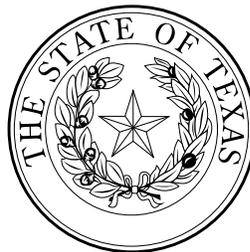


**Texas Commission on  
Jail Standards**

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**Staff Report**



**Texas Sunset  
Advisory Commission**

**1996**

## TEXAS SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS COMMISSION ON JAIL STANDARDS**

**SUNSET STAFF REPORT**

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# **EXECUTIVE SUMMARY**



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# Executive Summary

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The Texas Commission on Jail Standards (TCJS) sets minimum standards for the operation of jail facilities in 242 counties, and it inspects these facilities for compliance with those standards. TCJS also regulates 11 private correctional facilities that operate by contract with a county or city. The review of TCJS focused on identifying and closing loopholes in the TCJS statute relating to the operations of privately-owned and operated facilities that have begun to accept prisoners from other states. The review also concentrated on assessing agency operations to determine better ways for the state to more effectively and efficiently regulate county jails. The following material summarizes the results of our review efforts.

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## 1. Close a loophole that allows private corrections facilities to escape regulation while accepting prisoners from out of state.

Nothing in state law provides the legal authority for privately-owned and operated facilities to hold inmates from other states. In addition, these facilities are not regulated by any federal or state agency. This lack of legal authority and regulation increases the potential for safety and security problems at some private facilities in the state. A contractual agreement between a private facility, the sending state, and the county or municipality in which they are located would clarify the legal authority of private facilities to incarcerate prisoners from other states and place these facilities under the regulatory authority of TCJS.

***Recommendation:*** Require contractual agreements between private prison facilities accepting prisoners from other states, the sending state, and the counties or municipalities in which they are located. Specify the special provisions these contracts should have, including an Emergency Strategy Plan, a reimbursement plan, a process for returning prisoners when necessary. Require all adult private correctional facilities outside the TDCJ system to disclose their inmate census to TCJS.

## 2. Require TCJS to establish a system to target inspections of jails under its jurisdiction.

TCJS does not prioritize its routine inspections of jails under its jurisdiction. By not considering the special needs of some jails, TCJS does not focus its efforts where it could have the most impact. Requiring TCJS to develop an inspection schedule based on compliance history and other risk factors and to include a greater number of unannounced inspections would enable the Commission to focus on those facilities that it determines need additional scrutiny.

***Recommendation:*** Require TCJS to schedule inspections of jails under its jurisdiction based on compliance history and any other risk factors the Commission determines necessary.

## 3. Continue the Texas Commission on Jail Standards for 12 years.

A continuing need exists to regulate and inspect county jails to protect the public safety, ensure safe facilities, and avoid costly court regulation of county jails. TCJS effectively meets these needs.

***Recommendation:*** Continue TCJS for 12 years.

## Fiscal Impact Summary

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The recommendation to continue the Commission would require its annual appropriations of about \$850,000 to continue. The recommendation to require TCJS to regulate privately-owned and operated jails in the state would result in no fiscal impact since TCJS would be authorized to collect fees from those facilities to offset the costs of its regulatory activities. No fiscal impact would result from requiring the agency to establish a system to target its inspections of jails under its jurisdiction.

## **APPROACH AND RESULTS**



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# Approach and Results

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## Approach

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In response to legal challenges filed against counties alleging poor conditions in county jails, the Legislature established the Texas Commission on Jail Standards (TCJS) in 1975. TCJS sets minimum standards for the operation of jail facilities in 242 counties and inspects these facilities for compliance with those standards. The agency's authority extends to the 11 private jail facilities in the state that contract with counties or cities. Since its establishment, the mission of TCJS has remained largely unchanged. However, beginning in 1991, TCJS made payments to counties which housed state inmates awaiting transfer to state facilities due to prison overcrowding. The money, about \$140 million per year, passed through TCJS from the Texas Department of Criminal Justice to the counties. This task continued until September 1, 1995 when the state met its duty to accept all state prisoners as result of a significant expansion of the state's prison capacity.

In developing the approach to the review, Sunset staff examined the functions of TCJS and its role in regulating county jail operations. Sunset staff also attempted to determine the agency's effect on the legal challenges against counties relating to jail conditions. In addition, since many county and private jails are beginning to contract to house inmates from other states, the review focused on identifying and closing loopholes in the TCJS statute relating to housing other states' inmates. The review also concentrated on assessing agency operations to determine better ways for the state to more effectively and efficiently regulate county jails.

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*Sunset staff sought to identify and close legal and regulatory loopholes in the holding of inmates from other states.*

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## Review Activities

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In conducting this review the Sunset staff:

- Worked extensively with TCJS staff from the agency's major program areas;
- Observed an annual jail inspection in LaGrange County;
- Attended a TCJS technical assistance seminar on mental disabilities and suicide prevention held by TCJS staff in Waco;

- Surveyed a sample of county sheriffs to determine perceptions and attitudes about TCJS;
- Attended portions of the 27th Annual Jail Management Conference at the Criminal Justice Center of Sam Houston State University;
- Talked with legislative staff, representatives of private jail firms in Texas, and Federal Bureau of Prisons personnel;
- Conducted a telephone survey of other states' officials involved in county jail operations and regulation to determine issues relating to county jails;
- Contacted persons conducting academic research concerning correctional privatization;
- Attended public meetings of the Texas Commission on Jail Standards; and
- Reviewed agency documents and reports, state statutes, legislative reports, Attorney General opinions, previous legislation, and other states information.

## Results

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The Sunset review of TCJS began by asking whether the functions performed by the agency are still needed. The mission of TCJS is to ensure the safe, healthy, and secure operation of county jails. The agency seeks to carry out this mission by developing and enforcing effective jail standards. One way to determine if the agency is serving its mission and is still needed is to see if successful legal challenges against counties relating to jail conditions have decreased since the agency's creation. However, Sunset staff was unable to locate or develop data on the number or outcomes of lawsuits filed on this basis.

