

TEXAS CRIMINAL JUSTICE AGENCIES

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Texas Department of Criminal Justice at a Glance

Created in 1989 by consolidating Texas' adult probation, incarceration, and parole supervision functions, the Texas Department of Criminal Justice (TDCJ) works with the Windham School District, the Correctional Managed Health Care Committee (Committee), and the Texas Board of Pardons and Paroles, to operate and oversee the adult criminal justice system in Texas. TDCJ's major functions include:

- assisting local Community Supervision and Corrections Departments (CSCDs) that provide supervision for offenders on probation;
- providing for confinement and rehabilitation of offenders in state jails and prisons; and
- supervising offenders released on parole by the Parole Board.

Correctional Managed Health Care Committee at a Glance

The Legislature created the Correctional Managed Health Care Committee in 1993 to serve as a third-party intermediary between TDCJ and state university contractors for offender healthcare services. However, the Legislature transferred contracting authority from the Committee to TDCJ in 2011. While the Committee continues to define its new role, today its major responsibility is in using its medical expertise to develop the Managed Health Care Plan and policies that outline the standards to which contract providers adhere in delivering offender healthcare services.

With legislative reforms resulting in a healthier system overall, this review focused on giving the agencies solid foundations to meet upcoming challenges.

Windham School District at a Glance

The Windham School District provides educational, vocational, and life skills programs for offenders in TDCJ to assist offenders in becoming responsible, productive members of their communities. Windham's statutory goals are to:

- reduce recidivism;
- reduce the cost of confinement or imprisonment;

- increase the success of former offenders in obtaining and maintaining employment; and
- provide incentives to offenders to behave in positive ways during imprisonment.

Board of Pardons and Paroles at a Glance

Established in 1929, the Texas Board of Pardons and Paroles is a constitutionally created agency primarily charged with determining which eligible offenders to release early from prison. The mission of the Parole Board is to:

- determine which offenders to release on parole or discretionary mandatory supervision;
- determine conditions of parole and mandatory supervision;
- determine revocation of parole and mandatory supervision; and
- recommend the resolution of clemency matters to the Governor.

Summary

When the Texas Department of Criminal Justice, Correctional Managed Health Care Committee, and Board of Pardons and Paroles were last under Sunset review in 2007, Texas' adult criminal justice system had reached a pivotal point. The system was at capacity and the Legislature had to decide whether to invest in building new prisons or in alternatives to incarceration. The Legislature chose the latter, investing in diversion strategies including treatment programming, probation, and parole to help control incarceration capacity.

Six years later, the Legislature's reforms have clearly improved the system. Since 2007, the number of offenders entering prison as a result of having their probation or parole status revoked has decreased, while the Parole Board's overall release rates have increased. State jail and prison reincarceration rates have declined and as a result, Texas has not had to build more prisons and was able to close the Central Unit in 2011. These successes indicate that overall, the Texas adult criminal justice system is working well.

Another difference between this Sunset review and the last is that the Legislature placed the Windham School District — Texas' correctional education provider — under a special purpose Sunset review to examine its structure, management, and operations. The Sunset review of the system overall identified some problems within each of the four agencies, but none were significant enough to justify major structural changes, particularly when any single structural change could easily impact the system's current stability, potentially causing renewed capacity problems.

Within this context, and with many of the Legislature's investments beginning to bear fruit, the Sunset Commission's recommendations aim to give the agencies clear direction, as well as a solid foundation and statutory framework needed to address future priorities and challenges. The following material summarizes the Sunset Commission's recommendations on all four agencies.

Issue 1

Texas Has a Continuing Need for the Texas Department of Criminal Justice.

Texas has a need to protect the public's safety, and TDCJ provides the support and structure to supervise offenders on probation in the community, securely confine more serious offenders in prison, and directly supervise offenders on parole. The Sunset Commission concluded that TDCJ is the most appropriate agency to oversee this system.

