

Texas Board of Criminal Justice
152nd Meeting



Minutes

December 9, 2010
Austin, Texas

TEXAS BOARD OF CRIMINAL JUSTICE

**Crowne Plaza Hotel – Salon E
6121 North IH-35
Austin, Texas 78752
Salon E**

**December 9, 2010
1:30 PM**

ORDER OF BUSINESS

Call to Order

Convene Texas Board of Criminal Justice (TBCJ)

I. Regular Session

A. Recognitions

B. Discussion, Consideration, and Possible Action Regarding Consent Items

1. Hazardous Duty Pay Authorization Requests
2. Personal Property Donations
3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
4. 151st TBCJ Meeting Minutes
5. Excused Absences

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

D. Report from the Chairman, Judicial Advisory Council (JAC)

E. Report from the Executive Director, Texas Department of Criminal Justice (TDCJ) –
Fiscal Challenges and Upcoming Legislative Session

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

1. Fiscal Year 2010 Financial Report
2. Historical Cost Per Day

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

- H. Report from the Chairman, TBCJ
 - 1. Chairman's Fitness Challenge
 - 2. Security Enhancement
 - 3. Fiscal Responsibility
- I. Internal Audit Status Report for Fiscal Years 2010-2011
- J. Discussion, Consideration, and Possible Action Regarding Purchases and Contracts Over \$1 Million
- K. Discussion, Consideration, and Possible Action Regarding Readoption of Title 37 Texas Administrative Code Section 163.45, Distribution of Community Corrections Funding
- L. Discussion, Consideration, and Possible Action Regarding a Proposed Land Sale Related to the Expansion of State Highway 36 at the Hilltop Unit in Coryell County, Gatesville, Texas
- M. Discussion, Consideration, and Possible Action Regarding Facilities Division Construction Projects
 - 1. Request to Replace Roof on Main Building at the Byrd Unit in Walker County, Huntsville, Texas
 - 2. Request to Install Fire Alarm System at the Clemens Unit in Brazoria County, Brazoria, Texas

Adjourn TBCJ

The TBCJ may discuss and/or take action on any of the items posted on this meeting agenda. The TBCJ may also convene into Executive Session on any of these matters when attorney-client privilege is warranted.

MINUTES OF THE TEXAS BOARD OF CRIMINAL JUSTICE

Meeting No. 152

The Texas Board of Criminal Justice (TBCJ) convened in regular session on Thursday, December 9, 2010, at the Crowne Plaza Hotel, Austin, Texas, at 1:55 p.m., adjourned at 2:50 p.m. into executive session, and finally adjourned at 3:59 p.m.

TBCJ MEMBERS PRESENT:

Oliver Bell, Chairman
Tom Mechler, Vice Chairman
Leopoldo (Leo) Vasquez, III, Secretary
Eric Gambrell
Pastor C.L. Jackson
Janice Harris Lord
Terrell McCombs
J. David Nelson
Carmen Villanueva-Hiles

TEXAS DEPARTMENT OF CRIMINAL JUSTICE STAFF PRESENT:

Brad Livingston, Executive Director
Bryan Collier, Deputy Executive Director
Jeff Baldwin
Mike Bell
Melinda Bozarth
Celeste Byrne
Matt Demny
Jackie Edwards
C. F. Hazlewood
Frank Inmon
Sherry Koenig
Lannette Linthicum, M.D.
Michelle Lyons
Angie McCown
Jerry McGinty
Susan McHenry
John Moriarty
Raymond Pyeatt
Ron Steffa
Rick Thaler
Jan Thornton
Kim Vernon
Carey Welebob
Dee Wilson

OTHERS PRESENT:

The Honorable Allen Hightower, Executive Director, Correctional Managed Health Care Committee (CMHCC); David McNutt, Chief Financial Officer, CMHCC; Debbie Roberts, Superintendent of the Windham School District; and members of the media.

Convene Texas Board of Criminal Justice

Chairman Oliver Bell convened the 152nd meeting of the TBCJ on Thursday, December 9, 2010, at 1:55 p.m., noted that a quorum was present, and declared the meeting open in accordance with Texas Government Code Chapter 551, the *Open Meetings Act*. The TBCJ conducted business from the agenda posted in the Texas Register.

Chairman Bell requested that cell phones or pagers be placed on the silent or vibrate mode. He noted that no public officials or their staff representatives were in attendance.

Chairman Bell 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 registration cards were received prior to the required deadline, the TBCJ did not hear public presentations on posted agenda topics.

Recognitions

Celeste Byrne, Director of the Private Facilities Contract Monitoring and Oversight Division (PFCMOD), recognized Bobby Lumpkin, Deputy Director of the PFCMOD, for 20 years service with the state of Texas. She presented Mr. Lumpkin with a 20-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 October and November 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.

