
TEXAS BOARD OF CRIMINAL JUSTICE
Crowne Plaza Hotel
Austin, Texas

February 11, 2010

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**TEXAS BOARD OF CRIMINAL JUSTICE
SUMMARY OF February 11, 2010, MEETING MINUTES**

Meeting No. 147

Oliver Bell, Chairman, convened the 147th Meeting of the Texas Board of Criminal Justice (TBCJ) on Thursday, February 11, 2010, at 12:57 p.m.

Mr. Bell acknowledged the attendance of the following staff representatives: Kyle Mitchell, Office of the Governor; Larance Coleman and Doug Clements, Senate Criminal Justice Committee staff; and Travis Sampley, Committee Clerk, House Corrections Committee.

Recognitions

Brad Livingston, Executive Director, Texas Department of Criminal Justice (TDCJ), recognized Jan Thornton as the director of the Human Resources Division. Ms. Thornton thanked Mr. Livingston and the TBCJ for their support. Chairman Bell congratulated and welcomed Ms. Thornton to her new position with the executive staff.

John Moriarty, Inspector General, recognized Louis Fawcett for his service with the Office of Inspector General (OIG) as an investigator. Mr. Fawcett was a key player in an investigation of fraud that cost 500 offender families \$1.4 million. Through diligence of the Board of Pardons and Parole (BPP), the Parole Division, and Mr. Fawcett, the perpetrator received a sentence of over 12 years in the federal prison system. Chairman Bell remarked on the excellence of agency employees, noting the outstanding service of the investigators in the OIG. Chairman Bell presented Mr. Fawcett with a 15-Year Service Award.

Carey Welebob, Director, Community Justice Assistance Division (CJAD), recognized Manny Rodriguez, as the deputy director of CJAD.

Stuart Jenkins, Director, Parole Division, recognized Pamela Thielke, as the deputy director for Parole Support Operations, and Norma Greenfield, as the Parole Region IV director.

Celeste Byrne, Director, Private Facility Contract Monitoring/Oversight Division, recognized Grady Wallace as the deputy director for Operations Monitoring.

Ron Steffa, Deputy Chief Financial Officer, recognized Matt Demny, Director of the Agribusiness, Land and Minerals Department, for serving the State of Texas for 25 years. Chairman Bell and Mr. Livingston presented Mr. Demny with his 25-year service award.

Chairman Bell recognized the TDCJ employees who have achieved 25, 30, 35, and 40 or more years of service with the State of Texas during the months of December 2009 and January 2010. The TBCJ, along with Mr. Livingston, expressed their deepest gratitude for the continued service of these employees who represent the commitment of the TDCJ's staff. To each of these employees, the TBCJ 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 TBCJ certificate along with a personal letter of gratitude.

Discussion, Consideration and Possible Action Regarding Consent Items

APPROVED

- 1. Hazardous Duty Pay Authorization Requests**
- 2. Personal Property Donations**
- 3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property**
- 4. 146th TBCJ Meeting Minutes**
- 5. Excused Absences**

Chairman Bell asked if there were any amendments or objections to the proposed consent items. (*Eric Gambrell and J. David Nelson were not present during the approval of the consent items.*)

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

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

Report from the Chairman, Judicial Advisory Council (JAC)

The Honorable Larry Gist, Chairman of the JAC, had no report.

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

Mr. Livingston stated that the correctional officer (CO) staffing report for January 2010 indicated 512 CO vacancies. As the staffing plan continues to improve, the TDCJ will continue to raise the bar to increase the standards for CO positions. Mr. Livingston thanked the TBCJ, the legislature, and staff for their support over the years concerning the CO staffing issue.

Leo Vasquez asked Mr. Livingston to outline where the TDCJ was in its CO staffing levels just a few years ago. Mr. Livingston responded that the worst peak in the CO vacancies was in September/October 2007 when the vacancies were just under 4,000. Since that time, the state's leadership, the legislature, the TBCJ, and TDCJ staff have worked on incentives and means to reduce the number of CO vacancies as well as retain experienced personnel. Mr. Livingston stated that over the past two years there has been a positive trend in this area; the January CO staffing report has shown the best CO staffing level in well over a decade. Mr. Vasquez praised Mr. Livingston and staff for a job well done. Chairman Bell noted that the agency really has come a long way in a two-year period with the support of many people. He commended the TDCJ Human Resources Department for its excellent managing and monitoring in the recruitment and retention areas; Mr. Livingston for his leadership; the leadership team that initiated and implemented these strategies; and foremost to the legislature for its support during these difficult economic times.

