TEXAS BOARD OF CRIMINAL JUSTICE

Crowne Plaza Austin – Salons A – D
6121 North IH-35
Austin, Texas 78752

August 22, 2014
12:45 – 1:45 PM

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 (pages 1-7)
   1. Hazardous Duty Pay Authorization Requests
   2. Personal Property Donations
   3. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
   4. 173rd TBCJ Meeting Minutes
   5. 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 2015 Annual Audit Plan

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

G. Discussion, Consideration, and Possible Action Regarding the TDCJ Fiscal Year 2015 Proposed Operating Budget and Fiscal Years 2016-2017 Legislative Appropriations Request
H. Discussion, Consideration, and Possible Action Regarding Proposed Revisions to Personnel Directives
   1. PD-22, “General Rules of Conduct and Disciplinary Action Guidelines for Employees” (pages 10-93)
   2. PD-29, “Sexual Misconduct with Offenders” (pages 94-102)

I. Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Title 37 Texas Administrative Code Section 151.21, Weapons Policy (pages 103-107)

J. Discussion, Consideration, and Possible Action Regarding Adoption of Amendments to Board Rules Title 37 Texas Administrative Code
   1. 152.25, Maximum Rated Capacity of Individual Units (pages 108-113)
   3. 159.9, Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding (pages 117-121)
   4. 163.35, Supervision (pages 122-127)
   5. 163.41, Medical and Psychological Information (pages 128-131)

K. Discussion, Consideration, and Possible Action Regarding Proposed Amendments to Title 37 Texas Administrative Code Section 151.77, Purchasing and Contracting with Historically Underutilized Businesses (pages 132-133)

L. Discussion, Consideration, and Possible Action Regarding Proposed Land Transactions (pages 134-137)
   1. Pipeline Easements at the Clemens Unit in Brazoria County, Brazoria, Texas
   2. Pipeline Easement at the Ramsey Unit in Brazoria County, Rosharon, Texas

M. Discussion, Consideration, and Possible Action Regarding Roof Replacement at the Wynne Unit in Walker County, Huntsville, Texas (pages 138-139)

N. Public Comment

Recess/Adjourn

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. 174

The Texas Board of Criminal Justice (TBCJ or board) convened in regular session on Friday, August 22, 2014, at 1:00 p.m. at the Crowne Plaza Hotel, Austin, Texas. The board adjourned at 2:05 p.m.

BOARD MEMBERS PRESENT: Oliver Bell, Chairman
Tom Mechler, Vice Chairman
Leopoldo (Leo) Vasquez, III, Secretary
Eric Gambrell
Judge Larry Gist
Terrell McCombs
Thomas P. Wingate

BOARD MEMBER ABSENT: Janice Harris Lord
Carmen Villanueva-Hiles

TDCJ STAFF PRESENT: Brad Livingston, Executive Director
Bryan Collier, Deputy Executive Director
Jeff Baldwin Sherry Koenig
Mike Bell Bobby Lumpkin
Rudolph Brothers Jerry McGinty
Jason Clark Oscar Mendoza
Matt Demny Paul Morales
Marie Freeland Ron Steffa
Patty Garcia William Stephens
Scott Hornung Bruce Toney
Sharon Howell Carey Welebob
Frank Inmon April Zamora
Stuart Jenkins

OTHERS PRESENT: John Newton, Legislative Budget Board (LBB); Andrea Winkler, LBB; The Honorable Judge Dale Spurgin, Jones County; Taylor Borer, Office of Senator Charles Schwertner; Tatiana Oria, Office of Representative Toni Rose; Dr. Clint Carpenter, Superintendent of Windham School District; and members of the media.
Convene Texas Board of Criminal Justice

Chairman Oliver Bell convened the 174th meeting of the TBCJ on Friday, August 22, 2014, at 1:00 p.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 board would conduct business from the agenda posted in the Texas Register.

Chairman Bell recognized John Newton, LBB; Andrea Winkler, LBB; The Honorable Judge Dale Spurgin, Jones County; Taylor Borer, Office of Senator Charles Schwertner; Tatiana Oria, Office of Representative Toni Rose; Dr. Clint Carpenter, Superintendent of Windham School District; and members of the media.

