
TEXAS BOARD OF CRIMINAL JUSTICE
Crowne Plaza Hotel
Austin, Texas

April 8-9, 2010

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**TEXAS BOARD OF CRIMINAL JUSTICE
SUMMARY OF APRIL 8-9, 2010, MEETING MINUTES**

Meeting No. 148

Chairman Oliver Bell convened in regular session on Thursday, April 8, 2010, at 11:03 a.m. at the Crowne Plaza Hotel, Austin, Texas.

15th Annual Governor's Criminal Justice Volunteer Service Awards Ceremony

Chairman Bell welcomed all the honored guests who joined the TBCJ on this important occasion. He acknowledged that the individuals recognized at this event represent the dedication and commitment of thousands of volunteers who are, on a daily basis, turning a life around. Volunteers make a difference in the lives of many Texans by unselfishly giving of themselves to help offenders, and their families, have an opportunity for a better life. Chairman Bell read a greeting from Governor Rick Perry, who could not be present for the ceremony.

Chairman Bell yielded the floor to Brad Livingston, Executive Director of the Texas Department of Criminal Justice (TDCJ or agency). Mr. Livingston welcomed the honored guests; he expressed his gratitude to the volunteers for their service to the agency. Without the help of the volunteers, a significant number of the offender population would not receive cognitive skills and spiritual nourishment. Mr. Livingston noted that he could not over emphasize how much the volunteer workforce has become an integral part of the TDCJ's reentry efforts. The outstanding men and women of the TDCJ front line correctional staff and the volunteers make a partnership that the TDCJ is fortunate to have. Mr. Livingston acknowledged that the men and women promote positive change in those offenders presently incarcerated and those released into their communities.

Chairman Bell introduced Carol Vance, former TBCJ chairman, as the keynote speaker. Chairman Bell credited Mr. Vance as the driving force behind the development and growth of the volunteer program within the TDCJ, which consists of 19,500 volunteers entering the prisons regularly to mentor, teach seminars, and provide other programs. Mr. Vance was also instrumental in the implementation and growth of the InnerChange Freedom Initiative in a prison system, making Texas the first in the nation to have such a program in a correctional facility.

Mr. Vance thanked Chairman Bell for his kind invitation to participate as the keynote speaker for the award ceremony honoring the criminal justice volunteers. He related how he and his wife became interested in volunteering in the prisons while he was on the TBCJ. The birth of the volunteer program began in 1993 with the expansion of Texas' prison system. The vision for creating a volunteer program to assist offenders in gaining cognitive skills through Prison Fellow Ministries began one of the most innovative ideas in the corrections field. Mr. Vance emphasized that offenders, through the efforts of the thousands of volunteers, receive the tools and support to succeed in the community. He noted that the selfless and untiring pioneer spirit of volunteers make Texas a safer place to live. Mr. Vance expressed his gratitude to the volunteers for their service to Texas and extended the richest possible blessings to them.

Chairman Bell thanked Mr. Vance for his remarks, commenting that through the endeavors of volunteers, offenders can succeed in Texas communities.

Chairman Bell yielded the floor to Eric Gambrell, Master of Ceremonies. Mr. Gambrell thanked Mr. Vance for his inspiring remarks. He stated that the individuals being recognized were the epitome of the caliber of volunteers that serve unselfishly to make a difference in the lives of those supervised by the Texas criminal justice system. Mr. Gambrell acknowledged the Rehabilitation Programs Division staff and the TBCJ office staff who worked collectively on this ceremony to honor the volunteers. Mr. Gambrell stated that it was his honor to read the names of the award recipients and advised them of the award procedures. The following individuals and organizations were recognized:

Gilbert Peters, Chaplaincy Department
David Rust, Correctional Institutions Division
Kevin Marks and Kevin Varner, Private Facilities Contract Monitoring and Oversight Division
Wilbert Burney, "Nancy Hees" Award-Parole Division
Lovers Lane United Methodist Church, Religious Service
CrossNet-Criminal Justice Ministry, Religious Service
John N., Substance Abuse Treatment Program
Jessica Godinez, "Pathfinder" Award-Victim Services Division
Marie Herbort, "Judy Burd" Award-Windham School District

