

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem with a thick black border. Inside the semi-circle, the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a bold, white, sans-serif font.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

***Texas Adult
Probation Commission***

**A Staff Report
to the
Sunset Advisory Commission**

1986

TEXAS ADULT PROBATION COMMISSON

February 1986

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SUMMARY OF STAFF REPORT

The Texas Adult Probation Commission (TAPC), established in 1977, has primary responsibility for overseeing the management of adult felony and misdemeanor probationers in Texas. Since the commission's inception the legislature has expanded the agency's responsibilities to include the funding and oversight of special supervision programs and residential facilities for adult offenders. The commission is a nine-member policy body composed of six district court judges and three citizen members. The Chief Justice of the Supreme Court of Texas appoints five members and the presiding judge of the Court of Criminal Appeals appoints four members. Overall, the Texas Adult Probation Commission has three main functions: providing state funding to adult probation departments that elect to participate in the state funded system; setting probation standards and monitoring department compliance with standards; and developing and establishing new probation programs statewide.

State funding is currently provided to 110 of 117 judicial district adult probation departments in the state through a reimbursement system paid on a per probationer (per capita) basis and through grants for special programs and residential facilities. About 95 percent of the agency's total appropriation each year is distributed to local departments to fund probation services.

Standards set by the agency for the 110 participating probation departments serve as operational guidelines for managing probation services. The standards cover residential facility operations, caseload sizes, financial management, effective probation supervision and other areas. Both fiscal auditing and program monitoring functions are performed by agency staff to determine compliance with standards.

New programs have also been developed by the agency and funded by the legislature, including: court residential treatment centers serving probationers in need of drug and/or alcohol treatment; restitution centers providing employment and victim compensation assistance to probationers; specialized caseloads for offenders with special problems such as alcohol abuse and mental illness; and intensive supervision probation.

District judges trying criminal cases oversee the management of probation offices within their district including making budget decisions and hiring chief

probation personnel. Approximately 1,800 probation officers employed by the district judges are responsible for over 260,000 felony and misdemeanor probationers.

The sunset review of the agency's programs and responsibilities indicated that there is a continuing need for the state to be substantially involved in overseeing the management of adult probationers. The review indicated that the agency has generally met its goals and objectives in an efficient and effective manner and should be continued for a 12-year period.

The sunset review also determined that if the agency is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. These changes are outlined in the "Recommendations" section.

During the review, other approaches were identified which could improve state operations but would change the focus of current state policy. These approaches are outlined in the "Major Policy Issues" section. Three options have been developed for each major issue. The first option on each issue is recommended as a baseline approach and the other two options provide additional degrees of change for that issue.

I.
RECOMMENDATIONS

THE AGENCY SHOULD BE CONTINUED FOR A 12-YEAR PERIOD WITH THE FOLLOWING CHANGES:

Policy-making Structure

- 1. The statute should be changed to clearly authorize TAPC to appoint advisory committees as needed and to specify the purpose, duties, selection and reporting requirements through agency rules. (p. 32)**

The agency has no clear authority to have advisory committees to assist the commission. To clarify the agency's authority for the existing advisory council and any others deemed necessary in the future, the statute should be changed to expressly authorize TAPC to appoint advisory committees and to establish purposes and procedures for the committees through the rule-making process.

Overall Administration

2. **The statute should be amended to clearly authorize TAPC to provide training and technical assistance to local probation departments. (p. 33)**

While TAPC performs an important service to local probation departments through training and technical assistance efforts, no clear authority exists for these activities in statute. Training activities are necessary for standardizing probation supervision across the state and for promoting compliance with agency standards. To clarify the agency's authority, the statute should authorize TAPC to provide training and technical assistance.

3. **The statute should: a) require TAPC to establish a certification program for adult probation officers, and b) require completion of the certification course and examination prior to appointment as a probation officer. (p. 34)**

Currently, about 75 percent of all newly hired probation officers attend a pre-service probation training course, although there is no requirement to do so. Pre-service training helps promote consistency between probation departments across the state and improve service delivery to probationers. In order to ensure that all new officers receive basic training, the statute should be changed to require TAPC to develop a pre-service certification process, including training coursework and a competency examination, and to require completion of the coursework and examination within the first year of employment as a probation officer.

Evaluation of Programs

Probation Policy and Program Development

4. **The statute should be changed to clearly authorize TAPC to fund and set standards for the intensive supervision probation (ISP) program. (p. 37)**

While the ISP program currently funded by the agency was established to divert felony offenders from incarceration at the Texas Department of Corrections, there is no clear authority for the program in statute. In order to ensure continuation of a necessary diversion program, the statute should authorize TAPC to administer ISP programs through local probation departments.

5. **The statute should be changed to clearly authorize TAPC to fund and set standards for court residential treatment centers (CRTCs).** (p. 40)

Of the two types of residential programs funded by TAPC, clear statutory authority exists for one program, restitution centers, but not the other, CRTCs. While the CRTCs provide an important service to probationers, the agency has only indirect authority to fund and set standards for the centers through its mandate to establish facilities other than jails or prisons. The statute should be changed to clarify the agency's authority to administer CRTCs through local probation departments.

6. **The statute should be amended to require TAPC to adopt formal policies and procedures in agency rules for administration of programs and facilities.** (p. 41)

The Administrative Procedure and Texas Register Act requires an agency to adopt rules describing the nature and requirements of all formal and informal procedures. The Texas Adult Probation Commission currently has rules for some of its major programs but not others, including the supplemental grant program, contract residential services, specialized caseloads and court residential treatment centers. To ensure that all probation departments have access to program guidelines and to allow public input into decisions on agency programs, TAPC should adopt rules on all programs and facilities.

7. **The statute should require evidence of community involvement, as defined in agency rules, prior to providing implementation funding for community-based residential facilities.** (p. 42)

Community resistance to opening some residential facilities funded by TAPC has led to delays and the necessity to relocate one facility. In order to avoid future delays and relocation efforts, TAPC should require departments establishing such centers in their locality to provide evidence to TAPC that there is community support for the center before TAPC provides grant money to implement the center. Further, TAPC should define in its rules what constitutes community support.

8. **The statute should be changed to allow short-term furloughs, as defined in agency rules, to restitution center residents.** (p. 44)

Short-term furloughs are permitted for residents of court residential treatment centers whereby probationers may receive leave passes as a reward for good behavior. Short-term furloughs are not generally permitted for restitution center

residents, however. In order to make policies consistent between the two types of facilities and to alleviate restitution center absconder problems, the statute should permit restitution center residents to have short-term furloughs. Minimum requirements for issuing such furloughs should be established in agency rules.

9. The statute should require TAPC to evaluate program outcomes to determine effectiveness of programs. (p.46)

Texas Adult Probation Commission's program evaluation focus has, in the past, concentrated on tracking persons while on probation, including examination of demographic data, offender profiles and numbers of probationers. As a new agency experiencing rapid growth, this information has been a necessary priority. However, in order to determine what affect TAPC-funded programs are having on probationers, more program evaluation efforts are needed for the future.

10. The statute should authorize courts to impose a short-term jail sentence, not to exceed 30 days, for felony probationers who commit misdemeanor offenses or administrative violations of probation terms. (p. 48)

Courts may require probationers to submit to a period of detention as an original condition of probation. Additionally, courts have authority to amend conditions of a person's probation at any time. However, there is no clear authority to impose a short-term jail sentence on felony probationers that fail to comply with probation conditions, such as committing a misdemeanor offense or violating administrative terms of probation, including failure to report to the probation officer or failure to pay fees. Short-term jail time could eliminate the need for some current probation revocations and could make another sanction available to courts for dealing with offenders that don't take their conditions of probation seriously.

11. The statute should require probation fees to be a mandatory condition of probation, with a minimum monthly fee of \$25, unless waived, reduced or suspended by the court. (p. 51)

Courts have permissive authority to charge a probation fee of persons placed on probation in Texas. Currently the fee, which helps defray some of the costs of supervision, was recently raised to a maximum of \$40 per month. However, variance exists in the fee amounts assessed by judges. This variance can create revenue problems for probation departments who depend on the fees, along with

state funding, to pay for probation services. In order to improve assessment efforts, the fee should be made mandatory, with a \$25 minimum. Courts should be permitted to waive, reduce or suspend the fee in cases of financial hardship.

12. The statute should be modified to allow persons who have been on intensive supervision probation (ISP) to be admitted to a restitution center. (p. 54)

The Texas Adult Probation Commission funds a continuum of probation programs ranging from less restrictive to highly restrictive sanctions. For the most part, probationers may be moved from one program to the next as their behavior improves or worsens. The one exception is that those on ISP are permitted entry into court residential treatment centers but not restitution centers. This restriction appears unnecessary and may prohibit some probationers from receiving proper supervision.

13. The statute should be changed to allow restitution center discharge review at three months. (p. 56)

The statute currently requires that probationers must serve a minimum of six months in a restitution center before being evaluated for discharge from the center. For offenders exhibiting good behavior while in the center, this six month time frame is unnecessary. If the minimum time before review for discharge were lowered to three months, more probationers could be served and supervision efforts could focus on probationers who most need to be in the centers.

14. The statute should require probation department employees to receive travel mileage reimbursements in amounts no greater than the state travel mileage rate. (p. 57)

Because some probation department employee salaries are maintained at rather low levels, salary supplementation occurs in some areas through travel mileage reimbursements paid with state funds. A rider attached to TAPC's appropriation during the 69th session in response to this situation requires TAPC to reduce per capita state aid to departments by amounts equal to mileage payments higher than the state mileage rate. However, since this provision applies only to employees hired after May 31, 1985, most employees are exempted and the practice continues. In order to eliminate salary supplementation through travel reimbursements and to make travel reimbursements the same for all probation employees, the statute should require all employees to receive travel mileage rates in consonance with the state rate.

- 15. The statute should permit adult probation departments to contract with the Board of Pardons and Paroles for provision of probation services. (p. 59)**

The Board of Pardons and Paroles (BP&P) can currently contract with TAPC to provide supervision services where deemed more efficient. Probation departments, however, do not have similar authority to contract with BP&P. To provide probation with another management option for supervising probationers, the statute should permit contracting with BP&P.

Monitoring and Enforcement

- 16. The statute should authorize TAPC to reduce state aid payments or impose budget controls over departments in substantial non-compliance with agency standards, as defined in agency rules. (p. 60)**

When probation departments fail to comply with standards set by TAPC, the statute currently permits the agency to withhold state aid payments. This sanction is undesirable in some cases because it may cause a department to cease functioning. Additional sanctions such as authority to reduce payments or impose budget controls over non-compliant departments would provide TAPC with greater enforcement power without jeopardizing probation services and public protection. The Texas Adult Probation Commission should define in its rules what constitutes substantial non-compliance.

- 17. The statute should require TAPC to define in its rules what constitutes an adequate level of county support to probation departments and to participate in county budget processes for those counties failing to provide adequate support. (p. 62)**

Counties are currently required to provide facilities, utilities and equipment to local probation departments. Variations exist in the state, however, in terms of the adequacy of support provided by the counties. By requiring TAPC to define what constitutes an adequate level of support from counties and to participate in the budget process of counties that are found to be providing inadequate support, better contributions for office space, utilities and equipment for probation departments might be obtained through negotiations with the county.

Compact Continuation

18. The State of Texas should continue participation in the Interstate Probation and Parole Compact. (p. 65)

The Interstate Probation and Parole Compact is a binding agreement among all 50 states to provide for supervision of probationers and parolees who want to live outside the state where they were sentenced or released. The review of the compact showed that it has worked as originally intended and, therefore, Texas should continue its participation. This recommendation requires a statutory extension of the compact statute.

Non-Program Changes

19. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (p. 91)

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency and a description of the provisions and their applications to the Texas Adult Probation Commission are found in the "Across-the-Board Recommendations" section of the report.

20. Minor clean-up changes should be made in the agency's statute. (p. 95)

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modifications of Agency's Statute" section of the report.

II.

MAJOR POLICY ISSUES

ISSUE: PROVIDE GREATER STATE EXECUTIVE RESPONSIBILITY FOR ADULT PROBATION SERVICES IN TEXAS. (p. 71)

The Texas Adult Probation Commission considers itself a judicial branch agency primarily because members of the judiciary are responsible for making all commission appointments and because probation departments are administered by

district court judges in all localities of the state. However, since TAPC oversees state funds passed through to local probation departments and is responsible for managing a portion of the state's potential prison population, state executive interests should also be represented in commission operations. This representation is currently missing. Providing the state executive branch with a greater role in overseeing agency functions could be accomplished in several ways. Three options are presented below which place increasing responsibility for probation operations with the state.

Option One:

The governor could be allowed to make commission appointments, including six citizen members and three district court judges. (p. 71)

This option would transfer commission appointment authority from the judiciary to the governor, thereby allowing the state executive branch to be involved in commission selection. The governor would also designate the commission chair. Further, more citizen membership on the board would allow greater citizen representation in probation decision-making.

Option Two:

The state could assume responsibility for supervising felony offenders through state employees. (p. 74)

This option would transfer supervision efforts for felony probationers from judicial district employees to state employees under a state executive system, while leaving misdemeanor supervision a responsibility of the counties. This approach could result in cost savings to the state, but would substantially alter the current probation system.

Option Three:

The state could assume responsibility for supervising felony and misdemeanor offenders through state employees. (p. 86)

This option would transfer supervision efforts for felony and misdemeanor probationers to state employees and would be administered through a state executive system. This approach is more costly, but would allow the state to have responsibility for the entire probation population.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
 2. Does the agency operate efficiently?
 3. Has the agency been effective in meeting its statutory requirements?
 4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
 5. Is the agency carrying out only those programs authorized by the legislature?
 6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?
-
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Introduction

THE ADULT CORRECTIONS SYSTEM IN TEXAS

The supervision aspects of the criminal justice system in Texas are managed through three agencies having primary responsibility for adult offenders, the Texas Adult Probation Commission (TAPC), Texas Department of Corrections (TDC), and Board of Pardons and Paroles. An offender becomes involved in adult corrections through the judicial system, which has a complex structure in Texas. This is due to the large variety and number of courts in the state, including district courts, county courts, county courts-at-law, probate courts and others. Judges bear the primary burden for hearing cases and sentencing offenders because over 90 percent of all cases result in guilty pleas with sentences assessed by a judge and not a jury.

Generally, when a defendant pleads guilty or no contest to an offense or is convicted, he/she can be sentenced to a term of imprisonment (prison time for felony offenses and jail time for misdemeanors), or he/she can be placed on probation. A judge may not grant probation if a person is found guilty of: capitol murder, aggravated kidnapping, aggravated sexual assault, aggravated robbery, or when a deadly weapon was used in the commission of or flight from an offense. In cases where a person pleads guilty or no contest, the court may also defer adjudication and place the person on probation. Since there is no conviction in deferred adjudication, the offense does not appear on a person's record. The court can defer adjudication in every type of offense, except involuntary manslaughter, driving while intoxicated and certain drug offenses.

For those placed on probation, the imposition of the sentence is actually suspended and the person must comply with certain terms of probation or risk going back to court for a revocation. The terms of probation are set by the court and may include but are not limited to any of the following: paying a probation supervision fee, court costs, fines associated with the offense, attorney fees and victim restitution; performing community service work hours; attending a treatment program; and being placed in a residential facility or special program such as the contract work program. Courts can add other reasonable conditions to the terms of probation and can modify terms at any time. The period of probation can be no longer than 10 years for felony offenses and no longer than the maximum period of confinement prescribed for misdemeanor offenses.

Probationers come under the supervision of the court and consequently become the responsibility of a probation department. Due to the local structure of

adult probation services in Texas, nearly every court trying criminal cases in the state uses adult probation officers in overseeing the supervision of probationers. Currently, 110 judicial district adult probation departments have elected to participate in the state funded probation system, while seven departments have elected not to participate. These seven departments operate their own probation system and do not receive state funding assistance. The population of the non-participating counties represents less than two percent of the state's total population. Participating probation departments in compliance with TAPC guidelines receive state aid which funds probation services, residential facilities in some departments and probation officer salaries, fringe benefits, travel and other expenses. In 1985, approximately 1,800 probation officers statewide provided direct supervision to an average of 74,000 felony and 98,000 misdemeanor probationers and indirect supervision to an additional 73,500 probationers.

Probation departments may be involved with offenders before the court sentencing phase through pre-trial diversion programs and writing pre-sentence investigation reports used by courts in sentencing. However, the main involvement of the department comes after a person has been placed on probation by the court. Once an offender is received from court, the probation officer generally interviews the person to review conditions of probation that must be followed and to assess problem areas and level of supervision needed. Through the use of the case classification system, a probationer's needs and risks are assessed and a supervision plan is developed accordingly.

Probationers that successfully comply with probation conditions can be released early or upon completion of the full probation term. Violations of probation terms, however, can lead to revocation of probation. In such cases, the court holds a revocation hearing, after which probation may be revoked, modified or continued.

There are three main ways a felony offender can enter TDC: directly from court after sentencing; through probation revocation; and through parole revocation. See Exhibit I for percentage of admissions from each source. Once a person is sent to TDC, that person is under TDC's jurisdiction until his/her sentence is served out. TDC has two main responsibilities in dealing with inmates -- to confine the inmates in secure facilities during their incarceration and to provide them programs and services to assist with their special needs and overall rehabilitation. Currently, there are over 37,000 inmates housed in 27 units and one hospital of TDC.

