

Texas Board of Criminal Justice
187th Meeting



Minutes

August 18, 2016
Austin, Texas

TEXAS BOARD OF CRIMINAL JUSTICE

**Omni Hotel at Southpark – Ballrooms D, E, F
4140 Governor’s Row
Austin, Texas 78744**

**August 18, 2016
10:00 – 11:15 AM**

ORDER OF BUSINESS

Call to Order

Convene Texas Board of Criminal Justice (TBCJ)

I. Regular Session

A. Recognitions

B. Consideration of Approval of Consent Items

1. Hazardous Duty Pay Authorization Requests
2. Personal Property Donations
3. 186th TBCJ Meeting Minutes
4. Excused Absences

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

D. Report from the Chairman, TBCJ

E. Discussion, Consideration, and Possible Action Regarding the Proposed Fiscal Year 2017 Annual Audit Plan

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

G. Discussion, Consideration, and Possible Action Regarding the TDCJ Fiscal Year 2017 Proposed Operating Budget and Fiscal Years 2018-2019 Legislative Appropriations Request

H. Discussion, Consideration, and Possible Action Regarding Adoption of Amendments to Board Rule Title 37 Texas Administrative Code Section 163.39, Residential Services

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

1. 151.3, TBCJ Operating Procedures
2. 151.52, Sick Leave Pool

J. Discussion, Consideration, and Possible Action Regarding a Proposed Land Transaction Request to Renew Gas Pipeline Easement at the Connally Unit in Karnes County, Kenedy, Texas

K. Public Comment

II. Executive Session – Southpark Room

A. The TBCJ may convene into Executive Session.

B. Discussion of Personnel Matters Relating to the Executive Director, the Inspector General, the Director of the Internal Audit Division, the Director of the State Counsel for Offenders, and the Prison Rape Elimination Act Ombudsman (Closed in accordance with Section 551.074, Government Code).

C. Discussion Regarding Deployment of Security Personnel, Devices, or Security Audits (Closed in accordance with Section 551.076, Government Code).

D. Consultation with Legal Counsel Regarding Pending or Contemplated Litigation or Settlement Offers; to Receive Legal Advice on Items Posted on this Agenda; or Consultation on a Matter Where the TBCJ Seeks the Advice of its Attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas (Closed in accordance with Section 551.071, Government Code).

Adjourn

The TBCJ may discuss and/or take action on any of the items posted on this meeting agenda.

Convene Texas Board of Criminal Justice

Chairman Dale Wainwright convened the 187th meeting of the TBCJ on Thursday, August 18, 2016, at 10:08 a.m. He noted that a quorum was present and declared the meeting open in accordance with Chapter 551, Texas Government Code, the *Open Meetings Act*. He stated that during the regular session, the TBCJ would conduct business from the agenda posted in the *Texas Register*.

Chairman Wainwright recognized Representative James White; the Honorable Judge Dale Spurgin, Jones County; Terra Tucker, Senator Whitemire's office; Mike Goldman, Governor's Abbott's office; and Josh Finkenbinder, Representative Tony Tinderholt's office.

Chairman Wainwright stated that the TBCJ is committed to providing the opportunity for public presentations on posted agenda topics, as well as, public comments on issues within its jurisdiction as provided in accordance with Board Rule 151.4, "Public Presentations and Comments to the Texas Board of Criminal Justice." Speaker registration cards were received only for public comments.

Recognitions

Chairman Wainwright announced a special recognition of retiring Texas Department of Criminal Justice (TDCJ or agency) Executive Director Brad Livingston and asked TBCJ Vice-Chairman Terrell McCombs to conduct the recognition. Mr. McCombs thanked Chairman Wainwright for the honor.

Mr. McCombs recognized retiring TDCJ Executive Director Brad Livingston for serving the state of Texas with distinction. He discussed his first impression of Mr. Livingston and how he knew they would get along well. Mr. McCombs noted Mr. Livingston's excellent skills with numbers and people, and unique leadership and management style. He mentioned Mr. Livingston received many awards, including one recognizing him for being the best by national standards, and continually strived to be a better leader. He thanked Mr. Livingston for all his hard work and making the state of Texas a safer place.

