

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem. It features a thick black outer border and a white inner border. The center is a solid black area containing the text "Texas Sunset Advisory Commission" in a white, bold, serif font, stacked in four lines.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Commission on Jail Standards

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



COMMISSION ON JAIL STANDARDS

November 1990

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SUMMARY

Summary

The Texas Commission on Jail Standards (TCJS) is subject to the sunset act and will be automatically abolished unless statutorily continued by the 72nd Legislature in 1991. The commission has not undergone a prior sunset evaluation.

The review of the TCJS included an assessment of the need for the functions of the agency, benefits that could be gained by performing the functions through another agency, and changes needed if the agency was continued in its current structure. The results are summarized below.

Assessment of Need for Agency Functions

The review concluded that the functions of the TCJS should be continued. The primary function of the agency, the development and enforcement of standards for the state's county jails, continues to be needed. Jail conditions and populations require periodic inspection, new standards must be developed as conditions and designs change, and existing standards must be updated. The agency's function to review and comment on jail construction and renovation plans provides safeguards to both the counties and their prisoners that facilities constructed are both safe and secure.

Assessment of Organizational Alternatives

If the decision is made to continue the functions of the agency, the review concluded that the functions are logically provided through the current structure, the Texas Commission on Jail Standards. Providing the agency functions through the current structure provides counties direct access to the agency's policy body and staff. In addition, the review was unable to identify any benefits that would be gained from merging or transferring the functions to another entity.

Recommendations if Agency is Continued

- The method of designating the commission's chairman should be changed from election by the commission members to designation by the governor; and
- The operation of the agency's programs should be improved by requiring the commission to set and collect fees for design and construction documents review and inspections of facilities that house significant numbers of prisoners held under contract with out-of-state authorities.

Fiscal Impact

Preliminary estimates indicate that the recommendations could produce fee revenue to the agency in excess of \$36,500 annually.

BACKGROUND

Creation and Powers

The Texas Commission on Jail Standards was created in 1975 to set and enforce standards for the state's county jails. The statute specifies the commission shall adopt minimum standards for the following areas: the construction, equipment, maintenance, and operation of facilities; the care, custody, and treatment of prisoners; the number of jail supervisory personnel; and, the programs for prisoner rehabilitation, education, and recreation.

The Local Government Code also sets out minimum requirements for the operation of county jails. These requirements include such areas as prisoner segregation (e.g. males from females, first offenders awaiting trial from convicted prisoners), the types and capacities of cells, minimum amounts of space for each prisoner, facilities that must be available to prisoners, and specific requirements such as the minimum size of bunks. The code specifies that the code's requirements are enforceable by the Commission on Jail Standards.

The commission is also required to inspect each county jail at least annually to determine if the jail is in compliance with its own standards and those requirements set out in the Local Government Code.

The commission is empowered to enforce the standards contained in its own rules and in the Local Government Code. If a jail is found to be out of compliance with standards, the commission is required to report the noncompliance to the county commissioners and the sheriff of the county and send a copy of the report to the governor. The commission may allow the county up to one year to remedy the noncompliant areas. If adequate remedies are not achieved within the designated period, the commission may issue an order to restrict the use of the jail. The commission may in its order require all or some of the prisoners confined in the jail to be transferred to a detention facility that agrees to accept the prisoners.

In addition to the standards that are to be set and enforced, the commission is required to provide local government officials with consultation and technical assistance for county jails. The commission must also review and comment on plans for the construction and major modification of a county jail.