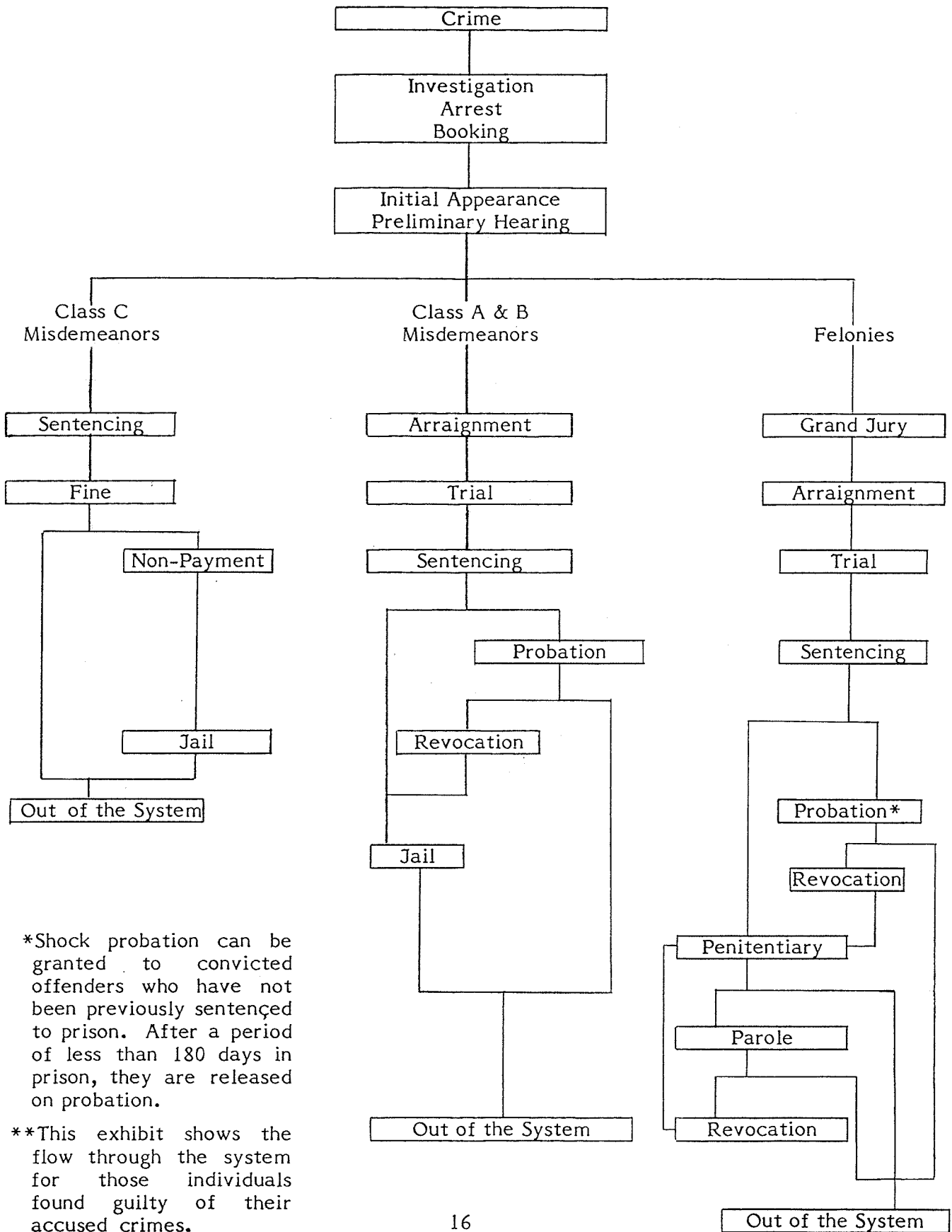
Exhibit I
Source of TDC Admissions for Selected Months - 1985

	<u>January 1985</u>	<u>August 1985</u>	<u>September 1985</u>	<u>Average</u>
Returned Parolees	28%	29%	27%	28%
Revoked Probationers	37%	33%	37%	36%
From the Courts	<u>35%</u>	<u>38%</u>	<u>36%</u>	<u>36%</u>
	100%	100%	100%	100%

An inmate can be released from TDC in one of four ways: shock probation, release on parole, mandatory release, and release after serving his/her complete sentence. "Shock probation" can be granted by the judge within 180 days of the time of sentencing. The offender is released after a short period of incarceration to the supervision of a local probation department. Most inmates are either paroled or released to mandatory supervision. Parole eligibility generally occurs when an inmate's flat time served and awarded good time equal one-third of his or her sentence. Mandatory release occurs when time served at TDC and good conduct time awarded to the inmate equal his/her sentence. Because of the granting of good conduct time to inmates by TDC, very few inmates ever serve their entire sentence incarcerated at TDC.

Parole decisions are made by the Board of Pardons and Paroles. The board, and nine parole commissioners employed by the board, form three-member panels to review all inmates for parole as they become eligible. Inmates approved for release on parole are then supervised by board staff. Currently, the board has 658 employees in parole supervision. Actual supervision is done by employees located in eight geographical regions of the state working out of 42 district offices. Parolees remain under the board's supervision until they serve out the remainder of their sentence which was not served in TDC. In addition to parolees, all inmates receiving a mandatory release from TDC are also under the supervision of the board for the remainder of their sentences. Currently, there are 19,557 parolees and 15,181 mandatory releasees under the active supervision of the board. Exhibit II which follows provides an overview of the adult corrections system.

**Exhibit II
ADULT CORRECTIONS SYSTEM ****



*Shock probation can be granted to convicted offenders who have not been previously sentenced to prison. After a period of less than 180 days in prison, they are released on probation.

**This exhibit shows the flow through the system for those individuals found guilty of their accused crimes.

AGENCY BACKGROUND

Creation and Powers

The Texas Adult Probation Commission (TAPC) was created in 1977 by the 65th Legislature and is currently active. The commission was established to make probation services available throughout the state, to improve the effectiveness of probation services, to provide alternatives to incarceration and to establish uniform probation administration standards through distribution of funds to local departments.

While the commission's structure is fairly new, roots were established for adult probation in Texas with the Suspended Sentence Act of 1913, which provided for the release of convicted offenders without imprisonment. This Act was amended several times over the years but remained in effect until 1965. Passage of several other important laws caused probation to evolve over time into its current form. Enactment of the Adult Probation and Parole Law in 1947 provided the first legislative mandate for probation in the state. The law gave responsibility for adult probation to the State Board of Pardons and Paroles. While the Board's staff was to work with the courts and offenders, no funds were appropriated by the legislature and probation programs never developed.

In 1957, a second adult probation and parole law was enacted. This law separated the administration of probation and parole, designating probation as a function of county government and parole a function of the state. It authorized the commissioners court to employ and set salaries of probation officers in each county and to combine two or more counties within a single judicial district to share expenses. However, no provision was made for state subsidy, oversight or control of probation. The Revised Code of Criminal Procedure was enacted in 1965 and mandated significant changes in probation. Under this code, the Suspended Sentence Act was eliminated and probation was expanded to include misdemeanors. District judges were vested with the authority to employ probation personnel and administer the department, although fiscal support required the advice and consent of the commissioners court. Two years later, courts were given authority to assess a fee as a condition of probation and the revenue was to be used by that judicial district to offset operational expenses.

It was not until 1977 that the legislature created the Texas Adult Probation Commission as a separate agency charged with overseeing adult probation departments in Texas. Originally, the commission consisted of six district judges and three public members, all appointed by the judiciary. State funding was

appropriated to the commission in 1978 for administration of agency programs and for distribution to judicial district adult probation departments. Programs have been expanded since that time to include establishment of intensive supervision probation, court residential treatment centers, restitution centers, specialized caseloads and contract residential services.

Board Structure

The structure of the Texas Adult Probation Commission is unique in state government due to the judiciary's responsibility for appointing the nine commission members. The Chief Justice of the Supreme Court appoints three district court judges and two citizen members, while the presiding judge of the Texas Court of Criminal Appeals appoints three district court judges and one citizen member. All members serve staggered six-year terms. Senate Bill 454 of the 69th Legislature would have added three county court-at-law judges to the commission, bringing the total number of commissioners to 12. However, the house and senate passed two different versions of the bill, leaving the interpretation of this bill in dispute. The agency has requested an attorney general opinion on S.B. 454, but has not yet received a response. No additional commission members have been appointed to date.

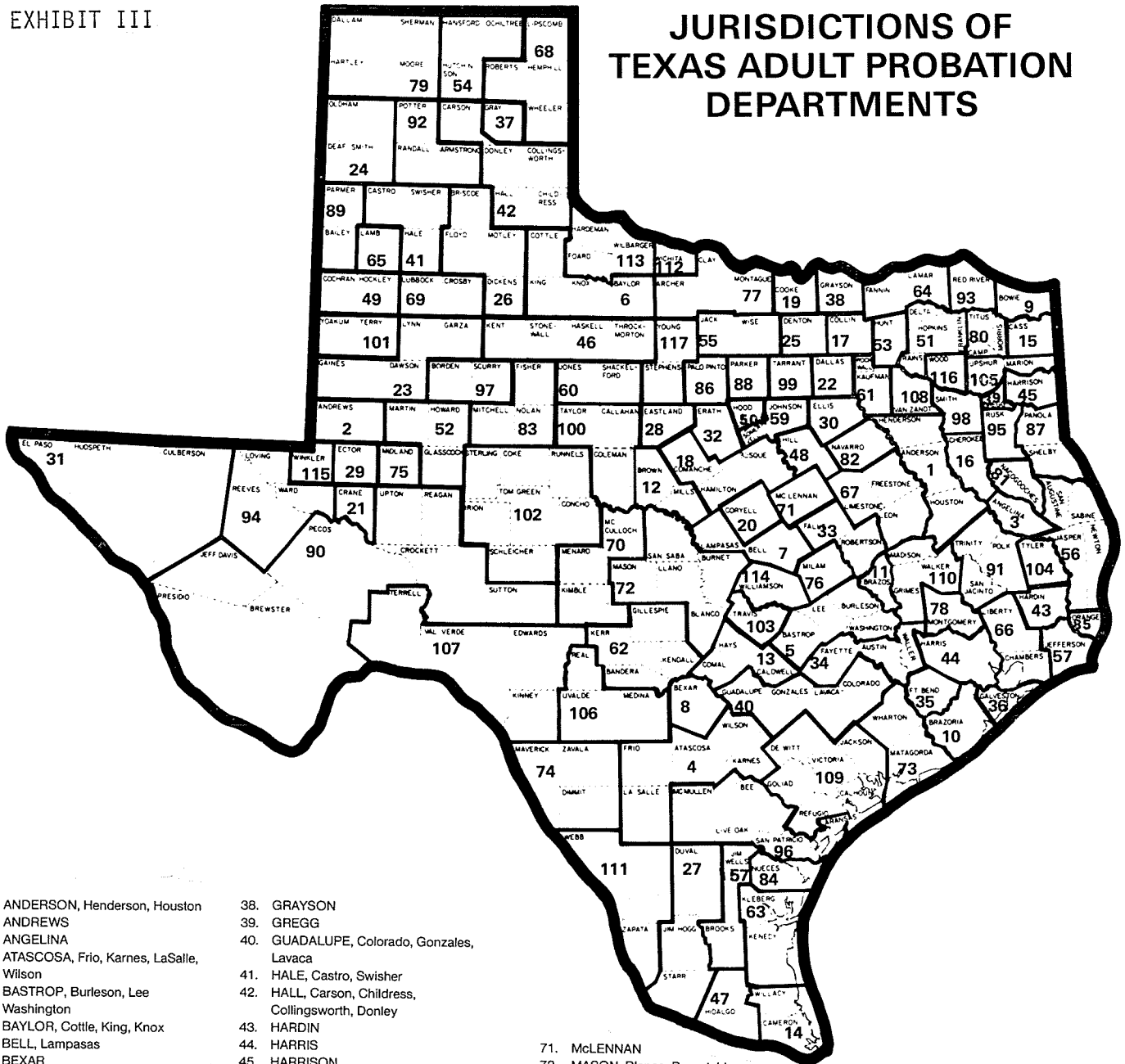
Funding and Organization

The commission employs 61 people, with headquarters in Austin, Texas. There are no branch offices. Funding for fiscal year 1986 totals \$44,662,057, all of which is from general revenue. About 95 percent of the agency's funds are distributed to local probation departments in the form of state aid.

Currently, 110 out of a total of 117 judicial districts have elected to participate in the TAPC system and receive state aid. Exhibit III illustrates the judicial district boundaries. By electing to participate, judicial district adult probation departments are subject to state guidelines for establishing probation services in order to continue receiving state aid. These departments employ approximately 1,800 probation officers and in fiscal year 1985 provided direct supervision to an average of 74,000 felony cases and 98,000 misdemeanor cases. An additional 73,500 adult probationers were receiving indirect supervision.

The adult probation system in Texas requires coordination between state and local personnel to oversee probation services in the field. Because district judges have primary responsibility for overseeing probation department activities, budgets and hiring of chief personnel, probation department staff are considered employees

JURISDICTIONS OF TEXAS ADULT PROBATION DEPARTMENTS



- | | | | |
|---|--|--|--|
| 1. ANDERSON, Henderson, Houston | 38. GRAYSON | 71. McLENNAN | 98. SMITH |
| *2. ANDREWS | 39. GREGG | 72. MASON, Blanco, Burnet, Llano, San Saba | 99. TARRANT |
| 3. ANGELINA | 40. GUADALUPE, Colorado, Gonzales, Lavaca | 73. MATAGORDA, Wharton | 100. TAYLOR, Callahan, Coleman |
| *4. ATASCOSA, Frio, Karnes, LaSalle, Wilson | 41. HALE, Castro, Swisher | 74. MAVERICK, Dimmit, Zavala | 101. TERRY, Yoakum |
| 5. BASTROP, Burleson, Lee, Washington | 42. HALL, Carson, Childress, Collingsworth, Donley | 75. MIDLAND | 102. TOM GREEN, Coke, Concho, Irion, Runnels, Schleicher, Sterling |
| 6. BAYLOR, Cottle, King, Knox | 43. HARDIN | 76. MILAM | 103. TRAVIS |
| 7. BELL, Lampasas | 44. HARRIS | 77. MONTAGUE, Archer, Clay | 104. TYLER |
| 8. BEXAR | 45. HARRISON | 78. MONTGOMERY | 105. UPSHUR, Marion |
| 9. BOWIE | *46. HASKELL, Kent, Stonewall, Throckmorton | 79. MOORE, Dallam, Hartley, Sherman | 106. UVALDE, Medina, Real |
| 10. BRAZORIA | 47. HIDALGO | 80. MORRIS, Camp, Titus | 107. VAL VERDE, Edwards, Kinney, Terrell |
| 11. BRAZOS | 48. HILL | 81. NACOGDOCHES | 108. VAN ZANDT |
| 12. BROWN, Mills | 49. HOCKLEY, Cochran | 82. NAVARRO | 109. VICTORIA, Calhoun, DeWitt, Goliad, Jackson, Refugio |
| 13. CALDWELL, Comal, Hays | 50. HOOD | 83. NOLAN, Fisher, Mitchell | 110. WALKER, Grimes, Madison |
| 14. CAMERON, Willacy | 51. HOPKINS, Delta, Franklin, Rains | 84. NUJECES | 111. WEBB, Zapata |
| 15. CASS | 52. HOWARD, Glasscock, Martin | 85. ORANGE | 112. WICHITA |
| 16. CHEROKEE | 53. HUNT | 86. PALO PINTO | *113. WILBARGER, Foard, Hardeman |
| 17. COLLIN | 54. HUTCHINSON, Hansford, Ochiltree | 87. PANOLA, Shelby | 114. WILLIAMSON |
| 18. COMANCHE, Bosque, Hamilton | 55. JACK, Wise | 88. PARKER | *115. WINKLER |
| 19. COOKE | 56. JASPER, Newton, Sabine, San Augustine | 89. PARMER, Bailey | 116. WOOD |
| 20. CORYELL | 57. JEFFERSON | 90. PECOS, Brewster, Crockett, Jeff Davis, Presidio, Reagan, Sutton, Upton | 117. YOUNG, Stephens |
| *21. CRANE | 58. JIM WELLS, Brooks | 91. POLK, San Jacinto, Trinity | |
| 22. DALLAS | 59. JOHNSON, Somervell | 92. POTTER, Armstrong, Randall | |
| 23. DAWSON, Gaines, Garza, Lynn | 60. JONES, Shackelford | 93. RED RIVER | |
| 24. DEAF SMITH, Oldham | *61. KAUFMAN, Rockwall | 94. REEVES, Loving, Ward | |
| 25. DENTON | *62. KERR, Bandera, Gillespie, Kendall, | 95. RUSK | |
| 26. DICKENS, Briscoe, Floyd, Motley | 63. KLEBERG, Kenedy | 96. SAN PATRICIO, Aransas, Bee, Live Oak, McMullen | |
| 27. DUVAL, Jim Hogg, Starr | 64. LAMAR, Fanin | 97. SCURRY, Borden | |
| 28. EASTLAND | 65. LAMB | | |
| 29. ECTOR | 66. LIBERTY, Chambers | | |
| 30. ELLIS | 67. LIMESTONE, Freestone, Leon | | |
| 31. EL PASO, Culberson, Hudspeth | 68. LIPSCOMB, Hemphill, Roberts, Wheeler | | |
| 32. ERATH | 69. LUBBOCK, Crosby | | |
| 33. FALLS, Robertson | 70. McCULLOCH, Kimble, Menard | | |

of the judicial district and not the county. Counties contribute office space, utilities and equipment to probation departments. For this reason, probation staff who work closely with county employees are often housed in county courthouses and generally follow county personnel guidelines. The state is involved in probation through the establishment of uniform standards for services statewide and through distribution of state aid, which primarily pays for probation services, residential facilities and probation officer salaries, travel and fringe benefits.

Programs and Functions

As described earlier, TAPC's primary activities are to provide funding to departments, set and monitor compliance with probation standards and establish new probation programs statewide. To fulfill these responsibilities, the agency is organized into four major divisions which include Administration, Fiscal Services, Program Services and Data Services. Although these programs reflect the agency's general categories of activity, the sunset evaluation was structured around an analysis of the actual functions of the agency. In reviewing the performance of the Texas Adult Probation Commission, the following four functions were identified and analyzed: 1) administration and support services, 2) probation policy and program development, 3) state aid distribution, and 4) monitoring and enforcement. A description of these functions is set out below.

Administration and Support Services

a. Public Information

The agency's public information officer and two specialists develop written and audio-visual materials for local departments, legislative groups, the public and media. The department maintains a small library of publications containing factual reports on probation and TAPC activities. Local departments can use the library and related resources in a variety of ways. For instance, TAPC graphics specialists assist local departments in developing customized brochures and they loan audio-visual presentations illustrating statewide probation efforts to departments .

Legislative and media requests are also handled through the department by recording and making available commission meeting minutes and answering requests on probation issues and policies. Since 1983, public information has published over 38 manuals, brochures, workbooks, directories and reports, as well as a bi-monthly newsletter distributed to all local departments. In addition, they have developed nine video or slide/tape presentations used to promote and explain adult probation in Texas.

b. General Counsel

Located within the executive administration division of TAPC, the general counsel acts as the agency's legal advisor. The counsel's primary duties include legal research, providing written opinions for the commission and legal information bulletins for probation departments, drafting standards for publication in the Texas Register, interpreting standards, and acting as the liaison between the attorney general's office and the agency. Although the county attorney provides assistance to local probation offices, legal assistance is also provided by the general counsel in clarifying laws or standards upon request of local departments. Complaint files are also maintained by the agency counsel. Written complaints are first reviewed by the executive director and, if warranted, are sent to the legal counsel for further investigation.

c. Training

The training section currently consists of a coordinator and a staff of five within the Program Services Division. Professional development training is provided statewide to probation officers in order to meet TAPC requirements that officers receive at least 20 hours of professional training annually and to assist local departments in improving delivery of probation services. Training has been made available to 2,100 personnel as of fiscal year 1984, including chief probation officers, supervisors, probation line officers and support staff.