Mr. McCombs outlined the various positions Mr. Livingston served in the TDCJ; Deputy Director of the Financial Services Division in 1997, appointed Chief Financial Officer (CFO) in 2001, Interim Executive Director in 2004, and formerly appointed Executive Director in 2005. He noted during Mr. Livingston's tenure as administrator the TDCJ employed nearly 39,000 employees, almost 40% of the total state employment, had an operating budget over \$3 billion, and had many notable accomplishments. Mr. McCombs stated more would be said about that and asked TBCJ Secretary Leo Vasquez to say a few words. Mr. Vasquez stated Mr. Livingston is a world-class manager and his legacy will continue in the TDCJ.

Bryan Collier, newly appointed TDCJ Executive Director, continued in recognizing Mr. Livingston. He stated Mr. Livingston frequently taught others to develop an agency-wide enterprise focus, proactively made agency improvements, and worked tirelessly to build

significant credibility with legislative leaders allowing the agency to successfully navigate six legislative sessions. Mr. Collier acknowledged Mr. Livingston as a strategic master fostering an atmosphere that allowed the TDCJ to remain nimble and creative. He spoke highly of Mr. Livingston's commitment to building leadership capacity in others, leaving the agency well respected and strong.

Representative James White expressed gratitude for Mr. Livingston's leadership, stewardship, and compassion to the state of Texas. Mr. McCombs added more comments about Mr. Livingston's outstanding leadership.

Chairman Wainwright closed by quoting Winston Churchill, "Now this is not the end. It is not even the beginning of the end, but perhaps the end of the beginning." He highlighted numerous accomplishments and awards Mr. Livingston earned during his tenure as executive director. Mr. Livingston thanked Chairman Wainwright, Mr. Collier, and the TBCJ for the honor of serving the state of Texas.

Mr. Collier presented Oscar Mendoza as the new Deputy Executive Director. He stated Mr. Mendoza has 37 years of service with the state of Texas. Mr. Collier highlighted Mr. Mendoza's career with the TDCJ and his educational background. He acknowledged Mr. Mendoza's substantial experience and strong operational perspective. Mr. Mendoza thanked Mr. Collier for his support and stated it is an honor to serve as the deputy executive director.

Mr. Collier presented Pam Thielke as the new Parole Division Director. He stated Ms. Thielke has 27 years of service to the state of Texas. Mr. Collier highlighted her career with the TDCJ and her educational background. He acknowledged her creativity and strong operational oversight. Ms. Thielke thanked Mr. Collier, Chairman Wainwright, and the TBCJ members.

Mr. Collier presented Cody Ginsel as the new Private Facility Contract Monitoring/Oversight Division Director. He stated Mr. Ginsel has over 25 years of service to the state of Texas. Mr. Collier highlighted Mr. Ginsel's career with the TDCJ and his educational background. He acknowledged Mr. Ginsel's experience and strong operational background. Mr. Ginsel thanked Mr. Collier, Chairman Wainwright, and the TBCJ.

Mr. Collier presented Kelvin Scott as the new Administrative Review and Risk Management Division Director. He stated Mr. Scott has over 29 years of service to the state of Texas. Mr. Collier highlighted Mr. Scott's career with the TDCJ and his educational background. He acknowledged Mr. Scott's strong operational background and attention to detail. Mr. Scott thanked Mr. Collier, Chairman Wainwright, and the TBCJ.

Lorie Davis, Correctional Institutions Division (CID) Director, presented Tracy Bailey as the new deputy director for Management Operations. She recognized Ms. Bailey for 24 years of service with the TDCJ and highlighted her career. Ms. Davis presented John Werner as the new Region III Director. She recognized him for 24 years of service with the TDCJ and highlighted his career.

Chairman Wainwright recognized the TDCJ employees who have dedicated 25, 30, 35, and 40 plus years of service with the state of Texas during the months of June and July 2016. He stated these individuals represent the strong commitment of the TDCJ staff systemwide. On behalf of the TBCJ and Mr. Collier, he expressed deepest gratitude for the continued service of these employees.

(Attachment A – Employee Names)

Consideration of Approval of Consent Items

- 1. Hazardous Duty Pay Authorization Requests**
- 2. Personal Property Donations**
- 3. 186th TBCJ Meeting Minutes**
- 4. Excused Absences**

Chairman Wainwright asked if there were any amendments, abstentions, or objections to the proposed consent items. Mr. Gambrell abstained from taking action due to his firm representing entities listed on the personal property donations list. Mr. Miles also abstained from taking action due to his church, Trinity Fellowship Church, donating items for consideration. Chairman Wainwright acknowledged the abstentions and, seeing no further questions, the consent items were approved.