Policy-making Body

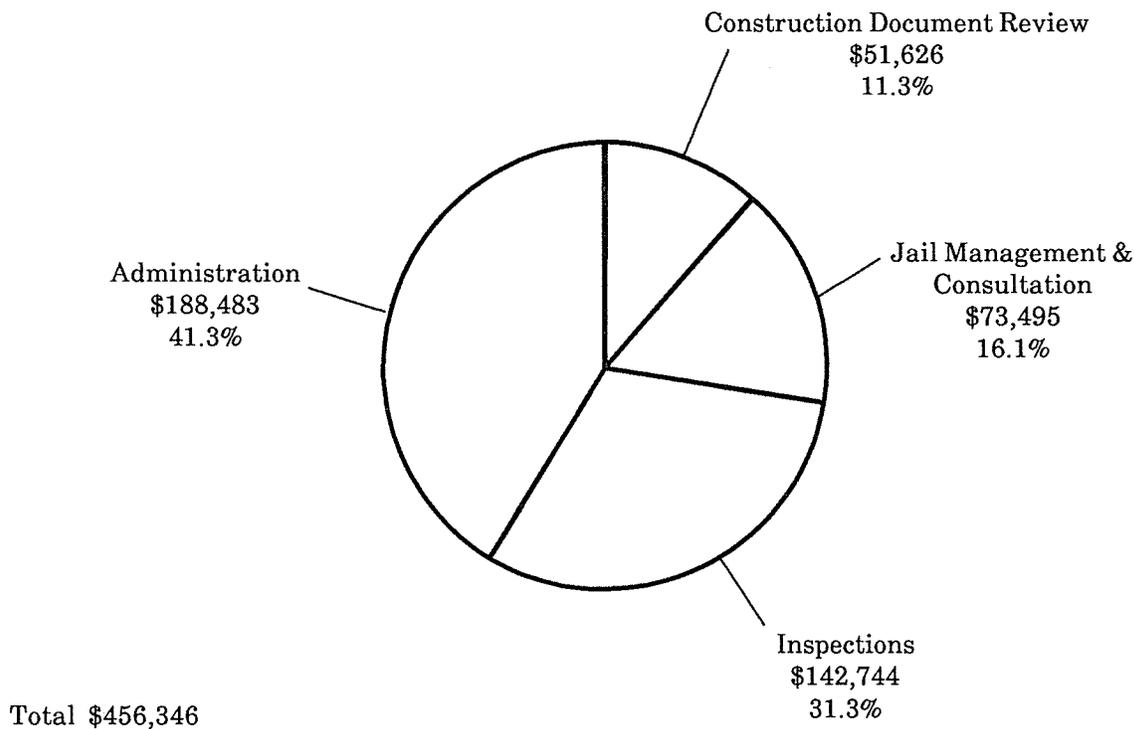
The commission has nine members appointed by the governor and confirmed by the senate for staggered six-year terms. One member must be a sheriff of a county with a population of more than 200,000, one must be a sheriff of a county with a population of less than 200,000, one member must be a county judge, one must be a licensed practitioner of medicine, and five must be citizens of the state who do not hold another public office. If a sheriff or county judge ceases to hold their respective elected positions, that position on the commission becomes vacant and must be filled by a person with the same qualifications. The commission biennially elects a presiding officer and assistant presiding officer who serve two-year terms. The statute requires the commission to hold a regular meeting at least quarterly and allows the holding of special meetings at the call of the presiding officer or on the written request of three members.

The duties of the commission include the selection of the executive director and oversight of agency administration. The commission's major responsibility is to adopt and enforce reasonable rules and procedures for the construction, maintenance and operation of county jails. In addition, the commission is required to submit an annual report to the governor, the lieutenant governor, and the speaker of the house on the commission's operations, its findings concerning county jails during the preceding year, and any recommendations that the commission considers appropriate.

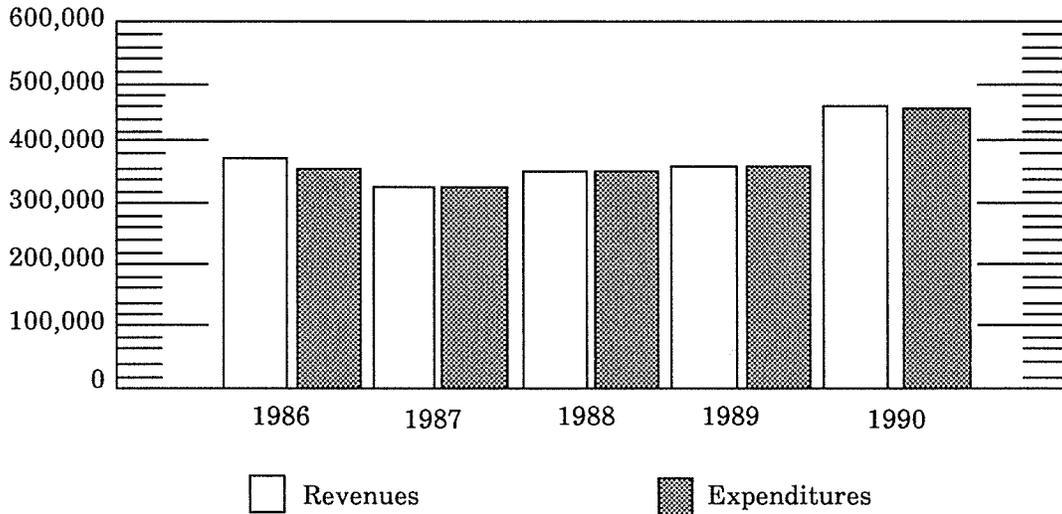
Funding and Organization

In fiscal year 1990 the legislature appropriated to the commission a total of \$462,141; \$317,007 from the general revenue fund, \$140,134 from criminal justice grants, and \$5,000 from other funds. Commission expenditures are divided into four major activities shown in Exhibit A. Exhibit B shows agency expenditures and revenues for fiscal years 1986 through 1990.