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

Allen Hightower, Executive Director of the CMHCC, stated that a public meeting was held on February 8, 2010, to hear public testimony on House Bill 4586. The bill states that the TDCJ and CMHCC will identify and evaluate ways to lower the cost or increase the quality in health or pharmacy services and submit a report to the Legislative Budget Board (LBB) and the Office of the Governor no later than May 1, 2010. Mr. Hightower outlined the method of notification used for the meeting through the Texas Register and to the offices of interested government entities. The TBCJ was represented, as well as, the chairman of the CMHCC and other CMHCC members. Only one group, Correctional Medical Services, signed up for the public comment period. Correctional Medical Services presented an industry overview, company history in correctional management and health care, and methods to lower costs. The company's recommendations included a proposal for a pilot project that would outsource for a two-year period. Their proposed project would need to cover a certain geographical region of the state that consists of a representative sample of the facility's mission, medical acuity, age and gender, and a plus or minus of 15 percent of the health care population. The information gathered from the meeting will become a permanent part of the report submitted to the LBB and the governor. It is the CMHCC's intent to present a draft report, which will include recommendations from the Texas Tech Health Sciences Center, University of Texas Medical Branch, TDCJ Health Services Division, and the testimony taken at the public meeting. The draft report will be distributed for comment to the TBCJ, Health Services Division, CMHCC, and the university health care partners.

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

Mr. John Bradley, Chairman of ACOOMMI, had no report.

Report from the Chairman, TBCJ

The following are highlights of Chairman Bell's report:

1. Polunsky Unit Escape Attempt

A description of the escape was provided. The efforts of the picket and perimeter staff, who quickly took charge of the situation, stopped the escape attempt inside the unit's perimeter. Chairman Bell commended the correctional officers for their exceptional efforts in discharging their duties.

2. Reentry Task Force

On January 15, 2010, the TDCJ held its first meeting of the Reentry Task Force, a 21-member group comprised of state agencies, advocacy groups, and representatives from the courts. The meeting was well attended and productive. Several work groups were subsequently developed to research and formulate recommendations to include areas of employment, family and

support services, housing, information sharing, rehabilitation and support services, special needs, identifying key issues for female offenders, and community reentry. The task force is a key component of the reentry of the offenders into their communities as well as positively influencing the recidivism rate.

3. Diversion Programs

Over the past two legislative sessions, diversion programs have received substantial funding to increase diversion programming and strengthen community supervision. Chairman Bell reviewed the legislative funding for the diversion programs. There is currently no waiting list for any of the community supervision beds. The diversion programs addressed, through progressive sanctions, the needs of offenders on the front end of the criminal justice system. Chairman Bell recognized the CJAD staff for outstanding work in interfacing with the judicial community, which needs to be aware of the opportunities to assign offenders to these programs as opposed to prison.

4. Chairman's Fitness Challenge

The Texas Round Up is at the half-way point. Staff was advised to encourage employees to participate in the six-week challenge or in the family walk at the Round Up day in April. Employees may also volunteer to assist with that event which also counts as participation in the program.

For the second quarter of the Chairman's Fitness Challenge, the "Maintain, No Gain" program, two departments, the Parole Executive Administration Office and the Mount Pleasant District Parole Office, registered 100 percent participation. Forty-one offices/departments achieved 100 percent completion rates based on employees who actually participated the full six weeks. The names of the offices/departments along with the wellness coordinators will appear in an upcoming edition of *Connections*. The Marshall District Parole Office had 70 percent participation rate along with a 90 percent completion rate, giving them the best overall average in both areas combined. The group will receive a certificate of recognition.