Probation officers receive their 20 hours of annual training from three primary sources. First, TAPC has developed a comprehensive case classification training system which assists probation officers in determining the level of supervision needed by probationers and in establishing an appropriate supervision plan. Besides this fundamental training provided by TAPC trainers, courses are offered in intensive supervision probation and restitution center supervision and management to probation departments statewide. Additional workshops are offered on a periodic basis to probation administrators and line officers who work with special groups such as DWI offenders. In fiscal year 1985, TAPC sponsored workshops in 32 locations statewide for a total of 2,880 training hours delivered. Second, training for newly employed probation officers is offered in cooperation with Sam Houston State University. In fiscal year 1985, the university provided 16,336 hours of training to 538 juvenile and adult probation officers. The university uses a TAPC-approved curriculum for training new adult probation officers and provides approximately 40 classroom hours. Currently, approximately 75 percent of new adult probation officers attend basic training. Third, officers

may attend any other outside workshops or courses approved by TAPC that are shown to be relevant to adult probation. These courses may be offered in the local community or at state or regional conferences.

d. Data Services

The data services division, with 17 authorized employees, is responsible for: 1) data processing, 2) statistical reporting, 3) management information systems, and 4) interstate compact transfers. With the exception of the interstate compact, the functions performed in this division are closely related.

The division is responsible for the design, operation and maintenance of the commission's computerized information systems. Data processing duties primarily involve entering and tracking probationer data, programming, and maintenance of the system. Monthly workload summary reports received from all probation departments are processed in this division in order to compute per capita state aid payments. The agency's statistician prepares monthly reports from the workload summary reports received from departments, updates and maintains the telephone directory which contains listings from all probation departments, provides technical assistance to probation offices and analyzes data to develop probation population projections and offender profiles.

The management information specialist serves as a resource to local departments by designing and implementing standardized computer programs for local departments and by providing technical assistance and software programs to departments for accounting, budgeting or tracking persons on probation. Management information systems have been installed in 15 local probation departments.

The Interstate Probation and Parole Compact is a binding agreement among all 50 states and some provinces regarding supervision of probationers who want to reside outside the state where they were placed on probation or parole. Each state has a compact administrator who is responsible for overseeing the compact rules. The governor of Texas appoints the administrator for our state, who in turn appoints two deputy administrators, one for probation and one for parole. The executive director of the Texas Adult Probation Commission (TAPC) currently serves as the deputy compact administrator for probation. This function is currently assigned to the data services division which is responsible for tracking the high volumes of transfers to and from the state. For example, from July 1, 1984 through June 30, 1985, Texas received 2,616 probationers from other states and sent out 4,085 probationers.

e. Fiscal Services

The Fiscal Services Division has 16 authorized employees and is responsible for general accounting, auditing, budgeting, personnel, and facilities management for the agency. A primary responsibility of the accounting section is to disburse state aid to local probation departments, review department budgets, process TAPC's payroll and handle vouchers for services and equipment. The audit section is also responsible for conducting over 60 fiscal audits a year of local departments receiving state funding. Audit activities are described further in the monitoring and enforcement section of this report.

Budgeting activities primarily consist of preparing the agency's annual operating budget and various budget reports, while personnel responsibilities primarily involve: developing job descriptions; calculating overtime, merit increases, and workforce requirements; updating the agency's personnel manual; and hiring personnel. Finally, facilities management duties are assigned to this division and include janitorial services and general maintenance of the building.

State Aid Distribution

Before TAPC was created in 1977, probation services in the state were primarily funded through the counties and revenue from collection of probation supervision fees. Today, adult probation departments receive state funding assistance provided by TAPC if they elect to participate in the state system and comply with state guidelines. For the 110 of 117 departments in the state that have chosen to participate, there are two primary sources of revenue which pay for department probation services. These are the probation supervision fee collected from persons placed on misdemeanor or felony probation, which accounts for about 40 percent of department funding on the average, and state aid distributed by TAPC, which accounts for approximately 60 percent. Both sources of funds are combined into a judicial district probation fund maintained by each district to pay for basic probation services, programs and probation officer salaries, fringe benefits, travel and other costs. TAPC distributes two basic forms of funding to participating departments -- per capita state aid, paid on a per probationer basis, and grants for special programs, services and residential facilities.

a. Per Capita State Aid

Three forms of per capita funding are available to local probation departments: basic per capita, which is the main funding source received by all departments; supplemental per capita, which will begin in fiscal year 1987; and intensive supervision probation (ISP) funding.

During fiscal year 1986, basic per capita aid is calculated at \$.75 per day for felony probationers and \$.40 per day for misdemeanor probationers. In fiscal year 1987, per capita aid will decrease to \$.50 and \$.25, respectively. TAPC issues basic per capita payments to departments quarterly. Payments are calculated from monthly workload summaries received from departments which report numbers of felony and misdemeanor probationers receiving direct supervision. For fiscal year 1986, \$28,169,950 has been appropriated for basic per capita aid.

Supplemental per capita aid will also be made available to departments in fiscal year 1987 and is funded at a rate of \$.25 per day for felony probationers. To be eligible to receive supplemental funds, departments must meet TAPC's caseload standard of an average of no more than 100 probationers per officer or have at least 60 percent of the department staff engaged in caseload supervision at least 80 percent of the time. For fiscal year 1987, \$7,700,000 is appropriated for supplemental per capita funding.

Forty-nine probation departments received ISP funding in fiscal year 1985 to provide services to over 5,000 felony probationers who would have otherwise been incarcerated at the Texas Department of Corrections. ISP was funded at a rate of \$5.00 per felony probationer per day in fiscal year 1985. The higher cost per day for ISP funding compared to regular probation funding results from the limited caseload necessary for providing more intensive surveillance and case management. For fiscal year 1986, ISP has been appropriated \$5,820,000 and will be funded at a rate of \$4.50 per day.

b. Grants

TAPC also funds two types of grant programs, restitution center grants and special/supplemental grants. Like ISP, restitution centers also serve as a prison diversion program for offenders by providing a residential sanction. The focus of the program is a higher level of control which encourages employment, payment of restitution to victims and fulfillment of other financial obligations. TAPC provides grant funds for feasibility studies and implementation of restitution centers. In fiscal year 1986, \$6,274,375 is appropriated to fund 15 restitution centers.

Special grants fund community-based court residential treatment centers (CRTC's), contract residential services and specialized caseload programs. Three existing CRTC's provide a structured residential setting for offenders in need of treatment for drug and alcohol abuse, mental health problems, job skills training and education. Contract residential services funding allows departments to buy bed space and treatment services in facilities not operated by local departments for probationers needing drug, alcohol or other treatment. The specialized

caseload concept involves grouping together offenders who share the same problem on a limited caseload, so that an experienced probation officer can work closely with them. There are currently eight departments operating specialized caseloads for drug and alcohol abusers, mentally ill or mentally retarded offenders, sex offenders or assaultive offenders.

Local departments unable to maintain a basic level of service through basic per capita funding may apply to the commission for supplemental grants. These grants generally fund rural counties who have increased costs due to large geographic service areas and increased travel expenses. Nine departments have been awarded supplemental grants for this year. For fiscal year 1986, special and supplemental grant programs were appropriated \$2,500,000. About 95 percent of TAPC's total appropriation of \$44,662,057 for fiscal year 1986 will be distributed to probation departments in the form of per capita state aid or grants.

Probation Policy and Program Development

In order to establish consistent probation services for 110 probation departments participating in the state-funded system, TAPC first goes through an internal planning process. This process is carried out by a variety of agency personnel, including commission members, the agency director, department heads and program division staff. It also involves the input of probation officers and judges in Texas, as well as probation agencies in other states through a network of information exchange. Two basic steps are involved in the planning process, policy development and program development.

Policies developed by the commission have an impact on two main groups of people -- probation officers and probationers. Operational standards are developed for probation department personnel and are published in a procedural manual distributed to all departments entitled "Standards for Adult Probation Services in Texas".

The process of developing probation policies generally begins with agency staff members who respond to identified needs, problems arising from the field during audits, or suggestions from probation officers. Once approved internally, all policies are presented to the commission for final approval before being implemented. For example, a new standard to be published in the "Standards for Adult Probation Services in Texas" manual might first be generated by agency staff members. The agency's legal counsel would then review the standard and draft language before it is approved by the executive director. Sometimes standards are reviewed by local probation officers either in writing or through their review at

commission meetings. After final approval from the commission, the standard is published in the Texas Register, inserted in the manual and all departments notified of the new rule. The standards are currently undergoing a revision process which is being carried out by the agency's advisory committee. After the committee reviews the standards and determines changes needed, recommendations will be presented to the commission.

Program development generally begins with ideas generated through the legislature, probation departments, or agency staff. For agency-initiated program ideas, the process begins with identifying probation needs in Texas, obtaining information about new programs that have been successful in other states and, in some cases, identifying potential grant money available to fund a study or pilot program. New programs are discussed internally at TAPC to determine impacts on known probation needs and trends in Texas. Ideas that are approved internally go through the commission for approval before funding is requested from the legislature for programs that appear to be successful. Programs developed by TAPC are operated through local probation departments. TAPC primarily provides funding, sets standards for the programs and monitors program activities once they are in place.

The major programs funded by TAPC and operated by local probation departments are described as follows:

1. Basic Probation Services. As mentioned earlier in the report, in 1985 an average of 1,800 probation officers in the state were responsible for supervising 74,000 felony and 98,000 misdemeanor probationers. Supervision efforts typically include: intake and screening of probationers; assessing needs and risks of probationers in order to develop appropriate supervision plans; drug and alcohol testing; in-office counseling with probationers; visits to the probationers' home or job site; referral services; and documentation of progress. Probationers placed on regular probation are assigned to one of three levels of direct supervision: maximum supervision, which requires two contacts per month with a probation officer; medium supervision, which requires one in-office visit per month and one visit outside the office every three months; and minimum supervision, which requires an in-office visit once every three months and submission of monthly written reports. In addition to supervising probationers, adult officers are often responsible for collecting from probationers court costs, fines, attorney fees, probation supervision fees and victim restitution payments ordered by the court. Probation officers may also be involved in coordinating community service work for probationers if

ordered by the court. Basic per capita funding provided by TAPC at \$.75 per day for felony probationers and \$.40 per day for misdemeanor probationers helps pay for basic probation services in local departments.

2. Intensive Supervision Probation (ISP). The ISP program was created in 1981 to serve felony offenders who are documented diversions from TDC. To be eligible for court placement in ISP, an offender must meet one or more of the following criteria: one or more prior commitments to jail or prison; one or more convictions; documentable employment, drug, alcohol or mental/emotional problems; and commitment of a serious current offense. Probationers placed in the program receive more frequent contacts with probation officers than do those on regular direct supervision. Caseloads for officers supervising ISP probationers are limited to a maximum of 40 people in order to allow for a more intense level of supervision. Assignment to the program is generally for one year, unless the court extends the term. Performance reviews are done every 90 days and probationers showing significant progress may be transferred to a regular probation caseload. In fiscal year 1985, 49 probation departments received state funding from TAPC for ISP caseloads.

3. Restitution Centers. Established by the legislature in 1983, restitution centers provide a community-based residential sanction for non-violent felony offenders who would have otherwise been incarcerated at TDC. The program's goal is to assist probationers in seeking employment and paying restitution to their victims through supervision in a structured residential setting. The salary earned by the probationer is turned over to the center director for deposit in a special fund after deducting victim restitution, court-ordered fees and fines, room and board expenses, and dependent support. Probationers are assigned to the center for a maximum of one year and evaluations occur every three months. Upon being successfully discharged from the facility, a probationer is placed on intensive supervision probation for two months before eventually going to a regular probation caseload. At the end of fiscal year 1985, 12 restitution centers were operational, with 323 probationers residing at the centers. Fifteen centers will be funded by TAPC in fiscal year 1986, of which three are contract operated facilities and the remainder department run.

4. Court Residential Treatment Centers (CRTC). The first community-based correction program funded by the commission in 1978 was the court residential treatment center. This residential facility provides a structured setting for felony offenders in need of mental health treatment, drug or alcohol treatment,

job training and basic education. Probationers are classified according to need and are assigned to a treatment program during their stay in a CRTC. In addition to regular probationers, those on intensive supervision probation can also be served in the CRTC. When probationers have made significant progress in their treatment plan, they are discharged from the facility and placed on regular probation. Three CRTCs -- in El Paso, Waco and Houston -- are currently funded by TAPC. While all existing CRTC facilities are operated by local probation departments, contract arrangements are also permitted. At the end of 1985, there were 187 CRTC residents.

5. Specialized caseloads. A specialized caseload is created when probationers sharing the same type of problem, such as alcohol abuse or assaultive behavior, are grouped together and are assigned to a probation officer who specializes in dealing with the problem. TAPC has funded specialized caseloads for alcohol and drug abusers, sex offenders, mentally ill and mentally retarded probationers, and assaultive probationers. Those on specialized caseloads are given a needs assessment so that a personal treatment plan can be developed and treatment services arranged by the probation officer. Services may be provided through a contract arrangement, volunteer groups or by a specially trained probation officer. This program serves both felony and misdemeanor offenders. There are currently eight probation departments receiving specialized caseload funding from TAPC.

Monitoring and Enforcement

a. Fiscal Auditing

The fiscal audit staff, composed of one supervisor and eight field auditors, do field audits of adult probation departments statewide to determine their compliance with fiscal standards established by TAPC. Approximately 60 fiscal audits are conducted annually.

The first step in a departmental audit involves about 10 to 40 hours of pre-audit work done in Austin. This includes doing a review of a department's financial records, previous audits and other related correspondence. A letter is then sent out to the department's probation staff, judges and county fiscal officer notifying them of the upcoming audit. The second step involves an on-site review of financial records. Here, auditors check to verify caseload data for financial eligibility, examine the department's revenues and expenditures and review general accounting procedures such as their receipting system and methods for handling vouchers and payments. County contributions for utilities, facilities and equipment

are also checked. The time required to conduct on-site audits ranges from 40 to 160 hours, depending on the size of the department. After the review is completed, an exit interview is conducted with the chief probation officer, chief fiscal officer and the judges to discuss problems and adjustments. The audit report is then prepared by the auditor and reviewed by the supervising auditor.

The audit report then goes through an approval process at TAPC beginning with the audit review committee, composed of four commission members. After the report receives committee approval, it is sent to the department's district judge, chief probation officer and fiscal officer with a request for a written response to the findings and plan for initiating corrective action. The department's response receives a second review by the audit review committee and the final draft of the report then goes before the entire commission for approval or disapproval.

In addition to performing fiscal audits, the audit staff is available to provide technical assistance to the probation departments in the areas of internal control, accounting systems, efficiency of operations, budgeting and cost control.

b. Program Monitoring

The program audit staff, composed of a supervisor and five management auditors, review the main programs operated by probation departments, including the basic and supplemental per capita programs, ISP, restitution centers and CRTCs. Audits primarily focus on management functions of local departments including use of case classification and supervision plans, re-evaluation of supervision plans, use of pre-sentence reports and intra-state transfer procedures. They also verify the number of probationers claimed by the department for state aid per capita payment. In fiscal year 1985, there were 67 on-site program audits. All departments are generally audited at least every four years on a priority basis, with large departments and departments with compliance problems receiving more frequent audits.

The first step in the program audit is to send out three forms to the department -- a program questionnaire, a management questionnaire and a self-evaluation form -- which are completed and returned to TAPC prior to beginning the on-site review. When this information is received by the audit staff in Austin for review, a statistical sample is then selected from all probationers claimed for per capita reimbursement. The sample is used to determine compliance when the on-site audit is conducted in lieu of looking at data on every probationer receiving

supervision. It is assumed that any problems or trends found within the sample would be representative of the entire group.

During the on-site audit, samples developed in Austin are reconciled with an examination of department files to determine the department's error rate. For error rates over an acceptable level, the department may be requested to refund a certain amount of money back to the commission. Generally, the on-site audit takes from three to five days for between two and five TAPC program monitors and is followed by an exit interview to discuss areas of non-compliance with TAPC standards.

During the exit interview, time frames are established for when corrective action or compliance will be achieved by the department. Some citations issued to departments for non-compliance with standards may require immediate action, while others can be waived. Waivers to some standards not dealing with legal matters can be granted by the executive director when inadequate resources or circumstances warrant it. In other instances, waivers can only be granted by the commission, such as for standards on experience of probation officers or the county's ability to provide adequate facilities to the department. In these instances, the corrective action plan from the audit is reviewed by the program services committee and a recommendation is made to the full commission. Waivers are issued to departments for a limited period of time, with a corresponding compliance date that departments must meet.

Following the on-site review, a draft report is prepared and sent to the probation department for comments and the signature of the chief probation officer. Afterwards, a final report containing the corrective action plan is published. Further follow-up reviews and documentation may be performed with some departments to check their progress on areas where citations were issued.

REVIEW OF OPERATIONS

The evaluation of the operations of the board is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it fairly reflects the interest served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved both in terms of the overall administration of the agency and in the operations of specific agency programs.

Policy-making Structure

The evaluation of the policy-making structure was designed to determine if the current statutory structure contains provisions that ensure adequate executive and legislative control over the organization of the body; proper balance of interests within the composition; and effective means of selection and removal of members.

The Texas Adult Probation Commission is composed of nine members serving staggered six-year terms. The Chief Justice of the Supreme Court appoints three district judges and two citizen members, while the presiding judge of the Texas Court of Criminal Appeals appoints three district judges and one citizen member. The commission chairman is elected by the members and serves a two-year term.

In addition to the commission, an advisory council composed of six adult probation administrators and three line officers has been established to advise the agency on various matters. This nine-member council is appointed by the commission chairman. The commission also divides itself into two separate subcommittees -- a program services committee and an audit review committee -- to review funding applications and audit reports. Both subcommittees consist of four commission members.

While the review indicated that the existing policy-making structure appears to be functioning appropriately, there was no statutory authority for the existing advisory committee. This issue is discussed as follows. Additionally, other changes were needed for ensuring adequate executive control over the policy body and for representing a proper balance of interests on the commission. These changes are discussed in the back of the report under the section on "Major Policy Issues."

The statute should authorize the agency to have advisory committees.

The Texas Adult Probation Commission currently has one advisory council that is active in assisting the commission on various matters. The council is composed of six adult probation administrators and three line officers appointed by the commission chairman. Created by a resolution of the commission in February 1985, the purpose of the council is to advise the commission on any matters related to improvement and delivery of probation services. One of the current projects of this advisory body is to assist the commission in updating and rewriting the statewide adult probation standards use by all probation departments.

The existence of an advisory committee in a corrections-related agency such as TAPC is an effective means for increasing input into the decision-making process from those directly affected by commission policies. There is further precedence for a statutorily authorized advisory council in the Texas Juvenile Probation Commission enabling legislation (Section 75.027, Human Resources Code).