Exhibit A
Expenditures by Activity
Fiscal Year 1990



**Exhibit B
Revenue and Expenditures
Fiscal Years 1986-1990**

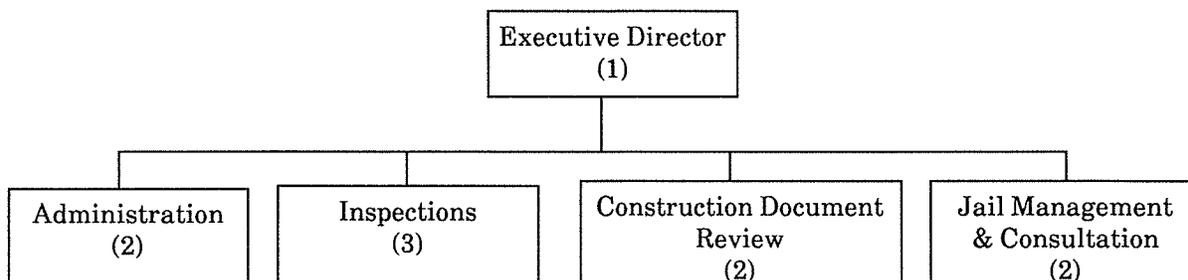


The agency is authorized 10 full-time employees (FTE's) for fiscal year 1990 to carry out its programs. The two exhibits that follow describe this workforce and indicate its organization. The first of these exhibits, Exhibit C below, depicts how the agency's workforce has changed over a five-year period in categories of employment. Since the state Appropriations Act established minority employment goals for these categories, the agency's minority employment is also depicted by category over this time period. The second exhibit, Exhibit D, shows the organizational pattern for the 10 employees. Seven staff are employed in the agency's Austin headquarters and three field inspectors are assigned to three regions and live in their respective regions.

**Exhibit C
Percentage of Minorities in Agency's Workforce**

Job Category	1986 Total Workforce 8		1990 Total Workforce 10		1990-1991 Appropriations Act Statewide Goal for Minority Workforce Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	1	0%	1	0%	14%
Professionals	5	0%	6	0%	18%
Administrative Support	2	0%	3	0%	25%

Exhibit D Plan of Organization



Programs and Functions

Administration

The executive director is responsible for carrying out the commission's policies and administering the agency's operations. Because of the small staff, the executive director is directly involved in most of the agency's activities. The executive director has primary responsibility for developing and revising rules and responding to prisoner complaints and requests for assistance. Prisoner complaints and requests are screened and prioritized. High priority issues are immediately referred to a field inspector for resolution. More routine requests are forwarded to a field inspector for resolution when the inspector is at or near the jail where the prisoner is confined. During fiscal year 1990, 278 complaints and requests were received and 254 were investigated. In addition, the executive director provides consultation to local officials. Most consultations are by telephone and deal with information requests and technical questions. In fiscal year 1990, the executive director and other headquarters staff were involved in 2,185 consultations. This function also operated in fiscal year 1990 with three employees and included the executive director, the chief accountant and an administrative technician.

Inspections

The inspection activity is responsible for inspecting all operating county jail facilities at least annually. Field inspectors make announced visits and use a 600 item checklist. Areas inspected include: operating plans; records and reports; physical plant facilities, operation and maintenance; heating, ventilation, and smoke evacuation systems; staffing numbers and assignments; medical facilities and services; food service facilities and preparation; and recreational, educational, and rehabilitation programs. Actual life safety drills are observed and timed.

Field inspection staff also perform occupancy inspections of newly constructed and renovated jails to ensure that construction is completed as approved and that the facilities comply with minimum standards. After the initial occupancy inspection,

some items on the checklist remain constant (e.g. the number and dimensions of cell). Thereafter, inspections are performed to affirm that conditions previously approved still exist and continue to meet standards.

When requested by a sheriff, inspectors assist the sheriff's personnel in developing administrative, management, operational and program plans and procedures to assure that they are consistent with legal requirements and will provide efficient functioning of the jail.

Inspectors also inquire into and investigate prisoner complaints and requests forwarded by the executive director. Routine issues are investigated during scheduled inspections. Priority issues are investigated at the inspectors' earliest opportunity.

During fiscal year 1990 the agency performed 30 occupancy inspections, 251 annual inspections, and 24 special inspections. As a result of these inspections, 92 letters of noncompliance and six remedial orders were issued. During fiscal year 1990, this function operated with three employees.

Jail Management and Consultation

The jail management and consultation activity provides consultation and technical assistance to county officials to assist them make informed decisions about jail matters. The primary purpose of the activity is to avoid unnecessary expense to achieve minimum jail standards and avoid potentially costly litigation. Consultations and technical assistance includes on-site visits and in-house conferences with county officials or their representatives.

Commission staff assist county officials on current operations and for planning future jail facilities. Commission staff assist local officials to establish procedures and forms consistent with Texas minimum jail standards and national life safety codes to ensure life safety equipment is present, maintained and properly used. Sheriffs receive instruction on developing operating plans and drills for such incidents as riots, hostage situations, natural disasters, and power outages. Local officials are provided information about identifying and procuring community resources for prisoner programs such as education, counseling, rehabilitation, and recreation. Availability of these resources provide direct benefits to the prisoners and make the jail eligible to receive free surplus foodstuffs from the Federal Commodities Program.

In addition, staff assist local officials and communities by providing information on jail issues. Staff often make presentations to inform commissioners courts and community groups about current jail needs and conditions and their future implications to the community. Such information is helpful to both the local officials and the community to form a plan of action.

During fiscal year 1990, staff in the jail management and consultation activity performed 257 documented contacts and operated with two full-time employees.