Chairman Bell 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.” He stated that seven registration cards were received for the public comment period; therefore, the review of the rules for comments to the board would take place at that time.

Recognitions

Chairman Bell yielded the floor to Brad Livingston, Executive Director of the Texas Department of Criminal Justice (TDCJ), for a special presentation. Mr. Livingston displayed the Golden Eagle award, received from the American Correctional Association (ACA) during its summer conference. ACA bestows the Golden Eagle, their most prestigious award, only to jurisdictions that have achieved full accreditation, which encompasses every facility and every operation. Mr. Livingston commended past and present TDCJ administrators and staff, and praised their commitment to professionalism in corrections, noting only a few jurisdictions in the nation have received the award. Chairman Bell recalled the days when the TDCJ was nearing full accreditation, and congratulated all the TDCJ staff, as well as the contract staff which includes other important services such as offender health care.

Chairman Bell recognized the TDCJ employees who have dedicated 25, 30, and 35 plus years of service with the state of Texas during the months of June and July 2014. The TBCJ, along with Mr. Livingston, expressed their 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. Sale or Disposal of Surplus Agricultural Goods and Agricultural Personal Property
4. 173rd TBCJ Meeting Minutes
5. Excused Absences

Minutes of the 174th Meeting of the TBCJ
Chairman Bell asked if there were any amendments, abstentions, or objections to the proposed consent items, which included excused absences of Leo Vasquez, Eric Gambrell, and Carmen Villanueva-Hiles from the April 2014 meeting, and Tom Mechler and Eric Gambrell from the June 2014 meeting, due to personal business. Seeing none, the consent items stand approved.

**Report from the Executive Director, Texas Department of Criminal Justice**

Mr. Livingston discussed the Legislative Appropriations Request (LAR), which would be presented for board consideration later in the meeting. He stressed the importance of the request that frontline correctional officers and parole staff receive a pay increase of 10%, and explained how it would help fill positions and prevent officer turnover. He also highlighted the requests for increased investment in probation, as they reflect the agency’s ongoing commitment to diversion and treatment programs. Mr. Livingston said the next legislature would thoroughly review the Legislative Appropriations Request and he was very hopeful the members would give it favorable consideration. Chairman Bell asked if there were questions. There were none.

**Report from the Chairman, TBCJ**

**Fiscal Management and Good Stewardship**

Chairman Bell echoed Mr. Livingston’s points regarding the LAR as he assured the board’s commitment to fiscal stewardship. He said the request for a pay raise to staff was timely, and wished increases for more state employees. He noted that participation in diversionary programs, with completion of the aftercare component, can reduce recidivism to single digit rates, as shown by evidence based practices. Chairman Bell reported that he and the board members spent countless hours reviewing the FY 2015 budget and the FY 2016-2017 LAR with Mr. McGinty and his staff, to produce a document that reflects the state’s ongoing criminal justice priorities. He said the board supports the request, and they look forward to hearing Mr. McGinty’s presentation.

**Chairman’s Fitness Challenge**

Chairman Bell reported that during the fourth quarter, participating employees earned over 21 million points. He noted that historically, every set goal had been surpassed early in the year, and the number for this quarter was about three times the number of the goal set for the entire first year. He recognized the winning departments and individuals for the quarter, thanked all the participants, and encouraged their continued support.

**Tour Initiative**

Chairman Bell discussed the board’s initiative to visit every facility by the end of June. He said the goal evolved to include parole offices, satellite offices, and treatment centers. The visits allowed board members to convey personal interest, gain a deeper understanding and appreciation of day to day operations of the agency, heighten staff morale, and discuss shared thoughts and concerns. He stated that he and the board received exceptional professionalism and courtesy from staff at every visit. He thanked fellow board members for their support.
Scott Hornung, Internal Audit Division Director, reminded the board of his presentation during the Audit and Review Committee meeting, and asked the board if they had further questions for him regarding the proposed FY 2015 audit plan. He added if they had no questions, he recommended board approval.

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

Leo Vasquez moved that the Texas Board of Criminal Justice approve the Internal Audit Plan for Fiscal Year 2015 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.