There is no clear authority in TAPC's statute or standards for the current advisory council. Amending the statute to authorize the existence of the present advisory committee, or any future advisory bodies deemed necessary, would ensure continuation of the practice of allowing outside involvement in agency decision-making. Further, the commission should adopt rules for any advisory committee created which specify the committee's purpose, duties and responsibilities, methods of selecting members, qualifications and terms of membership, and requirements for reporting to the commission regarding the committee's work.

Overall Administration

The evaluation of the overall agency administration was designed to determine whether the management policies and procedures and the monitoring of agency management practices were consistent with the general practices used for internal management of time, personnel and funds. The review showed that while the agency's overall administration was generally effective, two changes needed to be made in the area of training. The suggested improvements are described as follows.

The statute should authorize the agency to provide training and technical assistance activities.

Training and technical assistance are currently provided by a staff of five agency trainers to assist probation officers in complying with standards set by the commission and in providing effective probationer supervision. Probation officer training is provided by TAPC in a variety of settings: on-site, at workshops, at academies or training centers, at institutions of higher learning, through contract service, or at professional meetings. In addition, local probation departments may also provide their own in-service training, subject to approval and other conditions specified by TAPC.

In reviewing agency functions, training and technical assistance were found to be important services provided to local departments. TAPC records from fiscal year 1985 indicate that at least 50 percent of all officers received 26 hours or more of approved training. One benefit of probation officer training is that a means is established to achieve greater statewide uniformity in probation services. Additionally, it provides a way to educate officers on the newest probation information and techniques available. For instance, probation officers statewide are now in the process of receiving standardized training on assessing probationer needs and risks and developing appropriate supervision plans through the case classification system. Besides formal training, technical support is also provided by divisions within TAPC on an informal basis. Examples include answering local requests for specialized information for planning; providing legal advice on probation issues, answering requests for slide/tape presentations; and responding to financial questions about allowable budget expenses.

Training and technical assistance activities provided to local probation departments by TAPC are important in promoting local compliance with agency standards. However, the only reference to TAPC training activities is found in Section 321.2b of TAPC standards, which require each officer to have 20 hours of professional training annually. Authority to provide training under the agency's statutory mandate "to improve the effectiveness of probation services" and "to establish uniform administration standards" (Section 1.01, Article 42.121, C.C.P.), is unclear since it does not speak directly to training. A similar agency, The Texas Juvenile Probation Commission (TJPC) has clear statutory guidance to provide training. Sections 75.041 and 75.043 of the Human Resource Code statutorily authorize TJPC to provide "appropriate educational, pre-service and in-service

training" and "educational training and technical assistance" to local authorities in promoting compliance with standards.

A 1979 Attorney General Opinion No. MW-42 addressing the issue of statutory authority for agency operations concluded that administrative agencies have only those powers expressly granted by statute. For this reason, TAPC's statute should be changed to provide express authority for training and technical assistance activities. This would bring the agency's statute in line with their standards and the attorney general opinion, as well as create statutory consistency between TJPC and TAPC who perform similar training functions.

A certification program for adult probation officers should be developed.

Currently, there are approximately 1,800 adult probation officers in the state who carry out direct supervision functions for about 175,000 misdemeanor and felony probationers. For over 200 probation officers hired annually, certain eligibility requirements must be met before becoming a probation officer. Eligibility requirements include having a bachelor's degree from an accredited university and one year of graduate study in a broad range of social sciences. One year of experience approved by TAPC may be substituted for the year of graduate study.

While the eligibility requirements appear to be adequate to ensure that qualified probation officers are hired in each locality, the review also looked at the adequacy of education and training for new probation staff once hired. Three concerns are identified below.

First, there are no mandatory training requirements for new probation officers. Sam Houston State University in Huntsville, Texas offers a week long intensive orientation program for probation officers between two and four times a year. This program has been funded by a Criminal Justice Division grant through the governor's office since 1977, although these funds have diminished over the years. Funds have been made available to probation departments for use in paying some of the training costs during the week long program. The course covers probation law, effective supervision techniques and communication skills.

While many probation departments take advantage of this program, training is not required for new officers. The agency estimates that about 75 percent of all new probation officers attend the training each year. This means that about one-fourth of all new probation officers start their jobs without any basic probation

training, other than what was learned in college or through previous work experience.

A similar agency, the Texas Juvenile Probation Commission (TJPC), requires that all new juvenile probation officers have pre-service training. Section 75.042 of the Human Resources Code requires officers to "have satisfactorily completed the course of pre-service training or instruction, have passed the tests or examinations, and possess the level of certification as the commission may prescribe." Due to the similarity between the jobs of adult and juvenile officers, it is appropriate that adult officers be subject to the same training standards as are juvenile officers.

Second, probation officers may potentially be held liable for "acts or omission" when supervising probationers, which means that a probationer or citizen could sue an officer for the manner in which the officer performed his/her job. This is especially true for officers that have not received basic pre-service training. Areas where an officer may be potentially liable include: damages for false arrest and restraint, defamation of character, right of privacy, failure to protect the public and acting without authority. A study conducted in conjunction with the U.S. Department of Justice entitled "Potential Liabilities of Probation and Parole Officers" published in August 1985 indicates that potential liability in these areas can be reduced through better training.

Third, for officers that do attend the basic training course offered by Sam Houston State University, a competency test is not required after the course is completed to measure whether an officer has achieved a minimum level of knowledge or skill. Without this measure, it is not possible to determine an officer's competency.

If new probation officers were required to receive basic probation training followed by a competency test, several benefits could be achieved. First, the adult probation profession would be enhanced by ensuring that competent officers were being placed in charge of supervising offenders. Second, better protection from liability would occur, since probation officers must deal with sensitive issues such as public protection and adequate supervision of some serious criminal offenders. Third, training requirements for adult officers would be brought up to the same level as the requirements for juvenile officers, thereby creating consistency between agencies designed to carry out similar tasks.

A common way to accomplish these objectives is through "certification." This process, already in place for juvenile probation officers, requires the taking of specified coursework and the authority to use a competency test. To better ensure that newly hired adult probation officers have the skills necessary to effectively carry out their work, two statutory changes are necessary. First, the agency's statute (Art. 42.121, C.C.P.) should be modified to require development of the pre-service training coursework and "certification" competency examination for new officers. Second, the general probation statute (Sec. 10(c), Art. 42.12, C.C.P.) should be amended to require completion of the coursework and examination developed by TAPC within the first year of employment as a probation officer. As is common for new certification programs, it appears appropriate to "grandfather" current officers into the certification program due to their on-the-job training and experience.

Through discussions with the agency, estimates were obtained on the cost of establishing a certification process. One time start-up costs for the state would be approximately \$89,000 including competency test construction and evaluation. This cost would also include certificates for all existing probation officers who would be grandfathered into the certification process. On-going state costs would be about \$63,000 a year including two agency trainers to provide training to local departments and consultants which the agency estimates it needs to provide certification training statewide and certificates for about about 200 new officers hired annually. Probation departments would pay travel and per diem for new officers to attend training. The total travel and per diem cost would be about \$11,000 annually.

It may be possible to reduce these costs, however, through the use of resources available to the agency. These resources include using the expertise of Sam Houston State University in developing training coursework or the test, providing some training through the university, and utilizing a regional approach to training, with the assistance of existing training personnel in larger probation departments, so that new agency training personnel may not be required. Additionally, grant funding has been provided by the National Institute of Corrections for test construction for a similar purpose at the Texas Commission on Law Enforcement Officer Standards and Education.

Discussions with TAPC staff indicate that the work involved in establishing a certification process could be accomplished in approximately 15 months. Although

some costs to the state would be incurred, it appears that a better trained probation staff will improve the quality of services delivered to probationers and ultimately better protect the state's citizens.

Evaluation of Programs

For the purposes of the review, the functions of the Texas Adult Probation Commission were divided into four main areas: administration and support services; probation policy and program development; state aid distribution; and monitoring and enforcement. Recommended changes for administration were presented in the previous section. The review indicated that additional improvements were needed in two remaining areas -- probation policy and program development and monitoring and enforcement. These suggested improvements are set out below.

Probation Policy and Program Development

The Texas Adult Probation Commission is responsible for developing probation standards for local probation departments. Standards established by TAPC serve as operational guidelines for departments to follow in order to receive state funding. The agency is also responsible for developing new probation programs for effectively supervising offenders. Policies and programs established by the agency have an impact on the courts in Texas, which are responsible for utilizing probation programs, and probation employees, who have direct supervision responsibility for offenders.

The review indicated that the agency generally performs effectively in the area of policy and program development. However, several changes could be made which would improve probation program and facility operations, allow more flexibility in the use of sanctions for probationers and improve department policies. These suggested changes are described below.

The statute should authorize the agency to fund and set standards for the intensive supervision probation program.

Created by a rider to the 1982-1983 general appropriations act, the intensive supervision probation (ISP) program is operated by TAPC through a per capita payment system. Forty-nine probation departments participated in the program during fiscal year 1985 serving 5,142 felony probationers.

The program is designed to provide an alternative to incarceration at TDC. In fact, rider restrictions in place since 1981 require that the funds be used to

divert persons from commitment to the Texas Department of Corrections (TDC). The rider in effect for fiscal years 1984 and 1985 indicates that at least 8,400 persons should be diverted from TDC by the program during the biennium. Agency records indicate that some 9,269 persons had been placed on ISP in lieu of TDC incarceration during the biennium.

The agency provides a per capita payment (\$5.00 per day in 1985 and \$4.50 per day in 1986) to participating departments that agree to comply with commission standards regarding the program. The standards are designed to ensure "intensive supervision" of those probationers placed in the program by judges who must determine that the person would have gone to TDC if the program had not been available.

The cost of the program is high compared to the cost of regular probation services. Departments receive \$.75 per day for each regular felony probationer and, as mentioned previously, \$4.50 per day for each ISP probationer. The difference in cost is because of the much smaller caseload per probation officer for ISP (1:25 to 40 in ISP and 1:150 in regular probation) and because of the significant amount of contract service dollars for probationers on ISP. A review of expenditures for 36 of the participating departments for fiscal year 1985 indicates that 27 percent of their ISP expenditures were for contract services. These services include general counseling, drug testing, and contract payments for residential placement. Other expenditures are for officer salaries, travel and benefits.

The types of offenders supervised through ISP and their general problems vary greatly. Exhibit IV which follows provides a percentage breakdown of the types of offenses and problems addressed through the ISP program. As can be seen, most of the persons have been convicted of burglary (25 percent) and the general problems faced by the probationers include drug, alcohol and employment difficulties.

**Exhibit IV
ISP DEMOGRAPHICS FOR 1984 and 1985**

	<u>Fiscal Year</u>	
	<u>1983-84</u>	<u>1984-85</u>
<u>Offense</u>		
Murder	2%	2%
Kidnapping	0	0
Sexual Assault	4	3
Robbery	5	5
Assault	5	7
Arson	1	1
Extortion	5	6
Burglary	25	25
Larceny	7	5
Stolen Vehicle	5	4
Forgery/Counterfeiting	6	6
Fraud	1	1
Drugs	18	21
Sex	2	3
Weapons	1	1
Traffic	2	1
DWI	9	5
Other	3	3
<u>Problem Area</u>		
Academic/Vocational	7%	8%
Employment	16	16
Financial Management	6	4
Marital/Family	3	3
Companions	3	3
Emotional	9	9
Alcohol	30	24
Drug	22	28
Mental Ability	1	1
Health	1	1
Sexual Behavior	<u>3</u>	<u>5</u>
Total Number of ISP Probationers	<u>4,127</u>	<u>5,142</u>

A review of the results of the program indicate that it appears to provide an alternative to TDC incarceration and has a supervision structure which provides a lower revocation rate to TDC than regular probation (19 percent as compared to 30 percent). The cost of the program is significantly lower than TDC incarceration. One concern has been encountered concerning the program, however, relating to its lack of statutory authority.

The agency's enabling statute provides that the purpose of the agency is, in part, "to provide alternatives to incarceration by providing financial aid to judicial districts for the establishment and improvement of probation services..." (Sec. 1.01, Art. 42.121, C.C.P.). This general authority is broad and does not specifically authorize the intensive supervision probation program. The agency's other TDC diversion program, the restitution center program, is specifically authorized in the statute governing the agency (Sec. 3.10, Art. 42.121, C.C.P.). Further authority and governance concerning the restitution center program are found in Sec. 6e of the "general probation law" (Art. 42.12, C.C.P.). The current authority and governance for the ISP program is found only in the general appropriations act.

To ensure that the intensive supervision probation program is maintained as a diversion program and that general legislative direction for the program is provided in a similar manner as the agency's other diversion program, specific authorization should be developed in statute. This authorization can be accomplished through additions to the agency's statute and general probation law to indicate that intensive supervision probation is a sentencing alternative to incarceration at the Texas Department of Corrections. Secondly, the agency should be authorized to fund the program in consonance with available dollars appropriated by the legislature and in conformity with standards developed by the commission.

The Texas Adult Probation Commission should be given clear statutory authority to fund and set standards for court residential treatment centers.

Of the two types of residential centers operated through TAPC, clear statutory authority exists for one facility but not the other. When the legislature authorized establishment of restitution centers in 1983, statutory authority was provided to TAPC to administer the centers through local departments and guidelines for operating the facilities were established in Articles 42.12 and 42.121, C.C.P. Eligibility requirements for placement in the center were also laid out in statute.

For court residential treatment centers (CRTCs), established by TAPC in 1978, the agency's general mandate to establish "facilities other than jails or prisons" (Section 1.01, Article 42.121, C.C.P.) serves as the main authority for such centers. There are no further statutory provisions concerning the CRTCs. Currently, three CRTCs are operational in El Paso, Waco and Houston. In fiscal year 1985, these centers served over 750 clients in need of mental health treatment, drug and alcohol treatment, and job skills and vocational training. The

CRTCs serve an important function by providing supervision, counseling and treatment for offenders with a variety of problems in a structured residential environment. In many cases, the CRTCs are also used to divert offenders from TDC, although this is not a requirement for placement in the center.

The commission should be given statutory authority for funding and setting standards for CRTCs. This would make the statute consistent between both types of facilities funded by the agency and clarify TAPC's authority for the centers.

The Texas Adult Probation Commission should adopt rules for administering all programs and facilities.

The Administrative Procedure and Texas Register Act requires an agency to adopt rules describing the nature and requirements of all formal and informal procedures (Art. 6252 13a, V.A.C.S.). The Texas Adult Probation Commission has adopted rules for administration of probation services and published them in their "Standards for Adult Probation Services in Texas." These standards, which are distributed to probation departments statewide to create consistency in probation services, outline the major program and department regulations set by TAPC.

A review of TAPC's rules (or standards) indicated that formal rules have been adopted for some agency programs but not others. The agency currently operates five major funding programs: basic per capita funding for probation services; supplemental grants; special grants which fund CRTCs, contract residential services and specialized caseloads; intensive supervision probation (ISP); and restitution centers. A supplemental per capita funding program will also be added in 1987. Rules concerning program eligibility requirements and operational procedures have been specified in agency rules for basic per capita funding, restitution centers and ISP. There are, however, no specific rules on supplemental grant programs and special grant programs including CRTCs, contract residential services and specialized caseloads.

While not all departments operate each of the five major programs funded by TAPC, the Administrative Procedure and Texas Register Act specifies that agencies should adopt rules for all formal program activities of this type. Unlike restitution centers, CRTC directors are operating their facilities without any minimum program standards specified in rules. The agency does set operational guidelines for facilities and programs through other publications which outline conditions for program grants and procedures for establishing residential facilities. However, it is appropriate that all probation departments are informed of agency standards that must be met and eligibility requirements for TAPC-funded programs

through the publication and distribution of rules. Further, adoption of program policies according to provisions of the Administrative Procedure and Texas Register Act would permit adequate public participation in the process. The rule-making process outlined in the APA provides the opportunity for input from any interested parties as rules are considered and finally adopted.

To ensure consistency in distribution of program information and an adequate opportunity for public participation, the statute should be amended to require the agency to establish formal policies and procedures in agency rules for administration of all programs and facilities.

Evidence of community involvement should be required prior to agency funding to implement all community-based residential facilities.

As mentioned earlier, TAPC funds two types of community-based residential facilities, restitution centers and court residential treatment centers (CRTCs). In 1986, there will be a total of 18 community-based facilities located in the state. However, the review indicated that the amount of community support for these programs varies greatly.

Restitution centers were first authorized in Texas in 1983 by the legislature and in 1984 received almost two million dollars in funding. These diversion centers are designed for non-violent felony offenders who work and pay restitution to their victims in a supervised setting. Since 1983, restitution centers have developed rapidly throughout the state and in 1986, 15 centers will be open, three of which are privately operated. However, neighborhood opposition resulted in one center being moved to another location while another center approved for state funding has yet to open due to lack of community support, in spite of continued efforts. Money granted for the latter center has been deobligated. Court residential treatment centers were first funded by TAPC in 1978. These programs emphasize mental health treatment, drug and alcohol rehabilitation, and job skills training. Currently there are three centers located in Houston, Waco and El Paso.

TAPC's statute and corresponding standards are not consistent in their approach for establishing community-based programs. For instance, shortly after public opposition forced the relocation of one restitution center, the commission in May of 1984, added a standard (Section 321.12-v) requiring a public hearing on the proposed location of any new restitution center prior to establishing the center. However, this provision applies only to department operated centers and not to privately contracted centers that also receive state funding. In addition, while

commission standards clearly outline procedures for establishing and maintaining restitution centers, no standards currently exist for the establishment and maintenance of CRTCs. There are also no statutory provisions for CRTCs as there are for restitution centers.

In reviewing the previous problems that have occurred in finding suitable locations, the agency indicated that inadequate neighborhood involvement and education may have contributed to the problems in some localities. Other problems may have resulted from the timing of when restitution center funding became available. In 1984, fears of safety were raised when the overcrowded conditions of Texas prisons forced the early release of convicted felons on parole and placement of more offenders on probation to relieve crowded prison conditions. Since Texas citizens did not want their communities to become "dumping grounds" for potentially dangerous felons, halfway houses and restitution centers became obvious targets of concern.

Today, citizens are demanding more public accountability for community-based residential facilities. In an effort to meet this need, evidence of community support appears to be a useful step prior to funding and establishing these facilities. This approach may help identify and alleviate potential problems early in the process and prevent additional costs incurred in relocation efforts. One means for getting community support might include a community advisory group consisting of representatives of the community who advise the probation department on establishment and maintenance of the program. The commission now requires local judges to appoint a community advisory council to advise probation departments on establishing and maintaining restitution centers (Section 10(a), Article 42.12, C.C.P.), although there is no such provision for CRTCS. In addition, community involvement and awareness could be increased through speaking engagements, open houses, community work projects, volunteer work and a responsive complaint process.