Sunset staff was able to identify, in an informal survey of 20 sheriffs representing a cross-section of Texas counties, general satisfaction that TCJS regulation has reduced viable litigation against counties relating to their jail operations. Sunset staff also concluded that statewide regulation of correctional facilities provides a more consistent and comprehensive approach than any fragmentary and incomplete oversight by the courts. In addition, the review found that TCJS has the knowledge and expertise to provide effective regulation of jails and that it is well positioned as an

independent agency to perform this task. **Issue 3** lays out the continuing need for TCJS to regulate correctional facilities in Texas.

Once the determination was made to recommend continuing the Commission, the review focused on the adequacy of the state's authority over private jails to protect the public and on the operations of TCJS itself. Staff identified two areas of inquiry--whether privately-owned and operated jails in the state need to fall under the state's legal and regulatory jurisdiction, and whether the inspection process at TCJS could be improved.

**Privately-Owned and Operated Correctional Facilities** - The Sunset review examined whether the current legal and regulatory framework relating to private correctional facilities maximizes public safety and provides for adequate jail conditions. The review found that a small number of privately-owned and operated jails in Texas do not appear to have the legal authority to hold these inmates, and also appear to operate outside the direct oversight of any governmental entity. This legal and regulatory ambiguity increases the potential for safety and security problems at some private facilities in the state. **Issue 1** addresses the authority of privately-owned and operated facilities to incarcerate inmates from other states and details steps to ensure that those facilities function with effective safety and security measures.

**TCJS Inspection Process** - The Sunset review also studied the method TCJS uses to inspect jails. The review found that the current practice of inspecting every county jail annually did not effectively target agency resources. **Issue 2** requires TCJS to develop an inspection process that uses agency resources more effectively.

As a result of the Sunset review activities described above, the staff offers the following recommendations concerning the Texas Commission on Jail Standards. These recommendations are discussed in detail in the issues presented in this report.

## Recommendations

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1. Close a loophole that allows private correctional facilities to escape regulation while accepting prisoners from other states.
2. Require the Commission to establish a system to target inspections of jails under its jurisdiction.
3. Continue the Texas Commission on Jail Standards for 12 years.

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*In addition to agency operations, the review focused on the state's authority over private jails.*

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# ISSUES

# Issue 1

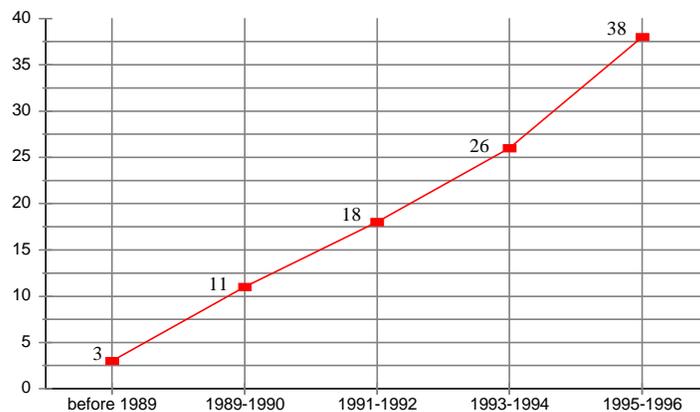


## Close a Loophole that Allows Private Corrections Facilities to Escape Regulation While Accepting Prisoners from Other States.

### Background

In response to prison overcrowding problems beginning in the 1980s, the Texas Department of Criminal Justice (TDCJ) and many counties began to contract with private corporations to incarcerate inmates until new state prison beds became available. As a result, the number of private facilities, jails, and correctional detention facilities increased in Texas. The chart, *Rising Number of Private Facilities and Jails in Texas*, shows that the number of privately-owned or operated facilities in Texas has grown from three in 1989 to 38 in 1996. However, at the same time these private facilities were being built, the state and counties were also building facilities to deal with their overcrowding. Once they created adequate capacity, TDCJ and the counties transferred many of their inmates out of private facilities. Because of this transfer, many private prisons and jails have had difficulty keeping their beds full, leading some of these facilities to contract with the federal government and other states to house their inmates in Texas.

**Rising Number of Private Facilities and Jails in Texas**



Currently, private facilities in Texas hold a variety of adult inmates including Texas county prisoners, Texas state felons, federal prisoners, and out-of-state inmates. The chart, *Private Facilities and Jails in Texas*, provides a breakdown of these facilities' location, incarceration levels, and inmate origins. As of September 1996, Texas' private facilities housed approximately 16,000 inmates, with 2,885, or 18 percent coming from other states' penal systems.

Private Facilities and Jails in Texas (as of September 1, 1996)						
Private Facilities	Type of Inmates	Ownership	Operations	Regulatory Responsibility	Beds	Inmates
<b>Holding Out-of-State Inmates</b>						
Crystal City Detention Center	Missouri, Utah	Crystal City	CSI	TCJS	467	0
Dickens Co. Correctional Facility	Hawaii	Dickens County	Bobby Ross	TCJS	489	389
Karnes Co. Correctional Facility	Colorado	Karnes County	Bobby Ross	TCJS	508	473
Newton Co. Correctional Facility	Virginia, Hawaii	Newton County	Bobby Ross	TCJS	876	807
Odessa Detention Center	Oklahoma	City of Odessa	GRW	TCJS	100	74
<b>Holding Federal Inmates</b>				<b>TOTAL</b>	<b>2,733</b>	<b>1,866</b>
Eden Detention Center*	INS, FBP	CCA	CCA	INS, FBP	1,006	883
Houston I*	FBP	Cornell Corp.	Cornell Corp.	FBP	95	95
Houston Processing Center**	INS	CCA	CCA	INS	411	145
Laredo Processing Center**	INS,FBP	CCA	CCA	INS,FBP	258	226
Big Spring*	FBP	Cornell Corp.	Cornell Corp.	FBP	1,305	1,142
<b>Holding TDCJ Inmates</b>				<b>TOTAL</b>	<b>3,075</b>	<b>2,491</b>
Barlett State Jail	TDCJ	State of TX	CCA	TDCJ	1,000	401
Billy Max Moore State Jail	TDCJ	State of TX	CCA	TDCJ	500	500
Bradshaw State Jail	TDCJ	State of TX	Management and Training Corp.	TDCJ	1,704	1,498
Bridgeport Pre-Parole Transfer Facility	TDCJ	CCA	CCA	TDCJ	200	198
Bridgeport Pre-Release Center	TDCJ	State of TX	Wackenhut	TDCJ	520	519
Brownfield Intermediate Sanction Facility	TDCJ	State of TX	CCA	TDCJ	200	191
Cleveland Pre-Release Center	TDCJ	State of TX	CCA	TDCJ	520	520
Diboll Correctional Center	TDCJ	State of TX	US Corrections Corp.	TDCJ	500	496
El Paso Intermediate Sanction Facility	TDCJ	Southern Corrections System	Avalon	TDCJ	144	102
Houston II	TDCJ	Cornell Corp.	Cornell Corp.	TDCJ	310	310