Of the four state agencies in the adult criminal justice system — TDCJ, Parole Board, Committee, and Windham — only TDCJ has an abolishment date under the Sunset Act, necessitating a recommendation to continue the agency. As a constitutionally established agency, the Parole Board is not subject to abolishment, but will continue to come under Sunset review at the same time as TDCJ. Neither the Committee nor Windham has an abolishment date, but as discussed in Issues 4 and 5, the Sunset Commission recommends continuing to review both of these entities along with TDCJ in future reviews.

Recommendation

Change in Statute

1.1 Continue the Board and Department of Criminal Justice for eight years.

This recommendation would continue TDCJ and the Board of Criminal Justice to oversee its operations for eight years. Because the Parole Board is subject to Sunset review at the same time as TDCJ, it would also come under review again in 2021. The Committee and Windham would also be subject to Sunset review in conjunction with TDCJ in 2021, as recommended in Issues 4 and 5.

Issue 2

Reentry Strategies Lack Focus and Coordination, Limiting Opportunities for Texas to Further Reduce Recidivism and System Costs.

Reentry programming and related services help improve offenders' transition from prison to communities and reduce the likelihood of recidivism. Though TDCJ and partner agencies are working to improve the reentry process, the agencies have yet to establish clear and thorough reentry strategies.

Without concrete goals and responsibilities for participants in the reentry planning process, or compulsory coordination, reentry partners run the risk of missing opportunities to leverage limited resources and better manage offenders. Given the pivotal role of reentry in improving the criminal justice system, the Sunset Commission determined that the agencies need explicit direction and clear expectations to make offender reentry an ongoing priority.

Recommendations

Change in Statute

2.1 Require TDCJ to produce a written reentry plan, detailing the reentry goals and strategies, and how it will evaluate the plan.

This recommendation would expand the current statutory requirement to develop a comprehensive reentry plan by requiring TDCJ, in consultation with Windham and the Parole Board, to clearly

establish a written reentry plan that includes each agency's reentry goals, strategies for achieving those goals, the responsibilities of various entities involved in reentry, and timelines for implementing the plan. As part of this plan, TDCJ would identify how it will evaluate the impact of reentry services using recidivism data and other means.

2.2 Require TDCJ to implement a system-wide risk and needs assessment for use in managing offenders on probation, parole, and in prison.

This recommendation would require TDCJ to adopt one consistent needs assessment tool, including criminogenic factors, for use throughout the system from probation to parole. This requirement would replace existing law that requires TDCJ to assess offenders upon intake to a TDCJ facility. Instead, TDCJ must ensure that local probation departments assess probationers, determine when during the period of incarceration to assess offenders in prison, and assess parolees. Since different TDCJ divisions are in the process of piloting assessment tools, this recommendation requires all assessments be fully implemented and in use by January 2015.

2.3 Require TDCJ to leverage existing resources to institute a case management system for offenders.

This recommendation would require TDCJ to implement basic case management using existing processes and staff. The current unit classification process would serve as the basis for improved case management. Classification hearings would include an appropriate array of members to assess each offender and direct them to needed programming. The case management team would review the offender's Individual Treatment Plan (ITP) or institutional record with the offender, and discuss options for a possible plan of treatment through education, rehabilitation, or volunteer programs, as needed.

2.4 Require the Individual Treatment Plan to capture all of an offender's risk and needs information, as well as all participation in both state-funded and volunteer programs.

Under this approach, TDCJ would upgrade its use of the ITP to more fully capture individual offender information for use in treatment planning, including scores resulting from all assessments including educational, vocational, substance abuse, and criminogenic factors. The record would contain need and priority information for all programming responsive to each offender's indicated needs. Finally, the record would capture an offender's participation in all programs, including both state-funded and intensive volunteer programs. TDCJ would review the ITP annually to capture changes in the needs, custody, unit placement, or health of an offender that could impact future programming.