To help address inconsistencies between the two community-based residential centers and to help reduce public opposition to centers funded by the commission, the statute should be changed to require evidence of community support for all residential facilities, including department and contract operated centers, prior to establishing the final location of a center. The commission should use evidence of community support as a main consideration before providing implementation grant money to probation departments for such centers. This means that no departments should receive implementation grants from the commission unless they demonstrate community support. The commission should establish, in rules, what

evidence of community support should be required. This would allow citizen input into the rule adoption process as outlined in Texas Register procedures.

The statutory requirement of community support for such centers provides a way to balance the needs of the state to establish treatment and diversion programs for offenders and the public's need for protection. This provision should also prevent costly delays in siting and possible relocation of facilities.

Short-term furloughs should be permitted for probationers in restitution centers.

Restitution centers and court residential treatment centers (CRTCs) provide a structured, community-based residential sanction for felony offenders. These live-in centers provide bed space, meals and basic services to probationers who are ordered into the centers by the court. Restitution centers were established to promote employment and victim restitution for felony offenders who would have otherwise been incarcerated in prison, while CRTCs are geared to probationers in need of drug, alcohol and mental health treatment and job skills or vocational assistance. While neither type of center is considered a minimum security facility, policies are established by the individual centers concerning rules of conduct, curfews and security. If probationers violate center policies, disciplinary action can be taken, including revoking the person's probation.

The review of the two types of residential facilities looked at how effective the centers were in achieving the purposes for which they were established. In performing the evaluation, several factors were analyzed: success rates for probationers in the facilities, in-program recidivism rates (new offenses), absconder rates (unauthorized absences), and level of treatment and employment of residents. The review indicated that residential facilities, in general, were achieving their intended goals. However, a fairly high absconder rate was found for residents of restitution centers, meaning many residents left the centers without permission or failed to return to the center after an approved leave or by a designated time. While each center sets its own policy for absconders, a probationer may be considered an absconder if he/she is missing for as little as one to four hours from some centers or over 24 hours from most other centers. For restitution centers, about 18 percent of the total people served by the centers in fiscal year 1984 (39 of 216 people) and 19 percent of the clients served in 1985 (150

of 775 people) absconded from the centers. CRTCs fared somewhat better, with only a 10 percent absconder rate in both 1984 and 1985. The absconder rate for CRTCs does not count one facility that had an unusually high absconder rate and was closed.

An examination was made of the agency's procedures for reviewing and taking action on facilities experiencing problems such as high absconder rates. Each center turns in a monthly report to TAPC, which identifies numbers of absconders for the month. If a high absconder rate is found for a facility, agency personnel may perform an on-site visit to investigate the situation. Annual audits performed by program monitors may also identify facility problems. Several courses of action may then be taken by TAPC to correct the situation, such as providing training and technical assistance for facility personnel, placing special conditions on grants that must be met by the facility in order to continue receiving grant funding from TAPC, and discontinuing funding for centers that fail to improve by a designated time. In the case of the CRTC mentioned earlier which had an unusually high absconder rate, funding for the facility was terminated by TAPC and the facility was then closed. This sanction is necessary for ensuring state funds are used in an effective manner.

The review next considered various ways to lower absconder rates for restitution centers since plans for expanding the number of facilities are underway by the agency. Individual facilities can take disciplinary action with probationers who abscond in order to improve compliance with center rules. Action can include giving a probationer extra work duties, taking away privileges, and holding administrative hearings with the probationer where either the chief probation officer or judge is present. Steps to improve center security may also be taken by the center director. Further, statutory provisions that appear to have a bearing on absconder rates of restitution center residents were also examined. Of particular interest is the restitution center furlough policy established in statute (Section 6e (j), Article 42.12, C.C.P.). This provision authorizes furloughs for probationers in restitution centers only for the purposes of obtaining medical treatment or diagnosis, attending funerals or visiting critically ill relatives. While probationers who earn the privilege of receiving visitors may see family members at the restitution center during set visiting hours, a probationer cannot visit his/her family at home, even though in many cases the center is near the probationer's home.

Since CRTCs do not have any statutory restrictions on furloughs, each center sets its own policy. All three existing centers have a furlough policy, which could

account for the lower absconder rates when compared to restitution centers. In many CRTCs, the furlough policy is expanded to allow weekend passes, temporary releases and home visits as a reward for good behavior. For example, one CRTC provides weekend passes to probationers that follow center rules such as holding a full-time job, doing all housekeeping chores, having no outstanding house rule violations, making all court-ordered payments, having urine specimens that test clean for drug and alcohol use, and attending all required drug or alcohol treatment sessions. Another CRTC has instituted a resident privileges program which allows home visits for probationers demonstrating progress in reaching rehabilitation goals. The probationer is routinely evaluated on his/her program or treatment progress and success in complying with terms of resident privileges. The goal of allowing such furlough privileges is to provide incentives to probationers to become more responsible and successfully fulfill their obligations while in the center and to encourage continuation of responsible behavior upon discharge from the center.

Consultants with the National Institute of Corrections (N.I.C.) who provided on-site technical assistance to TAPC in 1985 by reviewing residential programs have suggested that absconder rates could be lowered if short-term furloughs to visit family members were permitted. After reviewing residential programs for probationers in Texas, N.I.C. consultants recommended establishment of a pass policy for all residential programs to be used as an incentive for compliance, as well as a possible means for reducing absconder rates.

In order to improve restitution center absconder rates and make furlough policies consistent between restitution centers and CRTCs, the statute should be changed to permit restitution center directors to grant short-term furloughs to probationers. The agency should adopt rules which specify conditions for awarding short-term furloughs, as well. If developed as part of a probationer's supervision plan, the short-term furlough can serve as an incentive to improve behavior by rewarding responsibility.

The agency should evaluate program outcomes to determine effectiveness.

The Texas Adult Probation Commission is charged by statute with the responsibility of "improving the effectiveness of probation services" (Section 1.01, Article 42.121, C.C.P.). To determine whether TAPC was meeting this objective, the review looked at data collection methods used by the agency for learning how effective their programs are and for making necessary adjustments in less successful programs.

In general, the main data collected by TAPC includes workload measurements and general demographic or descriptive information on probationers. This information is primarily collected for purposes of tracking persons while on probation, making state aid payments to local departments and obtaining some profile data on agency programs and offenders. The agency also uses the data to calculate success rates of probationers while in various programs and for doing more extensive evaluations of special programs.

However, the agency does not do regular, systematic evaluations of all programs to determine their outcomes or effect on offenders once they leave probation. For example, there are no statistics on how many ex-probationers become offenders again, which probationers are more likely to recidivate, or the effect of TAPC's treatment programs on offenders with specific problems. There are two main reasons for the limited efforts of the agency in this area. First, the agency has been experiencing tremendous growth as a new agency and has had to make provision of services to offenders its first priority. Second, most of the available resources for data evaluation has had to be used to keep track of over 250,000 offenders currently on probation. The recent conversion of the agency's computer system, however, will allow the agency to expand its evaluation efforts in the future.

To help the agency achieve its mandate of improving the effectiveness of probation, TAPC should more extensively evaluate all probation programs on a regular basis with the goal of measuring program success and impact on probationers. To accomplish this, the agency could make better use of data available from case classification forms used on all probationers. Under the case classification system, probationer information is collected, recorded, and coded for computer use at four major points in time: intake, assessment, re-assessment and discharge. Intake information includes demographics, offense profiles, and amounts of monthly probation fee, restitution and community service ordered by the court. Assessment and reassessment information includes probationer needs and risk evaluation scores, referrals and supervision plans. At discharge, information recorded includes the reason for termination or exit from supervision and the current employment status or education level of the probationer.

Regular evaluation of case classification data through a sampling system would enable TAPC to concentrate staff and financial resources on programs that appear to be having the most positive impact on probationers or to improve less successful programs. For instance, if agency evaluations showed that probationers on the intensive supervision probation program (ISP) were having higher in-program

success rates, lower revocation rates, and lower in-program costs than were other programs, the agency could recommend to the legislature that resources be shifted to expand the use of ISP. If other programs were showing low success rates, high absconder rates and high post-program recidivism rates for certain types of offenders, improvements could then be made to the programs and a re-evaluation later performed to measure the impact of the improvements. This type of systematic evaluation is especially important for programs such as restitution centers and court residential treatment centers that have a relatively high cost per probationer per day.

Evaluation of program outcomes would also assist the agency in measuring the effectiveness of programs in producing change in the direction of defined and measurable goals. The measurement criteria might include such things as recidivism, revocation rates, employment performance, abstention from controlled substances, and cost.

Courts should be clearly authorized to impose a short-term jail sentence for felony probationers who commit misdemeanor offenses or administrative violations of probation terms.

The conditions of probation that must be followed by all persons granted probation for misdemeanor or felony offenses are specified in statute (Section 6(a), Article 42.12, C.C.P.) and are communicated to all probationers. Examples of probation conditions that must be met are to: commit no new offenses; report to a probation officer; pay all fees, fines and court costs ordered; and provide support to dependents. While probationers are expected to follow all conditions of probation, probation officers and courts must continually deal with persons who violate one or more terms of probation. Generally, any violation of probation terms is considered justification for revoking probation after a hearing, whether a new criminal offense was committed or whether "administrative" conditions of probation were violated. Examples of administrative violations are: failure to report to the probation officer, non-payment of required fees, and failure to remain within the area. Courts also have the option of modifying conditions of probation at any time.

During the review, agency figures were obtained on the number of felony probationers who have had their probation revoked. Figures obtained for fiscal year 1981 through 1984 are shown in Exhibit V as follows.

Exhibit V
FELONY PROBATION REVOCATIONS

<u>Fiscal Year</u>	<u>Approximate No. of Felony Probationers Revoked</u>	<u>Approximate No. of Felony Probationers Revoked for Administrative Violations</u>
1981	6,132	1,226
1982	7,099	1,420
1983	8,431	1,686
1984	8,429	1,686

Of the total number of probationers revoked, it was possible to make estimates on the percent revoked for administrative violations. Since number of revocations and revocation reasons came from two separate data bases at the agency, the following numbers should be seen as an approximation. When revocation reasons are examined using cumulative data the agency has tracked since 1981, approximately 80 percent of all felony probationers who had their probation revoked were for new offenses, while 20 percent were for administrative violations. This means that for fiscal year 1984, about 1,700 people on felony probation were revoked for administrative violations. An estimate could not be obtained for number of felony probationers revoked for new misdemeanor offenses.

While exact figures are not known, many of the 1,700 probationers revoked in 1984 for administrative violations, as well as those revoked for new misdemeanor offenses, were placed either in TDC or county jails. This places a heavy burden on prisons and county jails. Further, once a person's probation is revoked, it denies probation officers any further opportunity to help correct a probationer's behavior through treatment and supervision, since the person would generally no longer be on probation. For these reasons, other informal means of getting a probationer to take the probation program seriously are first used before the final step of revoking probation is taken. Some of these means include: taking the probationer back to court and ordering him/her into a treatment program; extending the length of probation; adding community service work hours to the terms of probation; and bringing the probationer before the court on a motion to revoke, at which point the judge may give the probationer another chance to improve behavior.

However, both the courts and probation officers in Texas have been frustrated by the limited range of legally authorized intermediate sanctions for dealing with persons that either commit less severe misdemeanor offenses while on probation or administrative violations of probation conditions. These intermediate sanctions are useful in order to avoid being too "soft" on probationers who commit new violations and to avoid revoking all probationers.

An intermediate sanction that is used informally by some courts is to bring the probationer back before the court for committing a new misdemeanor offense or for violating administrative conditions of probation and to subsequently place the person in detention in the county jail for a short period of time. After the jail time is served, the person may be placed back on regular probation or a modified form of the original probation terms. Short-term jail time is designed to give the person a taste of incarceration as a disincentive to further institutionalization in state prison and to harshly deal with those that don't take terms of probation seriously. If this sanction achieves its goal of discouraging further violations, a trade-off is made in length of incarceration. Placing a person in detention for a short period of time prior to revocation would in some cases eliminate the need to revoke the person for a new offense later, in which case a longer period of imprisonment would often follow.

While jail time is informally used by some courts, the process has never been formalized and clearly communicated to probationers as a possible means of dealing with probation violations. This is largely due to the fact that statutory authority for this procedure does not exist. There is clear authority for courts to modify conditions of probation at any time (Section 6 (a), Article 42.12, C.C.P.) and to require a period of detention no greater than 30 days as an original term of probation (Section 6b(a), Article 42.12, C.C.P.). However, the statute does not clearly specify that a probationer can be brought back before the court after having been granted probation and be ordered to a period of detention in county jail upon violating probation conditions. By formalizing this procedure, the probationer can know in advance that violations of conditions of probation can result in detention in the county jail, as well as revocation.

It must be recognized that county jails are very near capacity in some areas of the state. According to December 1985 data from the Texas Commission on Jail Standards, county jail occupancy rates were at 78 percent of total capacity, or 98 percent of "rated" capacity, when dedicated and buffer zone bed spaces used for separating certain individuals are counted. However, since this provision would give permissive authority for what is already the current practice in many courts,

no significant burden on county jail occupancy rates should occur as a result of formalizing this sanction. In fact, judges have ready access to information on available bed spaces in their local jails and do currently adjust jail sentences accordingly when no vacancies exist. By allowing courts to order jail time up to 30 days, the court could remove the probationer from jail at any point prior to 30 days and suspend the rest of the sentence if jail conditions become crowded.

Establishing clear authority to detain a felony probationer in county jail for committing new misdemeanor offenses while on probation or for violating administrative terms of probation accomplishes several goals. First, it would legalize the current practice of some courts, while making the use of jail time permissive; second, it would allow judges and probation officers to clearly inform the probationer in advance that the sanction exists; third, it would provide another opportunity for corrective action prior to probation revocation; and finally, it may relieve some prison or county jail overcrowding problems by preventing or delaying some current revocations.

Probation fees should be a mandatory condition of probation, with a \$25 minimum monthly fee, unless waived, reduced or suspended by the court.

Probation supervision fees were first assessed to persons placed on probation in Texas in 1967 as both a form of punishment and as a way of allowing probationers to help subsidize some of the costs of services rendered to them. Paid on a monthly basis, the supervision fees are a common condition of probation and are assessed at the judge's discretion, taking into consideration what a probationer is able to pay. The Code of Criminal Procedure was recently amended to increase the maximum monthly supervision fee a court could assess from \$15 to \$40, effective September 1, 1985 (Sec. 6a(a), Art. 42.12, C.C.P.).

In Texas, fees for probation supervision currently constitute about 40 percent of a probation department's total revenue, while state money accounts for about 60 percent. Probation fee revenues are placed in a judicial district fund which remains in the district to help pay for the department's probation services and employees' salaries, travel, and fringe benefits. At least 21 states, including Texas, now assess fees for probation supervision or services, and the trend is for more states to do so. Thirteen of the 21 states make the fee assessment a mandatory condition of probation. The fee in Texas is not considered a mandatory condition of probation since courts are given permissive authority to charge the fee. Probation fee amounts in other states vary from \$10 to \$100 per month.

Besides the probation supervision fee, other fines and fees are often ordered as a condition of probation in Texas including county court costs, attorney reimbursement fees and fines tied to the particular offense committed. While the amount assessed varies from one county to the next, in Travis County, these fines and fees usually total \$82 per probationer and are paid in two payments.

Because state funds for support of probation departments recently decreased, departments have had to rely more heavily on the revenue generated from probation supervision fees. An analysis was made of probation fee assessment and collection amounts to determine whether courts in Texas were using their permissive authority to assess supervision fees.

The review indicated that there was a wide variation in both the fees assessed by the courts and the amounts collected by departments statewide. First, since TAPC does not maintain complete data on the fees assessed by various courts in the state, a survey of 25 representative departments was conducted by the agency to obtain representative information. The survey showed that in 1984, when the maximum fee was still \$15, an average fee of \$14.59 was assessed to 97 percent of felony probationers and an average of \$13.97 was assessed to 97 percent of misdemeanor probationers. However, some courts were charging as low as \$5.00 per month and one was charging no fee until 1985. Second, when looking at department fee collection amounts, variations also existed among departments in terms of the dollar amount of probation fees collected for the number of probationers on direct supervision. As shown in Exhibit VI, collections ranged from \$2.40 to \$29.30 per month per probationer on direct supervision for February 1984 when the maximum fee was \$15 per month.

Exhibit VI
PROBATION SUPERVISION FEE COLLECTIONS
February 1984

The Five Highest Departments		The Five Lowest Departments	
Jones	\$29.30	Jim Wells	\$ 2.40
Montague	27.00	Kleberg	6.00
Hill	24.20	Grayson	8.50
Parker	23.10	El Paso	8.50
Wood	21.30	Duval	9.10

Statewide Average: \$15.60

It should be noted that there are two general classifications of probationers in Texas -- direct and indirect. An indirect probationer is one who does not report in person to a probation officer. Included in this group would be probationers who have moved out of the county and are supervised somewhere else, yet still send fees back to the county having original jurisdiction over their case. Thus, such probationers would be counted as a direct probationer by the county that is supervising them and would also be counted as an indirect case by the county of original jurisdiction. Consequently, counties which have a higher number of indirect probationers would have fee amounts collected greater than the \$15 maximum per month, as shown on the chart. The exhibit above divides the total probation fee collections (for direct and indirect cases) by the number of people on direct supervision.

After the analysis of assessments and collections was made, it was found that the departments whose courts assessed the lowest probation supervision fees were also lowest in collection amounts. Thus, it can be reasonably concluded that in departments with very low collection amounts per direct probationer, the full fee is not being assessed in most cases.

While most courts are assessing some level of probation fees, it is appropriate that all should do so where feasible. To accomplish this, the statute should be amended to require a probation fee assessment in all cases, unless the judge specifically waives or reduces the fee and enters an explanation in the court record. In addition, a minimum fee level should be set. The survey results indicated that for fiscal year 1986, the average fee assessed for felony cases is \$26.01 and for misdemeanants, \$21.50. A reasonable minimum fee would then be \$25 per month.

Allowances should be made for cases of financial hardship. In other states with mandatory probation fee requirements, the fee can be waived under various circumstances including lack of employment or cases of "extreme hardship". In addition, provision should be made for the suspension of the probation fee for the first two months of probation, for example, while the probationer is paying the other court costs and fines.

The full fiscal impact of such a change is difficult to determine as data is not yet available on collections since the new \$40 maximum fee went into effect. However, it is reasonable to assume that more revenue will be generated through a mandatory probation fee, with a minimum amount set in statute, than is currently generated through a permissive fee assessment. The agency should continue its efforts to monitor the fee collection situation and adjust future appropriation

requests for state aid distribution in consonance with significant shifts in fee collections.