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

Raymond Pyeatt, Director of the Internal Audit Division, provided the following update to the status report published in the agenda book:

FY 2009 Audit Plan

- **0909 – Texas Correctional Office on Offenders with Medical or Mental Impairments, *Continuity of Care*:** The proposed final report is being prepared.
- **0910 – Parole Division, *Case Tracking and Analysis*:** The final report will be released by February 12, 2010.
- **0911 – Correctional Institutions Division, *Distribution of Offender Medication*:** The final report was released on January 13, 2010.
- **0912 – Administrative Review and Risk Management Division, *Operational Review*:** The draft report was released on February 5, 2010. An exit conference is pending.
- **0913 – Manufacturing and Logistics Division, *Texas Correctional Industries, Graphics Division*:** The management responses to the draft report are pending.
- **0916 – Business and Finance Division, *Facility Based Budget Program*:** The draft report is being reviewed by a lead auditor. It should be available for release within a week.
- **0918 – Information Technology Division, *Information System Security*:** The draft report, which is under review by Internal Audit staff, should be released within a week.

FY 2010 Audit Plan

- **1001 – Correctional Institutions Division, *Unit Entry Procedures*:** The audit was reassigned on February 1, 2010.
- **1004 – Information Technology Division, *Communications*:** The draft report was released on February 1, 2010. The second exit conference is scheduled for February 16, 2010.
- **1007 – Manufacturing and Logistics Division, *Texas Correctional Industries, Accounts Receivable*:** The audit has moved to control assessment.
- **1008 - Parole Division, *District Reentry Centers*:** The draft report was released on January 25, 2010. It is currently under revision.
- **1009 – Parole Division, *Annual Reporting Status and Early Release from Supervision*:** The draft report is being written.

- **1010 – Correctional Institutions Division, Unit Classification Committee:** The audit has moved in to control assessment.
- **1011 – Office of the General Counsel, Open Records:** The audit was assigned on January 12, 2010. The background for the audit has begun.
- **1013 – Parole Division, District Parole Officer Training Academy:** The State Auditor’s Office (SAO) recently announced an audit of the Parole Division. One of the SAO’s audit components might be training; therefore, Internal Audit will not perform this audit.
- **1018 – Business and Finance Division, Agribusiness, Land and Minerals Department, Maintenance:** The draft report is being written.
- **1019 – Administrative Review and Risk Management, Office of the Ombudsman:** The draft report was released on January 15, 2010. A third exit conference has been scheduled for February 25, 2010.
- **1021 – Parole Division, Sex Offender Registration:** The audit fieldwork has begun.
- **1023 – Texas Department of Criminal Justice, Internal Audit Division, Self Study:** The audit was assigned February 1, 2010, and has moved into background.

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

APPROVED

Mr. Steffa, reviewed the three purchases and contracts over \$1 million. Item (1) is a request for an increase to an existing Fiscal Year (FY) 10 contract for cans and lids designated for use at the Terrell Canning Plant. Item (2) is a request for isolated soy protein for use in the processing of meat for offender consumption. Item (3) is a request for the purchase and installation of a comprehensive video security surveillance system at the Polunsky Unit for \$2,575,000. Sigma Surveillance Incorporated will install the system throughout the unit, including buildings, walkways, and the perimeter. There will be 25 monitoring systems throughout the unit, providing full recording capability.

Discussion, Consideration, and Possible Action Regarding Proposed Revisions to Board Policies

1. BP-01.07, “Inspector General Policy Statement”

APPROVED

Melinda Bozarth, General Counsel, reviewed the following revisions to the policy:

- Sections V.E and X.H: Added language that requires OIG to investigate all allegations of excessive/unnecessary uses of force that result in serious bodily injury (current policy requires investigation of all such allegations regardless of serious bodily injury), as well as added references to AD-16.20, “Reporting Incidents/Crimes to the Office of the Inspector General.”
- Section V.P: Added language relating to administrative subpoenas.
- Section VI.A: Added “original documents” to the list of items the OIG has the right to full, unrestricted access to during the course of their duties.
- Various grammatical and language updates.

Ms. Bozarth recommended that the TBCJ approve the policy’s revisions as presented in the agenda packet.

2. BP-02.06, “Request for Attorney General Opinions”

APPROVED

Ms. Bozarth noted the policy was extensively revised. The following provides the major revisions proposed to the policy:

- Policy Section, second paragraph: Revised language to reflect the TBCJ chairman and the executive director are authorized to request opinions from the attorney general.
 - Second paragraph: Added language requiring TBCJ approval of all requests sent to the attorney general on behalf of the TBCJ.
 - Fourth paragraph: deleted requirement for a majority vote of the board.
- Section I: Added language to clarify that a request may be initiated by the TBCJ, chairman, executive director, or a division director.
- Section II: Revised to require requests for attorney general opinions from TDCJ divisions not reporting to the TBCJ to be submitted in writing to the executive director. Added language addressing TBCJ member and divisions reporting to the TBCJ.