Management Action

2.5 Direct the Parole Board to use the ITP in making programming placement decisions.

This recommendation directs the Parole Board to consider offender risk, needs, and priority information contained in the ITP when making program placement decisions for paroling offenders, once TDCJ has upgraded the ITP consistent with Recommendation 2.4. This recommendation also directs the Parole Board to track placement decisions that are inconsistent with the need indicated on the ITP; and directs the Parole Board, TDCJ, and Windham to establish the frequency and method by which the Parole Board will provide this information on program placements to the agencies. Finally, under this recommendation, the Parole Board, TDCJ, and Windham should meet annually to discuss program

placement, recent outcomes, and programming needs throughout the system, including any concerns related to placements based on use of the upgraded ITP.

Change in Statute

2.6 Expand the statutory membership and duties of the Reentry Task Force.

This recommendation expands the membership of the Reentry Task Force to include representation from each of the following entities — Board of Pardons and Paroles; Windham School District; Texas Commission on Jail Standards; Department of State Health Services; Texas Court of Criminal Appeals; County Judges and Commissioners Association of Texas; Sheriff’s Association of Texas; Texas District and County Attorneys Association; and Texas Conference of Urban Counties. TDCJ’s Executive Director would select three additional members, including a representative from community supervision and corrections departments; an organization that advocates for offenders; and a local reentry planning entity. The Executive Director would be authorized to appoint additional members as necessary.

Under this recommendation, the Task Force would identify gaps in and make recommendations regarding the provision of comprehensive post-release services. This recommendation would also require the Task Force to identify its own goals, the responsibilities of each participant, the Task Force’s deliverables, the timeline for completing deliverables, and who should receive the deliverables.

Issue 3

Community Supervision Funding Formulas and Grant Processes Need Strengthening to Keep Pace With a Changing Adult Probation System.

TDCJ’s Community Justice Assistance Division (CJAD) provides state money — through competitive grants and formula funding — to the 121 local CSCDs that directly supervise and rehabilitate offenders sentenced to community supervision. The Sunset Commission found CJAD lacks a statutory grant-making structure to ensure funds are awarded transparently and fairly to programs that can show a direct impact by reducing recidivism and community supervision revocations.

The Sunset Commission also found that statutory funding formulas do not align with or reward community supervision initiatives that emphasize successful outcomes, which can discourage participation. Although CJAD is working on collecting additional offender risk data to help deliberations on changing these formulas, it does not yet have the data.

Recommendations

Change in Statute

3.1 Require CJAD to establish standard grant processes.

This recommendation would require CJAD to develop processes for each of its grant programs, including establishing goals to ensure the grant programs meet CJAD’s mission, and to maintain a system to routinely monitor grant performance. CJAD would establish customary grant application, evaluation, and award processes, including defining and making publicly available grant evaluation criteria and award determinations, and developing an appeals process for grant award decisions. CJAD would also assess a program’s direct impact or benefit based on program-specific outcome data, which CSCDs would be required to submit.

3.2 Require CJAD to study the use of performance-based funding formulas and report its recommendations to the Legislature.

This recommendation would require CJAD to research and consider modifications to the State's current statutory funding formulas for community supervision. CJAD would seek input from stakeholders in developing recommendations and work with the Legislative Budget Board (LBB) to determine the impact of any recommended changes to current funding projection methodology and appropriations. CJAD would consider other appropriate factors that may be necessary to align statutory funding formulas with the needs of the State's community supervision system, and report any recommendations and their potential effects to the Legislature by 2017 through existing statutory reporting requirements.

Issue 4

Statute Does Not Align With Recent Changes in the State's Approach to Providing Offender Health Care.

Providing incarcerated offenders with a constitutional level of health care costs the State approximately \$490 million annually. Historically, Texas has provided such care by contracting with two university providers — the University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center — with the Committee acting as a contracting intermediary between the universities and TDCJ. However, last session, the Legislature shifted healthcare contracting oversight from the Committee to TDCJ. This change, coupled with public acknowledgement that UTMB might end its long-term relationship with the State to provide offender healthcare, highlighted inconsistencies in TDCJ's current contracting authority in state law. The Sunset Commission found these inconsistencies could limit TDCJ's ability to move forward and partner with new entities to provide offender health care.