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

Discussion of Legislative Appropriations Request for 2018-2019 Biennium

Mr. Collier expressed gratitude to the Chairman and TBCJ members for individually discussing the Legislative Appropriations Request (LAR) for 2018-2019 Biennium in detail. He thanked Jerry McGinty, CFO; Ron Steffa, Deputy CFO; Sherry Koenig, Budget Director; and Jennifer Gonzales, Budget Deputy Director, for the numerous hours spent working on this project. He acknowledged the lengthy process and expressed confidence in working with legislators on the issues of the next legislative session.

Remarks on Transition to Executive Director

Mr. Collier updated Chairman Wainwright and the TBCJ members on the transition to executive director by stating the transition is complete. He stated the leadership team is in place. Chairman Wainwright commented that it was a quick transition and thanked Mr. Collier.

Condolences to Officer Mari Anne Johnson's Family

Mr. Collier spoke regarding Correctional Officer Mari Anne Johnson who was tragically murdered on July 16, 2016, while working at the Robertson Unit in Abilene, Texas. He stated Officer Johnson had been an exceptional correctional officer since beginning employment with the agency in 2009. Mr. Collier acknowledged she was a strong mother, grandmother, daughter,

and sister to her family. She was taken at much too young of an age, as was mentioned at the celebration of her life on July 22, 2016, in Mansfield, Texas. Several hundred people attended the celebration, including those representing other state correction departments. Mr. Collier said her death is a harsh reminder of what the TDCJ staff face each day as they work to keep the public safe. He asked to keep Ms. Johnson's family and coworkers in our thoughts and prayers as they continue to deal with her loss. Mr. Collier commended the staff at the Robertson Unit for their performance immediately following the incident. Unit staff continued to perform their critical responsibilities while at the same time dealing with the loss of Officer Johnson.

Report from the Chairman, TBCJ

Fallen Officer Mari Anne Johnson

Chairman Wainwright commented on the dedication of TDCJ employees to protect the citizens of Texas and noted the job is not easy. He stated Mari Anne Johnson impacted many lives, never hesitating to extend a hand or help anyone in need. Chairman Wainwright stated in recognition of Officer Johnson's ultimate sacrifice while carrying out duties in service of the great state of Texas, the TBCJ recognized and honored her memory by playing Taps followed by a moment of silence.

Fiscal Management and Good Stewardship

Chairman Wainwright stated he agreed with Mr. Collier's comments regarding the LAR for the FY 2018-2019 Biennium and reaffirmed TBCJ's continued commitment to good fiscal stewardship. He thanked Mr. McGinty, Mr. Collier, and staff for the time taken to provide detailed briefings to each TBCJ member individually. Chairman Wainwright confirmed, as Mr. McGinty presented in committee, the TDCJ funding request is consistent with instructions from state leadership and seeks continued funding for items critical to the stability and successful accomplishment of TDCJ's mission. He fully supports the request and looks forward to working with the 85th Legislature.

Discussion, Consideration, and Possible Action Regarding the Proposed Fiscal Year 2017 Annual Audit Plan

Christopher Cirrito, Director for Internal Audit, requested approval of the Proposed FY 2017 Annual Audit Plan as presented in committee.

Chairman Wainwright asked if there were any questions or comments. Seeing none, he asked if there was a motion and a second.

Leo Vasquez moved that the Texas Board of Criminal Justice approve the Internal Audit Plan for FY 2017 and authorize the internal audit director to perform audit work outside of the audit plan if the director deems deviations are warranted, documented as required by the Texas Internal Auditing Act, and presented to the board at its next scheduled meeting.

Derrelynn Perryman seconded the motion which prevailed unanimously when called to a vote.

(Attachment B – Internal Audit Plan for Fiscal Year 2017)

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

Jerry McGinty, Chief Financial Officer, reviewed the purchases and contracts over \$1 million. He presented one purchase item for approval. Item 1 is a renewal of an existing contract at the Ney Unit in Hondo, Texas, for 512 treatment slots for Substance Abuse Felony Punishment (SAFP), In-Prison Therapeutic Community (IPTC), and Driving While Intoxicated (DWI) substance abuse treatment programs.

Chairman Wainwright asked if there were any questions or comments. Seeing none, he called for a motion and a second.