Chairman Bell recognized the passing of Gregory S. Coleman, former TBCJ vice chairman, secretary, and member, who served on the board from 2003-2009. He highlighted Mr. Coleman's brilliant legal career beginning with his appointments as a judicial clerk to the Honorable Edith Hollan Jones on the United States Court of Appeals for the Fifth Circuit; the legal clerk for Supreme Court Justice Clarence Thomas; and in 1998, the first Solicitor General of the state of Texas. Mr. Coleman became recognized as one of the greatest litigators in Texas, frequently appearing before the Supreme Court. Mr. Coleman was known as one of the top ten "Super Lawyers" by *Texas Monthly* magazine. Mr. Coleman was also a devoted husband and father, who was kind, gracious, and humble. His public service, charity, and generosity were legendary. Chairman Bell requested a moment of silence in memory of Gregory Coleman. (Silence followed.)

(Attachment A – Employee Names)

Discussion, Consideration, and Possible Action
Regarding Consent Items

1. **Hazardous Duty Pay Authorization Requests**
2. **Personal Property Donations**
3. **Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property**
4. **151st TBCJ Meeting Minutes**
5. **Excused Absences**

Chairman Bell asked if there were any amendments or objections to the proposed consent items. Eric Gambrell stated that his firm does pro bono work for the San Antonio Food Bank and as there are personal property donations from the food bank brought before the TBCJ for approval, he would abstain from voting on the consent items. Seeing no further objections, Chairman Bell 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)

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)
Fiscal Challenges and Upcoming Legislative Session

Brad Livingston, Executive Director of the TDCJ, reported that all state agencies have received a letter from the offices of the Governor, Lieutenant Governor, and the Speaker of the House requiring them to identify an additional 2.5% in savings for this fiscal year. For TDCJ this means a budget reduction of \$75 million. Mr. Livingston stated these additional reductions would pose a difficult operational challenge for all state agencies. Dialogue with the state leadership offices will continue to outline where reductions would have a more manageable impact and where reductions would cause severe operational and system problems within the TDCJ. Mr. Livingston stated that TDCJ recognizes its fiscal responsibilities and takes them seriously. At the same time, TDCJ acknowledges that it is critical to be clear when reductions impact its ability to fulfill its mission. Mr. Livingston emphasized that as outlined in the Legislative Appropriations Request, it would be impossible to avoid staff reductions under the additional 2.5% savings scenario. He noted that TDCJ staff is committed to working with the state leadership throughout this process, with diligence while maintaining the integrity of the

operations and mission of the TDCJ. The TBCJ would be kept apprised as to how the process unfolds.

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

1. Fiscal Year 2010 Financial Report

David McNutt, Chief Financial Officer for the CMHCC, reported that the overall health care costs through the Fourth Quarter of Fiscal Year (FY) 2010 totaled \$545.5 million. This amount is above overall revenues earned by the university providers by \$21.6 million. The University of Texas Medical Branch's (UTMB) total revenue was \$417 million and their expenditures totaled \$435.7 million resulting in a net loss of \$18.7 million. Texas Tech University Health Sciences Center (TTUHSC) total revenue was \$106.9 million and expenditures totaled \$109.8 million resulting in a net loss of \$2.9 million. The cost per day was \$9.88. Drug costs through the fourth quarter were \$39.8 million.

2. Historical Cost Per Day

Mr. McNutt reviewed the historical cost per day from FY 1996 through FY 2011. He stated that the growth of the CMHCC appropriations was in direct response to the growth of the offender population treated. Additionally, the offender population aged 55+ has grown 6-7% each year over the past few years. Mr. McNutt explained that the CMHCC continues to operate below the national average on health care costs per day.

Chairman Bell asked if there were any questions or comments. David Nelson thanked Mr. McNutt for his update. He then asked if there were statistics available showing what private prisons pay on a per diem cost for health care for offenders under their care. Mr. McNutt responded private contractors would have to establish a pilot program to determine cost, while UTMB and TTUHSC are already in place. Mr. Nelson noted that the board should explore all possibilities even those in private facilities. Mr. McNutt assured Mr. Nelson that the CMHCC was dedicated to providing a quality of care in addition to finding cost saving measures.

Terrell McCombs asked why Oklahoma health care costs were low. Mr. McNutt stated that their costs did not include psychiatric services.

Tom Mechler asked if the CMHCC received the 2.5% reduction letter as did other state agencies. Mr. McNutt stated that he has spoken with Jerry McGinty, TDCJ Chief Financial Officer, and discussed the 2.5% reduction. The 2.5% savings would be in the TDCJ appropriations package.

