

**Texas Board of Criminal Justice**  
***183rd Meeting***



**Minutes**

**February 19, 2016**  
**Austin, Texas**

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## TEXAS BOARD OF CRIMINAL JUSTICE

Omni Hotel Downtown Austin – Longhorn Room, Executive Board Room  
700 San Jacinto Street  
Austin, Texas 78701

February 19, 2016  
11:30 AM – 1:30 PM

### ORDER OF BUSINESS

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*Call to Order*

*Convene Texas Board of Criminal Justice (TBCJ)*

I. Regular Session – Longhorn Room

A. Recognitions

B. Consideration of Approval of Consent Items (*pages 1-8*)

1. Hazardous Duty Pay Authorization Requests
2. Personal Property Donations
3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
4. 182nd TBCJ Meeting Minutes
5. Excused Absences

C. Report from the Presiding Officer, Texas Board of Pardons and Paroles – Overview of the Texas Board of Pardons and Paroles Fiscal Year 2015 Annual Review

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

E. Report from the Chairman, TBCJ

F. Internal Audit Status Report for Fiscal Years 2015 – 2016

G. Discussion, Consideration, and Possible Action Regarding Purchases and Contracts Over \$1 Million (*page 9*)

H. Discussion, Consideration, and Possible Action Regarding Proposed Amendments to Board Rule Title 37 Texas Administrative Code Section 151.55, Disposal of Surplus Agricultural Goods and Agricultural Personal Property (*pages 10-13*)

I. Discussion, Consideration, and Possible Action Regarding Adoption of Amendments to Board Rules Title 37 Texas Administrative Code (*pages 14-20*)

1. 156.1, Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender
2. 195.71, Drug and Alcohol Testing Program

- J. Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Board Rules Title 37 Texas Administrative Code (*pages 21-29*)
  - 1. 195.72, Admission of Use Form
  - 2. 195.73, Drug and Alcohol Tests
  - 3. 195.74, Training
  - 4. 195.75, Chain of Custody
  - 5. 195.76, Safety
  - 6. 195.77, Data Collection
  - 7. 195.78, Procedural Manual
  
- K. Discussion, Consideration, and Possible Action Regarding Proposed Land Transactions (*pages 30-33*)
  - 1. Request to Renew Gas Pipeline Easement at the Boyd Unit in Freestone County, Teague, Texas
  - 2. Request for Electrical Easement at the Connally Unit in Karnes County, Kenedy, Texas

II. Executive Session – Executive Board 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.*

# MINUTES OF THE TEXAS BOARD OF CRIMINAL JUSTICE

## Meeting No. 183

The Texas Board of Criminal Justice (TBCJ) convened in regular session on Friday, February 19, 2016, at 11:41 a.m. at the Omni Hotel Downtown, Austin, Texas and adjourned at 12:36 p.m.

### **TBCJ MEMBERS PRESENT:**

Dale Wainwright, Chairman  
Terrell McCombs, Vice Chairman  
Leopoldo (Leo) Vasquez, III, Secretary  
Tom Fordyce  
Eric Gambrell  
Larry Gist  
Larry Miles  
Derrellynn Perryman  
Thomas P. Wingate

### **TDCJ STAFF PRESENT:**

Brad Livingston, Executive Director  
Bryan Collier, Deputy Executive Director  
Jeff Baldwin  
Mike Bell  
Christopher Cirrito  
Jason Clark  
Matt Demny  
Marie Freeland  
Patty Garcia  
Sharon Howell  
Frank Inmon  
Stuart Jenkins  
Sherry Koenig  
Bobby Lumpkin  
Angie McCown  
Jerry McGinty  
Oscar Mendoza  
Madeline Ortiz  
Ron Steffa  
William Stephens  
Bruce Toney  
April Zamora

### **OTHERS PRESENT:**

Mike Goldman, Office of the Governor; Kelsey Vela, Legislative Budget Board (LBB); David Gutierrez, Presiding Officer of the Texas Board of Pardons and Paroles (BPP); Ed Robertson, Member, BPP; Fred Solis, Member, BPP; Timothy McDonnell, Administrator, BPP; The Honorable Judge Dale Spurgin, Jones County; Joseph Halbert, General Counsel for Senator Charles Schwertner; and members of the media.

### **Convene the Texas Board of Criminal Justice**

Chairman Dale Wainwright convened the 183rd meeting of the TBCJ on Friday, February 19, 2016, at 11:41 a.m. He noted a quorum was present, and declared the meeting open in accordance with Texas Government Code Chapter 551, the *Open Meetings Act*. He stated the TBCJ would be conducting business from the agenda posted in the *Texas Register*.

