during the session. Security enhancement and security equipment also remain high priorities during the session, which Governor Perry has announced as one (1) of the emergency items for the legislature to review. Staff continue working with the state leadership and members of the legislature on security issues. Mr. Livingston advised the Board that Correctional Managed Health Care remains another difficult area during the session. Specifically, the continued recovery from Hurricane Ike has created a number of challenges for TDCJ and its health care partners. Mr. Livingston noted that these items as reported were the standing issues before the legislature.

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

Allen Hightower, Executive Director of the CMHCC, reported on the first quarter of Fiscal Year (FY) 2009.

- Throughout the quarter, the health care programs experienced a slight decline in the overall offender population served by the program.
- The older offender population continues to grow steadily, which represents approximately a 6% increase from last year's first quarter.
- The HIV+ population remains stable at 1.7% of the offender health care population. He reviewed the mental health caseload measure, noting that the number of available inpatient beds in the system limits the inpatient caseload. The outpatient caseload represents 12.6% of the service population of mental health patients.
- The health care costs totaled \$117.1 million, which is 1.4% below overall revenues earned by the university providers. The onsite services were 49.5% of the total health care expenses, which is a large decrease. Offsite services were 27.3% of total expenses, which is an immense increase.
- The total cost per offender per day for all health care services throughout the first quarter statewide was \$8.54 compared to the previous four (4) years fiscal average of \$7.86. This current cost per day average is still below the average of costs in the free world.

Mr. Hightower advised the Board that the CMHCC during its meetings, which are open to the public, has been challenged by individuals to reduce the number of patients cared for in free world hospitals. He noted that the number of patients in free world hospitals is 68, which is down from 117 in November 2008. Mr. Hightower further advised that Hospital Galveston has 68 acute care beds occupied by offenders. Before Hurricane Ike, Hospital Galveston had 108 acute care beds and 100 skilled nursing beds. Mr. Hightower expressed the commitment of the CMHCC to continue working with the Board to ensure there is not a discontinuation or a slack in the performance of the delivery of health care to the offender population, regardless of the future of John Sealy Hospital in Galveston.

Chairman Bell thanked Mr. Hightower and the CMHCC for reducing the number of offenders sent to private hospitals. He remarked that security for these offenders is a cost issue. Mr. Hightower responded the praise was not all his to receive, noting that Mr. Livingston's staff from the Health Services Division, the Correctional Institutions Division, Classification and Records Department and Offender Transportation were the first responders to remedy this situation. He noted that TDCJ staff and the CMHCC work closely together and have weekly conferences for planning purposes.

Board Member David Nelson inquired about the financial costs, in addition to property damage, incurred by the aftermath of Hurricane Ike, such as transportation costs and additional funds for health care delivery to offenders. Mr. Hightower responded that the combined costs of the CMHCC, TDCJ, University of Texas Medical Branch (UTMB) and the Texas Tech University Health Science Center were not immediately available. Mr. Nelson stated that the answer was important to him as the Chair of the Health Care Committee. Mr. Hightower explained that he did not have those figures with him but he would work with Mr. Livingston's staff to provide them. Mr. Livingston noted that after Hurricane Ike the damages to UTMB's physical plant and equipment within the facility were extensive. He expressed his doubt that UTMB has an estimated loss at this point, although UTMB has had significant physical plant loss in addition to the operations. With regard to TDCJ and its budget, of which correctional managed health care is a part, staff have roughly calculated where the agency stands, but as Mr. Hightower indicated the onsite costs have dropped considerably because UTMB has not been delivering services at UTMB Hospital Galveston. Offsite costs have increased substantially. Mr. Livingston stated that because the CMHCC is in the position to handle this without supplemental appropriations, he could only conclude this is a wash. From TDCJ's standpoint, with the ongoing overtime expenditures, the impact on TDCJ's budget is around \$33 million; of that number, approximately \$30 million is due to overtime that the agency had to incur for Hurricane Ike. Mr. Livingston advised the Board that the agency has been requested by the House Appropriations Committee and the Senate Finance Committee to present those numbers. He noted that a significant piece of that cost stream is eligible for Federal Emergency Management Agency (FEMA) reimbursement. The critical element is the timeframe in which the state is reimbursed, and how the legislature chooses to grapple with "how to make the agency whole in the intervening months or years." Mr. Livingston summed up the cost at approximately \$33 million to include managed health care operational delivery, which is separate from the millions of dollars of equipment and infrastructure that has been calculated in the budget proposal for consideration by the legislature.

Chairman Bell assured Mr. Hightower that the Board is keeping abreast of the health care issues and hopes for a positive outcome during the session.

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

John Bradley, Chairman of ACOOMMI, had no report.

Report from the Chairman, TBCJ

The following are highlights of Chairman Bell's report:

- TDCJ is working diligently to be a good steward of state resources. The budget request is designed to address key issues that continue to enhance the agency's overall mission. TDCJ is a vertically integrated correctional operation with multiple missions that touch several areas. An expanded explanation of the agency's mission was provided.
- Priorities:
 - The Board recognizes the challenges of the current economic times. The economic horizon is very different than it was six (6) months ago, when Mr. Livingston and his staff proposed a pay increase for correctional officers and parole officers. Even though there are economic challenges today, the Board and executive staff feel the pay increases are justified and appropriate for employees that serve the State of Texas and have a positive effect on Texas communities. It is hoped that as the legislative session evolves, those that oversee the agency's resources will give this request due consideration and act favorably.