- Section III: Information moved from Section II. Deleted language relating to highly speculative questions and those requesting resolution of factual disputes.
- Section V: Revised to reflect that the general counsel shall draft requests for opinions initiated or approved by the TBCJ, chairman, or executive director, and the draft shall be approved, signed, and submitted by the executive director or chairman.
- Section VI: New section requiring the general counsel to notify the TBCJ of all opinions requested and received.
- Grammatical revisions and language updates.

Ms. Bozarth recommended that the policy revisions be approved as presented in the agenda packet.

3. BP-03.91, “Uniform Offender Correspondence Rules”

APPROVED

Ms. Bozarth reviewed the following policy revisions:

- Added definitions of educational materials, e-message, and reference book.
- Revised definition of Special Correspondent to clarify that all division directors, deputy directors, and wardens of the TDCJ are considered special correspondents.
- Section I.C.3 and I.E: Added language allowing offenders to receive educational materials and reference books from volunteer organizations that operate various educational programs in accordance with Texas Government Code §501.009, as well as procedures regarding such materials.
- Section III.B: Deleted the reference to “consistently” to allow TDCJ the opportunity to suspend an offender’s legal mail privileges following just one violation of law or correspondence rules through legal correspondence.
- Section IV.E.2: Revised to include generalized language relating to the sender of a publication.
- Section IV.F: Added language relating to the maintenance of records indicating the source and destination of outgoing mail from death row offenders.
- Grammatical revisions and language updates.

Ms. Bozarth noted that the following corrections:

- Section II.A: The second sentence should read “All incoming correspondence from any special or media correspondent shall be opened and inspected only for contraband, except under the special circumstance noted in these rules.” The addition of the language strengthens the policy regarding the search for contraband in the mail.
- Section III.A: The second sentence should read “No correspondence from an offender to any legal correspondent shall be opened or read.” The third sentence should read “All incoming correspondence from any legal correspondent shall be opened and inspected for contraband only.”
- Section IV.E.2: The first and second sentences in the paragraph should read “If a publication is rejected, the offender and sender shall be provided a written notice of the disapproval and a statement of the reason for disapproval within 72 hours of receipt of the publication on a Publication Denial Form. Within the same time period, the offender and sender shall be notified of the procedure for appeal.”
- Section V.B: The first paragraph should read “Any offender or other correspondent, or sender of a publication may appeal the rejection of any correspondence or publication. An offender or sender may appeal the placement of the sender on the offender’s negative mailing list. An offender or sender may apply to the DRC for reconsideration of the negative mailing list placement after the passage of six months.”

Ms. Bozarth recommended that the TBCJ approve the revised policy as printed in the agenda packet to include the corrections as presented.

Discussion, Consideration, and Possible Action Regarding Adoption of Amendments to Title 37 Texas Administrative Code Section 152.71, Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes (37 TAC §152.71)

APPROVED

Ms. Bozarth stated that no comments were received from the rule’s publication in the December 25, 2009, issue of the Texas Register. She recommended that the TBCJ adopt the rule as presented in the agenda packet.

Chairman Bell recognized and welcomed Mr. Gambrell whose arrival was delayed by inclement weather.

Discussion, Consideration, and Possible Action Regarding Proposed Repeal of Rules Promulgated by the Private Sector Prison Industries Oversight Authority, Title 37 Texas Administrative Code Chapter 245 (37 TAC §§245.10-245.47)

APPROVED

Ms. Bozarth stated that the director for Manufacturing and Logistics Division provided a presentation earlier today to the Business and Financial Operations Committee, on the Private Sector Prison Industry Programs. As the Private Sector Prison Industries Oversight Authority was abolished in the 81st Legislative Session, and the responsibilities transferred to the TBCJ, Chapter 245 for the authority is proposed for repeal. Ms. Bozarth recommended that the repeal of these rules be published in the Texas Register for public comment as presented in the agenda packet.

Chairman Bell recognized and welcomed Robert Hamilton, staff representative from the Office of the Lieutenant Governor.