In summary, the statute should be changed to make probation fees a mandatory requirement of probation, unless waived, reduced or suspended by the court in cases of financial hardship. The maximum fee should remain at \$40, while the statute should be changed to set a minimum fee of \$25. By taking these steps, more revenue will be generated for local probation departments.

Probationers who have been on intensive supervision probation should be allowed to enter a restitution center.

As discussed earlier, the intensive supervision probation (ISP) program provides an alternative to incarceration in the Texas Department of Corrections (TDC). In serving this function, it has a place in the "continuum of supervision" available to Texas judges in dealing with persons convicted of felony criminal offenses. This continuum of controlled supervision starts with unsupervised probation and ends with TDC incarceration. Along this spectrum are included many other steps shown below:

- Unsupervised probation
- Deferred adjudication
- Regular probation
- Intensive supervision probation
- Community residential supervision (Restitution Centers and Court Residential Treatment Centers)
- Shock probation (confinement in TDC up to 180 days)
- Incarceration (sentenced to TDC)

In theory, an offender should be able to move along this continuum to receive the type of supervision most appropriate for the person. Increasingly restrictive sanctions should be available for judicial authorities when needed to respond to inappropriate behavior on the convicted offender's part. In most situations, this spectrum of alternatives is available to Texas judges. If regular probation is ordered as part of a person's sentence and the person does not perform well, the judge can amend the conditions of probation and place the person on intensive supervision probation. This provides an alternative to revocation and incarceration in TDC. In fact, 35 percent (1,800) of the persons added to the ISP caseloads around the state in fiscal year 1985 came from revocations of regular probation.

A problem arises, however, when a judge is faced with a revocation possibility for certain persons on ISP. Current law prohibits the placement of certain persons who have been on ISP in a restitution center. Placement in the restitution centers and the court residential treatment centers is often the next logical step in the supervision spectrum. Statutory provisions (Sec. 8(a), Article 42.12, C.C.P.) do not allow a person who has been placed on ISP for failure to meet court imposed sanctions to receive the next community supervision sanction -- placement in a restitution center. No similar restrictions exist for placement in a court residential treatment center (CRTC) and such placement is common. On the average, during fiscal year 1985, 44 of the total 143 CRTC beds were occupied by persons formerly on ISP. To determine if the restriction on restitution centers receiving ISP clients should be removed, a review was made of the types of clients served in the different centers, the centers' geographic distribution and capacity and the average cost per day in the centers.

The CRTC is similar to a restitution center in that it provides structured residential supervision for persons placed on probation. A review of the characteristics of the populations of the CRTCs and restitution centers during fiscal year 1985 indicates that most of the residents in both kinds of centers are employed, perform community service activities, and are convicted of similar offenses (burglary is the most prevalent -- 42 percent in restitution centers and 40 percent in CRTCs). A significant difference between the two types of facilities did exist until the last session of the legislature. During the 69th session, restrictions prohibiting the admission of a probationer with an extensive history of drug or alcohol abuse were removed so that restitution centers can now serve substance abuse clients. This modification makes the restitution centers and CRTCs similar in the types of persons the centers can serve.

The review also indicated that the restitution centers are greater in number and capacity. Overall, there will be 15 restitution centers in 12 areas of the state with a total of 649 beds in 1986. There are three CRTCs in three areas of the state with a total of 143 beds. The costs of the center operations are similar, with average total cost per day of CRTCs slightly higher (\$31.93 compared to \$31.58)

Overall, it appears the two types of centers serve a similar probationer population at a similar cost. They also offer a probation supervision alternative short of TDC incarceration. However, the judges' use of this alternative is unnecessarily restricted when confronted with a person who has been on intensive supervision probation due to prior supervision problems and is in need of a more restrictive probation approach. Since the judge may use the CRTC in this

situation, it does appear that the restitution center placement should also be an available option. These centers are greater in number and geographic distribution and therefore offer an increased diversion capability. Although exact data is not available concerning how many ISP revocations to TDC could have been prevented if this alternative had been available in the past, discussions with agency staff indicate that the 19 percent ISP revocation rate to TDC could be reduced if this alternative were available in the future. This modification would also provide a logical "continuum of supervision" that should be available to judges in dealing with offenders placed on probation.

The statute should be modified to allow restitution center discharge review at three months.

Restrictions regarding the general operation of restitution centers are set in statute (Sec. 6e, Art. 42.12, C.C.P.). These restrictions relate to what kinds of offenders may serve a portion of their probation in a restitution center, what kinds of activities they must participate in while at the center, and the conditions which lead to an offender's discharge from the center. One of these discharge restrictions requires each probationer to serve at least six months in a center prior to evaluation by the center director and the judge for possible release and placement on intensive supervision probation.

The report concerning the criminal justice system in Texas developed in May of 1985 by the Henningson, Durham and Richardson consulting firm (commonly referred to as the "HDR Report") recommended that this review time for discharge be reduced from six to four or possibly three months. This change would allow quicker turnover in the centers and increase the centers' year-round capacity. To determine if such a change would be beneficial, the TAPC staff was asked to contact each center director to determine what percentage of the current clients could be appropriately released prior to six months if the restriction provision were modified.

The results of the survey indicate that a significant number of restitution center probationers could be released prior to the six-month time limit. Six of the 12 directors contacted indicated that 20 to 50 percent of their probationers could be released in three to four months. One director indicated 25 percent of his center's probationers could be released in three months and another indicated that 65 percent of his residents could be released in four months. Five directors also

indicated that they have waiting lists for admission to their centers. These lists ranged from two to three persons up to nine persons at any one time. The persons on the waiting lists are in local jails.

From these results, it does appear that the mandatory time that a person must serve in a restitution center could be reduced and have a significant effect on the number of persons that could be served in the facilities. Assuming 25 percent of annual admissions could be released in three months, this would allow up to 400 additional persons per year to receive restitution center services, according to agency estimates.

In summary, the six month discharge review time was established when the restitution center program was established in 1983. Experience of center directors now shows that earlier release of a significant number of residents is feasible. To increase the capacity of the centers and therefore possibly increase diversions from TDC, the review time for discharge should be reduced from six to three months. This change would not force the director to recommend release to the judge but would allow quicker release for those the director and judge determine to be ready for discharge.

Probation department employees should receive travel mileage reimbursements in amounts no greater than the state mileage rate.

State funds distributed to local adult probation departments by the Texas Adult Probation Commission may be used by the departments to pay probation department employee salaries, fringe benefits and travel expenses. It has been left up to individual departments to determine the method to be used for reimbursing department employees for travel expenses, within guidelines set by TAPC standards. The two primary methods used by departments are to pay a set rate per mile (for instance, \$.23 per mile) or to pay a flat monthly rate. The original TAPC standard relating to local mileage reimbursement rates states that "flat rate monthly payment based on approximate mileage computed at not less than the current state rate per mile is not prohibited" (Section 321.1-h). This provision, in essence, allows probation department employees to be reimbursed for travel at a rate over the current rate for state employees of \$.23 per mile since it is based on approximate and not actual mileage.

However, a rider attached to TAPC's appropriations by the 69th legislature requires TAPC to reduce per capita state aid to departments by amounts equal to any mileage payments greater than the state mileage reimbursement rate. An

additional clause in this rider exempts probation department employees hired prior to May 31, 1985 from compliance with the rider. Attorney General Opinion No. JM-393, issued on December 19, 1985 confirms that the grandfather clause in the rider exempts anyone who was an employee of a local probation department prior to May 31, 1985.

Some probation departments in the state have elected to pay flat monthly car allowances that exceed actual miles driven or mileage rates over \$.23 per mile for two main reasons -- the practice follows local county travel policies, or such payments may be intended as salary supplements for department employees.

However, problems have developed as a result of this practice. First, another rider attached to the agency's appropriations prohibits probation officers from receiving a higher salary than parole officers. When probation officer salaries are supplemented through flat monthly rates or higher mileage rates, some officers are indirectly receiving a higher salary than are parole officers. This causes some probation officers to be out of compliance with the provision in this rider. Second, the agency has had to initiate a burdensome accounting system as a result of the rider governing travel mileage in order to calculate allowable travel mileage rates for probation employees hired before May 31, 1985 and persons hired after that date. The agency must then deduct any overpaid amounts from the department's next per capita state aid payment. Additionally, since most employees are now exempted through the grandfather clause, the rider will not have much of an impact on the practice of paying higher mileage rates.

In fiscal year 1985, 27 departments paid mileage rates greater than the state's \$.23 per mile, representing an estimated \$48,364 in additional costs. Another 29 departments paid flat monthly car allowances to 683 employees in amounts ranging from \$50 to \$600 each. These allowances can continue to be paid to most employees, regardless of actual miles driven, since the grandfather clause in the rider governing travel mileage exempts the vast majority of local employees.

By statutorily requiring all probation department employees to be reimbursed for travel expenses at a rate no greater than the state mileage rate, several problems could be eliminated. Salary supplementation could not be done through travel mileage reimbursements, consequently eliminating the possibility of some probation officers indirectly receiving a higher salary than parole officers. It would also eliminate needless accounting procedures for the agency, as well as avoid possible inconsistencies within departments between how older and newer employees are reimbursed for travel. Two additional benefits might occur with this change. First, while it is expected that many departments would legitimately

convert money now used for higher travel reimbursements to direct salaries, additional funds for program services could be made available if some departments choose to use the money in this manner. The second benefit would be that actual local department expenses and salaries could be analyzed and evaluated directly.

By changing the statute as described above, the provisions in the rider governing travel mileage would no longer be necessary. An additional change should also be made in Section 321.1-h of the agency's standards to make language consistent with the statute.

Adult probation departments should have authority to contract with the Board of Pardons and Paroles for provision of probation services.

Currently, the Board of Pardons and Paroles (BP&P) has the statutory option to supervise parolees through its own employees or to contract for this service through the Texas Adult Probation Commission (Sec. 81, Article 42.18, C.C.P.). Contracting authority gives BP&P another management option for providing services in an efficient and effective manner. This type of management option is not available to adult probation departments. A local department cannot contract with BP&P to provide services to probationers, even if it would be more cost effective to do so.

The review did not indicate any valid reason to deny a local probation department the use of this management option. Providing the flexibility to contract would give the local departments an additional method to meet future needs.

Monitoring and Enforcement

Program monitoring and fiscal auditing functions performed by agency staff are necessary for making sure probation departments comply with operational standards set by TAPC. Program monitoring efforts provide the main way to check quality of supervision within probation departments, while fiscal auditing focuses on fund accounting procedures employed by departments. Enforcement action is also necessary for ensuring that departments not complying with agency standards are given an opportunity to correct the situation and make necessary adjustments to be back in compliance with standards. The ultimate enforcement authority afforded TAPC is to withhold state funding to departments that do not follow standards.

While the review indicated TAPC's monitoring and enforcement functions are generally adequate, two areas were identified where changes are needed. These

recommended changes concern providing the agency with additional enforcement power over non-compliant probation departments and over counties that fail to provide adequate support to departments. The recommended changes are described below.

The agency should have authority to reduce state aid payments or impose budget control over departments in substantial non-compliance with standards.

Generally, when state or federal money is passed through a state agency to local entities, requirements for how the money is to be used accompany the funding. In the case of adult probation, TAPC distributes state funding to 110 departments electing to participate in the state funded system and establishes and enforces standards outlined in the "Standards for Adult Probation Services in Texas" manual distributed to all departments. Probation departments must comply with these standards pertaining to administration, caseloads, programs and fiscal accounting in order to continue receiving funds.

While most departments attempt to comply with the standards, cases involving substantial non-compliance have occurred. Examples of such cases are given later in this section. In general, substantial non-compliance with standards can create situations where either the public is put at risk due to ineffective supervision of probationers resulting from very high caseloads or ineffective supervision practices, or state funds are mismanaged.

The Texas Adult Probation Commission has been provided with only a limited range of sanctions it can impose on departments that violate standards. Authority provided under Section 4.06, Article 42.121, C.C.P. permits the agency only to refuse or suspend state aid payments to a department that does not comply with TAPC standards. This "all or nothing" range of sanctions that can be imposed on a department by TAPC creates an enforcement problem for the agency.

Except in extreme cases, it is generally not desirable to withhold all state funds from a probation department, as the department would no longer be able to effectively supervise probationers. In some cases, the department would cease to function. When public protection from offenders is at stake, the sanction of totally withholding funds places the agency in a precarious position. For this reason, TAPC has never used its authority to refuse state aid payments to probation departments out of compliance with standards.

Since TAPC must balance its goal of public protection with the need to protect the use of state funds, more intermediate sanctions are needed for

enforcing compliance with agency standards. Two additional sanctions exist which the agency currently does not have authority to use. The first is to allow TAPC to reduce state aid payments to non-compliant departments. By permitting TAPC to withhold partial funding until a department is back in compliance with standards, the department would be financially affected, but not to the extent where it would cease to function. This sanction could be administered by having departments define improvements that are needed to get back in compliance with standards and a timetable for doing so. Then, when the improvements are made, the full amount of state aid could be continued.

The second sanction is to permit TAPC to assume budgetary control over a non-compliant department. Precedence for this action currently exists under the supplemental grant program administered by the agency. Departments receiving supplemental grants must submit their budgets to TAPC for approval and cannot change budget amounts without the agency's permission. If this same concept were to apply to departments that substantially violate standards, TAPC could take over making budget decisions for a department, including number of personnel needed and expenditures, until the situation is resolved.

If TAPC had authority to use these two additional sanctions, some problems that departments have had in the past might have been avoided or made less severe. The first situation involves departments that do not hire needed officers and staff. This may occur because the department does not receive sufficient office space and equipment from their counties to hire additional staff or it could be due to a local decision to simply not hire more staff. Without sufficient staff, these departments cannot comply with caseload and other standards. Meanwhile, state funds distributed by TAPC may either build up locally since the department cannot expend money on staff when no office space is available or state funds may be spent inappropriately in the form of higher wages for fewer personnel. If TAPC had authority to reduce state aid payments to the department, this could reduce any accumulating surplus as well as encourage the department to take steps to either negotiate with the county for additional space and equipment or hire the appropriate number of personnel at the appropriate wages.

The second type of problem involves departments that operate at a deficit over some time and the department administrators fail to take the proper actions to correct the situation. An example of this situation is a recent case where the Travis County adult probation department was operating at a deficit over a period of many months. Although TAPC was aware of the problem and had advised the local department chief that this was an unacceptable situation, the department

failed to take the steps necessary to reduce its expenditures. When the department was finally unable to pay its employees, the department was reorganized amidst controversy and significant personnel cutbacks were made. This would be a situation where temporary TAPC control of the department's budget to take necessary corrective action could have ensured stable use of state funds and prevented possible disruption of probation supervision.

In summary, the agency's statute should be amended to authorize two intermediate sanctions for departments found to be in substantial non-compliance with TAPC standards. The first is the reduction of state aid payments. The second is temporary TAPC control of the department's budget under certain circumstances. Budget control could be done at the judges' request or imposed as a condition of continued state aid. The agency should define in its rules when a department is considered to be in substantial non-compliance, how long sanctions shall be in effect, and the general administrative procedures that will be followed to implement the sanctions. By allowing the use of these two additional intermediate sanctions, TAPC can more effectively enforce standards and ensure that effective probation services are being provided in the state. Additionally, the agency might be less hesitant to use its enforcement powers than in the past since the sanctions would not severely interfere with probation supervision efforts.

The agency should define what constitutes an adequate level of county support to probation departments and participate in county budget processes for those counties failing to provide adequate support.

The county or counties comprising the judicial district or geographical area served by the district probation department are required to provide physical facilities, equipment and utilities "for an effective and professional adult probation" service (Section 10 (l), Article 42.12, C.C.P.). The counties must pay for these from their own general funds, not from probation fees. Under general principles of law, the county is a political subdivision created by the legislature for the purpose of locally administering policies of the state. The state legislature has the power, subject to constitutional limitations, to control the use, management, and disposition of county property and revenues. Neither the county's consent nor compensation to the county is required. In the case of adult probation, the legislature has directed that county general revenues be used to support local department offices.

The review looked at the adequacy of county contributions for facilities, utilities and equipment provided to probation offices statewide and found that the level of county support varies greatly from one department to the next. Inadequate county support in some cases prohibits proper operation of probation departments. For example, needed probation officers cannot be hired due to a lack of space and equipment for them. Or, the department cannot have an office close to an area where many probationers live because the county will not lease building space for an office. Consequently, probationers may not be supervised as closely as they should be due either to high caseloads or geographic distances.

The Texas Adult Probation Commission has estimated county contributions for facilities, equipment, and utilities provided to probation departments on a department by department basis for fiscal year 1984. This was done by determining the value of office space provided, estimates for utility and telephone rates, actual equipment requests, and any other direct contributions. Wide variations in county support were found for square feet of office space provided per probation department employee and for value of county contributions provided per probationer supervised, according to Exhibit VII.

Exhibit VII

**SQUARE FOOTAGE OF OFFICE SPACE PER EMPLOYEE PROVIDED
TO THE PROBATION DEPARTMENT BY THE COUNTY
Fiscal Year 1984**

Five Highest			Five Lowest		
1.	Reeves	677sq. ft.	1.	Wichita	56 sq. ft.
2.	Cooke	650	2.	Kaufman	61
3.	Coryell	600	3.	Hunt	62
4.	Parmer	567	4.	Caldwell	74
5.	Ft. Bend	442	5.	Jim Wells	74
Average = 204 sq. ft. per employee					

**VALUE OF COUNTY CONTRIBUTIONS PER PROBATIONER PER MONTH
UNDER DIRECT SUPERVISION
Fiscal Year 1984**

Five Highest			Five Lowest		
1.	Hutchinson	\$16.20	1.	Kaufman	\$.95
2.	Reeves	\$16.20	2.	Jim Wells	\$ 1.10
3.	Parmer	\$ 8.80	3.	Matagorda	\$ 1.20
4.	Cooke	\$ 8.60	4.	Hopkins	\$ 1.30
5.	Val Verde	\$ 8.20	5.	Hunt	\$ 1.40
Average = \$3.80 per probationer per month					

For example, square feet of office space provided per department employee ranged from a high of 677 down to 56 square feet. The average square footage was 204 per employee. To determine the average dollar value of county contributions per probationer supervised, the county contribution was divided by the number of probationers on direct supervision. The average was \$3.80 per month per probationer supervised, but the range was from \$.95 to \$16.20 per month.

Because wide variations in county support were found, the review next looked at what courses of action could be taken by probation departments when county support is inadequate. There is a provision in statute which allows district funds, composed of state monies and probation fees, to be used to expand a probation office if the county can certify it has neither additional space nor funds and if the county is already providing an adequate level of support, as defined by TAPC. This provision, however, does not apply to counties that are providing inadequate support.