Mr. McCombs inquired how much out of the \$9.88 cost per day would be charged to mental health. Mr. McNutt responded that the mental health cost share is \$.90.

Chairman Bell commented that the management of the health care system is for a large population. The delivery of the health care overall is comparable to the private sector. Chairman

Bell noted that according to the daily rate chart and the subsequent charts in Mr. McNutt's presentation, most of the other correctional health care systems have not been able to stabilize their costs per day. TDCJ and the CMHCC have worked diligently to keep the numbers down. California has tripled the costs in correctional health care. Chairman Bell stated that while the staff is working on lowering costs and finding more efficient and effective ways of health care delivery, the past and current numbers reflect the effectiveness of the correctional managed health program in Texas. He commended UTMB and TTUHSC for their endeavors.

Allen Hightower, Executive Director of the CMHCC, assured the TBCJ that the report was an impartial rendering of facts and statistics. He stated that the CMHCC would take any suggestions and recommendations that the TBCJ had in relation to the document for the upcoming legislative session.

(Attachment B – CMHCC Handout)

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

John Bradley, chairman of the ACOOMMI, had no report.

Report from the Chairman, TBCJ

1. Chairman's Fitness Challenge

The first quarter of the Chairman's Football League was a big success. For this event, divisions were created to match like size offices, departments and units to compete for championship. Points were achieved through exercise completed during the challenge. Chairman Bell recognized the top ranking participants in each division as follows:

Division 1 – 39 or fewer employees: Top participant - Parole Division Specialized Programs Department achieving 785 points. Second and third place winners were the Texas Board of Criminal Justice and the Richmond/Rosenberg Parole Office.

Division 2 – 40 to 99 employees: Top participant - Agribusiness, Land, and Minerals Department earning 985 points. Second and third place winners were State Counsel for Offenders and the Houston III Parole Office.

Division 3 – 100 to 199 employees: Top participant - Fort Stockton Unit with 2,667 points. Second and third place winners were the Human Resources Main Headquarters and the Information Technology Division.

Division 4 – 200 to 299 employees: Top participant - Lynaugh Unit earning 3,941 points; the highest points earned of all participating departments and units. Second and third place were the Cole State Jail and the Scott Unit.

Division 5 – 300 plus employees: Top participant - Gurney Unit with 2,706 points. Second and third place winners were the Holliday Unit and the Jester IV Unit.

Chairman Bell noted that for the first time in the chairman's challenge, a private facility participated and acknowledged the Mineral Wells Pre-Parole Transfer Facility. He also acknowledged the Windham School District, whose employees earned 2,011 points.

The next challenge in the Chairman's Football League "Balanced for Life – 24/7/365" begins December 13, 2010.

2. Security Enhancement

Chairman Bell stated that funding provided in the 81st Legislative Session is being used to install comprehensive video surveillance equipment at the Polunsky, Stiles, Darrington, and McConnell units. Security equipment was also purchased to enhance the TDCJ's ability to eliminate contraband and other security threats at other locations where contraband has been most prevalent. Security technology enhancements included body orifice scanner chairs (43 chairs installed on 34 units), walk through metal detectors (74 detectors on 33 units), parcel scanners (41 scanners on 23 units), and egress and ingress video systems (32 systems on 32 units). The TDCJ has increased the frequency of comprehensive searches and reviews on maximum security units. Additionally, pat searches are conducted continually of all individuals entering maximum facilities, and random pat searches entering all other facilities. The TDCJ continues to provide enhanced curriculum in pre-service and in-service training pertaining to offender searches, offender manipulation tactics, and transportation procedures. Chairman Bell stated that there are ongoing exchanges of information between the Office of Inspector General and the Security Threat Group office concerning offender tactics. He mentioned other areas of security enhancement such as correctional officer physical agility testing and random drug testing.

3. Fiscal Responsibility

Chairman Bell recognized that the state is facing challenging fiscal times. The TBCJ is dedicated to fulfilling the mission of TDCJ to protect the public's safety, promote positive offender change, reintegrate offenders into society, and assist victims of crimes. Staff will work with the state leadership by providing information to them to make informed decisions about the future of the criminal justice system. TDCJ will implement the decisions made, remaining dedicated to keeping the public's safety at the forefront. During session, each bill will be scrutinized by TDCJ staff for any impact to the agency.

Internal Audit Status Report for Fiscal Years 2010-2011

Raymond Pyeatt, Director for the Internal Audit Division, provided the following revision to the handout of the Internal Audit Status Reports for the Fiscal Years 2010-2011:

- **1017 – Rehabilitation Programs Division, Clinical Staff Development Program:** The final report was mailed to the TBCJ on December 8, 2010.