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

(Attachment B – Texas Department of Criminal Justice Internal Audit Division Fiscal Years 2013 and 2014 Status Report as of 08/15/14)
(Attachment C – Texas Department of Criminal Justice Internal Audit Division Proposed Fiscal Year 2015 Annual Audit Plan)

Jerry McGinty, Chief Financial Officer, reviewed the purchases and contracts over $1 million. The first was a blanket order, processed through the comptroller’s office, for $5 million in furniture parts for manufacturing related to Texas Correctional Industries sales. The other, related to information technology, was ordered and awarded through the Texas Department of Information Resources, for a lease of copiers throughout the agency over the next five years, at $1,857,501.

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

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

Terrell McCombs seconded the motion which prevailed unanimously when called to a vote.
Discussion, Consideration, and Possible Action Regarding the TDCJ
Fiscal Year 2015 Proposed Operating Budget and Fiscal Years 2016-2017 Legislative Appropriations Request

Mr. McGinty reminded the board of his committee presentation of the FY 2015 proposed operating budget of $3,148,399,483, and the FY 2016-2017 LAR. He mentioned that prior to the presentation, he and his staff had individual briefings with each board member. He reviewed the operating budget, and noted the 12 exceptional items, which represent an additional $546 million. He explained that the largest portion of that funding represented the 10% pay increase for correctional officers and parole officers. He asked if the board had any questions.

Chairman Bell asked if there were questions. Seeing none, he thanked Mr. McGinty for his briefing in the committee. He called for a motion and a second.

Terrell McCombs moved that the Texas Board of Criminal Justice approve the Texas Department of Criminal Justice Fiscal Year 2015 Operating Budget and Fiscal Years 2016-2017 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.

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

(Attachment D: Texas Department of Criminal Justice Fiscal Year 2015 Operating Budget, Fiscal Years 2016-2017 Legislative Appropriations Request, August 22, 2014)

Discussion, Consideration, and Possible Action Regarding Proposed Revisions to Personnel Directives

1. PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees

Sharon Howell, TDCJ General Counsel, reviewed PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees. She highlighted three of the proposed revisions. The first revision would improve the timeliness of pre-hearing investigations, the second would revise the list of activities considered employee misconduct, in order to comply with the Prison Rape Elimination Act (PREA) standards. The third would clarify violations related to drug possession, to exclude as a defense, any drug related activity in states where it is legal. She asked if there were any questions.

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


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2. PD-29, Sexual Misconduct with Offenders

Ms. Howell presented PD-29, Sexual Misconduct with Offenders. She explained that the proposed revisions were made to conform the policy language to the definitions and standards established by PREA. Ms. Howell asked if there were any questions.

Chairman Bell acknowledged the challenge as well as the value of merging federal and state policy language, and asked if there were questions. Seeing none, he asked for a motion and second.

Eric Gambrell moved that the Texas Board of Criminal Justice approve the proposed revisions to Personnel Directive, PD-29, “Sexual Misconduct with Offenders,” as presented.

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

Discussion, Consideration, and Possible Action Regarding Adoption of Repeal of Title 37 Texas Administrative Code 151.21, “ Weapons Policy”

Ms. Howell presented the proposed repeal of Board Rule 151.21, Weapons Policy, stating the rule was duplicative and therefore, no longer needed. The board approved the repeal for publication in the Texas Register. It was published in the June 20, 2014 issue of the register, and 30 days passed, with no comments received from the public. Ms. Howell asked the board to move forward with final adoption of the repeal.

Chairman Bell 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 adopt the repeal of Title 37 Texas Administrative Code Section 151.21, Weapons Policy, as published in the Texas Register, and that the Chairman sign the order to this effect.

Tom Mechler seconded the motion which prevailed unanimously when called to a vote.

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

1. Section 152.25, Maximum Rated Capacity of Individual Units

Ms. Howell presented Board Rule 152.25, Maximum Rated Capacity of Individual Units. She reminded the board of their approval to publish the revisions to the rule in the Texas Register for public comment. The rule was published in the May 2, 2014 issue, and 30 days passed, with no
comments received from the public. Ms. Howell asked the board to move forward with final adoption of the rule.

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

Leo Vasquez moved that the Texas Board of Criminal Justice adopt Title 37 Texas Administrative Code section 152.25, regarding Maximum Rated Capacity of Individual Units, as published in the Texas Register, and that the chairman sign the order to this effect.