In order to improve the level of county contributions to the probation departments, TAPC should first define in its rules the meaning of the statutory requirement in Sec. 10(1), Art. 42.12, C.C.P. requiring counties to provide facilities, utilities and equipment for "an effective and professional adult probation...service". TAPC should develop standards which define in objective terms the minimum level of support required from the county or counties comprising the judicial district. This way, TAPC would be better able to assess when county support is inadequate. One factor to be considered by the agency in defining adequate level of support might include square footage based on number of probationers supervised or probation department employees. In addition, TAPC could take into consideration counties which are experiencing genuine financial hardship. Factors such as property tax revenues could be included in defining adequate county contributions to take into account the general economic conditions in each county.

Once TAPC has defined adequate required levels of county contributions, it should then monitor county contributions to identify those counties which, by falling below the required minimum level of support, are preventing probation departments from performing effectively. In order to negotiate for increased support, TAPC should participate in the budget preparation processes for those counties which fall below the minimum contribution levels.

It is estimated that the total value of all county contributions for facilities, utilities, and equipment to probation departments statewide was approximately \$6.6 million for fiscal year 1984. This represents a substantial level of support

relied upon by probation departments to function adequately. When county support is inadequate, probation services may suffer and it is, therefore, necessary for the state to take action. The statutory changes outlined here help ensure the continued quality of probation services.

Compact Continuation

The State of Texas should continue participation in the Interstate Probation and Parole Compact.

The Interstate Probation and Parole Compact is a binding agreement among all 50 states and some provinces regarding supervision of probationers and parolees who want to live outside the state where they were sentenced or released. The annual compact dues for Texas are \$200, which helps pay for support services at the central compact office in Lexington, Kentucky. The support staff maintains a current registry of state compact contact persons and notifies states of any new developments or changes to the compact.

Each state has a compact administrator who is responsible for overseeing the compact rules. The governor appoints the administrator for Texas who in turn appoints two deputy administrators, one for probation and one for parole. The executive director of the Texas Adult Probation Commission currently serves as the deputy compact administrator for probation and a senior parole analyst with the Board of Pardons and Paroles serves as the deputy compact administrator for parole.

Texas probationers and parolees who wish to move to another state must be transferred through the interstate compact. According to the rules outlined in the compact manual, with minor exceptions, no state should refuse to receive a probationer or parolee for supervision who meets at least one of the following criteria:

- Probationer/parolee is a resident of the state he/she wishes to transfer to;
- Probationer/parolee can obtain employment there; and
- Circumstances exist in the state which appear to be beneficial in the rehabilitation of the individual.

The original purpose of the Interstate Probation and Parole Compact, established in 1935, was to discourage the practice of "sundown probation and parole." Before the compact existed, offenders were often released under the condition that they leave the state, never to return. No thought was given to supervision. Today, this situation has changed. Probationers and parolees may

move to another state, but they must agree to abide by the rules of both the sending and receiving state. The receiving state is responsible for their supervision and the sending state retains the authority to revoke any offenders for violating the terms of their probation or parole.

The review of the compact showed that it is working as originally intended. Between June 1, 1984 and June 30, 1985, about 78,000 offenders were transferred between all states participating in the compact. Texas received 2,616 probationers and 1,006 parolees from other states and sent 4,085 probationers and 836 parolees to other states.

Under the rules of the Interstate Probation and Parole Compact, a state may withdraw its membership after six months notice has been given to other member states. However, without a compact, there would be no data base and tracking system to locate almost 9,000 offenders transferring into and out of the state annually. Furthermore, transfers would continue but without the coordination assistance provided by the compact. Therefore, Texas should continue its participation in the Interstate Probation and Parole Compact.

Under the Texas Sunset Act, statutory authority for Texas' participation in the compact expires September 1, 1987. In order to continue to receive the benefits afforded through the compact, Texas should continue its participation in the Interstate Probation and Parole Compact.

MAJOR POLICY ISSUES

During the review of an agency under sunset, different approaches to existing systems are identified and analyzed. While these approaches could improve state operations, they would also involve a significant change in the focus of current state policy. For the purpose of the sunset review, these approaches are broken into definable parts or options for commission consideration. The first option under each approach is recommended as a baseline approach with the other two options providing different degrees of change.

STATE EXECUTIVE RESPONSIBILITY FOR ADULT PROBATION

Option 1

1. Authorize the governor to make all commission appointments with senate confirmation, instead of the current judiciary appointment system.
2. Authorize the governor to appoint the chairperson of the commission.
3. Change the board composition to include six public members not employed in the criminal justice field and three district judges.

Option 2

1. Authorize the governor to make all commission appointments with senate confirmation, instead of the current judiciary appointment system.
2. Authorize the governor to appoint the chairperson of the commission.
3. Change the board composition to include six public members not employed in the criminal justice field and three district judges.
4. Authorize the state to administer felony probation services through state employees, leaving misdemeanor probation supervision a function of the counties.

Option 3

1. Authorize the governor to make all commission appointments with senate confirmation, instead of the current judiciary appointment system.
2. Authorize the governor to appoint the chairperson of the commission.
3. Change the board composition to include six public members not employed in the criminal justice field and three district judges.
4. Authorize the state to administer felony and misdemeanor probation services through state employees.

ISSUE 1: STATE EXECUTIVE RESPONSIBILITY FOR ADULT PROBATION

Historically, adult probation services in Texas were established through the counties and run by local employees prior to the creation of the Texas Adult Probation Commission in 1977. The legislation creating TAPC (Article 42.121, C.C.P.) established a policy body of six district judges and three public members, all appointed by high ranking officials of the judiciary. The appointment system parallels the local structure of probation departments statewide which are overseen by the district judge(s) trying criminal cases in each judicial district of the state. Prior to the final passage of S.B. 39, 65th Legislature, creating the commission, the concept of establishing a state agency to administer probation services statewide was supported by many judges and probation officers alike, as long as the state did not interfere with local control of probation. The roots of probation as a local responsibility in Texas no doubt contributed to the local-judicial structure of the agency, whereby all board members are appointed by the judiciary and probation officers are local judicial district employees.

The review indicated that the local-state partnership implemented by the structure of the agency has limited the ability of the state to standardize probation services statewide and enforce agency standards for probation management. Better policy consistency and control of offender populations might be achieved if the executive branch were allowed to manage adult offenders from the start to the end of their involvement in the adult corrections system. This has been done by other states and may be appropriate for Texas. Three ways in which this could be accomplished are outlined as follows.

Option 1:

Allow the Governor to make Commission Appointments and have a Majority of Citizen Members.

The structure of the policy body consists of six district judges and three citizens appointed by the judiciary. The Chief Justice of the Supreme Court of Texas appoints three district court judges and two citizens not employed in the criminal justice system, while the presiding judge of the Texas Court of Criminal Appeals appoints three district court judges and one citizen not employed in the criminal justice field. While TAPC serves as an overseer of state funds by passing money through to local adult probation departments all over the state, the agency considers itself a judicial branch agency and not an executive branch agency. This perception comes largely from the judiciary's representation on the commission and the responsibility placed with district judges statewide for overseeing the functions

of local probation departments, including hiring the chief probation officer, assisting the department in general policy decisions and overseeing the department's budget.

The review indicated that having a judicial structure serving as an overseer of state money is unique when compared to other corrections agencies in Texas and is fairly unique when compared to adult probation agencies in other states. Exhibit VIII shows the board structure of other criminal justice agencies in Texas, including the agency most similar to TAPC in functions performed, the Texas Juvenile Probation Commission (TJPC).

Exhibit VIII

	TAPC	TJPC	TYC	BP&P	TDC
Number of board members and who appoints	9 total 5-Chief Justice of Texas Supreme Court 4-Presiding Judge of Texas Court of Criminal Appeals	9 Governor	6 Governor	6 Governor	9 Governor
Number of Public Members	3 public members and 6 judges	6 public members and 3 judges	All 6	All 6	All 9
Percent of State Funding Appropriated for FY 1986	100% general revenue	100% general revenue	97% general revenue	100% general revenue	Generally 100% general revenue

As the chart indicates, all other criminal justice agencies except TAPC have governor-appointed policy bodies. The Texas Adult Probation Commission is the only corrections agency that excludes the governor from the appointment process and is also unique when comparing number of citizen members on the policy body. While the board structures of TYC, BP&P and TDC are entirely composed of public members and two-thirds of the TJPC board are public members, only one-third of TAPC's policy body is represented by public members.

A comparison was also made to adult probation agencies in other states. Exhibit IX which follows points out Texas' unique structure as a local-judicial agency when compared to eleven similar adult probation agencies in other states. These eleven other states have probation agencies with responsibilities for residential facilities, as does Texas. The other 11 states all have state-executive policy bodies with either state probation employees or local employees.

Exhibit IX
ANALYSIS OF OTHER STATES WITH ADULT PROBATION AGENCIES
RESPONSIBLE FOR RESIDENTIAL FACILITIES

State	Adult Probation Agency Structure	Probation Facilities Agency is Responsible For	Funding
Alaska	Executive agency/ state employees	Officers monitor halfway houses under state contract	100% state funds
Georgia	Executive agency/ state employees	12 restitution centers and diversion centers statewide	State funds & probationer supervision fees
Idaho	Executive agency/ state employees	Community work and restitution centers	100% state funds
Iowa	Executive agency/ local employees	Contract for or operate residential treatment centers	100% state funds
Michigan	Executive agency/ state employees	Community corrections cen- ters & resident home programs (most are contract operated)	State funds
Minnesota	Executive agency/ local and state employees	Residential facilities and community service facilities	State and county funds
Montana	Executive agency/ state employees	Pre-release centers (contract or operate)	100% state funds
Nevada	Executive agency/ state employees	Multi-purpose service facilities (contract or operate)	100% state funds
Texas	Judicial agency/ local employees	Restitution centers and court residential treatment centers (contract or operate)	State funds, supervision fees, and county contri- bution of office, equip- ment and utilities
Utah	Executive agency/ state employees	Residential diagnostic facility	100% state funds
Washington	Executive agency/ state employees	Manage work training and release centers	State funds
Wisconsin	Executive agency/ state employees	Operate 5 minimum security pre-release centers and contract for 1	100% state funds

It is apparent when looking at other criminal justice agencies in Texas that the legislature's general approach has been toward executive-branch, governor-appointed policy bodies that include a majority of citizen members. Even when compared to probation agencies in other states (Exhibit IX), Texas is unique. There is little precedence for the current structure of TAPC. It was concluded that there was no overriding reason that the agency should be excluded from executive branch guidance and policy-making by the state's chief executive. To make this change, the governor could make all appointments, including designating the chair, and the commission composition should include six citizen members and three district court judges confirmed by the senate.

Because of the scope of this recommended change, several possible disadvantages have also been identified. Discussion with agency personnel indicate the agency opposes the commission structure change because it lessens the role of the judiciary in the management of probation and would alter the agency's current relationship with judges. Judges might also oppose the change because it reduces their authority for administration of the agency. There is some concern that if the support of judges is lost for probation programs, judges might be more reluctant to use probation programs as a sentencing alternative.

Option 2:

State Supervision of Felony Probationers.

The present system of supervising adult probationers in Texas involves two groups of people. The group with primary responsibility for supervision consists of 110 individual judicial district adult probation departments. In these departments, local district judges hire the chief probation officer and oversee the administration of the departments. Probation personnel are employees of the local judicial district, but otherwise follow the personnel policies of the county. Probation officers are considered state employees only for limited purposes such as workman's compensation. The second group, TAPC, distributes state funds to the 110 individual departments. To improve the effectiveness of probation statewide, TAPC is charged with setting and enforcing standards that the departments must meet in order to receive funds.

Each local department may have whatever type of programs to supervise probationers it chooses as long as TAPC standards are met. Each department determines such issues as departmental staffing and number of satellite offices. The Texas Adult Probation Commission's role is limited to funding departments,

establishing standards for departments to follow, and advising local departments on general administrative practices and effective case management.

The role of probation in managing offenders has become increasingly important in Texas. For instance, probation represents the largest disposition of court cases in Texas and over 260,000 persons in the state are currently on probation. Exhibit X which follows shows probation population growth rates since fiscal year 1979. Further, approximately one half of the new yearly arrivals at TDC are persons whose probation has been revoked. As our prisons become more crowded and the state population grows, even more persons will be placed on probation, resulting in a larger and more serious group of offenders that must be supervised by probation departments.

Exhibit X		
TEXAS ADULT PROBATION POPULATIONS		
Fiscal Year	Average Total Number of Probationers	Percent Increase Over Previous Year
1979	118,000	-
1980	124,000	5%
1981	137,000	10%
1982	156,000	14%
1983	186,000	19%
1984	230,000	24%
1985	251,000	9%

In light of increasing budgetary constraints in the state, probationer growth rates and the increasing risk to public safety, a growing need exists for cost-effectiveness and policy consistency between all agencies responsible for managing offenders. Although TAPC is basically fulfilling the objective for which it was originally created, the review indicated the local-judicial structure of the present system has limited the agency's effectiveness in several areas.

The remainder of this section will cover the following issues related to the review of the agency's current local structure: 1) limited ability to standardize probation services; 2) alternative probation structures; 3) costs of converting to a state executive system; 4) benefits of state executive system; and 5) potential drawbacks.

1. Limited ability to standardize probation services.

The first area where the agency has had only limited success is in standardizing probation officer salaries, which vary widely statewide. A rider attached to TAPC's appropriation stipulates that probation officer salaries may not be higher

than parole officer salaries. After reviewing TAPC salary data, it was found that the average probation officer salary is in fact lower than the entry level parole officer salary in half of the departments statewide. In addition, while there is a cap on probation officer salaries, there is none on the salaries of probation chiefs or other local administrative personnel. Salaries for 30 out of 107 chiefs were higher than the highest salary level for parole supervisors, based on the 107 departments that were participating in the state funded system in fiscal year 1984. There are currently 110 participating local departments. It is more difficult to achieve salary equity statewide when this many independent decision-makers are responsible for setting salary levels.

The second area concerns the number of probationers on a caseload. Caseload sizes have not been brought down statewide to meet the TAPC standard of 100 probationers per officer. The statewide average caseload is approximately 150. In some cases, departments hire numerous support personnel to enable the probation officer to see more cases. This, in essence, creates a high ratio of probationers to officers involved in supervision activities. However, a review of the ratio of total number of direct probationers to total number of department employees, including probation officers and support staff, showed a statewide variation among departments of 30 to 111 probationers per employee. Approximately 75 percent of the departments receive routine waivers to the 100 caseload standard from TAPC. The waivers, if granted by TAPC, permit a department to exceed a standard and continue to receive state funding. Exhibit XI below shows that caseload sizes have fluctuated over the years, but for 1984 were still substantially over the goal of 100 probationers per officer.

Exhibit XI
RATIO OF PROBATIONERS TO PROBATION OFFICERS

<u>Year</u>	<u>Ratio</u>
1978	166:1
1979	134:1
1980	134:1
1981	148:1
1982	146:1
1983	148:1
1984	154:1

While TAPC considers the 100 to 1 caseload standard a goal to be met by departments and not a mandate, two riders were attached to TAPC's appropriation during the 69th legislative session to encourage more efforts in this area. The riders instruct the agency to give highest priority for per capita funding to departments that meet caseload standards. Supplemental per capita aid will also be provided to departments that reach the 100 to 1 standard or have at least 60 percent of probation staff involved in caseload supervision at least 80 percent of the time. Under the current local-judicial structure, caseload sizes have still not been brought down to a level near TAPC's 100:1 caseload standard. Further, wide variations between departments still exist for caseload ratios. Because local departments make decisions on staffing patterns, such variations should be expected under a local-judicial system.

Third, other waivers were also granted routinely by the commission to the standards on eligibility requirements for probation officers and for minimum office requirements for probation officers. According to TAPC commission meeting minutes, 100 percent of the waivers requested were granted in these categories in fiscal year 1985. This is another area where standardization has been difficult.

Finally, there is much evidence to suggest that the way in which state aid money is distributed to local departments is, in itself, a source of many problems for three reasons. First, it is difficult to influence local decisions on how the funds are spent. For example, higher per capita funding rates in fiscal year 1984 were meant to reduce caseloads in local departments. However, caseloads were not reduced to the fullest extent possible because some departments used the extra funds to hire more support staff, rather than more probation officers according to the Legislative Budget Board report to the 69th Legislature.

The second problem with the funding formula is that it provides no incentives or rewards for departments performing well, nor does it effectively penalize ineffective or wasteful ones. The formula does not take into consideration efforts of local departments to collect probation supervision fees, nor can it make allowances for legitimate variations in fee collections among departments due to local economic or other conditions. For instance, counties located near a large military base may receive probation fees from offenders in the military who may no longer live in the area yet are still obligated to mail in fees, while large metropolitan areas may receive many probationers under courtesy supervision from whom they do not receive probation fees. Since both state aid and probation fees make up a department's source of revenue, some departments are disadvantaged

through local conditions affecting probation fee collections. The state funding system does not compensate for this.

Another problem with a structure that provides funding for probation services through a per capita formula is that it may create an incentive to keep persons on probation longer than might be necessary. Probation departments now receive about \$22.50 per month for each felony probationer under direct supervision. During the last three months of fiscal year 1985, 37 percent of the felony probationers receiving direct supervision were on "minimum supervision." This means that the probationer must be seen by the probation officer only once every three months but the probationer still must pay the probation supervision fee (approximately \$25 per month) and the department may claim the per capita payment each month from TAPC. Since these persons require minimal supervision and staff effort but offer the departments a reimbursement equal to that provided for probationers in need of more supervision, there is an incentive to maintain persons on probation longer than might be necessary. Efforts to document the occurrence of this problem have not been successful. However, the structure does provide this potential problem.

The review also examined alternative methods for state funding of separate local judicial departments to determine if these problems could be addressed, thereby allowing the state to have greater control over funding. There are two main alternative funding methods that could be used, but neither one appears to be significantly better than the present system. One alternative that is found in other states is state funding of only specific items in a local probation department budget, such as probation officers' salaries and training. This alternative would increase state control of the items funded and reduce concern over money spent on other items such as fringe benefits and travel. However, as each local department would have to generate funds for the rest of its budget, there would still be great variations among departments and the state would have little leverage to improve the effectiveness of probation or bring about statewide standardization. The second alternative would be to fund each local department on the basis of a budget system, as TAPC does currently with its grants for funding special programs such as restitution centers. The principle benefit of this alternative is increased control over local departments' expenditures. However, there are numerous drawbacks, including a tremendous increase in TAPC staff time necessary to thoroughly review budget requests for 110 probation departments and the fact that some local department personnel would not be skilled at making budget grant proposals. Since

the review found numerous problems with the current per capita funding system and since the alternatives discussed above appear to offer little, if any, improvement over the current approach, correcting the funding structure is another reason for considering the option of a state executive system to supervise adult probationers. Having one state agency responsible for decision-making instead of 110 separate local departments could eliminate many of the current funding and standardization problems.