Chairman Wainwright paused for an invocation by Pastor Larry Miles. Chairman Wainwright recognized the following public officials: Mike Goldman, Office of the Governor; Kelsey Vela, LBB; David Gutierrez, BPP; Ed Robertson, Member, BPP; Fred Solis, Member, BPP; Timothy McDonnell, Administrator, BPP; The Honorable Judge Dale Spurgin, Jones County; Joseph Halbert, General Counsel for Senator Charles Schwertner; and members of the media.

Chairman Wainwright stated that the TBCJ is committed to providing the opportunity for public presentations on topics posted on the meeting agenda in accordance with Board Rule 151.4, "Public Presentations and Comments to the Texas Board of Criminal Justice." As one speaker registration card was received, Chairman Wainwright suspended explanation of the rules regarding public comments, until the appropriate time for that topic on the agenda.

### **Recognitions**

Frank Inmon, Facilities Division Director, recognized David Sweetin as the new Facilities Division Deputy Director. He provided an overview of Mr. Sweetin's thirty year career path with the Texas Department of Criminal Justice (TDCJ or agency) and said he will be an asset to the division.

Chairman Wainwright recognized the TDCJ employees who have dedicated 25, 30, 35, and 40 or more years of service with the state of Texas during the months of December 2015 and January 2016. He expressed deepest gratitude on behalf of the TBCJ and Mr. Livingston, for the dedicated service of these employees who represent the commitment of the TDCJ's staff.

*(Attachment A – Employee Names)*

### **Consideration of Approval of 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. 182nd TBCJ Meeting Minutes**
- 5. Excused Absences**

Chairman Wainwright asked if there were any amendments, objections, or abstentions to the proposed consent items. Pastor Larry Miles stated he would abstain from taking action due to property donations from members of Trinity Fellowship Church. Eric Gambrell stated that his firm represents several of the entities listed in the personal property donations brought before the TBCJ for approval; therefore, he abstained from voting. Chairman Wainwright asked for further comments. Hearing none, the consent items stand approved as posted in the meeting agenda, noting the abstentions of Pastor Miles and Mr. Gambrell.

**Report from the Presiding Officer, Texas Board of Pardons and Paroles – Overview of the Texas Board of Pardons and Paroles Fiscal Year 2015 Annual Review**

Chairman Wainwright introduced David Gutierrez, Presiding Officer of the Texas Board of Pardons and Paroles (BPP), who thanked the TBCJ for the opportunity to present his first annual report. He recognized members of the BPP, Ed Robertson and Fred Solis, both recently appointed by Governor Abbott, and Tim McDonnell, Board Administrator. He presented an overview of the FY 2015 Annual Review of the Texas BPP. He acknowledged the essential roles of the TDCJ and the Windham School District (WSD) in preparing offenders for a successful transition from incarceration back to their communities. Mr. Gutierrez expressed gratitude for treatment, reentry, integration, and victim services programming. He stressed the importance of working together, not independently. Mr. Gutierrez explained the role of the BPP staff, and highlighted the rise of parole considerations and approvals over the last decade. He noted improved collaboration with the TDCJ in program placement, and reported during FY 2015, over 82,000 total parole considerations, with an approval rate of 35.12%. For Discretionary Mandatory Supervision considerations, of the 19,000 heard, 47.88% received approval. He noted the decline over the past decade in revocations due to technical violations, and credited the graduated sanctions options within programming which provide alternatives to revocation.

Chairman Wainwright applauded Mr. Gutierrez' enthusiasm for coordinating with the TBCJ. Terrell McCombs thanked him for the refreshing report. Leo Vasquez echoed thanks and stated although we are independent agencies, we don't want to work independently of each other. Mr. Gutierrez returned thanks and recognized the BPP members and staff for their excellent work.

*(Attachment B – Texas Board of Pardons and Paroles, Presentation by David Gutierrez, Presiding Officer, February, 2016)*

**Report from the Executive Director, Texas Department of Criminal Justice (TDCJ) – Update on Correctional Officer Staffing**

Brad Livingston, Executive Director of the TDCJ, reported positive trends regarding the filling of correctional officer positions. He commended William Stephens, Correctional Institutions Division Director, unit wardens, and staff for working overtime and excellent management of overtime issues and other staffing challenges. He explained that nine months ago, there were approximately 3,700 vacant positions, but, since then, that number has been reduced by about 1,000 positions. He suggested the improvement could be attributed to the legislature's recent 10.5% pay raise and strategy for stabilizing the correctional officer pension fund, extensive agency efforts to recruit and retain officers, and declines in the oil industry.