INS = Immigration and Naturalization Service  
 FBP = Federal Bureau of Prisons  
 TDCJ = Texas Department of Criminal Justice  
 TCJS = Texas Commission on Jail Standards  
 CCA = Corrections Corporation of America

\* Private Facilities and Jails Affected by Recommendation

Private Facilities and Jails in Texas (cont.) (as of September 1, 1996)						
Private Facilities	Type of Inmates	Ownership	Operations	Regulatory Responsibility	Beds	Inmates
Jack County State Jail	TDCJ	State of TX	Wackenhut	TDCJ	1,000	722
Jess Dawson State Jail	TDCJ	State of TX	CCA	TDCJ	250	184
Mineral Wells Pre-Parole Transfer Facility	TDCJ	CCA	CCA	TDCJ	1,049	1,033
North Texas Intermediate Sanction Facility (Fort Worth)	TDCJ	State of TX	Wackenhut	TDCJ	400	392
South Texas Intermediate Sanction Facility (Houston)	TDCJ	State of TX	Esmor	TDCJ	400	360
Sweetwater Pre-Parole Transfer Facility	TDCJ	State of TX	CCA	TDCJ	2,000	
Travis County State Jail	TDCJ	State of TX	Wackenhut	TDCJ	1,000	
Venus Pre-Release Center	TDCJ	State of TX	CCA	TDCJ	1,000	1,040
Willacy County State Jail	TDCJ	State of TX	Wackenhut	TDCJ	1,000	
<b>Holding a Mix of Inmates/Other</b>				<b>TOTAL</b>	<b>15,002</b>	<b>9,608</b>
Liberty County Jail & Juvenile Detention Facility	INS, US Marshal County, TYC	Liberty Co.	CCA	US Marshall, INS TCJS	274	245
Limestone County Detention Facility	US Marshal, County NC, OK	Limestone Co.	Capital Correctional Resources	TDCJ, USM TCJS	816	767
Lockhart Work Program Facility	TDCJ, City	State of TX	Wackenhut	TDCJ	500	495
Taylor*	Under Construction	CCA	CCA	NONE	512	
Coke County Juvenile Facility	TYC	Wackenhut	Wackenhut	TYC	96	96
Tarrant Co. Comm. Correctional Facility	Tarrant Co.	Tarrant Co.	Esmor	TDCJ	320	297
Central Texas Parole Violation Facility (San Antonio)	US Marshal TDCJ	State of TX	Wackenhut	TCJS TDCJ, USM	623	451
Brazoria County Detention Center	County, Missouri	Brazoria County	Capital Correctional Resources	TCJS	1,170	761
Frio County	County	Frio County	CSI	TCJS	295	75
<b>Total For all Facilities</b>				<b>TOTAL</b>	<b>3,544</b>	<b>2,297</b>

INS = Immigration and Naturalization Service  
 FBP = Federal Bureau of Prisons  
 TDCJ = Texas Department of Criminal Justice  
 TCJS = Texas Commission on Jail Standards  
 CCA = Corrections Corporation of America

**Total For all Facilities**  
 Beds 24,447  
 Inmates 16,139  
 Occupancy Rate 66%  
 \* Private Facilities and Jails Affected by Recommendation

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*The Texas Commission on Jail Standards regulates only those private jails that contract with counties or cities.*

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Because of the variety of inmates housed in private facilities in Texas, five government agencies regulate and inspect private facilities in Texas.

Typically, the type of inmate determines which agency regulates and inspects the private facility. In general, the federal government regulates those private facilities that contract to hold federal inmates. The Federal Bureau of Prisons, Immigration and Naturalization Service, and the U.S. Marshal each regulate and inspect facilities holding their respective prisoners. TDCJ regulates and inspects any privately-owned or operated facility that it contracts with and has the authority to regulate the number of federal and out-of-state inmates in county jails. The Texas Commission on Jail Standards (TCJS) regulates and inspects all privately-owned and operated jails and facilities that contract with counties or municipalities.

Texas participates in the Interstate Corrections Compact which guides the state and some counties when contracting to hold prisoners from other states. The Compact establishes the legal authority to incarcerate out-of-state prisoners under the authority of TDCJ and sets provisions that ensure out-of-state prisoners will be released to the sending state or returned if they cause problems while in Texas.

However, most counties and private facilities do not subcontract with TDCJ for inmates and do not operate under the Compact. These facilities contract directly with the sending state under terms overseen by TCJS. These contracts actually specify the conditions for the treatment and handling of prisoners from other states while they are in Texas. In addition, private facilities that exclusively hold federal prisoners are not subject to the Compact since they fall under the jurisdiction of federal agencies.

The Sunset staff focused on privately-owned and operated facilities in Texas and assessed whether these private facilities and counties have adequate legal authority to house out-of-state prisoners. The Sunset staff also looked at whether the state has sufficient regulatory oversight of these facilities to protect public safety.

## Findings

- ▼ **Privately-owned and operated facilities do not have clear legal authority to incarcerate out-of-state prisoners.**
  - ▶ The incarceration of individuals is an inherent governmental function under its responsibility to protect the public safety and welfare. Private citizens and corporations do not have the

responsibility to protect public welfare and therefore, do not have the legal authority to jail prisoners unless specifically given that authority by a government entity.