Construction Document Review

This activity reviews and comments on counties' building plans and specifications and facility operational plans. The review and comment effort on jail construction and renovation documents includes formal plan review against standards checklists.

The process may also include consultation or review with design professionals, consultants, county officials, and sheriffs' and their personnel.

Plans are reviewed at three phases, schematic design, design development, and the finalized construction documents. At each phase items requiring attention are noted and resolved prior to proceeding to the next phase. This process helps assure that counties understand jail requirements and that the completed jail is effective and economical.

Commission staff provide advice to county officials on the need for more or improved jail space or the possible alternatives to expansion or construction. Commission staff perform an analysis of needs that projects county populations for 20 years and recommendations are made on capacity and configurations that will meet both current needs and future growth requirements.

During fiscal year 1990 the staff of the construction document review activity reviewed and commented on 117 plans. The activity operated with two full-time employees.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

The Sunset Act requires an assessment of several factors as part of an agency's review. These factors include: a determination of the continued need for the functions performed by the agency; a determination if those functions could be better performed by another agency; whether functions performed by another agency could be better performed by the agency under review; and finally, a determination of the need for any changes in the agency's statute.

Approach to Current Review

In accordance with the Sunset Act, the review of the Texas Commission of Jail Standards (TCJS) included an assessment of the need to continue the functions performed by the agency; whether benefits would be gained by combining the functions of the agency with those of another organization; and finally, if the functions are continued in their present form, whether changes are needed to improve the efficiency and effectiveness of the agency.

The need for agency functions focused on whether continued mandatory jail standards and state enforcement of those standards was necessary. The review then examined whether benefits would result from merging the agency or elements of the agency with any other state agency. The remainder of the report details changes needed if the agency is maintained in its current form.

To make determinations in each of the review areas, the staff performed a number of activities. These included:

- review of agency documents, legislative reports, previous evaluations of TCJS activities, and literature containing background resource material;
- interviews with key TCJS and other state agency staff;
- monitoring an inspection of a county jail;
- attendance at commission meetings and public hearings of the Texas Commission on Jail Standards; and
- contacts with groups affected by or interested in the activities and policies of the agency, including private jail/prison operators and representatives of associations of county sheriffs and county commissioners.

The principal findings and conclusions resulting from the review are set out in three sections of the report: 1) Assessment of Need for Agency Functions; 2) Assessment of Organizational Alternatives; and 3) Recommendations if Agency is Continued.

Assessment of Need for Agency Functions

ISSUE 1: State regulation of the construction, renovation, and operations of county jails should be continued.

BACKGROUND

State regulation of the affairs of local government through licensure or certification is justified if several conditions are present. First, the unregulated activity should pose a serious risk to citizen's rights, health and safety, or economic well being. Second, the benefits to the public of state regulation should clearly outweigh any potential harmful effects, such as excessive costs or arbitrary pre-emption of activities or services adequately provided by local governments. Finally, the conduct of the local government activity or service is of such a complex or dangerous nature that there is risk to the public or the local government for it to set and monitor its own standards of operation.

These three conditions were examined to assess whether they exist to an extent that would justify continued regulation. The review considered the conditions that existed when state regulation of county jails began in 1975. Further, the agency's current functions and the current activities and conditions of county jails were considered.

Before the Commission on Jail Standards was created, county jails had no construction design or operating standards. Construction and renovation requirements were those necessary to meet security, building code and other structural standards. There were no requirements that assured that all necessary service or life safety needs unique to jails were met.

Prior to 1957 state statute simply charged county commissioners with providing "safe and suitable" jails. In 1957 the law was amended to provide more specific guidelines, but the amendments contained no enforcement provisions. The new law also provided for inspection by the state health department, but this function was not funded until 1969. Subsequent inspections by the health department found significantly substandard health conditions in virtually all the state's county jails. However, lacking any enforcement authority, the department had little impact on improving conditions.

When local officials failed to change jail conditions, federal courts became involved to intervene in the conditions, management and operations of county jails. These suits had two significant consequences for counties. First, the litigation proved costly to the counties. Second, the courts were creating a set of standards for county jails that were based on the individual jails involved in the suits. Consequently, the emerging standards were often conflicting or incomplete as guides to other jails.

The move toward state regulation of county jails became focused in 1973 when a legislative committee examined conditions in county jails. Many jails were operating with serious health and safety violations and few had policies that protected prisoners' due process rights. The committee recommended the creation

of a state commission to prescribe and enforce minimum standards for county jails.

In 1975 the 64th Legislature created the Commission on Jail Standards to establish standards for the design, construction, management, and operations of county jails and to inspect for compliance with those standards. Since the commission was created, the courts have considered a county jail's compliance with commission standards as evidence whether or not the jail's facilities and operations meet constitutional requirements. The amount of significant litigation against county jails has dropped dramatically since the commission was created.