Chairman Wainwright thanked Mr. Livingston for his report.

## **Report from the Chairman, TBCJ – Gatesville Tour – Woodman, Hughes and Mountain View Units**

Chairman Wainwright visited three Gatesville area units to observe WSD educational programming. At the Woodman and Hughes units, he was joined by senior administrators Bryan Collier, William Stephens, Jerry McGinty, and April Zamora; with Region VI administrators; WSD Superintendent, Dr. Carpenter; presiding officer of the Texas BPP, David Gutierrez; and representatives from the governor's office. Chairman Wainwright expressed appreciation to the three unit wardens, James Werner, Patricia Walker, and Melody Nelson. Chairman Wainwright reported excellent cooperation between WSD and unit security staff, and described the facilities as efficient and clean. At the Mountain View Unit, the Braille program, provided through Texas Correctional Industries, offers certification as a Braille transcriber, equipping offenders with a rewarding and marketable skill after release. Chairman Wainwright thanked all the unit staff and those who joined him in the tour, and stated he planned more visits to units in the future.

### **Public Testimony**

Chairman Wainwright invited the one registered public speaker to address the TBCJ. Ms. Frances Vaughn stated her loved one had been in Administrative Segregation at the Hughes Unit, but was to be moved. She wanted to thank Warden Werner and the entire unit staff for their wonderful cooperation and professional excellence, and urged the TBCJ to grant Warden Werner any items or funding he may request for the unit as it transitions to a mental health facility. Chairman Wainwright thanked Ms. Vaughn for her kind words.

### **Internal Audit Status Report for Fiscal Years 2015-2016**

Christopher Cirrito, TDCJ Internal Audit Division Director, recognized Kristy Hail, Audit Manager of the Internal Audit Division. Chairman Wainwright welcomed her to the position. Mr. Cirrito reviewed the February 19, 2016, Internal Audit Division status report, noting the following updates:

- **1506 – Correctional Institutions Division, Release Functions:** *Audit is moved to a draft report.*
- **1603 – Manufacturing and Logistics Division, Marketing:** *Audit has moved to field work.*
- **1605 – Parole Division, Interstate Compact:** *Audit has moved to background.*
- **1608 – Windham School District, Information Security - Access Controls:** *Audit has moved to background.*

Chairman Wainwright opened the floor for questions or comments. Mr. McCombs commended the report and called Mr. Cirrito and the Internal Audit Division central and essential to the performance of the TDCJ. Hearing no further questions, Chairman Wainwright thanked Mr. Cirrito for the report.

*(Attachment C – Internal Audit Status Report, Fiscal Years 2015-2016, Status as of 2/19/16)*

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

Jerry McGinty, Chief Financial Officer, introduced the new format for the TBCJ document, "Purchases Over \$1 Million for Board Approval," which now includes a special statement at the bottom of the page, certifying all procurement rules were followed, and any questions or challenges during the solicitation process were reported to the TBCJ. He referred to Senate Bill 20, which required state agencies to place checks and balances ensuring compliance to financial standards, and explained the statement was added pursuant to the bill which required such assurance for all contracts above \$5 million. Mr. McGinty stated most of the new requirements were already the practice of the TDCJ, and all procurement rules have been and would continue to be followed, regardless of dollar amount. Mr. McGinty presented one item over \$1 million for TBCJ approval. It was a halfway house contract awarded from funding by the 84th Legislative Session. For the remainder of the biennium, it provides halfway house services in Edinburg to parolees lacking residential resources, with two subsequent options to renew.

Chairman Wainwright verified the contract contained an initial term with the flexibility to renew and asked if this gave the TDCJ opportunity for evaluation of the program prior to each renewal. Mr. McGinty replied yes, and assured him the TDCJ uses this strategy for all large private contracts. He noted Edinburg's location within South Texas will answer the need for services to that area. Chairman Wainwright thanked him and asked if there were any questions or comments. Hearing 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.*

**Discussion, Consideration, and Possible Action Regarding Proposed  
Amendments to Board Rule Title 37 Texas Administrative Code Section  
151.55, Disposal of Surplus Agricultural Goods and  
Agricultural Personal Property**

Sharon Howell, General Counsel, reviewed the proposed amendments to Board Rule 151.55, Disposal of Surplus Agricultural Goods and Agricultural Personal Property. She stated the rule was scheduled for periodic review and noted one substantive change: TBCJ approval will no longer be required for disposition of surplus items. Therefore, if the rule is approved, the document would appear at the back of the agenda packet as an information item. She recommended the TBCJ move forward and approve the amended rule to be published in the *Texas Register*, for public comment.