Recognizing the offender healthcare contract landscape is changing almost daily, the Sunset Commission identified the need to give TDCJ both the structure and flexibility to be responsive to healthcare provider changes and legislative direction. TDCJ needs clear statutory authority and a strong contracting framework to better ensure it can fully protect the State's interest while providing the necessary level of health care to offenders in its new healthcare contractor role. However, the Sunset Commission determined that the Committee continues to serve a needed and useful role in helping formulate offender healthcare policies and procedures.

Recommendations

Change in Statute

4.1 Clarify TDCJ's authority to contract with any provider for offender health care, to include, but not be limited to, specifically named university providers.

This recommendation would expressly authorize TDCJ to enter into a contract with any entity to provide healthcare services, including public medical schools, governmental entities, and any other provider, as appropriate. Under this recommendation, if TDCJ were to contract with non-governmental providers, it would competitively bid those contracts. This recommendation would remove statutory references to contracting with specific providers, namely UTMB and Texas Tech. Since the State receives significant cost savings from contracting with an entity that can purchase prescription drugs under Section 340B of the federal Public Health Service Act, this recommendation would continue to require TDCJ to

make efforts to enter into contracts with entities that participate in this program, but remove current specificity that limits these contracts to UTMB.

4.2 Require TDCJ to adhere to standard contracting requirements for offender healthcare services contracts, and report healthcare cost and use information to state leadership.

Under this recommendation, TDCJ must adhere to the State of Texas Contract Management Guide, published by the Comptroller of Public Accounts, when entering into any contract related to offender health care. This recommendation would codify language currently in Rider 55 of TDCJ's appropriations pattern that requires TDCJ to submit quarterly reports to LBB and the Governor's Office regarding actual and projected expenditures for unit, psychiatric, hospital and clinic care, and pharmaceuticals; healthcare utilization; and other healthcare information, as determined by LBB and the Governor's Office. TDCJ would include information relating to any cost savings associated with contracting with a healthcare provider other than UTMB or Texas Tech in these quarterly reports.

4.3 Continue the Correctional Managed Health Care Committee as an independent state agency, but modify the Committee's structure and functions.

This recommendation would continue the Committee as an independent state agency responsible for developing and approving the Managed Health Care Plan and providing medical expertise to the Texas Board of Criminal Justice. The Committee would develop and finally approve the Managed Health Care Plan that specifies the type and general level of care provided and ensures continued access to needed care in the offender healthcare system. The Committee would provide expertise in developing any associated policies and procedures that further implement the Plan's directives. The Committee would report to the Board and be authorized to appoint subcommittees.

The Committee would provide medical expertise and advice to TDCJ and the Board as needed, including assisting in identifying system needs and helping in resolving contract disputes as they arise. However, this recommendation would transfer the Committee's duties relating to healthcare contracting to TDCJ, consistent with the Legislature's previous decision to transfer this authority, and would retain current language subjecting the Committee to Sunset review at the same time as TDCJ.

This recommendation modifies the Committee's membership as follows:

- two physicians representing university health science centers, appointed by the Governor;
- two public members appointed by the Governor, one of whom must be a physician who serves as the Chair;
- a TDCJ employee appointed by the Executive Director; and
- the State Medicaid Director, or other Health and Human Services Commission designee, who serves as an ex officio nonvoting member.

Issue 5

Without a Regular Review of the Windham School District and Its Programs, the Legislature Cannot Best Direct Resources to Programs That Work.

Although not subject to regular Sunset review, the Legislature placed the Windham School District under a special purpose Sunset review to examine its structure, management, and operations. Windham provides educational programs within the state criminal justice system and is Texas' only school district whose programs support a state agency — TDCJ. The Sunset Commission found Windham provides academic, vocational, and life skills programming and services, but cannot consistently show whether its programs actually accomplish the district's statutory goals — to reduce recidivism and incarceration costs, and improve offender behavior and employability.