- ▶ Although state law does allow counties and cities to contract with private operators for their jails, nothing in Texas law addresses the authority of privately-owned and operated facilities to hold out-of-state prisoners strictly on their own.
- ▼ **No state or federal agency has clear regulatory responsibility for privately-owned facilities holding out-of-state inmates.**
  - ▶ Privately-owned and operated facilities that house out-of-state prisoners do not fall under the regulatory responsibility of the Commission, TDCJ, or any federal agency. Only one privately-owned facility in Texas has housed out-of-state inmates. Five other private facilities contract with the federal government to hold federal prisoners. In addition, TDCJ contracts with three privately-owned and operated facilities to provide pre-parole and state jail beds for the state prison system.
  - ▶ When these facilities contract with TDCJ, they come under the state's jurisdiction. Likewise, when private facilities contract with a federal agency, they come under federal jurisdiction. However, when these private facilities contract directly with other states to house their prisoners, they fall outside both state and federal jurisdiction. These facilities are subject only to the provisions detailed in their contracts with the sending states.
  - ▶ While the sending state typically includes standards for facility construction, operation, and administration in its contract with the private facility, the sending state does not have to monitor these provisions or even include them. Sending states can send their inmates to private facilities in Texas without informing state or local authorities about these prisoners, their crimes, or their institutional behavior history. Texas state agencies have no way of controlling the type of inmate sent to a privately-owned facility in Texas.
  - ▶ TCJS has recognized this loophole in the state's regulatory authority over these facilities. The agency requested an Attorney General's opinion concerning what regulatory

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*Other states can send inmates to private facilities in Texas without providing any information to state or local authorities.*

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*A major question is whether escapes from a private facility are an illegal act.*

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authority, if any, it has over privately-owned and operated facilities accepting prisoners from other states.

▼ **The lack of clear legal and regulatory authority of these facilities can endanger public safety.**

- ▶ Because these private facilities do not have clear legal authority to incarcerate prisoners from other states, they face serious questions about their ability to control their inmate populations. For example, a major issue is whether escapes or escape attempts are illegal given the uncertain authority of these facilities to hold inmates. This issue has repercussions for private facility officials and local law enforcement.

Unlike county corrections officers, private prison guards are not necessarily commissioned by local law enforcement agencies or certified as peace officers by Texas Commission on Law Enforcement Standards and Education (TCLEOSE). As a result, they may not have the legal authority to completely deal with all emergency situations that can occur at prisons and jails such as escapes. Only commissioned law enforcement and peace officers may apprehend escapees and conduct searches off facility premises.

Local law enforcement officials may also be limited in their ability to control out-of-state prisoners. The Interstate Corrections Compact addresses this problem for inmates in facilities under TDCJ's authority. However, no such legal arrangement establishes this authority over out-of-state prisoners held in privately-owned and operated facilities in Texas.

- ▶ Because private facilities are not regulated by a state entity, the state has no way of assuring that these facilities appropriately meet the security requirements of the prisoners they house. This situation can result in a maximum custody inmate being housed in a facility designed for medium or minimum custody inmates. State regulation of county jails by TCJS addresses this problem by requiring each facility to have an approved classification plan that assures that facilities are appropriate for the inmates they house. In response to problems at jails it regulates, TCJS in October 1996 proposed rules to prohibit out-of-state inmates with institutional behavior problems. Because privately-owned and operated

facilities fall outside TCJS regulations, they are not subject to such controls.

- ▶ Because of a current regulatory loophole for private facilities, state officials have no way to assure that they are adequately informed of the presence of out-of-state prisoners. Private corrections companies have no obligation to tell local authorities who they have in their facilities, and no state agency has the authority to inspect these facilities to see what kind of prisoners they hold. As a result, state and local officials may not know about out-of-state inmates held in local private facilities until problems arise. As shown below, the state needs to know which private facilities have out-of-state prisoners.

A facility in Houston owned and operated by Corrections Corporation of America (CCA) had operated under a contract with INS for detaining illegal aliens, but recently accepted prisoners from Oregon. State and local officials did not learn that the facility housed Oregon prisoners until two Oregon sex offender escaped this past summer. In addition, the Harris County Sheriff's office was initially unsure as to its responsibility or authority in apprehending these escaped prisoners. The Sheriff's Office captured the escapees, but its legal authority to do so has not been fully established.

- ▼ **The state through TCJS has exerted legal and regulatory authority over other facilities in the state that receive out-of-state prisoners from other states.**
  - ▶ TCJS regulates jail facilities in 242 of Texas' 254 counties. These facilities include 12 facilities that held prisoners from other states as of September 1, 1996. These facilities include 11 county or municipally-owned jails that are privately operated that together held 2,885 prisoners from other states. The statute already specifies that private jails which contract with counties or municipalities fall under the regulatory authority of TCJS. In addition, the contractual arrangement between the private company and the county or city provides governmental sanction for these private companies to legally incarcerate individuals as designated agents of the state.
  - ▶ TCJS has expertise in regulating these jails. The agency gained significant experience in regulating these facilities

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*Unregulated private facilities can house a maximum custody inmate in a minimum custody facility.*

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during a time of overcrowding at TDCJ when large numbers of state-ready inmates had to be held in county jails.

- ▶ In addition, TDCJ has recently recognized TCJS's expertise in regulating jails holding out-of-state prisoners despite TDCJ's authority to regulate the number of federal and out-of-state prisoners in county jails. After proposing rules to require TDCJ approval of contracts between counties and other states, the prison agency withdrew its proposal, noting that ". . .the Jails Standards Commission has more successfully communicated its proactive stance on regulating the safety issue raised by out-of-state inmates in local jails."<sup>1</sup>

▼ **A contractual agreement between private facilities and counties or municipalities would establish the legal and regulatory authority over these facilities at no additional cost to the state.**

- ▶ A contract between a private facility and a county or municipality would ensure that private facilities operate under the same legal authority as other private facilities that already contract with counties or cities. The contractual arrangement would serve as the basis for these facilities to hold prisoners as agents of the state. The contract would also resolve the legal authority of county or municipal law enforcement officials to assist these facilities when needed. Requiring the contract to meet TCJS contracting guidelines would ensure adequate legal authority of local law enforcement to deal with emergency situations at private facilities and to approach escapes when necessary.
- ▶ Private facilities generally already follow TCJS guidelines. Some states that send their prisoners to Texas require compliance with TCJS standards as part of the contract, and some private facilities, such as a CCA facility currently nearing completion in Williamson County, agree to comply voluntarily. Requiring state regulation would assure adequate oversight in the future.
- ▶ TCJS already has the authority to charge fees to cover its cost of regulating certain jails that accept prisoners from other states. Specifically, the Commission has the authority to collect a fee for jails under its jurisdiction with at least 100 beds filled with 30 percent or more out-of-state prisoners. By charging a fee for inspections and technical assistance to

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*A contract between private facilities and a county or city would resolve many legal and public safety questions.*

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private facilities housing out-of-state inmates, TCJS could help increase public safety at no additional cost to general revenue.