Calvary Commission, *Restorative Justice*
Women's Storybook Project of Texas, "*Susan Cranford*" Award-Female Offender Program
G4-Faith Based Row, *Most Innovative Program*
Regional Criminal Justice Ministry of South Texas, *Community Service*
Mercy Heart Legacy Day with Mom, *Best Family Program*
Leonard Davis, *Greatest Number of Hours* (presented posthumously)
Ronald Fields, *Extensive Travel*
Ricky D. Henderson, *TDCJ Employee Volunteer*
Jacqueline Anderson Dickerson, *Criminal Justice Administrator*

Following the presentation of Mr. Davis' award to his niece, Phyllis Hennigan, Chairman Bell read a resolution recognizing the dedicated volunteer service of Mr. Davis who passed away on October 2, 2009, at the age of 78. Mr. Davis' incredible sense of duty, his faith, and his enduring devotion to serving others as a volunteer, has been an inspiration to all that knew him. Mr. Davis is the recipient of the Greatest Number of Hours for a TDCJ Volunteer for 2009, contributing 1,865 hours during the last nine months of his life. Mr. Davis has been the recipient of this award on several occasions. In honor of Mr. Davis' dedicated, unwavering service to TDCJ, the Greatest Number of Hours award category is henceforth known as the Leonard Davis Award for Most Hours Served.

Mr. Gambrell yielded the floor to Mr. Vance who presented Randy Richter with the "*Carol S. Vance*" Volunteer of the Year Award for 2009.

Mr. Gambrell closed the award ceremony by recognizing and honoring the families of award recipients. Chairman Bell adjourned this portion of the 148th Meeting of the board at 12:15 p.m.

Tom Mechler, Vice Chairman, reconvened the 148th Meeting of the TBCJ on Friday, April 9, 2010, at 9:07 a.m.

Mr. Mechler acknowledged the attendance of staff representative Angela Issack, Legislative Budget Board (LBB).

Mr. Mechler stated that the TBCJ is committed to providing the opportunity for public presentations on topics posted on the meeting agenda or 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." He reviewed the requirements for speaker registration. As no speaker registration cards were received by TBCJ staff prior to the required deadline; no public presentations on posted agenda topics or public comments would be heard.

Recognitions

Mr. Mechler recognized Carol Blair Johnston on her retirement after serving 26 years with the TDCJ. He read a Resolution of Commendation highlighting her career achievements. Mr. Livingston praised Ms. Johnston on her outstanding contributions to TDCJ, thanking her for her passion, focus, and commitment to TDCJ employees. Ms. Johnston thanked Mr. Livingston and the TBCJ for all their support over the years.

Mr. Livingston recognized Bryan Collier, TDCJ Deputy Executive Director, on receiving his 25-year service award from the State of Texas.

Jerry McGinty, Chief Financial Officer, recognized Ron Steffa, Deputy Chief Financial Officer, on receiving his 20-year service award from the State of Texas.

C.F. Hazlewood, Director of the Manufacturing and Logistics Division, recognized Darin Pacher as the deputy director of Manufacturing and Logistics Division.

Stuart Jenkins, Director of the Parole Division, recognized Dede Johnson as the section director of Specialized Programs, Christina Propes as the section director of Review and Release Processing, and Gwenette Macklin as the director of Region III Parole Office in Houston.

Mr. Mechler 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 February 2010 and March 2010. As a symbol of appreciation, these individuals will receive a TBCJ certificate along with a personal letter of gratitude.

Mr. Mechler acknowledged Kyle Mitchell, Office of the Governor; Larance Coleman, staff member from the office of Senator Whitmire; Marsha McLane, staff member from the office of Representative Madden; and Travis Sampley, Committee Clerk, House Corrections Committee, as present.