Terrell McCombs moved that the Texas Board of Criminal Justice approve the purchases and contracts over \$1 million, as presented.

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

(Attachment C – Purchases and Contracts Over \$1 Million Handout)

**Discussion, Consideration, and Possible Action Regarding the
TDCJ Fiscal Year 2017 Proposed Operating Budget and
Fiscal Years 2018-2019 Legislative Appropriations Request**

Jerry McGinty, Chief Financial Officer, requested the approval of the TDCJ Fiscal Year 2017 Proposed Operating Budget totaling \$3.4 billion and Fiscal Years 2018-2019 Legislative Appropriations Request (LAR) with \$607 million in exceptional items as presented in committee.

Chairman Wainwright asked if there were any questions or comments. Seeing none, he called for a motion and a second.

Eric Gambrell moved that the Texas Board of Criminal Justice approve the Texas Department of Criminal Justice Fiscal Year 2017 Operating Budget and Fiscal Years 2018-2019 Legislative Appropriations Request as presented, and authorize the executive director of the Texas Department of Criminal Justice to make transfers as necessary and as authorized through the General Appropriations Act and other applicable laws.

Larry Miles seconded the motion which prevailed unanimously when called to a vote.

(Attachment D – Texas Department of Criminal Justice Fiscal Year 2017 Operating Budget, Fiscal Years 2018-2019 Legislative Appropriations Request, August 18, 2016)

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

1. Section 163.39, Residential Services

Sharon Howell, TDCJ General Counsel, requested the adoption of amendments to Board Rule 163.39, Residential Services, as proposed and authorized at the June 24, 2016, TBCJ meeting. She explained the amendments appeared in the July 8, 2016, issue of the *Texas Register*. The rule published was slightly different than what was authorized. It was discovered by the *Texas Register* staff, three additional words in section (a) (2) second sentence, “supervisions and corrections department,” were added at the end of the sentence. It didn’t change the meaning of the sentence and wouldn’t alter the public’s understanding of the rule. The words were removed, and 30 days have passed and no comments were received.

Chairman Wainwright asked if there were questions. Seeing none, he called for a motion and a second.

Judge Larry Gist moved that the Texas Board of Criminal Justice adopt Title 37 Texas Administrative Code Section 163.39, Residential Services, as published in the Texas Register, and that the Chairman sign the order to this effect.

Thomas Wingate seconded the motion which prevailed unanimously when called to a vote.

2. Section 151.3, TBCJ Operating Procedures

Ms. Howell presented the proposed amendments to Board Rule 151.3, TBCJ Operating Procedures. She explained the proposed amendments are necessary to provide clarification of Open Meetings requirements and update formatting. Ms. Howell requested the TBCJ approve the amended rule for publication in the *Texas Register*.

Chairman Wainwright asked if there were questions. Seeing none, he called for a motion and a second.

Derrelynn Perryman moved that the Texas Board of Criminal Justice approve for publication in the Texas Register, the proposed amendments to Board Rule Title 37 Texas Administrative Code Section 151.3, regarding TBCJ Operating Procedures, to receive public comment, as presented.

Judge Larry Gist seconded the motion which prevailed unanimously when called to a vote.

3. Section 151.52, Sick Leave Pool

Ms. Howell presented the proposed amendments to Board Rule 151.52, Sick Leave Pool. She explained the proposed amendments are necessary to clarify the intent of the rule and update formatting. Ms. Howell requested the TBCJ approve the amended rule for publication in the *Texas Register*.

Chairman Wainwright asked if there were questions. Seeing none, he called for a motion and a second.

Thomas Wingate moved that the Texas Board of Criminal Justice approve for publication in the Texas Register, the proposed amendments to Board Rule Title 37 Texas Administrative Code Section 151.52, regarding Sick Leave Pool, to receive public comment, as presented.

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

Discussion, Consideration, and Possible Action Regarding Proposed Land Transactions

Chairman Wainwright abstained from taking action due to his firm representing Centerpoint Energy. Eric Gambrell abstained from taking action due to his firm representing Centerpoint Energy as well. Vice-chairman Terrell McCombs facilitated the handling of this matter.