- ▶ TCJS regulation private facilities holding out-of-state prisoners would help improve public safety. Private facilities and jails would be required to meet TCJS construction and operations standards, and thereby help ensure safe and secure facilities. For example, private facilities would have to develop classification plans to ensure that these facilities are appropriate for the prisoners they receive.

## Conclusion

Nothing in state law provides the legal authority for privately-owned and operated facilities to hold out-of-state prisoners. In addition, these facilities are not regulated by any federal or state agency and their correctional staff are not generally eligible for licensure by TCLEOSE. This lack of legal authority and regulatory oversight increases the potential for safety and security problems at some private facilities in Texas. For example, local law enforcement may not have the jurisdictional authority to deal with emergencies arising at private facilities holding out-of-state inmates. A contractual agreement between private facilities and the counties or municipalities would clarify the legal authority of private facilities and local law enforcement officials as well as place these facilities under the regulatory authority of TCJS. TCJS has the experience to effectively regulate and inspect these facilities and to help ensure they are operated safely and effectively.

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*Lack of legal authority and oversight increases the potential for safety and security problems at some private jails.*

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## Recommendation

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### Change in Statute

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- Require contractual agreements between private facilities accepting prisoners from other states, the sending state, and the counties or municipalities in which they are located. Specify the special provisions these contracts should have, including:
  - an emergency strategy plan;
  - a reimbursement plan; and
  - a process for returning prisoners to the sending state when necessary.

■ **Require all adult private facilities outside the TDCJ system to disclose their inmate census to TCJS.**

This recommendation would require privately-owned and operated facilities in Texas to contract with the counties and municipalities in which they are located. The contract must meet TCJS contracting guidelines and include the same standard programs that counties and municipalities include in their contracts with private jails. In addition to these standard provisions, the contract should include special provisions to address the unique circumstances of these facilities. Including an emergency strategy plan would detail how and when local law enforcement officials would be called to assist the private facilities in case of an emergency such as a riot or an escape. The contract should also establish a reimbursement schedule specifying appropriate compensation by the private facility to local authorities. In addition, the contracts should include provisions for returning out-of-state prisoners to their state of origin if they are involved in an emergency situation or other reasons specified in the contract.

Under this recommendation, private corrections facilities outside of the TDCJ system would have to conform to standards established by TCJS if they accept prisoners from other states. Currently six privately-owned and operated facilities operate in Texas, but only one has housed out-of-state prisoners. This recommendation would require that facility to meet the same level of regulation as all other facilities under the Jail Standards Commission's jurisdiction. Private facilities that are part of the TDCJ prison and jails system or that exclusively hold federal inmates or juveniles would not be subject to TCJS regulations.

TCJS could charge these facilities a fee to cover its cost to inspect and provide technical assistance. This fee would be the same in structure as the fee it already charges for inspecting county and contracted prisons with more than 100 prisoners and 30 percent or more out-of-state inmates.

In addition, this recommendation would require privately-owned and operated facilities that are not contracting with TDCJ to notify TCJS concerning the number and origin of the inmates they are holding. The Commission should determine the appropriate form for this notification by these private facilities. Generally, private facilities should report this information at least annually and before accepting inmates from out-of-state. This census data from private jails in the state would enable TCJS to monitor these providers and determine when they should come under its regulatory authority. This monitoring would ensure that no facilities fall through a regulatory loophole.

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## Fiscal Impact

No fiscal impact would result from this recommendation. Under this recommendation, TCJS would need to regulate one additional private facility. In addition, five other private facilities would be required to submit their inmate census to TCJS. Any additional cost resulting from this activity would be offset by fees assessed by TCJS to cover the cost of inspections and technical assistance provided to private facilities in the state. No fiscal impact would result from the requirement for other private facilities to submit inmate census to TCJS.

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<sup>1</sup> Memorandum. Texas Board of Criminal Justice. February 29, 1996.



## Issue 2



### Require the Commission to Establish a System to Target Inspections of Jails Under its Jurisdiction.

#### Background

In 1975, the Legislature authorized TCJS to set minimum standards for county jail construction, operation and maintenance. The minimum standards adopted by the Commission cover a wide variety of activities from jail design and construction to inmate supervision and hygiene.

According to statute, the Commission must inspect county jails on a regular basis for compliance with state law and Commission standards. As a result, the Commission requires staff, by rule, to conduct announced inspections annually of each county jail, and each jail owned by a county or city that is privately operated. Currently, 242 of the state's 254 counties have jails, including 11 jails operated by private companies by contract with a county or city. The 12 counties that do not have jails contract with adjacent counties for needed jail space.

As of September 1, 1996, TCJS reported that 209 of 242 counties comply with its standards, leaving 33 counties out of compliance. The map, *County Jails in Texas*, on page 38 of the Background of this report, shows which counties are in compliance, which counties are noncompliant, and which counties do not have jails.

When inspecting county jails, TCJS staff examines a number of areas for compliance with TCJS standards for the safety and welfare of the public and county inmates. Included in each inspection is an examination of a county jail's operational and life safety practices, as well as the overall facility design to ensure that no additions or modifications have been made to a jail that do not meet existing standards. During the examination, TCJS inspectors also supply county jail staff with technical assistance on better ways to maintain compliance or how to effectively address areas of noncompliance. As of September 1, 1996, TCJS employed three full-time inspectors to enforce its standards.

*TCJS annually  
inspects jails in 242  
counties in Texas.*

This inspection process helps the agency know how well jails under its jurisdiction meet its standards and which jails need assistance to improve their facilities or operations. Based on these inspections, TCJS may take enforcement action against jails to ensure compliance with standards. In 1996, TCJS issued 27 notices of noncompliance detailing the need for corrective action; and six remedial orders requiring counties to take certain action to come into compliance. If these two remedies do not obtain compliance, the agency can file suit to compel action, but TCJS has done so only once since 1975.