County jails in the state should be constructed, managed and operated in a manner that protects the health, safety and security of prisoners and the public. Continued state regulation is warranted if there is adequate evidence that state oversight is still necessary to ensure these conditions. The evaluation of the need to continue state regulation of county jails indicated the following:

- ▶ **Most states have some form of state-level review of county jail review.**
 - The Jail Division of the National Institute of Justice reports that 32 states with jails operated by county governments have some form of state-level jail review.
- ▶ **Overcrowding and life safety problems have improved significantly since the commission was created, but problems still arise.**
 - The agency continues to issue letters of non-compliance and remedial orders. During fiscal year 1990, the agency issued 92 letters of non-compliance and six remedial orders. Some jails have failed to be certified because of deficiencies. As of September 12, 1990, 78 county jail facilities lacked certification for failing to meet standards in one or more of the following areas: classification and separation of prisoners; crowded conditions; staffing; life safety conditions; exercise facilities; records management; and discipline procedures. Ensuring that these deficiencies are corrected remains an important aspect of the commission's functions.
 - Due to continued prisoner population demands on the Texas Department of Criminal Justice, county jails will continue to house state prisoners for extended periods of time. This pressure will continue to affect the quality of county jail operations.
- ▶ **Construction and major renovations continue and standards and monitoring are still necessary.**
 - During fiscal year 1990, the agency reviewed and commented on 117 documents related to county jail design or construction, and 30 occupancy inspections were performed on new construction or major renovation.

- ▶ **The commission provides an effective means for prisoners in county jails to resolve grievances.**
 - TCJS standards require that a county jail provide a grievance and complaint process for prisoners. Prisoners may send complaints and requests for assistance to the commission. Counties regard the commission's role in the process as an important aspect of prisoners' due process rights. During fiscal year 1990, the commission received 278 complaints and requests from prisoners, and 254 of the complaints were of a nature that required commission inquiry.

PROBLEM

While the severe conditions that existed in county jails when the commission was created no longer exist, problems still exist. New jails are being built that require oversight to ensure safe and secure conditions. Health and safety conditions can deteriorate because of poor maintenance and operations. Due to overcrowding and increased populations of non-county prisoners, ongoing jail management and operations require continued monitoring to ensure basic standards are maintained.

RECOMMENDATION

- **The state should continue to establish and enforce the standards for construction, management, and operation of county jails.**

Continued state regulation of county jails will ensure that counties will have a single, authoritative source of standards for their construction, operation, and management. County jail facilities are constructed in compliance with standards and future risks and expenses are minimized. Further, the commission helps assure that prisoner safety and health conditions are maintained and a system is provided that assures due process protection.

FISCAL IMPACT

If the current functions are continued, the agency's annual appropriation would continue. The agency's current budget is \$456,350, of which approximately \$300,000 is general revenue.

Assessment of Organizational Alternatives

ISSUE 2: The Commission on Jail Standards should be continued as a separate agency.

BACKGROUND

During a sunset review, the potential benefits of transferring a part or all of an agency's functions to other state agencies are examined. Accordingly, the following criteria were used as the basis to consider transfer of the functions of the Commission on Jail Standards: the responsibility or function would be more compatible with those of another agency; the services would be performed or delivered in a more effective manner; and the functions would be performed in a more efficient manner at a lower cost.

One agency, the Texas Department of Criminal Justice, was considered as a logical organizational structure that could assume all the responsibilities of the commission. The Department of Criminal Justice (TDCJ) was created in 1989 by the 71st Legislature and is the primary state agency for adult criminal justice matters. The TDCJ contains divisions for pardons and parole, community justice assistance, and institutions. The community justice assistance division is involved with probation departments and other local governments' activities that impact the state's overall criminal justice system. Part of the division's responsibilities include inspection of local facilities. The institutional division is responsible for the prison system and for all facility design, construction and operations.

A review of the impact and benefits of transferring all or part of the agency's functions indicated the following:

- ▶ **The facility inspection responsibilities and functions of the Commission on Jail Standards are not compatible with those of the TDCJ's community justice assistance division and transfer of the inspection function of the Commission to the TDCJ would not provide identifiable improvements in economy or effectiveness.**
- The TDCJ's community justice assistance division (CJAD) has statewide responsibilities and is involved with local facilities and programs of district courts and local governments. However, CJAD's responsibilities with local governments are different from those of the Commission on Jail Standards. The responsibilities of the commission are limited to county jails and municipal governments that have vendor operated jails. The CJAD works primarily with judicial districts and does inspections of physical facilities at local programs. However, the division's primary purpose is to develop and monitor programs that provide alternatives to prison incarceration, not facility inspections. The primary purpose of the TCJS is to provide oversight regulation to ensure that jails are safe and secure.

