

**From:** [Elizabeth Jones](#)  
**To:** [Trisha Linebarger](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Thursday, December 17, 2020 2:15:07 PM

---

From: sunset@sunset.texas.gov On Behalf Of Texas Sunset Commission  
Sent: Thursday, December 17, 2020 1:56:32 PM (UTC-06:00) Central Time (US & Canada)  
To: Sunset Advisory Commission  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS COMMISSION JAIL STANDARDS

First Name: Diana

Last Name: Claitor

Title: co-founder and communications director

Organization you are affiliated with: Texas Jail Project (nonprofit 501(c)3  
name: Jail Project of Texas)

Email: [Diana.claitor@texasjailproject.org](mailto:Diana.claitor@texasjailproject.org)

City: Texas

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or  
Opposed:

Texas Jail Project staff is pleased to see this thoughtful and focused analysis of the Texas Commission on Jail Standards, an agency with influence on the lives and well-being of more than a million people booked into county jails each year in our state. As the Sunset staff report states, "Texas relies on this agency to act as the public's eyes and ears inside jails." The response of the Texas Commission on Jail Standards also demonstrated careful attention to the issues and a willingness to take action and respond to some of Sunset's recommendations, although not to all of them.

Issue 1

While we can see that it is very difficult for such a small agency as TCJS to tailor standards to different sized jails, we think that is an important goal, since one of the outcomes of the one-size-fits-all are standards that lack specificity and are weaker than they should be. In 1.2, we agree with Sunset that TCJS must clarify their authority to change rules, and we are glad that TCJS agrees.

Section 1.3 of your assessment which states that the vague and overly-broad standards must be reviewed to make the standards more useful is pertinent to almost every aspect of TCJS's work. Of course, we realize that part of the reason for the vagueness is that TCJS lacks much-needed authority as well as capacity, but we believe, based on 14 years of experience interacting with TCJS directors, staff, and jail administrators, that vaguely-written standards also function as a shield, allowing jails to run things however they see fit. This is particularly true of standards around medical care.

Not only are overly-broad medical standards less useful in protecting jails from liability, they allow slipshod medical providers to do less than the minimum standard would allow if the language was clear and specific. In addition, when a standard's language interprets a law loosely enough, the standard undercuts legislative intent. Then, after numerous failures and outcry from the public, advocates and legislators must try again in a later session to pass a separate bill, written in such specific language that TCJS must refine their standard or create another standard that explicitly directs policy and practices.

For example, TJP spent time and energy working with Rep. Gonzalez to pass HB 1651 last session, directing jails to instruct staff on how to recognize labor and requiring them to transport a woman

in labor to a hospital on her say so. We were asked more than once whether such an obvious part of medical care necessitated a law when there was already a law requiring jails to provide medical care for pregnant women—HB 3654. However, the medical care standard TCJS created as a result of that bill is vague, and we had unfortunate examples of women in labor who were accused of faking or who were simply ignored, who then had to bear children on the floors of their cells.

However, if the original standard had been more stringent and clear, a second bill probably wouldn't have been necessary.

In addition, in response to HB 3654, TCJS created confusing policy and language about the process for counting pregnant prisoners that resulted in a huge undercount of pregnant women that went on for years and that TJP only discovered belatedly, in 2018.

Thus, it was with real dismay we read the TCJS response in their letter to

Sunset: “The agency believes all existing standards to be effective.” The examples of indecipherable language and unclear directives in the standards would fill a book—something that we believe TCJS staffers understand quite well—so that statement seems to be more boilerplate than authentic. TCJS goes on to say they will review those that “appear” to be vague and then the commission “may” then permit further workshops to recommend revisions to the standards to improve their clarity.” This response does not inspire confidence in the will of TCJS to move toward using language in the standards that clearly communicates the responsibilities and accountability of jails.