The Sunset staff evaluated the county jail inspection program to see whether the agency's approach uses resources in the most efficient and practical manner to ensure that jails comply with its standards.

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*By routinely inspecting all jails with the same frequency, TCJS loses the flexibility to place additional resources on problem jails.*

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## Findings

- ▼ **Although TCJS conducts regular inspections of jails under its jurisdiction, these inspections are not based on risk factors.**
  - ▶ TCJS as a matter of policy routinely inspects all county jails with the same frequency — once a year. However, TCJS does not incorporate risk factors when conducting routine inspection of jails.
  - ▶ By conducting all routine inspections of county jails with the same frequency, TCJS does not recognize differences in jails that consistently meet its standards and those that do not. In fiscal year 1996, TCJS staff inspected 88 county jails which had been in compliance for at least five consecutive years.
  - ▶ By treating all routine jail inspections the same, TCJS has less flexibility to dedicate additional resources to monitoring problem jails and providing technical assistance to those counties.
- ▼ **Numerous factors could be used to determine which of the jails under TCJS authority should undergo extra scrutiny and receive additional technical assistance.**
  - ▶ Results from previous inspections are a key measure of a county's ability to meet TCJS standards. A jail that consistently fails to meet TCJS standards is less likely to meet those standards in the future, as compared to a jail that consistently obtains compliance. In fiscal years 1994-1996, TCJS staff identified 19 counties that violated at least one

standard all three years. These 19 counties have a greater need for technical assistance than those counties that fully comply with TCJS standards.

- ▶ Other factors can affect a county's ability to meet TCJS standards. For example, jails with large populations, that occupy older facilities, or that have a large percentage of high-risk inmates, can have a more difficult time obtaining compliance due to the increased complexities of jail operations under such circumstances. Large jail populations require more intricate logistical activity to ensure inmates are fed and bathed adequately. Older jails often need to replace or enhance plumbing and lighting fixtures to ensure health and safety of guards and inmates. Jails with a large proportion of high-risk inmates require additional security measures to ensure public safety.
- ▼ **TCJS staff already has a policy of targeting some jails for additional oversight and assistance.**
- ▶ TCJS staff currently has a policy to inspect and assist county jails holding out-of-state inmates on a quarterly basis, rather than annually. TCJS staff established this policy to address the increased risk resulting from county jails holding inmates normally held in penitentiaries.
  - ▶ TCJS staff also has a policy of conducting special inspections as a follow up for facilities that fail to meet TCJS standards. This policy was established to ensure concerns identified in annual inspections conducted by TCJS have been addressed within a reasonable period of time. In fiscal year 1996, TCJS conducted 35 special inspections, 33 of which were follow up inspections of facilities that had previously identified compliance problems.
- ▼ **By expanding the existing TCJS policy of targeting jail inspections, TCJS staff could better dedicate resources and formalize an existing policy.**
- ▶ TCJS staff has a limited amount of resources dedicated to ensuring compliance with Commission standards. Since TCJS currently uses three inspectors for 242 county jails, each inspector must annually inspect 80 county jails, some of which make use of multiple buildings throughout the county, requiring even more time and resources. By expanding the

current staff approach of identifying counties with a greater need for technical assistance from those with a lesser need, TCJS could more effectively focus on the county jails where its efforts are needed.

- ▶ As part of a risk-based inspection program, TCJS should also consider conducting unannounced routine inspections. Current TCJS policy encourages inspectors to make as many unannounced "visits" to facilities as time permits. These visits, however, are not considered actual inspections, but "drop by" visits to supplement inspections. Only the Executive Director or Deputy Director can order an unannounced inspection be conducted. TCJS currently only conducts unannounced inspections after receiving substantive complaints of serious violations of its standards. In fiscal year 1996, TCJS staff conducted three unannounced inspections. By not giving advanced warning of routine inspections TCJS staff can gain a more accurate picture of day-to-day operational practices at facilities under TCJS jurisdiction.
- ▶ Placing this expanded approach into statute would ensure that TCJS targets problem county jails for oversight and assistance into the future despite turnover in staff or on the Commission.

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*TCJS does not focus its inspection efforts in areas where it could have the greatest impact.*

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## Conclusion

TCJS does not prioritize its routine inspection of jails under its jurisdiction. By not considering the special needs of some jails, TCJS staff does not focus its efforts where it could have the most impact. Requiring TCJS to develop an inspection schedule based on compliance history and other risk factors and including a greater number of unannounced inspections would enable the Commission to focus on those facilities that it determines need additional scrutiny.

## Recommendation

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### Change in Statute

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- Require the Commission to schedule inspections of jails under its jurisdiction based on compliance history and any other risk factors the Commission determines necessary.

This recommendation would require the Commission to establish a schedule for conducting inspections of jails under its jurisdiction based on compliance history and other factors it considers to be important. The Commission would allocate staff resources and schedule inspections based on factors that identify which jails indicate the need for heightened attention. These factors could include facility population, facility age, or the classification of inmates held. As part of this recommendation, the Commission would be required to conduct unannounced inspections, though it would not be prevented from conducting announced inspections as it currently does. In addition, the Commission would be authorized to determine the frequency of inspections over time to assure that jails in good standing do not develop compliance problems because of regulatory neglect.

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### **Fiscal Impact**

No fiscal impact would result from this recommendation. This recommendation would simply allow TCJS to better focus the efforts of its staff in inspecting facilities under its jurisdiction.



# Issue 3



## Continue the Texas Commission on Jail Standards for 12 Years.

### Background

The Legislature created the Texas Commission on Jail Standards (TCJS) in 1975 to develop and enforce standards relating to the construction, operation and maintenance of county jails in Texas. Before the creation of TCJS, the Legislature, in 1957, required county jails to meet minimum requirements relating to size and staffing of county jails. The Texas Department of Health had the responsibility of ensuring these standards were met, but had no means of enforcement if the county refused to take action to improve the county jail. As a result, the only effective regulation of these county jails occurred through lawsuits brought by prisoners against county officials for inflicting cruel and unusual punishment upon county inmates. The rulings made by the judges in these lawsuits were the main method of requiring counties to modernize and maintain their jails until the establishment of TCJS in 1975.