- ▶ **The facility design and construction documents review responsibilities and functions of the commission are not compatible with those of the TDCJ's institutional division.**
- The TDCJ's institutional division constructs and operates TDCJ's prisons. The division does have personnel familiar with construction standards and operation of safe and secure facilities. However, the nature and design of prison facilities construction and operation differ significantly from those of county jails. Prisons are designed for long-term incarceration while jails are for short-term custody. Further, the federal courts have mandated the standards under which TDCJ's institutions are operated, while the TCJS develops and enforces those for counties. Finally, the division's operations are not statewide and monitoring all counties in the state would be a major departure from its current operations.
- ▶ **The 71st Legislature considered placing the Commission on Jail Standards in the Texas Department of Criminal Justice when the department was created in 1989, but determined the commission should be a separate agency and the commission's current structure was retained.**

RECOMMENDATION

- **The Commission on Jail Standards should be continued as a separate agency.**

The programs and functions assigned to the Texas Commission on Jail Standards are appropriately placed in the agency as it is currently structured and no significant benefits would be achieved by transferring any duties or activities to another agency.

FISCAL IMPACT

No additional fiscal impact would occur as a result of this recommendation.

Recommendations if Agency is Continued

ISSUE 3: The statute should require that the governor designate the chairman of the commission.

BACKGROUND

The chairman of the commission is currently elected by the members of the commission and serves as chair for two years. The method of selection of the commission and its chair should provide for accountability between the policy body and the governor and legislature. Having the governor designate the chair is one way to strengthen this accountability. The Sunset Commission has routinely recommended that the governor appoint the chair for the purpose of improving accountability between state boards and the chief executive. The review found that the governor already selects the chair of 42 other state agencies, including the State Board of Insurance, the State Board of Education, the Alcoholic Beverage Commission, and the State Highway and Public Transportation Commission. The majority of the agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

PROBLEM

The election of the chairman by the commission members does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer.

RECOMMENDATION

- **The statute should be changed so the governor designates the chair of the Texas Commission on Jail Standards.**

The person appointed as chair would continue in the position at the pleasure of the governor. In the event the governor decided to remove the person from the chairmanship, the person would continue to serve his appointed term on the commission and the governor would choose another chairman from the membership of the commission. This change will promote accountability of the commission to the governor.

FISCAL IMPACT

No fiscal impact would occur as a result of the recommendation.

ISSUE 4: The statute should require the agency to charge fees for design and construction plan review and inspections for county jails built and operated primarily for prisoners held under contracts with out-of-state entities.

BACKGROUND

A new industry is emerging among the state's county jails. During the past decade some counties have built new jails with excess bed capacities and are filling those beds with prisoners held under contract with other entities. These counties are building their jails for future growth and contracting to fill the excess space until the future need materializes. Other counties are involved in large jail facilities that are, or will be, privately built and operated to hold contract prisoners. Often these counties are supporting the construction and operation of these facilities as economic development activities for their communities.

Initially, many of these facilities were planned and built because of the state's overcrowded prisons. During the past decade county jail prisoner populations have more than doubled, in part, because of overcrowding in the state's prison system. Convicted felons awaiting transfer to the state prison system are held for various lengths of time in the jails until prison space becomes available. Often the backlogs resulting from this situation have caused jails, otherwise in compliance with jail standards, to go out of compliance because of overcrowding.

The legislature has responded to overcrowding of prison and jail populations by authorizing and funding new programs at the state and local level targeted at reintegration of offenders back into the community, thus averting sentencing to the state's prisons. In 1983 the legislature authorized adult probation departments (administrative functions of district courts) to use state funding to establish restitution centers and residential treatment centers.

The legislature also granted new alternatives to county and municipal governments. In 1983 commissioner courts, with the approval of their sheriffs, were authorized to place low-risk inmates in a detention facility operated by a private vendor. In 1987 this authority was expanded to authorize counties to contract with private vendors to provide financing, purchase, design, construction, leasing, operation, maintenance, and management of jail facilities. Similar authority was granted to municipalities and included the authority for municipalities to contract with counties. Vendor operated municipal jails were required to be certified by the TCJS under its minimum standards. The most recent addition to the state's criminal justice network occurred in 1989 when counties were authorized to establish county correctional centers. These programs serve counties as part of their range of correctional programs. Also, counties with county correctional centers can join with district courts that are participating in funding under the community assistance programs of TDCJ.

As these programs emerged during the 1980s, private vendors realized the opportunity to assist county and local governments to meet these needs by promoting various packages to finance, construct, and operate jail facilities. Local governments realized the potential benefits to use private vendors to construct local jail facilities to remedy current jail problems. In addition, many counties saw the potential to meet future growth needs by building new jails with capacities in excess of current needs. Prisoners held under contracts with other entities, such as TDCJ, other counties, and federal agencies, could utilize the excess capacities. Other counties saw the potential for large jail facilities built specifically for contract prisoners as economic development activities for their communities. As a result, a number of Texas counties have constructed, or are in the process of constructing, such facilities. Such contractual arrangements are advantageous to a county because the income - normally \$35 to \$45 per prisoner per day - pays all or part of the jail's operating costs and debt retirement. In some instances, net income is being deposited to county treasuries.