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. **147th TBCJ Meeting Minutes**
5. **Excused Absences**

Mr. Mechler noted that the consent items include excused absences for Janice Harris Lord and for himself, as they were both unable to attend the TBCJ February meeting due to weather and travel delays. They also include an excused absence for David Nelson who was unable to attend the April TBCJ meeting as he was traveling outside the United States. The approval also includes an amendment to minutes of the TBCJ February Minutes, last page, last sentence, under adjournment should read as follows: "...147th meeting of the TBCJ..." Mr. Mechler asked if there were any further amendments to the consent items. Eric Gambrell stated that his firm does pro bono work for the San Antonio Food Bank and there are personal property donations from the food bank donations brought before the TBCJ for approval, he abstained from voting on the consent items. Seeing no further objections, Mr. Mechler stated the consent items stand approved, noting for the record that Mr. Gambrell abstained from voting on the 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)

1. **Overview of the JAC Sentencing Conference**
2. **Discussion on Community Supervision and Corrections Department (CSCD) Refunds**

Judge Larry Gist stated that the refunds from the CSCDs as a method of finance have been handled by a professional staff and the result has been a rewarding experience. The recent sentencing conference was a huge success and well attended by judges and prosecutors. Judge Gist thanked the TBCJ for its support and looked forward to future cooperative endeavors.

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

Mr. Livingston, TDCJ Executive Director, had no report.

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

Allen Hightower, Executive Director, CMHCC, thanked Mr. Nelson and Ms. Lord for being present at the March 9, 2010 meeting of the CMHCC. Mr. Hightower informed the TBCJ that the CMHCC staff is working on the joint study required by HB 4586, which is due in the Governor's Office and the LBB by May 1, 2010. A rough draft is anticipated by April 16, 2010. Mr. Hightower explained the methodology used to write the report. He reviewed the history of legislatively mandated studies. Mr. Hightower advised the TBCJ that the CMHCC report would not make a recommendation to the legislature on what the CMHCC thinks the legislature should do, but rather provide all the information that is available so that the legislature can make a sound policy decision.

Terrell McCombs inquired why the CMHCC would not make a recommendation. Mr. Hightower responded the CMHCC will remain silent in that area so as to not influence the legislature's decision. Mr. Hightower responded positively. Mr. McCombs asked if the new federal health care plan could help the State of Texas lower the cost for TDCJ offenders. He suggested that perhaps the federal health care plan could be researched over the eight years to help lower health care costs. Mr. Hightower concurred with Mr. McCombs that the federal health plan should be researched to seek coverage for Texas offenders. Mr. Hightower noted that over the past six years he has not found any legislation or grants that allows for money to aid convicted felons. Mr. Hightower stated that at this time he did not foresee anything in the federal health care bill that would aid the

Texas prison system in its health care system. Mr. McCombs thanked Mr. Hightower for doing a very difficult job in the best way possible.

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

Due to Chairman Bell's absence, no report was given.

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 pending an exit conference with the Executive Director.
- **0912 – Administrative Review and Risk Management Division, *Operational Review*:** The proposed final report is pending staff responses.
- **0913 – Manufacturing and Logistics Division, *Texas Correctional Industries, Graphics Division*:** The proposed final report is awaiting release by the Executive Director.
- **0918 – Information Technology Division, *Information System Security*:** The final report has been released.

FY 2010 Audit Plan

- **1004 – Information Technology Division, *Communications*:** The final report has been released.
- **1006 – Administrative Review and Risk Management Division, *Risk Management*:** The draft report has been released. Management responses are pending.
- **1008 - Parole Division, *District Reentry Centers*:** The final report has been released.
- **1019 – Administrative Review and Risk Management, *Office of the Ombudsman*:** The final report has been released.
- **1021 – Parole Division, *Sex Offender Registration*:** The draft report has been released. Management responses are pending.
- **1026 – Business and Finance Division, *Windham School District, American Recovery and Reinvestment Act Grants*:** The draft report has been written.
- **1013 – Parole Division, *District Parole Officer, Training Academy*:** The State Auditor's Office will be auditing this area and will also be covering the scope of the TBCJ audit. Internal Audit will add a follow up audit on the 2011 Audit Plan.

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

APPROVED

Mr. McGinty reviewed the purchases and contracts over \$1 million. Item One is residential and outpatient substance abuse treatment services in Amarillo. Item Two is a competitive bid utility contract for electricity for calendar year 2011 for 48 facilities. Mr. McGinty noted that there is a 25% variance on the approved amount. He stated the third item, which could be found on the provided handout, was for a video surveillance equipment system to be installed at the Stiles Unit in the amount of \$2,425,000.

Mr. McCombs inquired why there was a 25% variance for electrical costs, instead of a 10% variance. Mr. McGinty explained that it will give the state time to negotiate the lowest rate.