TCJS regulates facilities in 242 counties and two privately-operated city jails. As of September 1, 1995 TCJS regulated jails incarcerating 41,600 inmates. TCJS imposes these regulations through standards and procedures relating to county jail construction, equipment, and maintenance; and inmate care and rehabilitation. The staff inspects these jails annually to determine they are in compliance with Commission standards, and may take remedial or legal action to enforce these standards. Finally, the agency provides technical assistance to local government officials relating to county jails.

In a Sunset review, continuation of an agency and its functions depends on certain conditions being met, as required by the Sunset Act. First a current and continuing need should exist for the state to provide the functions or services. In addition, the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions to another agency. The evaluation of the need to continue the Texas Commission on Jail Standards and its functions led to the findings discussed in the following material.

*TCJS regulates  
242 county jails  
holding more  
than 41,600  
inmates.*

## Findings

- ▼ **The functions of TCJS continue to be needed to ensure effective, safe, and secure jails.**
  - ▶ TCJS ensures the safety and welfare of the public and county prisoners by enforcing its standards. TCJS helps to protect the public by ensuring that a correctional facility's method of classifying inmates into minimum, medium, and maximum custody are appropriate and effective. The agency also protects the public by ensuring that county jails have an adequate number and type of staff supervising inmates.

TCJS ensures the welfare of inmates by requiring privately-operated municipal and county jails to develop sanitation plans that maintain an adequate level of cleanliness. The agency has also developed standards relating to inmate diets, medical services, and education.
  - ▶ To provide oversight of jails' compliance with Commission standards, TCJS staff conducts annual inspections and takes enforcement action when necessary. In fiscal year 1995, TCJS staff conducted 260 inspections, which resulted in 38 notices of noncompliance, and five remedial orders. If a remedial order does not result in corrective action, the Commission may file suit in state district court to force compliance with TCJS standards, which it has done only once since its creation in 1975.
  - ▶ In addition, TCJS assists county governments by providing plan review for jail construction. By providing this type of service to counties, TCJS helps counties avoid problems from the time a new jail is planned.
  - ▶ TCJS also helps counties by providing technical assistance to develop effective jail operational plans. Operational plans detail policies on how county sheriffs' personnel run a county jail. By providing technical assistance to counties relating to jail operations, TCJS can help ensure counties manage their jails in the most effective manner. In fiscal years 1994 and 1995, every jail facility under the Commission's jurisdiction had operational plans that met its standards.
  - ▶ As a result of TCJS standards, inspections, enforcement, and technical assistance, an increasing number of jails now meet minimum standards. In fiscal year 1993, 69 percent of county

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*TCJS ensures that county inmates receive appropriate security classifications and that jails are adequately staffed.*

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jails met minimum jail standards. That number has increased to 88 percent in fiscal year 1996.

- ▼ **Abolishing TCJS could cause a fiscal impact to local governments and the state.**
  - ▶ Before the establishment of TCJS, jails were basically regulated through the courts on the basis of inmates' lawsuits to force counties to improve jail conditions. Besides being an inefficient way to regulate jails, having the courts establish and enforce standards is also costly to counties because they must react to court orders after facilities are operating. Without having TCJS help counties properly plan, construct, and operate needed facilities and ensure that they meet minimum standards, counties could be subject to costly and lengthy court cases.
  - ▶ Once a year, TCJS conducts a survey of city and county jails to determine if juvenile offenders are held in county facilities. By conducting this survey, TCJS helps to ensure the state receives about \$7 million in federal funds used to pay for state and local juvenile justice programs.
- ▼ **No substantial savings or benefits would result from transferring the functions of TCJS to another state agency.**
  - ▶ Although the Texas Department of Criminal Justice (TDCJ) operates the state's penal facilities, it has no regulatory function relating to other facilities that house prisoners in the state. TDCJ does make use of privately owned and operated facilities to house state inmates, but it does so by contract and does not enforce standards or regulations for these facilities.
  - ▶ The Local Government Code authorizes TDCJ to adopt rules regulating the number of federal and out-of-state inmates in county jails. However, while this provision does give TDCJ very limited authority over county jails, it does not relate to establishing and enforcing standards for jail construction and operation.
- ▼ **Other states generally recognize the need for state regulation of county jails.**
  - ▶ Including Texas, seven of the ten most populous states regulate county jails. These states include California, Illinois, Ohio, New York, Michigan, and Pennsylvania.

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*The percent of county jails meeting minimum standards has increased from 69 percent in 1993 to 88 percent in 1996.*

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## Conclusion

The activities of TCJS help to ensure effective, safe, and secure county jails. Abolishing TCJS could result in a return to piecemeal regulation of these jails through costly and time-consuming court action to ensure county jails meet minimum standards. Although TDCJ also deals with incarceration of inmates, it has no regulatory functions related to these facilities and no current mission relating to interacting with local governments that also house prisoners.

## Recommendation

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### Change in Statute

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- Continue the Texas Commission on Jail Standards for 12 years.

This recommendation will result in the Commission having a new Sunset date of September 1, 2009. Although the primary functions of TCJS would remain unchanged, Issue 1 would expand the Commission's authority to include privately owned and operated jails housing out-of-state inmates.

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### Fiscal Impact

If the Legislature continues the functions of the Texas Commission on Jail Standards using the existing organizational structure, the Commission's annual appropriation of about \$850,000 would continue to be required for the operation of the agency.

**ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Commission on Jail Standards</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Already in Statute	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Already in Statute	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Already in Statute	10. Provide for notification and information to the public concerning agency activities.
Apply	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Already in Statute	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	14. Require information to be maintained on complaints.
Already in Statute	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	16. Require development of an equal employment opportunity policy.
Already in Statute	17. Require the agency to establish career ladders.
Already in Statute	18. Require a system of merit pay based on documented employee performance.

<b>Texas Commission on Jail Standards</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	5. Authorize the staggered renewal of licenses.
Not Applicable	6. Authorize agencies to use a full range of penalties.
Not Applicable	7. Specify disciplinary hearing requirements.
Not Applicable	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

# **BACKGROUND**

# Background

## Agency History

After 18 years of mainly regulating county jails through the federal courts, the Legislature created the Texas Commission on Jail Standards (TCJS) in 1975.