1. Request to Renew Gas Pipeline Easement at the Connally Unit in Karnes County, Kenedy, Texas

Matt Demny, Director of the Agribusiness, Land and Minerals Department, presented the request by Centerpoint Energy to renew a gas pipeline easement at the Connally Unit in Karnes County, Kenedy, Texas. Centerpoint Energy has agreed to pay \$500.00 for the renewal of the easement with another ten year term. Mr. Demny recommended the TBCJ approve the request.

Terrell McCombs asked if there were any questions or comments. Seeing none, he called for a motion and a second.

Larry Miles moved that the Texas Board of Criminal Justice approve the request to renew a gas pipeline easement at the Connally Unit in Karnes County, Kenedy, Texas, as presented.

Thomas Wingate seconded the motion which prevailed unanimously when called to a vote.

Public Comments

Chairman Wainwright stated that the TBCJ is committed to providing the opportunity for public comments 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 in accordance with the *Open Meetings Act*. There were four registration cards received prior to the established deadline for public comments within the jurisdiction of the TBCJ but not items posted on the agenda. The time limit set was three minutes per individual.

Jennifer Erschabek, Executive Director of the Texas Inmate Family Association, spoke on the topics of flooding, heat, and visitation. She stated they are celebrating 20 years of being in existence and working with the agency. She congratulated Mr. Collier, Mr. Mendoza, and Ms. Davis on their promotions. In regards to flooding, Ms. Erschabek commended the TDCJ on a wonderful job moving offenders and keeping them safe. Many family members panicked during this situation, however TDCJ did a great job of communicating and assisting the association in keeping family members informed. She expressed concern for the physical infrastructure of TDCJ and heat related issues. Ms. Erschabek stated it not only affects incarcerated family members but the correctional staff as well. She also voiced concern for visitation issues, specifically rule interpretation and wait times, and stated she looked forward to working with Mr. Collier on that issue.

Gloria Rubac spoke on diabetes care. First, she spoke about her adopted son Michael Gonzales, TDCJ #999174, who has diabetes. Ms. Rubac conveyed he is not getting adequate treatment. She requested this issue be looked into. Then, Ms. Rubac expressed concern about her son-in-law Nanon Williams, TDCJ #1306434. She stated his mother lives in California and made arrangements to visit him on the weekend of his birthday at the Ramsey Unit. His mother was told she couldn't see him because they were on lockdown. Ms. Rubac said this was unacceptable and asked this issue be looked into as well. Finally, she spoke about permanent isolation on death row. Ms. Rubac read a passage from Charles Flores' book regarding his experience of suicides and suicidal thoughts of offenders on death row. She closed by asserting solitary confinement is wrong, expensive, and unnecessary.

Joanne Gavin spoke on prisoner medical and mental health. She stated the medical and mental health of prisoners is an important issue in Texas prisons and could be remedied by the TBCJ. She accused the TDCJ of unlawfully abridging the right of the people to peaceably assemble and petition the government for redress of grievances, as granted under the First Amendment of the United States Constitution. Ms. Gavin asserted this has been done by public comments being restricted to two meetings per year and then arbitrarily abridged at those meetings by cutting time allotted after people have spent time preparing to address an issue.

Elizabeth Marie Brignac spoke on the topic of rehabilitation and families. She stated she has one family member and several friends incarcerated in the TDCJ. As a survivor of violence, Ms. Brignac expressed concern for the current conditions in TDCJ. She stated conditions are unacceptable and detrimental. Ms. Brignac mentioned a recent study by the Alliance for Safety and Justice that found crime victims agree with shorter sentences and more focus on rehabilitation. She stated prisoners are part of families and communities, and most will return to those communities. She suggested in order to reduce the causes of crime in our state there needs to be more focus on education, rehabilitation, and retaining ties to families in communities. She demanded Texas drastically reduce solitary confinement, implement better policies, provide additional educational classes and rehabilitation programs inside all Texas prisons, and increase health care of offenders. She claimed the system is not supposed to be an industry and demanded an end to the exploitation of prisoners and their families.

Chairman Wainwright thanked everyone and assured them the comments were noted. He stated the issues raised today will be addressed by agency staff in written form and to please provide a name and contact information on the follow up sheet to request a copy of the written response.

Adjournment

There being no further business, Chairman Wainwright adjourned the 187th meeting of the Texas Board of Criminal Justice at 11:29 a.m.

Chairman*

Secretary*

*Signature on file

Note: Attachments to the minutes can be obtained by contacting the Office of Record, Executive Services.