2. Alternative Probation Structures.

During the review, alternative structures in other states were first examined to determine how state and local entities worked together to provide probation services. Using 1984 survey data, 37 states (District of Columbia included) provided primary supervision of most adult probationers through a single state agency with state employees. Fifteen of these 37 states have a split probation system with local agencies that supervise misdemeanants or local ordinance violators in major metropolitan areas, while the state supervises all felons statewide and all probationers in rural areas. In six states, local agencies (i.e. judicial districts, cities or counties) supervise most probationers, while the state supervises felons in less populated areas where the local agencies do not. Eight states, including Texas, have strictly local agency supervision of probationers.

As mentioned earlier, 12 states (including Texas) have probation agencies with responsibility for residential facilities used for prison diversion and treatment of offenders (see Exhibit IX, page 73). These 12 states were examined in more detail, since they are similar to the current probation situation in Texas.

Facilities management activities in the 12 states ranged from monitoring contracts for halfway houses to operating departmental residential facilities. In 11 of the 12 states, the agency responsible for the residential facilities is an executive one. Texas is the only exception. Only one other state had entirely local employees responsible for probation supervision at the local level and in that case the local employees are employed by an executive, not judicial, agency. All others were run through state employees. It is apparent when examining this data that it is possible to administer adult probation services through a state executive agency with state employees. The state executive structure was, therefore, examined in more detail to determine costs and possible benefits over the current structure.

3. Costs of a State Executive System.

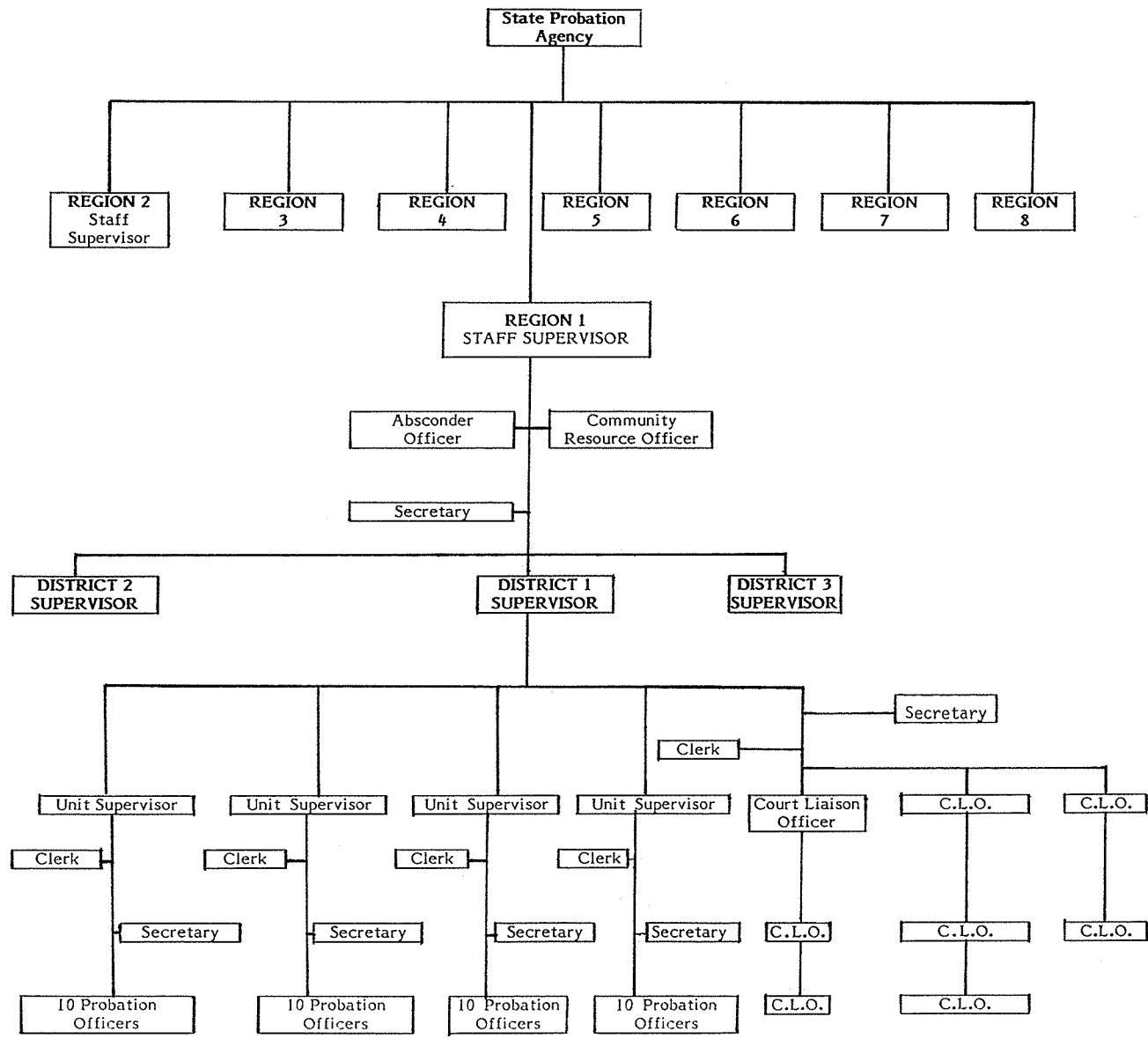
Cost comparisons were next evaluated for the current local-judicial system in Texas and for a proposed state executive probation system with state employees

responsible for supervising probationers. The analysis focused on the basic supervision of probationers and not other TAPC programs such as specialized caseloads, ISP, and residential centers, since these programs are already supported primarily by state funds and resident fees. The Board of Pardons and Paroles' structure for field supervision of parolees was used as a basis of comparison. Thus, eight probation regions and 42 districts were set up for the statewide estimate. A model staffing structure for the proposed state executive system is shown in Exhibit XII.

A detailed analysis of fiscal years 1984 through 1987 was done, comparing the estimated costs of the current local-judicial system to a state executive system scenario. The analysis was based on the following factors:

1. State supervision of felony direct probationers only. Misdemeanor supervision would be a county function under this approach. This is in line with the legislature's intent that the state should fund only felony probation by fiscal year 1988, according to an appropriation bill rider attached to TAPC's current appropriation. Supervision of felony probationers only would also be less costly overall to the state than both felony and misdemeanor supervision.
2. Caseload averages of 150, as this equates the current average. A cost comparison was then made to caseload averages of 125 and 100, which represents TAPC's goal.
3. State salary levels for probation officers and administrative personnel equal to the pay groups for adult parole employees. The full state employee fringe benefits package was also added to salaries.
4. Costs for leasing building space, utilities and purchasing equipment were included (based on estimates from TAPC and the State Purchasing and General Services Commission).
5. Court liaison officers were included in each district's staffing to ensure continued services to the courts.
6. Travel costs (at 10 percent of salaries) were also added.
7. Costs of increasing the Austin central administration office were included. (Approximately \$2 million under the felony scenario and \$4 million under the combined felony and misdemeanor scenario in Option 3).

Exhibit XII
 MODEL ADULT PROBATION ORGANIZATIONAL STRUCTURE



8. Funds were also included for contract services. (\$800,000 -felony; \$1.8 million - felony and misdemeanor in Option 3).
9. Support staff were added at a 1:5 ratio to professional staff.

Exhibit XIII presents the summary findings of the cost analysis. The exhibit provides a comparison of the current TAPC per capita expenditures for felony probation services to the proposed system. This comparison was done for fiscal years 1986 and 1987. Overall, the cost savings appear to be significant (\$18.6 million for the biennium at the current 1:150 caseload ratio) and are generally accounted for through a reduction in costs associated with staffing 42 district offices as compared to operating 110 separate probation departments. Costs and personnel for these operations are standardized and a significant reduction is made in the number of higher paid administrators under the proposed state executive system.

A significant element of determining the "net cost" of the proposed state executive system involves the estimation of fee collections. The projection is difficult and is of course subject to debate. The methodology used is described as follows. A survey done by TAPC of 25 probation departments indicated that the average fee now being charged felony probationers is approximately \$26 per month and is assessed in approximately 97 percent of probation cases. To estimate the real collection rate, other estimates developed by TAPC were used which attempt to project the average amount collected for varying fee rates. This material shows that for a \$25 fee assessment, a real collection of \$20.50 can be expected. Using this methodology, the fee amount was calculated for different caseload projections. For example, a felony probation caseload of 77,600 was used for fiscal year 1986. This number multiplied by 12 (months) and then by \$20.50 results in \$19.1 million. A similar approach for fiscal year 1987 yields a \$20.3 million estimate. Added together, the total estimated biennial fee collection is \$39.4 million.

Caution should of course be used in drawing conclusions from the cost savings material. The proposed system is oriented towards probation supervision and may not adequately provide for ancillary staff to work with and develop community resources. The fee collection projection, although logical, may be high due to unforeseen changes in Texas' economic situation. Should the real fee collection rate drop to \$18.00, for example, savings under the proposed structure shown in Exhibit XIII would erode significantly (from \$18.6 million to \$13.9 million under the 1:150 caseload). Additionally, the physical conversion (lease acquisition, moving and transportation expenses, for example) of the current system to the proposed is not

Exhibit XIII
**COMPARISON OF COST OF STATE FELONY SUPERVISION
 TO PRESENT PER CAPITA SYSTEM TAPC EXPENDITURES**
 1986 - 1987 Biennial Totals

	CASELOAD	1:100	1:125	1:150 (Current Level)
CURRENT	TAPC APPROPRIATIONS FOR PER CAPITA AND SUPPLEMENTAL GRANTS	\$44.0 Million		
PROPOSED	Estimated Cost of State System	\$88.2 Million	\$74.2 Million	\$64.8 Million
	Less Estimated Probation Fee Collections	(\$39.4 Million)	(\$39.4 Million)	(\$39.4 Million)
	ESTIMATED NET COST OF STATE SYSTEM	\$48.8 Million	\$34.8 Million	\$25.4 Million
	DIFFERENCE BETWEEN CURRENT AND STATE SYSTEM	\$4.8 Million Cost to the State	\$9.2 Million Savings to the State	\$18.6 Million Savings to the State

BREAK EVEN POINT -- APPROXIMATELY 108 PROBATIONERS PER OFFICER

directly calculated and included. Further, travel costs and other expenses of probation offices are included in the estimate (\$5.7 million) but may actually be higher due to the geographic dispersion of 42 rather than 110 offices.

Finally, the real costs of the central administrative office in Austin are difficult to project. Current funding for the central office in Austin (\$1.4 million) would still be available and the estimate given here adds an additional \$2 million in the felony supervision only scenario and \$4 million in the felony and misdemeanor supervision scenario (Option 3). These additions, however, may be low when the actual structure is developed to handle centralized payroll, fee collections, data systems and other support services for as many as 3,000 or more employees.

Even with these unknowns, the results of the comparison and the significance of the estimated cost savings indicate that the alternative of a state executive system deserves consideration.

4. Benefits of State Executive System.

First, the state would have direct control of a large portion of the potential state prison population. This could create greater policy consistency and information exchange between state agencies that manage offenders.

Second, a state system would be more cost effective. State money could be spent more efficiently while achieving better salary standardization. About half of the probation officers in the state would enjoy higher salaries and better benefits. This should attract more qualified persons to the field and reduce turnover.

Third, using the estimate outlined here, caseload ratios could be lowered from the current average level of 1:150 to about 1:108 without creating extra costs to the state. Caseload sizes could be lowered to 1:125 at a substantial cost savings to the state.

Fourth, the state would have the option of obtaining its own office space, utilities and equipment for probation operations or contracting with the counties or other local entities for office space. In either case, more adequate office space could be obtained than under the current system where probation departments depend on the county to contribute whatever office space they can.

Fifth, commission staff work efforts could be redirected toward greater emphasis on effective case supervision. Overall, less staff time would have to be dedicated to the audits necessary for the per capita system, developing the management and administrative skills of 110 different chiefs, and monitoring compliance with standards.

Sixth, a more homogeneous system would permit better evaluation of the effectiveness of existing and future programs, which is now difficult given the wide variations among departments.

Finally, a budgeting system could be initiated for funding district state offices, in lieu of the current per capita system. Generally, state agencies with field offices around the state fund district or field offices through a budgeting system. This system could eliminate some of the problems associated with the current per capita system including work created in calculating payments, audit verifications of probationers reported for state aid, and the potential incentive for keeping a probationer on a caseload longer than necessary in order to continue receiving funding.

5. Potential Drawbacks.

Because of the major impact this change would have on the structure of adult probation in Texas, possible drawbacks have been identified. First, some support from the judiciary might be lost due to the reduced role of judges for overseeing probation departments, including hiring chief personnel and making budget decisions. The state would assume responsibility for hiring and budgets under this scenario. If the judiciary's support of probation programs is diminished to the extent that the use of probation declines as a sentencing alternative, this could result in increased commitments to TDC. The cost savings for caseload ratios of 1:150 shown in Exhibit XIII would be eliminated if about 1,000 additional felons a year were sentenced to TDC (using a \$26 per day TDC rate) for an average of about one year instead of being placed on probation by the courts. If judges retained oversight responsibilities over the state's selection of court liaison officers or for transferring difficult probationers between probation programs as is done in some other states, this might lessen judicial opposition to some degree. A second drawback of the state executive system would be reduction of geographic coverage in some areas. This would mean more traveling for some probationers, officers, or both. Third, local probation department employees might be more familiar with local resources and people than would state employees operating out of a district office. Finally, with responsibility for hiring probation staff being shifted to the state, the existing local probation staff would provide the most logical pool of applicants; however, some local employees would no doubt lose their jobs if the state chose not to hire them or if fewer personnel were needed.

Option 3:

State Supervision of both Felony and Misdemeanant Probationers.

All of the above description of the problems of the current system structure and benefits of a state executive system applies to probation supervision of misdemeanor as well as felony direct probationers. The importance of supervision of misdemeanants lies in the belief that many felony offenders start out first as misdemeanor offenders.

To evaluate the benefits of a single state agency supervising felony and misdemeanor direct probationers, the same items examined in the felony only approach in Option 2 were examined in Option 3.

As mentioned previously, the detailed fiscal analysis of a state executive agency supervising all probationers assumes the state would pay for office space, equipment and utilities, which are now contributed by the counties. Exhibit XIV includes the cost to the state for equipment, utilities, and leasing office space. However, unlike the previous scenario where the state would supervise felons and the counties would supervise misdemeanants, this scenario involves the state supervision of both felons and misdemeanants. Since the counties would be relieved of all supervision duties, it is possible to require counties to provide office space for state probation operations under the latter scenario. Such a requirement is in keeping with the definition and purpose of a county, namely, to assist in the administration of matters of state concern. In fact, at least four other states do require counties to provide office space for state probation offices.

For state supervision of both felons and misdemeanants, as shown in Exhibit XIV, there could be a cost savings of over \$21 million when compared to the state expenditures for the present system, using the current caseload average of 150. However, when estimating the total cost for a state system of felony and misdemeanor supervision at a caseload average of 100, the state would pay an additional \$34 million over current appropriations since state funding has recently been greatly reduced for misdemeanor supervision. While it should be noted again that these cost projections assume no county contributions whatsoever, the figures would appear more favorable if counties were required to provide office space.

The chief benefit to the state of supervising both felony and misdemeanor probationers would be control of the entire probation population as well as avoiding a split state felony system and county misdemeanor system. It is also generally more cost effective for one agency to supervise all probationers than it is for two or more separate groups to do so.

Exhibit XIV
**COMPARISON OF COST OF STATE FELONY AND MISDEMEANOR SUPERVISION
 TO PRESENT PER CAPITA SYSTEM TAPC EXPENDITURES**
 1986 - 1987 Biennial Totals

	CASELOAD	1:100	1:125	1:150 (Current Level)
CURRENT	TAPC APPROPRIATIONS FOR PER CAPITA AND SUPPLEMENTAL GRANTS	\$70.7 Million		
PROPOSED	Estimated Cost of State System	\$199.2 Million	\$165.6 Million	\$143.3 Million
	Less Estimated Probation Fee Collections	(\$94.5 Million)	(\$94.5 Million)	(\$94.5 Million)
	ESTIMATED NET COST OF STATE SYSTEM	\$104.7 Million	\$71.1 Million	\$48.8 Million
	DIFFERENCE BETWEEN CURRENT AND STATE SYSTEM	\$34.0 Million Cost to the State	\$.4 Million Cost to the State	\$21.9 Million Savings to the State

BREAK EVEN POINT -- APPROXIMATELY 126 PROBATIONERS PER OFFICER

The chief drawbacks in this scenario are similar to those expressed in Option 2. Additionally, a rider to TAPC's appropriation adopted by the 69th Legislature states that funds for state aid programs are to be used exclusively for services for felony probationers starting in fiscal year 1988. This option to involve the state in misdemeanor probation supervision would be contrary to legislative intent expressed by the 69th Legislature.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission has identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

TEXAS ADULT PROBATION COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
	X		1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
X			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
X			5. Specify grounds for removal of a board member.
X			6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
X			9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
X			10. Provide for notification and information to the public concerning board activities.
X			11. Place agency funds in the Treasury to ensure legislative review of agency expenditures through the appropriation process.
	X		12. Require files to be maintained on complaints.
X			13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	14. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
X			15. Require development of an E.E.O. policy.
X			16. Require the agency to provide information on standards of conduct to board members and employees.
X			17. Provide for public testimony at agency meetings.
X			18. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.

*Already in statute or required.

TEXAS ADULT PROBATION COMMISSION
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

*Already in statute or required.

MINOR MODIFICATIONS OF AGENCY'S STATUTE

Discussions with agency personnel concerning the agency and its related statutes indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to clarify existing language or authority, to provide consistency among various provisions, or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

MINOR MODIFICATIONS TO ARTICLE 42.121, CODE OF CRIMINAL PROCEDURE

<u>CHANGE</u>	<u>RATIONALE</u>
1. Delete references to the appointment procedures and terms of office of the initial commission members in subsections (a), (b) and (d) of Section 2.03.	a. The first commission members were appointed in 1977, so this language is no longer relevant. b. Deleting Subsections (a) and (d) would also eliminate inconsistent references to the agency's policy body as "board."
2. Add new language specifying that all commission members serve staggered six-year terms, with the terms of three members expiring every two years in Section 2.03.	This language would clarify terms of all present and future commission members and would be substituted for outdated references deleted above.
3. Delete language on the date of the first commission meeting held September 1977 in Section 2.06(a).	This language is no longer necessary.