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

2. Section 152.71, Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes

Ms. Howell presented Board Rule 152.71, Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes. She reminded the board of their approval to publish the amended rule in the Texas Register for public comment. The revised rule appeared in the June 20, 2014 issue, and 30 days passed, with no comments received from the public. Ms. Howell asked the board to move forward with final adoption of the rule.

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

Tom Mechler moved that the Texas Board of Criminal Justice adopt Title 37 Texas Administrative Code section 152.71, regarding Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes, 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.

3. Section 159.9, Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding

Ms. Howell presented Board Rule 159.9, Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding. She reminded the board of their approval to publish the amended rule in the Texas Register for public comment. The revisions appeared in the June 20, 2014 issue, and 30 days passed, with no comments received. Ms. Howell asked the board to move forward with final adoption of the rule.

Chairman Bell asked if there were any questions or comments. Seeing 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 159.9, regarding Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding, as published in the Texas Register, and that the chairman sign the order to this effect.

Eric Gambrell seconded the motion which prevailed unanimously when called to a vote.

4. Section 163.35, Supervision

Ms. Howell presented Board Rule 163.35, Supervision. She reminded the board of their approval to publish the amended rule in the Texas Register for public comment. The revisions appeared in the June 20, 2014 issue, and 30 days passed, with no comments received from the public. Ms. Howell asked the board to move forward with final adoption of the rule.

Chairman Bell asked if there were any questions or comments. 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 163.41, regarding Medical and Psychological Information, as published in the Texas Register, and that the chairman sign the order to this effect.

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

5. Section 163.41, Medical and Psychological Information

Ms. Howell presented the proposed amendments to Board Rule 163.41, Medical and Psychological Information. She reminded the board of their approval to publish the amended rule in the Texas Register for public comment. The rule appeared in the May 2, 2014 issue, and 30 days passed, with no comments received from the public. Ms. Howell asked the board to move forward with final adoption of the rule.

Chairman Bell 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 adopt Title 37 Texas Administrative Code section 163.35, regarding Supervision, as published in the Texas Register, and that the chairman sign the order to this effect.

Tom Mechler seconded the motion which prevailed unanimously when called to a vote.
Discussion, Consideration, and Possible Action Regarding Proposed Amendments to Title 37 Texas Administrative Code Section 151.77, Purchasing and Contracting with Historically Underutilized Businesses

Ms. Howell presented the proposed revisions to Board Rule 151.77, Purchasing and Contracting with Historically Underutilized Businesses. She indicated the amendments were pursuant to the state requirement for periodic review, and were non-substantive and formatting only. She asked the board if they had questions.

Chairman Bell 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 for publication in the Texas Register, the proposed amendments to Title 37 Texas Administrative Code section 151.77, regarding Purchasing and Contracting with Historically Underutilized Businesses, as presented.**

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

Chairman Bell thanked Ms. Howell for her presentations.

Discussion, Consideration, and Possible Action Regarding Proposed Land Transactions

1. Pipeline Easements at the Clemens Unit in Brazoria County, Brazoria, Texas

Matt Demny, Agribusiness, Land, and Minerals Department Director, reviewed the request from Phillips 66 Pipeline, LLC, for five easements, for the installation of five new natural gas pipelines at the Clemens unit, on 36.82 acres of land. The request includes a temporary workspace totaling 28.03 acres for use during construction and installation. Phillips 66 has agreed to pay $2,455,551.00 for the easements, all with a ten year term. Mr. Demny recommended the board approve the request.

Chairman Bell asked if there were any questions or comments. Eric Gambrell stated that his firm represents Phillips 66, therefore he must abstain from taking action on this item. Chairman Bell acknowledged his abstention and asked if there were any further questions. Seeing none, he called for a motion and a second.