Discussion and Review of Proposed Revisions to Administrative Directives

1. AD-04.80, “Good Conduct Time”

Melinda Bozarth, TDCJ General Counsel, stated Section I.B.4.a., was revised to include protective custody, and Gang Renouncement and Disassociation (GRAD) offenders. On the summary of changes, under Section III, Ms. Bozarth noted a correction was needed to reflect there was no final approval for backdating State-Approved Trusty (SAT) good conduct time credit. The agency does not backdate good time. The change made in Section III was in the approval entity, from State Classification Committee to the Classification and Records Office, for offenders’ reclassification to a higher time-earning status. Ms. Bozarth noted that the TBCJ was not required to take action, only to review the directive.

2. AD-04.81, “Review Process for Promotion in Time-Earning Class”

Ms. Bozarth stated that the Policy Section was revised to include information relating to TBCJ approval for amendments to procedures within the directive and to delete subsequent references to the TBCJ mandates throughout the directive. The introduction paragraph of Section II was deleted, because the referenced attachment has been deleted. Section III.B.2 was revised to include procedures for restoration of good conduct time credit reinstatement effective September 1, 2009. Other revisions included grammatical revisions and language updates. As with AD-04.80, only a review is required by the board.

Discussion, Consideration, and Possible Action Regarding Proposed Revisions to Disciplinary Rules and Procedures for Offenders

APPROVED

Ms. Bozarth stated that most of the revisions to the Disciplinary Rules were procedural clarifications. She noted that Section III.B.3.d specifies that certain religious items may not be taken from an offender as a disciplinary sanction. Section IV.B.1.b designates that an offender assigned to a psychiatric inpatient facility or placed on an outpatient psychiatric caseload will be assigned a counsel substitute to assist with their defense if they are charged a major disciplinary offense. Section IV.B.4.e was deleted, as the requirement that an offender receive a counsel substitute upon his/her request exceeds constitutional standards. It is still discretionary if the TDCJ chooses to do so, but is not mandated or required. Section V.C adds language to clarify that an offender who self inflicts an injury cannot be disciplined if an evaluation by a mental health professional determines the offender’s behavior was the result of a mental condition. The TDCJ does not want to discipline an offender who is mentally ill and is acting out because of a medical condition. Section V.E has added language addressing the hearing impaired who are entitled to an interpreter during a disciplinary hearing. Section VII.A.2.a.(3) was revised to address the reinstatement of good conduct time credit. Ms. Bozarth also noted a correction to the Good Time Loss Limits Chart, under Level 2, the offense 23 - Creating a Disturbance, was inadvertently omitted from the document in the agenda packet.

Ms. Lord asked why sexual misconduct offenses were not raised to a level one offense. Ms. Bozarth stated that perhaps it was because they were not forcible offenses. Ms. Lord suggested Ms. Bozarth consult with Ralph Bales, the Prison Rape Elimination Action (PREA) Ombudsman, regarding this matter.

Discussion, Consideration, and Possible Action Regarding Proposed Revisions to Personnel Directive, PD-29, “Sexual Misconduct with Offenders”

APPROVED

Ms. Bozarth stated PD-29, “Sexual Misconduct with Offenders,” was reviewed in alignment with its two-year review process and only non-substantive changes were recommended.

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

APPROVED

1. BP-01.03, “Delegation of Authority to Manage and Administer the Texas Department of Criminal Justice”

Ms. Bozarth noted the following revisions: Section II.E language was revised to depict current practices for cases discussed in executive session. Section II.I was amended to conform the policy with state law Texas Government Code §493.031 concerning the establishment of a grant funds committee. Section III.A was revised to include and reflect that the PREA ombudsman reports directly to the TBCJ, and to delete references to the Windham School District (WSD) superintendent, as the superintendent is appropriately covered under WSD policy.

2. BP-01.04, “Standards of Conduct for the Texas Board of Criminal Justice and the Executive Director of the Texas Department of Criminal Justice”

Ms. Bozarth stated that the revisions to the policy have incorporated the TBCJ’s new responsibilities for reviewing and approving Prison Industry Enhancement (PIE) Certification Program contracts. She noted Sections I.A.06 and I.A.08 were revised to stipulate provisions under which a TBCJ member can be removed if a program contract is signed with a company they own, have an interest in, etc. Section X.C and Section XII.C were added to incorporate existing state law.