- Another priority area is approval of additional funds allowing the agency to enhance its security measures and counter measures for the continuation to interdict contraband.
 - In the last year, the agency's correctional officer staffing levels have improved greatly by introducing two (2) key initiatives. Under Mr. Livingston's leadership along with great work from his staff, the agency embarked on an initiative to adjust pay for entry-level correctional officers and provided an assignment bonus for officers accepting assignments to understaffed locations. In the fourth quarter of FY 2007, the correctional officer vacancy rate peaked at around 3,900 positions. In early 2008, the Board, at Mr. Livingston's request, approved the pay and bonus initiatives. At this time, the correctional officer vacancies have been reduced by 1,600 positions or 40%. With additional planned initiatives, such as the pay raise request, it is believed that the agency can significantly impact the staffing situation by further reduction of correctional officer position vacancies. Currently, the agency is staffed at 91% of its authorized level. The requested pay increase would allow the agency to further improve staffing levels during the biennium, which would have a positive affect on all aspects of the TDCJ mission.
- **Diversionsary Programs**
 - The agency offers programs that offenders can participate in and, upon the successful completion of these programs, they can return to their communities to become contributing citizens again. In particular, the agency offers programs to help individuals with drug abuse and alcohol abuse (DWI). During the last legislative session, the agency received additional funding in these areas and has recently completed awarding contracts for services to several vendors. As these vendors complete their setup, the full array of authorized programs will come online.
 - While the daily operational cost of these facilities is higher than regular facilities, the much shorter duration of stay, along with information that is initially indicating improved recidivism rates, indicates great promise for these alternative programs. For those offenders that would qualify for such programs the recidivism rates are good.
 - In Texas, the standard recidivism rates have fallen during the last six (6) reporting periods from 33% to 27%. The recidivism rates for the Substance Abuse Felony Prisons (SAFP) facilities is 22% for offenders who complete all required aftercare. Properly administered, these programs seem to have great potential. The agency has formed some great partnerships with the vendors to insure the best chance of the successful implementation of these programs.
 - As these programs seem to be positive, TDCJ has encouraged local law enforcement prosecutors and judges to consider using these types of programs when, in their opinion, it is appropriate. TDCJ supports and encourages the counties that have begun similar programs.
- **Fuel and Bio-fuel Initiatives:**
 - Regarding the concept of being good stewards of state resources, the agency's Agribusiness, Land and Minerals Department and Texas Correctional Industries are experimenting with cost cutting energy initiatives. The ongoing test includes the following:
 - Recycling used oil and utilizing it in a mixture with diesel to create a lower cost diesel fuel for internal use to the agency.
 - Experimenting with the use of waste food oil for conversion to bio diesel for use in TDCJ equipment. If successful, such an initiative potentially has multiple benefits including clean fuel, which is environmentally friendly, lower cost fuel, which has a positive budget impact, potential training for offenders on jobs of the future and eliminating the cost for disposal of waste oil.
- **Site Visits:** Board member site visits to prisons, parole and probation offices continue.
- **Texas Round-Up:** The Board recognizes and encourages TDCJ employees to participate in the Texas Round-Up. TDCJ has always been one (1) of the top participating agencies in this statewide event.

Chairman Bell thanked every TDCJ employee attending the meeting for their dedication and hard work, and asked those individuals to pass along the thanks to their employees.

Internal Audit Status Report for Fiscal Year 2008 and Fiscal Year 2009

Raymond Pyeatt, Director for the Internal Audit Division, provided a status update for FY 2008 and FY 2009. The following are highlights of Mr. Pyeatt's report:

FY 2008

- **0804 – Rehabilitation and Reentry Programs Division, *Rehabilitation Tier Tracking and Placement, Serious and Violent Offender Reentry Initiative***: The draft report is being reviewed.
- **0806 – Correctional Institutions Division, *Warehouse/Armory***: The draft report was released for comment on January 15, 2009. The responses by staff are due February 18, 2009.
- **0807 – Business and Finance Division, *Parole Division, Supervision and Restitution Fees***: The audit team is working with the Office of the General Counsel regarding the laws pertaining to restitution fees. An objective regarding the efficiency and effectiveness of the collection of restitution fees has been added. This additional objective will delay the audit until the end March.
- **0814 – Correctional Institutions Division, *Bench Warrants***: The audit is complete. The final report was released January 22, 2009.
- **0821 – Administrative Review and Risk Management Division, *Use of Force***: The final report was released February 10, 2009.