Recommendations

Change in Statute

5.1 Require Windham to conduct biennial program evaluations to measure whether its programs reduce recidivism and meet the district's other statutory goals, and to recommend changes to programs when needed.

This recommendation would require Windham to collect results-based performance data for each of its programs, and evaluate whether the programs are meeting the district's statutory goals. Windham would collect and analyze data related to institutional disciplinary violations, rearrests, reincarcerations, employment, and cost of confinement, and use the new data to produce and compare recidivism and other correctional impact trends over time.

If Windham's evaluations reveal poor program performance, this recommendation would allow Windham to make structural or programmatic adjustments to improve program performance, as needed. Windham would be authorized to establish a memorandum of understanding with TDCJ, the Texas Department of Public Safety, and the Texas Workforce Commission to obtain and share data necessary to perform these evaluations.

This recommendation would also eliminate the requirement that Windham consult with LBB on its evaluation of vocational training services, and would remove the requirement that LBB submit this information to the Legislature and the Governor. Instead, Windham would continue to compile, analyze, and report this information biennially.

5.2 Require Windham to be reviewed by the Sunset Commission in conjunction with future Sunset reviews of TDCJ.

Windham would be subject to Sunset review in conjunction with TDCJ, the Parole Board, and the Committee in 2021 to provide a full examination of all of the State's adult correctional programs together.

Issue 6

The Parole Board's Ability to Make Effective Parole Release Decisions Is Impeded by Its Limited Use of Available Resources and Inconsistent Access to Information.

As an independent entity, the Board of Pardons and Paroles is responsible for releasing offenders early from prison. Since 1987, the Legislature has required the Parole Board to use validated guidelines that indicate an offender's risk to recidivate as a baseline when making these decisions. However, the Sunset Commission found that the Parole Board has shown continued reluctance to use tools such as the guidelines and lacks explicit direction to use other available resources and management tools in making and reviewing parole decisions.

The Parole Board discontinued its public use of recommended approval rates, without which the Parole Board's overall voting cannot be fully assessed to ensure consistent and fair parole decisions. The Sunset Commission also found that despite efforts to increase clarity, the Parole Board continues to provide offenders with unnecessarily vague parole denial reasons, and that crime victim input is not always available for full consideration by the Parole Board when making parole decisions.

Recommendations

Change in Statute

6.1 Require the Parole Board to determine and maintain a range of recommended parole approval rates for each parole guideline score, and to conduct peer reviews to help improve parole decision making and management of its operations.

This recommendation would provide the Parole Board with additional management tools to augment its existing annual review of parole approval rates by requiring the Parole Board to determine and maintain a range of recommended parole approval rates for each guideline score; conduct an annual review of voting patterns to identify significant deviation from recommended parole approval rate ranges; develop and implement a peer review process to help ensure consistent application of the guidelines; and prioritize technical assistance, training, and use of outside experts to update the guidelines or modify the recommended parole approval rate ranges if needed changes are identified. The Parole Board would be required to include a summary of all peer review recommendations and the approved actions taken to implement those recommendations in the Parole Guidelines Annual Report.

Nothing in this recommendation would limit parole panel members' discretion in individual cases, establish any right to parole, modify existing parole release decisions made by a parole panel or parole panel member, or require an individual parole panel member to approve parole based on a recommended approval rate range.

6.2 Require standardized processes to ensure crime victim input is available for Parole Board consideration.

The goal of this recommendation is to improve inclusion rates of victim impact statements in pen packets submitted to TDCJ. If a victim impact statement is unavailable, counties must include a separate form in an offender's pen packet that affirms the victim assistance coordinator did not receive a victim impact statement from the offender's victim(s). TDCJ would develop the standard form and processing procedures with input and ideas from key participants in the criminal justice system. Victim assistance coordinators and attorney offices prosecuting criminal cases would be required to use the standard form and processing procedures no later than January 1, 2014.