## Issue 2

2.1 Texas Jail Project agrees with Sunset that “desk audits” are a good approach for risk assessment, but more importantly, we agree whole-heartedly with TCJS that on-site inspections for all jails are absolutely necessary—and that reducing that personal interaction and eyes on the facility would be detrimental to all concerned.

Sunset's proposal for escalating actions against jails that remain out of compliance repeatedly or for long periods is a long overdue strategy. Some have said that TCJS's reluctance to develop a model like this is due to the excessive influence of the Texas Association of Sheriffs and Texas Association of Counties. We hope any undue influence is negated by Sunset's clear direction.

We applaud the idea of an inspection procedures manual and are pleased that the Director considered the input of the inspection staff on the biggest shortcoming of the current methods. TCJS's idea of beginning a new way to objectively judge whether or not to issue a violation, by using classification as a test, will be an excellent way to establish criteria for determining when technical assistance is to be provided in lieu of listing a violation in classification. We agree that if carried out across all categories, this can help remove the subjectivity of the inspection process and ensure that all parties involved are aware of what they can do to meet the standards.

## Issue 3

The recommendations around changing the complaint process are especially pertinent to the work Texas Jail Project does as our cases and issues are driven in great part by the public requesting our help in filing complaints.

The TCJS website needs to state complaint procedures clearly and simply, and recently, the directions have improved, probably because of Sunset's attentive eye, but there still needs to be more information about the types of complaints TCJS can address, and information about where to go with other types of complaints. The complaints section has one shockingly unhelpful line that tells the public they can call if, after 20 days, there's no response to their complaint—that time period should be shortened, saying “in case of emergency” or some such phrase, call after 72 hours.

The website should briefly make the point that any jailers or staff engaging in retribution against a prisoner because of a complaint is expressly forbidden. It's quite common to have people withdraw a complaint because of threats, harassment or the fear of family members who have been warned not to complain again because “it will only make things worse” for their loved one.

As the Sunset staff emphasizes, information about the complaints process and the lesser-known appeals process should be clearly posted within jails, so that prisoners understand their prerogatives. While the suggestion to also require that information to be clearly explained in the Inmate Handbooks of each jail, Sunset needs to consider the fact that we often encounter jails that don't have inmate handbooks available or only one very old one that hasn't been updated. Since there is a standard requiring a handbook, TCJS inspectors need to check regularly to see if inmates can actually see a handbook and or have access to one, and then start citing jails which only wave a handbook around and ask the inmates to all sign that they have seen one. In other words, inspectors may need to insist that jails take that standard more seriously.

TCJS's response to Sunset says that it agrees that the complaints procedure needs revision and expansion; we suggest that when they occur, these revisions should be made clear to the jails in a technical assistance memo,

because if the changes are only noted on the website, many jail administrators may not notice or may ignore. And these revisions and expanded procedures should be made clear to the public on the website; it would be helpful to have an FAQ about such topics.

One important complaint that TCJS refuses to address must be highlighted because there is no justification for TCJS not addressing it: the refusal of some jails to allow communication with medical staff through the use of a medical authorization or release. Those forms are widely used and recognized by medical providers, in order to demonstrate a patient's permission for their medical treatment or condition to be discussed with family or representatives. However, Denton County Jail (presently) and many others in the past, repeatedly refuse to provide the release, refuse to let the family send the release to the inmate and/or refuse to acknowledge the release when it is presented with the inmate's signature. Thus, we see family members of incarcerated people with long term medical problems, like seizure disorders, specific types of diabetes and IDD and mental illness or medication allergies and side effects, unable to communicate vital information about those conditions to the jail medical staff, and there have been injuries and sometimes permanent harm as a result. Is that not a liability for the jail?

Director Wood has said in the past that a jail's refusal of medical releases is a choice that TCJS has no means of addressing, but we heartily disagree, as the acceptance of that medical release clearly falls within the mandate of the standard requiring adequate medical care.