Discussion, Consideration, and Possible Action Regarding Proposed New Board Rules for the Private Sector Prison Industries Programs, Title 37 Texas Administrative Code Chapter 154 (37 TAC §§154.1-154.12)

APPROVED

Ms. Bozarth stated that, in the same presentation given earlier today to the Business and Financial Operations Committee, the director for Manufacturing and Logistics Division provided an in-depth review of the proposed rules governing the Private Sector Prison Industries Programs that are now the responsibilities of the TBCJ. Corrections to the documents in the agenda packet for publication in the Texas Register follow:

- Rule §154.2, Definitions should be numbered (1) – (11).
- Rule §154.11, Program Compliance should be numbered (1) – (2).
- Rule §154.12, Complaint Investigations, Subsection (f) should be revised to Subsection (e), Subsection (g) revised to Subsection (f), and Subsection (h) revised to Subsection (g).

Ms. Bozarth recommended the TBCJ approve the proposed rules for publication in the Texas Register for public comment as printed in the agenda packet to include the corrections presented.

Discussion, Consideration, and Possible Action Regarding Proposed New Board Rule §195.81, Temporary Housing Assistance (37 TAC §195.81)

APPROVED

Ms. Bozarth stated that earlier in the day, the director for the Parole Division provided the Community Corrections Committee an overview regarding House Bill 3226 which created a new program to provide temporary housing assistance to offenders who have no financial resources and no residence at the time of their release. The proposed new rule has been written with flexible guidelines. Ms. Bozarth recommended that the rule be approved for publication in the Texas Register to receive public comment as presented in the handout.

Chairman Bell recognized and welcomed Mr. Nelson whose arrival was delayed by inclement weather.

Discussion, Consideration, and Possible Action Regarding Proposed Land Transactions

Mr. Demny presented the following items to the Business and Financial Operations Committee for review and discussion earlier on this date.

1. Request for Renewal of Natural Gas Pipeline Easement to Houston Pipe Line Company on the Central Unit in Fort Bend County, Sugar Land, Texas

APPROVED

Mr. Demny reviewed the renewal of the natural gas pipeline easement to the Houston Pipe Line Company on the Central Unit in Fort Bend County, Sugar Land Texas. He recommended that the TBCJ approve the easement as presented.

2. Request for Renewal of Natural Gas Pipeline Easement to Chevron Phillips Chemical Company, LP on the Clemens Unit in Brazoria County, Brazoria, Texas

APPROVED

Mr. Demny reviewed the renewal of a natural gas pipeline easement to Chevron Phillips Chemical Company, LP on the Clemens Unit in Brazoria County, Brazoria, Texas. He recommended that the TBCJ approve the request as presented.

Chairman Bell asked if there were any comments or questions. Mr. Gambrell stated he wished to abstain from vote on the renewal of an easement with Chevron Phillips Chemical Company, LP, since his law firm represents this company. He further stated he wished to prevent any suggestion of impropriety or conflict on this item. Chairman Bell instructed that the record reflect Mr. Gambrell's abstention on the vote of this item.

3. Request for Renewal of Pipeline, Valve Site, and Electrical Line Easement to South Tex 66 Pipeline Company, Ltd. on the Clemens Unit in Brazoria County, Brazoria, Texas, and on the Scott Unit in Brazoria County, Angleton, Texas

APPROVED

Mr. Demny stated that South Tex 66 Pipeline Company, Ltd. has requested a renewal of a pipeline, valve site, and electrical line easement on the Clemens Unit in Brazoria County, Brazoria, Texas and on the Scott Unit in Brazoria County, Angleton, Texas. He noted that the Clemens portion of the renewal should read "...ten feet in width and 9,908.91 feet in length..." Mr. Demny recommended that the renewal be approved as presented and corrected.

4. Request for Renewal of Valve Site and Electrical Line Easement to South Tex 66 Pipeline Company, Ltd. on the Scott Unit in Brazoria County, Angleton, Texas

APPROVED

Mr. Demny stated that South Tex 66 Pipeline Company, Ltd. has requested a renewal of a valve site and electrical line easement to South Tex 66 Pipeline Company, Ltd. on the Scott Unit in Brazoria County, Angleton, Texas. He recommended that the TBCJ approved the easement as presented.

There being no further business for Regular Session, Chairman Bell adjourned the 147th meeting of the TBCJ at 2:33 pm.