FY 2009

- **0901 – Correctional Institutions Division, *Unit Entry Procedures***: The draft report is being written and should be released February 20, 2009.
- **0903 – Facilities Division, *Maintenance***: Due to the loss of the lead auditor, the audit remains in control assessment. The draft report should be ready by mid-March.
- **0906 – Human Resources Division, *Application Processing***: The audit is in fieldwork.
- **0909 – Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), *Continuity of Care***: The audit is in control assessment.
- **0910 – Parole Division, *Case Tracking and Analysis***: The audit was assigned February 2, 2009, and background information is being gathered.
- **0913 – Manufacturing and Logistics Division, *Texas Correctional Industries, Graphics Division***: The assignment of the audit has been delayed until the end of March.
- **0915 – Correctional Institutions Division, *Offender Transportation***: The audit is in control assessment and remains on schedule.
- **0919 – Parole Division, *Client Supervision***: The audit was assigned February 5, 2009, and background information is being gathered.
- **0920 – Correctional Institutions Division, *State Ready Section***: The draft report is being written.
- **0924 – Correctional Institutions Division, *Correctional Officer Retention***: The proposed final report has been sent to the Chief of Staff for review.

Discussion, Consideration and Possible Action Regarding Purchases and Contracts Over \$1 Million

APPROVED

Jerry McGinty, Chief Financial Officer, reviewed the purchases and contracts over one (1) million dollars. The two first (2) items are increases to the current FY 2008-2009 contracts. Item one (1) is part of the diversionary programs and Item two (2) is for an increase for TCOOMMI services provided at the Andrews Center. Item three (3) is a replacement contract for existing services and the operations and management of 450 beds at South Texas Intermediate Sanction Facility (ISF) in Houston, which was awarded to the GEO Group, Inc. This contract is for one (1) and one-half years.

Chairman Bell asked if there were any questions. Leo Vasquez inquired about the usual length for a replacement contract term. Mr. McGinty responded that typically the contract length is negotiated with the vendor, usually for a longer term. Terrell McCombs inquired on how the South Texas ISF was used for offenders. Mr. McGinty responded that the BPP would vote to send a parole violator to an ISF for a certain length of time, in lieu of revoking the offender's parole and sending the offender back to prison. He noted that this was an existing facility, not one (1) of the new diversion facilities. Mr. McCombs asked if the contract was scrutinized thoroughly. Mr. McGinty responded affirmatively.

Chairman Bell asked if there were any further questions. Janice Lord inquired if the Board, at its last meeting, approved an increase for roughly one (1) million dollars to a first-step counseling program. Mr. McGinty responded that he did not recall the contract that Ms. Lord mentioned. He noted that he has brought forth several increases to existing contracts for residential beds and outpatient treatment slots. Ms. Lord inquired if these were additional treatment beds. Mr. McGinty responded that these contracts cover additional outpatient treatment slots where outpatient counseling is provided as opposed to residential services. Ms. Lord noted it appears judges order people to substance abuse programs and the agency does not have enough places for these offenders, therefore the agency is extending the contract so more people can receive the services. Mr. McGinty explained that as part of the diversion initiatives from the last legislative session, the agency received funding for 1,500 SAFFP beds and 1,000 for In-prison Therapeutic Community treatment slots. All 2,500 beds have an after care component related to them. Approximately 36 current contracts have been modified for these purposes. In this particular case, the increases to the after care contract amount to over one (1) million dollars. Chairman Bell further explained that this approval is an authorization to spend because the vendor is not paid until a service has been provided for each slot. He stated that, in fact, the contracted amount is a spending cap.

Discussion, Consideration and Possible Action Regarding Adoption of New Board Rule §195.41, Community Residential Facilities (37 TAC §195.41)

APPROVED

Melinda Bozarth, General Counsel, stated that at the December 3, 2008, meeting, the Board authorized this rule for publication in the December 19, 2008, issue of the Texas Register for public comment. One (1) comment was received from the Office of the Secretary of State regarding a punctuation error and a grammatical error in subsection (j)(17)(C), which has been corrected.

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

1. §151.8, Advisory Committees (37 TAC §151.8)

APPROVED

Ms. Bozarth stated that at its December 3, 2008, meeting, the Board authorized this rule for publication in the December 19, 2008, issue of the Texas Register for public comment. No comments were received from the public. She requested that the Board approve the final adoption of the amendments to the rule.

2. §151.75, Standards of Conduct for Financial Advisors (37 TAC §151.75)

APPROVED

Ms. Bozarth stated at its December 3, 2008, meeting, the Board authorized this rule for publication in the December 19, 2008, issue of the Texas Register for public comment. Although no public comments were received, staff suggested that the name of the rule be amended to include "service providers." She requested that the Board adopt the rule as presented.

3. §161.21, Role of the Judicial Advisory Council (37 TAC §161.21)

APPROVED

Ms. Bozarth stated that at its December 3, 2008, meeting, the Board authorized this rule for publication in the December 19, 2008, issue of the Texas Register for public comment. No comments were received from the public. She requested that the Board adopt the rule.

Chairman Bell thanked the attendees for coming to the meeting and reminded them that the next meeting of the Board would be April 3, 2009, at the Crowne Plaza Hotel, Austin.

There being no further business after the conclusion of the executive session, Chairman Bell adjourned the 141st Meeting of the Board at 3:44 p.m.