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

*Judge Larry Gist 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 151.55, regarding Disposal of Surplus Agricultural Goods and Agricultural Personal Property, to receive public comment, as presented.*

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

**Discussion, Consideration, and Possible Action Regarding Adoption of Amendments to Board Rule Title 37 Texas Administrative Code Section 156.1, Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender**

Ms. Howell reviewed Board Rule 156.1, Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender. After the TBCJ approved the amended rule for publication in the *Texas Register*, it appeared in the December 25, 2015 issue, with no public comments received after 30 days. Ms. Howell recommended the TBCJ move forward with adoption of the rule.

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

*Tom Fordyce moved that the Texas Board of Criminal Justice adopt Title 37 Texas Administrative Code Section 156.1, regarding Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender, as published in the Texas Register, and that the chairman sign the order to this effect.*

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

**Discussion, Consideration, and Possible Action Regarding Adoption of Amendments to Board Rule Title 37 Texas Administrative Code Section 195.71, Drug and Alcohol Testing Program**

Ms. Howell reviewed Board Rule 195.71, Drug and Alcohol Testing Program. Upon TBCJ approval at the December meeting, the amended rule appeared in the December 25, 2015 issue of the *Texas Register*, and after 30 days, no public comments were received. She recommended final adoption of the rule.

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

*Thomas Wingate moved that the Texas Board of Criminal Justice adopt Title 37 Texas Administrative Code Section 195.71, regarding Drug and Alcohol Testing Program, as published in the Texas Register, and that the chairman sign the order to this effect.*

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

**Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Board Rules Title 37 Texas Administrative Code Sections 195.72-.78, concerning Drug and Alcohol Testing of Offenders Under Supervision of the Texas Department of Criminal Justice Parole Division**

Ms. Howell reviewed the proposed repeal of Board Rules 195.72-.78, concerning drug and alcohol testing of offenders under supervision of the TDCJ Parole Division. The rules were published in the December 25, 2015 Texas Register, and after 30 days, no public comments were received. She explained these were the rules no longer necessary since they had been consolidated and placed under Board Rule 195.71, and recommended the TBCJ adopt the repeal.

*Larry Miles moved that the Texas Board of Criminal Justice adopt the repeal of Title 37 Texas Administrative Code Section 195.72-.78, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, 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.*

Chairman Wainwright thanked Ms. Howell for her presentations.

Chairman Wainwright recused himself from taking action on the next two items on the agenda, due to his firm's representation of the companies involved in both land transactions. Terrell McCombs, Vice Chairman, served as chair.

**Discussion, Consideration, and Possible Action regarding a Proposed Land Transaction Request to Renew Gas Pipeline Easement at the Boyd Unit in Freestone County, Teague, Texas**

Matt Demny, Agribusiness, Land, and Minerals Division Director, presented the request to renew an existing gas pipeline easement of approximately 13.05 acres at the Boyd Unit. Energy Transfer Fuel, L.P. has agreed to pay \$230,880 for the easement with another 10 year term. Mr. Demny recommended approval. Mr. McCombs verified there was a favored nations clause in the agreement. Mr. Demny assured him that is standard for all of these types of pipeline transactions. Hearing no further comments or questions, Mr. McCombs called for a motion and second.

*Leo Vasquez moved that the Texas Board of Criminal Justice approve the renewal of a gas pipeline easement at the Boyd Unit in Freestone County, Teague, Texas.*

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

**Discussion, Consideration, and Possible Action Regarding a Proposed  
Land Transaction Request for Electrical Easement at the  
Connally Unit in Karnes County, Kenedy, Texas**

Mr. Demny reviewed the request for a new electrical easement at the Connally Unit in Karnes County. AEP Texas Central Company has agreed to pay \$160,700 for 18.56 acres for one electrical transmission line, over the next 10 years. Mr. Demny recommended approval.

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

*Derrelynn Perryman moved that the Texas Board of Criminal Justice approve the request for an electrical easement at the Connally Unit in Karnes County, Kenedy, Texas.*

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

Chairman Wainwright thanked everyone for attending, and announced the next meeting of the TBCJ will be Friday, April 15, 2016, at the Crowne Plaza Hotel in Austin, Texas.

**Adjournment**

There being no further business, Chairman Wainwright adjourned the 183rd meeting of the TBCJ at 12:36 p.m.

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Chairman\*

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Secretary\*

\*Signature on file

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