6.3 Require parole panels, when approving or denying an offender's release from incarceration, to provide a clear and understandable written explanation of the panel's decision.

This recommendation would modify existing parole decision notification requirements by requiring a parole panel to produce a clear and understandable written explanation of the panel's parole decision, including only the reason(s) that relate specifically to the offender. The recommendation would require the explanation to provide the most information provided by law that does not compromise the statutorily confidential nature of information received by the Parole Board. In the case of a denial, the letter would not have a single paragraph indicating several reasons for denial, but would list each specific reason and component for denial that applies to the offender separately. The Parole Board would be required to place the letter in the offender's parole file and provide a copy of the letter to the offender.

6.4 Authorize the Parole Board to delegate all hearings, but not final determinations, to its hearing officers.

This recommendation would clearly authorize, but not require, the Parole Board to delegate all of its due process hearings to hearing officers. A parole panel would retain responsibility for making all final determinations, upon recommendation from the hearing officer.

Issue 7

Texas Criminal Justice Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Among the standard elements considered in a Sunset review, the Texas Sunset Act directs the Sunset Commission to recommend the continuation or abolishment of each reporting requirement established in law for an agency under review. TDCJ has 17 reporting requirements, Windham has three, the Parole Board has two, and the Committee has one. The Sunset Commission determined that one of TDCJ's reporting requirements does not serve a useful purpose and should be eliminated, and that all other reporting requirements should be continued.

The Texas Sunset Act also directs the Sunset Commission to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunities and historically underutilized businesses. The Sunset Commission found that TDCJ, Windham, and the Parole Board did not meet many statewide workforce percentages. Specifically, TDCJ has historically had difficulty recruiting Hispanic applicants, especially correctional officers.

Recommendations

Change in Statute

7.1 Abolish TDCJ's report on bed ratios for SAFFP facilities, and continue all other reporting requirements for TDCJ, the Committee, Windham, and the Parole Board.

This recommendation would eliminate TDCJ's report on bed ratios for Substance Abuse Felony Punishment (SAFFP) facilities. TDCJ's remaining reporting requirements as well as Windham's, the Parole Board's, and the Committee's reporting requirements would be continued as they provide information useful both to the agencies and the public.

Management Action

7.2 TDCJ should research and implement innovative alternatives to recruit a more diverse workforce.

As part of the recruiting process, TDCJ should identify positions that are underrepresented by Hispanics; identify recruitment strategies implemented by other state agencies with a large workforce; research other recruitment methods implemented by other states' correctional agencies; and implement innovative alternatives to recruit more Hispanic applicants.

Issue 8

The State Funding Arrangement for Local CSCD Employees' Health Benefits Is Not Transparent and Lessens Funding Available for Community Supervision Programs.

In 2003, the Legislature added local CSCD employees to the state Employees Retirement System (ERS). The State currently funds its contribution for these employees through an appropriation to TDCJ's Community Justice Assistance Division (CJAD), as opposed to a direct appropriation to ERS, as state employees are funded. Based on the total amount of state basic supervision funding appropriated, CJAD establishes a basic supervision budget for each CSCD and then deducts the amount needed to pay ERS from this amount.

The Sunset Commission found that while the Legislature has made significant investments in diversion efforts in recent years, an increasing portion of those investments are being put towards insurance costs through these ERS payments rather than into direct programmatic use. Additionally, these insurance costs may not be evident to some appropriators. As benefit costs increase, less funding is available for programming, which could eventually lead to increased revocations or other harms to public safety.

Recommendation

Change in Appropriations

8.1 Request that the Legislature, through the appropriative committees and the Legislative Budget Board, study the impact of the current method of providing insurance for CSCD staff and retirees and consider certain changes.

This recommendation expresses the will of the Sunset Commission that the Legislature, through the legislative appropriative committees, and LBB determine the feasibility of ERS fully managing CSCD health insurance and consider placing CSCD insurance amounts as an ERS funding line item.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State.