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

APPROVED

1. §159.1, Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria

Ms. Bozarth stated proposed revisions clarify the offenders’ eligibility criteria to participate in the substance abuse felony punishment facility program. She requested that the TBCJ move forward with the approval to authorize staff to publish the rule in the Texas Register to receive public comment.

2. §159.15, GO KIDS Initiative (Giving Offenders’ Kids Incentive and Direction to Succeed)

Ms. Bozarth stated this rule is presented as a part of its mandatory four-year review, and only non-substantive revisions are recommended. She requested that the TBCJ authorize staff to publish the rule in the Texas Register to receive public comment.

Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Rules Promulgated by the Private Sector Prison Industries Oversight Authority, Title 37 Texas Administrative Code Chapter 245

APPROVED

Ms. Bozarth stated that the proposed repeal of the rules within Chapter 245 were published in the Texas Register for public comment. As 30 days have passed and no comments have been received, Ms. Bozarth requested that the TBCJ proceed with the adoption of the repeal of Chapter 245.

Discussion, Consideration, and Possible Action Regarding Adoption of Title 37 Texas Administrative Code Chapter 154, Regarding Private Sector Prison Industries Programs

APPROVED

Ms. Bozarth stated that these rules were published in the February 26, 2010, issue of the Texas Register. She noted that comments were received. A private citizen expressed concern if the rules applied to existing vendors. Ms. Bozarth stated that HB 1914 had provisions protecting existing vendors. Therefore, the rules as published in the Texas Register incorporated the allowances where they would not apply to an existing program. Comments were also received from the Texas Workforce Commission (TWC). The TWC acknowledged that while the rules do not specifically require them to certify whether or not a proposed industry will result in the displacement of employees or the loss of existing jobs of a similar nature by employers in the state, they felt, by de facto, the rules would place them in the role of certifying that displacement. Ms. Bozarth explained that the rules require the governmental entity to request information from the TWC in order to make the required certification. They do not require the TWC to make the certification. The TWC also requested clarification on whether the governmental entity would be responsible for affected employer notifications. Ms. Bozarth confirmed this would be handled by the governmental entity. Ms. Bozarth recommended that the TBCJ approve the rules as published in the Texas Register since the comment required no changes to the rules.

Mr. McCombs inquired what would happen if the TWC could not provide information on displacement. Ms. Bozarth responded that the governmental entity would seek assistance from the Department of Justice, Bureau of Justice Assistance, who provided certification of the PIE program to the TDCJ, and work in developing a strategy for that determination. Mr. McCombs asked if there is a threshold of displacement. Ms. Bozarth responded that there is no threshold of displacement, and it would be at the discretion of the TBCJ if the displacement was significant to prevent the program from proceeding.

**Discussion, Consideration, and Possible Action Regarding Adoption of
Title 37 Texas Administrative Code §195.81, Regarding Temporary Housing Assistance**

APPROVED

Ms. Bozarth stated that the rule was published in the February 26, 2010, issue of the Texas Register. As no comments were received, Ms. Bozarth requested that the TBCJ adopt the rule as published.

Ms. Lord suggested that section (2)(C) be revised to read "...located more than 1,000 feet of premises where children..." Ms. Bozarth stated that the 1,000 feet is a factor to be examined to be sure the facility is not within 1,000 feet of premises where children play.

**Discussion, Consideration, and Possible Action Regarding a Facilities Division Construction
Project to Replace the Heating, Ventilating, and Air Conditioning (HVAC) System
in the Texas Correctional Industries Building at the Daniel Unit in Scurry County, Snyder, Texas**

APPROVED

Frank Inmon, Director of the Facilities Division, stated that the Business and Financial Operations Committee received a comprehensive briefing on the construction project to replace the HVAC system in the Texas Correctional Industries Building at the Daniel Unit in Scurry County, Snyder, Texas. The total project amount is \$1,007,700.

Public Comments

Mr. Mechler stated no registration cards were received for public comments.

Adjournment

There being no further business for the regular session, Mr. Mechler adjourned the 148th meeting of the Texas Board of Criminal Justice at 10:30 a.m.