**Judge Thomas Wingate moved that the Texas Board of Criminal Justice approve the request for pipeline easements at the Clemens Unit in Brazoria County, Brazoria, Texas, as presented.**

**Judge Larry Gist seconded the motion which prevailed unanimously when called to a vote.**
2. Pipeline Easements at the Ramsey Unit in Brazoria County, Rosharon, Texas

Mr. Demny reviewed the request from Phillips 66 Pipeline, LCC, for an easement at the Ramsey unit, for the installation of one new natural gas pipeline with two valve sites, consisting of an area of 21.61 acres. The request includes a temporary workspace of 57.13 acres for use during installation and construction. Phillips 66 has agreed to pay $1,487,185.00 for the easement over a ten year term. Mr. Demny recommended the board approve the request.

Chairman Bell asked if there were any questions or comments. Eric Gambrell stated that his firm represents Phillips 66, therefore he must abstain from voting on this item. Chairman Bell acknowledged his abstention and asked if there were any further questions. Seeing none, he called for a motion and a second.

Leo Vasquez moved that the Texas Board of Criminal Justice approve the request for a pipeline easement at the Ramsey Unit in Brazoria County, Rosharon, Texas, as presented.

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

Discussion, Consideration, and Possible Action Regarding Roof Replacement at the Wynne Unit in Walker County, Huntsville, Texas

Frank Inmon, Facilities Division Director, reviewed the job scope and proposed budget for the replacement of approximately 40,000 square feet of roofing material on the main building at the Wynne unit. Referring to his briefing in the committee meeting, he asked for board approval for a total cost of $2,261,300.00.

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

Judge Larry Gist moved that the Texas Board of Criminal Justice approve a not to exceed budget of $2,261,300 for Roof Replacement at the Wynne Unit in Walker County, Huntsville, Texas, as presented.

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

Chairman Bell thanked Mr. Inmon for his presentation.

Public Comments

Chairman Bell resumed discussion regarding the seven speakers who submitted registration cards for the public comment period. He explained the format and rules of conduct.

Ms. Maria Reyes requested to give her comments in Spanish. Chairman Bell agreed and assured her that the message would be translated for the record. She explained that her son was on parole,
but was now being kept in a small room for up to 24 hours. She said in her heart as a mother she feels there is no justice in Texas. She asked the board to make a change.

Yancy Escobar spoke on behalf of her husband, who was assigned to the Polunsky unit. She expressed her grief and concern that the conditions were inhumane, explaining that he is confined to his cell 23 hours a day. She asked for humane treatment such as phone privileges and a television provided by the family.

Angie Agapetus spoke on the issue of solitary confinement. She cited research which claims it causes permanent damage to the brain and psyche. She asked the board to reconsider solitary confinement as a method of housing offenders, as it is inhumane and expensive.

Pat Hartwell spoke to the board regarding the conditions on death row. She read an offender’s list of complaints, such as extremely hot water and mold in the showers, no make-up for recreation time lost due to bad weather, and the deprivation of sleep, religious services, and proper mail delivery. Ms. Hartwell asked the board to investigate the complaints.

Joanne Gavin spoke her concern about the cruelty of offenders being placed on death watch as soon as an execution date is determined. She asked that offenders not be placed on death watch until all legal avenues have been exhausted, as current practice can result in multiple placements of an offender, for months at a time.

Allison Deter voiced her concern that death row offenders are moved to a different cell every six months, which prevents friendships. Officers conduct shakedowns every 90 days, confiscating hot pots, typewriters, fans, and law books. Ms. Deter asked the board to investigate that process, and requested the state pay the yearly medical fee rather than taking it from the offender’s account.

Gloria Rubac stated her opposition to solitary confinement. She asked that offenders on death row receive special leniency on their visitor’s list, and to decrease the time offenders spend on death watch. She reported that a racist offender was mentally torturing a black offender, with encouragement from the correctional officer, and that she received mean treatment from officers working visitation at the Polunsky unit.

Chairman Bell thanked all the speakers for their comments, and assured them that the issues raised were recorded and would be addressed by staff in written form.

Chairman Bell thanked everyone for coming, and announced that the next meeting of the TBCJ will be Friday, October 9, 2014, at the Radisson Hotel, in Austin.

Adjournment

There being no further business for the regular session, Chairman Bell adjourned the 174th meeting of the Texas Board of Criminal Justice at 2:05 p.m.

*_________________________________  *__________________________________
Chairman Secretary

*Signature on file

Referenced attachments are available upon request from Executive Services, the office of record.

Minutes of the 174th Meeting of the TBCJ