The basic purpose of a county jail is to provide safe and suitable facilities and programs to prisoners of the county. The Texas Commission of Jail Standards is funded from state funds to ensure that prisoners in county jails are housed in facilities that meet minimum standards for facilities and programs. A review of the impact on the agency of increased numbers of out-of-state prisoners held in county jails indicated the following:

- ▶ **Housing out-of-state prisoners in county jails held under contract with other entities is impacting the costs and operations of the agency, and the number of these prisoners will increase.**
 - Agency costs related to document review and facility inspection are significant. Based on information provided by the agency, the cost to the agency to review and comment on design and construction documents ranges from \$1,627 to \$3,255 depending on the size of the project. Costs of occupancy inspections of new facilities range from \$685 to \$2,243. Costs of annual inspections range from \$743 to \$1,790.
 - Many counties have built facilities with the intent to hold prisoners from out-of-state jurisdictions under contract. Currently, 14 county jails with capacities of 100 prisoners or more have out-of-state prisoners that constitute 30 percent or more of their rated capacities (See Exhibit 1 in the Appendix). The agency estimates the cost to perform annual inspections of these jails to be \$14,900 per year.
 - The number of facilities with out-of-state prisoners is increasing significantly. As of October 1990, 13 new facilities are in some phase of planning or construction. The total out-of-state population of these 13 facilities (See Exhibit 2 in the Appendix) is expected to be 5,850. The estimated cost to the state to perform annual inspections of these 13 facilities will be \$21,600. If all of these facilities are completed, the cost to the agency to review and comment on design and construction documents is estimated to be approximately \$40,000.
- ▶ **Many counties and municipalities may have planned and constructed excess jail capacity anticipating contracts with the**

TDCJ to hold overflow state prison inmates. However, the opportunity for local governments to house TDCJ inmates in excess jail capacity has not materialized and other sources of contract prisoners must be found.

- In January 1990 the Texas Board of Criminal Justice established the policy that the TDCJ would not contract with a county for prisoner bed space unless the facility was designed to accommodate the classification of inmates to be assigned to the facility. The policy was required because of the strict facility and program requirements imposed by the federal court decision. Therefore, the only practical way for a county to contract with the TDCJ would be for the county to have a contract with TDCJ prior to beginning facility design.
- ▶ **Most non-county prisoners held in jails with excess capacity are federal offenders or from out-of-state jurisdictions.**
 - The agency collects detailed monthly reports from the 52 largest jails in the state. Based on the August 1990 report, the agency estimates there are 3,375 prisoners from out-of-state jurisdictions in the 52 jails. Of these, 2,800 are federal prisoners being held for the U.S. Immigration and Naturalization Service or the U.S. Federal Marshall's Office having custody of prisoners for other federal agencies. In addition, approximately 575 prisoners are being held under contract with the District of Columbia.
- ▶ **Unlike past county fiscal experiences with jail operations, counties are now realizing significant financial benefits by housing out-of-state prisoners.**
 - Out-of-state prisoners make up substantial populations of some jails. In August 1990, 17 jails with capacities over 100 had 2,679 out-of-state contract prisoners totalling 20 percent or more of their capacities. Nine of these jails held 1,905 prisoners that represented over 50 percent of their capacities. (See Exhibit 1 in the Appendix)
 - Contract rates can generate revenues for counties and help pay for overall jail operations and new facilities. Daily contract rates range between \$25 and \$50; most are between \$35 and \$45. Daily contract rates negotiated with the federal government are based on the county's operating budget for the jail. Eligible costs include reimbursement for all facility operations and retirement of debt principal. Costs not eligible for reimbursement are salaries for elected officials, operation of general county government, or interest on borrowing.
 - Some contractual arrangements generate a surplus that benefits the county treasury. Maverick County has a new 114 bed jail and the county has a contract with the District of Columbia for an average of 80 prisoners. At an average rate of \$46 per prisoner per day, the county receives approximately \$1,343,200 annually. This amount pays for all county jail operations, including the cost of Maverick County prisoners, and all debt service on the new jail. In addition,

the contract will generate an annual operating surplus of \$225,000 for the county treasury.

- ▶ **The agency is not authorized to charge any fees for construction plan reviews, occupancy inspections, or annual inspections.**
- ▶ **Other state agencies charge fees to local governments for licensing and regulatory activities.**
 - The Texas Department of Health charges local governments fees for licensing and registration of hospitals, X-ray equipment, radioactive materials, solid waste disposal sites, and municipal water systems.
 - The Texas Department of Licensing and Regulation charges fees to local governments for licensing and inspection of power boilers.
- ▶ **Fee amounts necessary to recover the costs of agency activities would not be a significant cost to the county.**
 - The agency estimates annual inspection costs range from \$743 for small jails to \$1,790 for large ones. These amounts would be insignificant compared to fee revenues from contracts. For example, if a county with a 100-bed jail contracted for 30 of those beds at \$40 per day, the annual revenue would be \$438,000. A \$743 annual inspection fee would be .17 of one percent of the revenue. Fees for design and construction document review would be an even smaller proportion of the design and construction costs.

PROBLEM

The practice of counties to hold out-of-state prisoners in excess jail capacity or in speculative projects is an increasing trend in the state. While the initial motive for some counties to build excess jail capacity was to house state prison inmates under contract with TDCJ, that option has not materialized. Instead, many counties are contracting with federal and other out-of-state entities. Although the practice of contracting for out-of-state prisoners is financially attractive to the counties and the communities in which the facilities are located, the facilities are impacting the workload and costs of the agency with little direct benefit to the state or its criminal justice system.