Chairman Bell asked if there were any questions or comments. Mr. Nelson inquired if Mr. Pyeatt had any scheduled audits dealing with correctional managed health care and its delivery systems. Mr. Pyeatt responded that there were none scheduled for this year. There was no further discussion.

(Attachment C – Internal Audit Status Report for FY 2010-2011)

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

Chairman Bell stated the board would pass on this item with no action taken.

Discussion, Consideration, and Possible Action Regarding
Readoption of Title 37 Texas Administrative Code Section 163.45,
Distribution of Community Corrections Funding

Melinda Bozarth, General Counsel, stated that Rule 163.45, Distribution of Community Corrections Funding, was reviewed as required by Texas Government Code §2001.039, which requires state agencies to review rules every four years. Staff recommended no revisions. The notice of the review was published in the July 23, 2010, issue of the Texas Register. No comments were received as a result of that notice. Additionally, Ms. Bozarth noted that Carey Welebob, Director of the Community Justice Assistance Division, presented the rule to the JAC, the Probation Advisory Council, and to all community supervision and corrections departments directors. No comments were received by those entities or those directors. Ms. Bozarth requested that the TBCJ readopt the rule as presented.

Mr. Mechler made a motion that the TBCJ approve the readoption of Title 37 Texas Administrative Code Section 163.45, as published in the Texas Register, regarding the distribution of community corrections funding, and that the chairman sign the order to this effect.

Leo Vasquez seconded the motion, which prevailed unanimously when called to a vote.

**Discussion, Consideration, and Possible Action Regarding
a Proposed Land Sale Related to the Expansion of State Highway 36
at the Hilltop Unit in Coryell County, Gatesville, Texas**

Matt Demny, Director of the Agribusiness, Land and Minerals Department, reviewed the request by the Texas Department of Transportation to purchase 0.843 of an acre of land for the proposed expansion of State Highway 36. He explained that the TBCJ is authorized by Texas Government Code §496.0021 to sell state owned real property under its management and control at the real property's fair market value. Based on a recent appraisal, Coryell County has offered \$4,215 for the subject property. Under the referenced statute, the Texas General Land Office may negotiate and close a transaction on behalf of the TBCJ using the procedures in the Texas Natural Resources Code §31.158(c). As required by statute, proceeds from this transaction shall be deposited in the Texas capital trust fund.

Mr. Vasquez made a motion that the TBCJ approve the land sale related to the expansion of State Highway 36 at the Hilltop Unit in Coryell County, Gatesville, Texas, as presented.

Mr. McCombs seconded the motion, which prevailed unanimously when called to a vote.

**Discussion, Consideration, and Possible Action
Regarding Facilities Division Construction Projects**

1. Request to Replace Roof on Main Building at the Byrd Unit in Walker County, Huntsville, Texas

Frank Inmon, Director of the Facilities Division, reviewed the project to replace the roof on the main building, pickets, and back gate at the Byrd Unit, for approximately 118,521 square foot of roofing. The project bids were received on November 23, 2010. Based on the bids, the total project budget is expected to be \$2,410,300. He noted that if approved by the TBCJ, the work would be performed by Texas Ligua Tech Services, Inc., which is a historically underutilized business (HUB) vendor.

Mr. Gambrell made a motion that the TBCJ approve a not to exceed budget of \$2,410,300 to replace the roof on the main building at the Byrd Unit in Walker County, Huntsville, Texas, as presented.

Pastor Jackson seconded the motion, which prevailed unanimously when called to a vote.

2. Request to Install Fire Alarm System at the Clemens Unit in Brazoria County, Brazoria, Texas

Mr. Inmon stated the Clemens Unit project is the installation of a fire alarm system, which includes buildings within and outside the perimeter. Project bids were received in October 2010. If approved, the work would be performed by Asez Inc. dba Sterling Security, which is a HUB vendor. The project cost is \$1,034,300.

Mr. McCombs made a motion that the TBCJ approve a not to exceed budget of \$1,034,300 to install a fire alarm system at the Clemens Unit in Brazoria County, Brazoria, Texas, as presented.

Mr. Nelson seconded the motion, which prevailed unanimously when called to a vote.

(Attachment D – Project Scope and Budget Information)

Chairman Bell thanked all in attendance and stated that the next meeting of the TBCJ will be February 11, 2011, at the Sheraton Hotel, in Austin.

Adjournment

There being no further business, Chairman Bell adjourned the regular session of the Texas Board of Criminal Justice into executive session at 2:50 p.m. The TBCJ finally adjourned at 3:59 p.m.

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Chairman

Secretary

Signature on file.

Note: Referenced attachments for the minutes are available upon request from the Office of Record, TDCJ Executive Services.