During the Jail Commission's quarterly meeting, the section on the agenda about complaints during that quarter is truncated and rushed, stating how many total, how many unfounded because the complaints are about something outside their purview, how many investigated and how many found accurate.

More detail would inform stakeholders and the public at large about what can and should be reported and also how TCJS responds. We can understand TCJS not stating the location or jail of the complaints investigated, but they can be more transparent in describing investigations.

#### Issue 4

While Texas Jail Project has usually received responses to requests for information from this agency in a fairly timely manner, we believe the agency's operations having to do with information and information requests could be streamlined and improved. In terms of 4.2, we believe the Sunset recommendation is too vague and actually doesn't address a problem that is ongoing; "publish certain information on the website for a specified length of time" should be more specific because information on the website appears and then disappears quickly and erratically, requiring advocates and journalists and researchers to file PIA requests for information that should be readily available. If, for example, one is researching the out of compliance reports on a county, you can only see a report until the county makes the corrections, because then it disappears and you can't see when it was or how many preceded it, without a PIA. If the county corrects its violations in 12 weeks, the report is gone.

And as 4.3 says, more information surely could be published online. In our estimation, the website is generally much too static and unresponsive to sudden events, e.g. when their complaint form stopped working, there was a gap of 3 months before the post changed to direct the public on how to file complaints. Needless to say, complaints were down that quarter.

We, of course, believe that the agency should share more information with stakeholders (4.5) but this requires staff time and a more active website.

This and the other agreed-upon recommendations raise two questions:

A. Can this agency, which is already lean, make these changes and maintain them with its current staff level? Or does this agency need a larger budget supporting more FTEs and full time website support?

B. What kind of followup or monitoring occurs when an agency agrees to make changes and initiate services? We can remember a newsletter the agency began publishing after the 2009 Sunset Review. It communicated information and highlighted issues for its audience of jail personnel and stakeholders like us. But that newsletter disappeared after a few years. Is there any part of Sunset that checks back on whether agreed-upon recommendations became permanent policy or practices?

#### Issue 5

Texas Jail Project concurs with the continuation of this valuable agency. We strongly believe that your recommendation in 5.2 to amend the enabling statute is extremely necessary for it to have the kind of expert and committed input that will ensure efficiently-run and humane and healthy jails. At present, even the most committed and competent commission is lacking the kind of advisory committees necessary to address the complexities and quickly-changing challenges facing the sheriffs and administrators of Texas county jails.

We believe TCJS is correct when they state that it's not possible to do the "expanded amount of work recommended within this report" with their existing staff, and we agree that Sunset is inaccurate in assuming that the work could be accomplished by increased "internal efficiencies." Having watched and listened to people at TCJS wearing several hats, coping with requests for information from the public, legislators, other agencies, and the media, as well as urgent complaints, required monitoring and reports, and unexpected crises from hurricanes to asleep-at-the-wheel sheriffs to pandemics, we know that is unlikely. On top of an already high-stress workload, the Sunset report recommends a substantial expansion of responsibilities. There are solid reasons for that expansion, but the Texas Commission on Jail Standards needs more robust funding that will provide them with the resources and full time employees to implement Sunset's recommendations.

Any Alternative or New Recommendations on This Agency: TJP believes that Director Wood is entirely correct in asking the Sunset to issue recommendations regarding the confusion and illegal actions taken by Texas county jail command staff and administrators, as well as county sheriffs, around the designation of deaths in custody. Having researched this subject, Texas Jail Project actually issued an award to Judge Cobos ([texasjailproject.org](http://texasjailproject.org)) who spoke out and reported his jail (Midland County) for disguising a death in custody, and our communications director recently published a story about the issue. The increasing number of such cases being uncovered speaks to a larger problem—derived mostly from a reluctance for deaths to be investigated by an outside agency. The Sunset Commission should address this issue or at least direct legislators to address the issue by defining exactly what responsibility a jail has to report each death related to incarceration in that jail.

My Comment Will Be Made Public: I agree