RECOMMENDATION

- **The TCJS's statute should be modified to:**
 - require the TCJS to charge fees for review and comment of construction documents and for performing occupancy inspections and annual inspections of county jails and municipal jails under private operation that have rated capacities of 100 or more prisoners and an annual average jail population of prisoners from out-of-state jurisdictions that make up 30 percent or more of the rated capacity of the jail. For new jail construction, the percentage would be based on the projected population

of the jail; for an existing jail, the percentage would be based on the projected average population for the jail for the year in which the inspection will occur;

- authorize the agency to set fees in amounts necessary to recover the costs of the agency related to the document review and inspection of the above facilities; and
- require that fees recovered be placed in the general revenue fund and be available to fund the agency's document review and jail inspection efforts related to these facilities.

The recommendation will authorize the agency to charge fees for construction document review and facility inspections for jails that are being built or operated to contract with out-of-state entities. Fees would only be charged to counties or municipalities under private operator contract with jail capacities of 100 or more that have 30 percent or more of their rated bed space used by prisoners under contract with out-of-state governmental units. These facilities do not just serve as traditional jails but are operated substantially as business enterprises. Fee amounts would be insignificant costs to jails compared to the revenue received. Fees recovered can be used to offset the added costs to the agency to perform services related to these facilities.

FISCAL IMPACT

Fee revenue is estimated to generate from \$36,500 to \$40,225 annually. Currently there are 25 facilities operating or under construction that meet the recommended criteria for fee charges. Inspection fees for these facilities would produce approximately \$36,500 annually. Fees for design and construction document review and occupancy inspections would depend on the amount of jail construction for a fiscal year. However, fee revenue would add significant support to agency operations when design and construction activities occur. As an example, fees for planning and construction document review and occupancy inspection of one 200 bed facility would be \$3,725. The agency estimates the annual cost to collect the above fees to be \$700.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission 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 is denoted in abbreviated chart form.

Texas Commission on Jail Standards			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
		*	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 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 for notification and information to the public concerning board activities.
		*	10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
	x		11. Require files to be maintained on complaints.
	x		12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
x			13. Require development of an E.E.O. policy.
x			14. Require the agency to provide information on standards of conduct to board members and employees.
x			15. Provide for public testimony at agency meetings.
x			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
x			17. Require development of accessibility plan.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Texas Commission on Jail Standards (cont.)			
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) related to 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 law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

APPENDIX

Exhibit 1

**Counties with Jail Capacities of 100 or More
with Contract Prisoners from Out-of-State Jurisdictions
(ranked by percent of contract prisoners)**

<u>Facility</u>	<u>Capacity</u>	<u>8/15/90 Number of Contract Prisoners</u>	<u>Percent Contract Prisoners</u>
1. Reeves Co.	584	543	93%
2. Hudspeth Co.	120	99	83%
3. Zavala Co.	291	216	74%
4. Frio Co.	169	124	73%
5. Maverick Co.	114	80	70%
6. Valverde Co.	168	105	63%
7. Webb Co.	856	490	57%
8. Starr Co.	116	64	55%
9. Hays Co.	358	184	51%
10. Guadalupe Co.	184	91	49%
11. Atascosa Co.	138	65	47%
12. Montgomery Co.	580	205	35%
13. Johnson Co.	288	94	33%
14. Comal Co.	148	45	30%
15. Cameron Co.	550	158	29%
16. Bee Co.	128	30	23%
17. McLennan Co.	431	86	20%
18. Bell Co.	523	97	19%
19. Hildago Co.	549	80	15%
20. Midland Co.	306	36	12%
21. Nueces Co.	675	70	10%
22. Jefferson Co.	502	48	10%
23. Navarro Co.	168	15	9%
24. El Paso Co.	1,024	84	8%
25. Harris Co.	4,698	180	4%
26. Lubbock Co.	733	25	3%
TOTAL	14,401	3,314	23%*

* Average for the 26 counties

Exhibit 2
**Facilities Under Construction or Planned
to Hold Prisoners from Out-of-State Jurisdictions**

<u>Facility</u>	<u>Capacity</u>	<u>Estimated Number of Contract Prisoners</u>	<u>Percent Contract Prisoners</u>
1. Angelina Co.	500	500	100%
2. Dickens Co.	150	150	100%
3. Falls Co.	500	500	100%
4. La Salle Co.	500	500	100%
5. Limestone Co.	500	500	100%
6. Newton Co.	500	500	100%
7. Pecos Co.	500	500	100%
8. San Saba Co.	500	500	100%
9. Starr Co.	500	500	100%
10. Swisher Co.	500	500	100%
11. Anthony - City	200	200	100%
12. Coleman - City	500	500	100%
13. Harker Heights - City	<u>500</u>	<u>500</u>	<u>100%</u>
TOTAL	5,850	5,850	100%

Commission on Jail Standards

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