In 1957, in response to growing awareness of unsanitary and sometimes dangerous conditions in county jails, the Legislature required counties to meet minimum requirements relating to size and staffing of county jails. The Legislature gave the responsibility of enforcing this law to the Texas Department of Health, which conducted periodic inspections of county jails for compliance with the requirements. Counties with substandard jails had up to four years to address areas identified by Health Department staff, however, no penalty existed for failure to do so. Because many counties did not take any action to improve their jails, often inmates would file lawsuits against county officials for inflicting cruel and unusual punishment upon them. For many years, rulings made by the judges in these lawsuits were the main method of requiring counties to modernize and maintain their jails.

After allowing county jails to be regulated through the federal courts, the Legislature created the Texas Commission on Jail Standards (TCJS) in 1975 to develop and enforce standards for county jails in Texas. Over the years, the Commission's statute has undergone the major changes outlined below.

- In response to state prison overcrowding, the Legislature charged TCJS in 1991 with monitoring state use of county jail space and issuing payment to the counties for housing state inmates. Counties received over \$140 million in fiscal year 1995 from TCJS, which paid the counties with funds passed through TCJS from the Texas Department of Criminal Justice (TDCJ). That same year, the state also established a "duty to accept" by TDCJ for all offenders sentenced to prison within 45 days of having all necessary paperwork complete. TCJS still monitors county jails to ensure the state meets its duty to accept. However, the program

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*After 18 years of mainly regulating county jails through the federal courts, the Legislature created the Texas Commission on Jail Standards in 1975.*

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to pay counties for county jail space occupied by state inmates expired on September 1, 1995 when the state's duty to accept went into effect.

- In 1993, the Legislature also required TCJS to provide technical assistance to the Texas Department of Criminal Justice regarding newly created state jails.

## Policymaking Structure

TCJS is governed by a nine-member Commission appointed by the Governor with the advice and consent of the Senate. Each member serves a staggered six-year term expiring on January 31 of each odd-numbered year. The Commission is composed of:

- two county sheriffs, one from a county of over 35,000 persons and one from a county of 35,000 persons or less;
- one county judge;
- one county commissioner;
- one medical doctor licensed by the Texas State Board of Medical Examiners; and
- four public members, one of which must reside in a county with a population of 35,000 or less.

The Governor appoints the chair of the Commission which elects its own vice chair for a two-year term.

The Commission has three primary duties:

- to develop, adopt, and revise reasonable standards and procedures relating to county jail construction, equipment, and maintenance; and inmate care and rehabilitation;
- to enforce those standards and laws by taking remedial action or by bringing action in state court against a county violating state law or a Commission standard;
- to hire the agency's Executive Director.

Statute requires that the Commission meet at least once each calendar quarter, but additional meetings can be held at the call of the chair. In fiscal year 1995, the Commission met six times.

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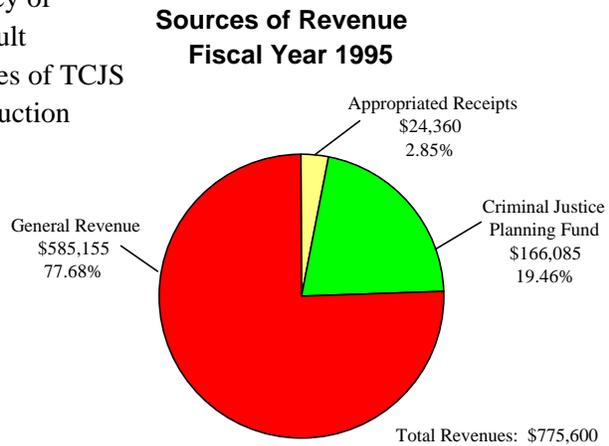
*TCJS is governed by a nine-member Commission appointed by the Governor with the advice and consent of the Senate.*

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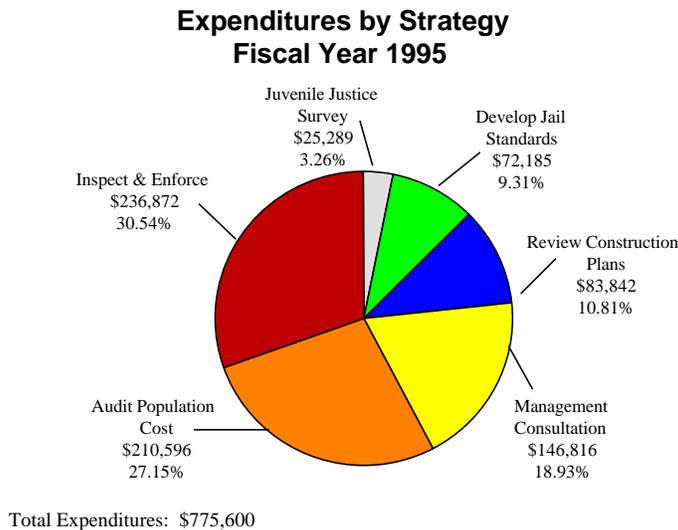
## Funding and Organization

### FUNDING

TCJS receives funding from three sources--general revenue, criminal justice grants and appropriated receipts. The criminal justice grants come to TCJS from the Criminal Justice Division of the Governor’s Office to fund county jails inspections and to conduct a survey of county jails to ensure removal of juveniles from adult facilities. The appropriated receipts come from sales of TCJS standards books. Agency fees for reviewing construction plans and inspections of certain jails accepting prisoners sentenced by non-Texas courts are deposited in General Revenue Fund and are not reappropriated to the agency. The chart, *Sources of Revenue — Fiscal Year 1995*, shows the dollar amount received from each funding source.



TCJS ensures safe, secure county jails by establishing jail standards, ensuring compliance with those standards and providing technical assistance to local governments. To carry out those activities, the agency pursues one strategic goal - Effective Jail Standards - by carrying out six strategies with a fiscal year 1995 budget of \$775,600. The chart, *Expenditures by Strategy — Fiscal Year 1995*, shows a breakdown of the agency’s total expenditures for each of its strategies.



The Legislature has established a statewide goal of 30 percent of all agency contracts be made with Historically Underutilized Businesses (HUBs). The Legislature also requires the Sunset Commission, in its reviews, to consider agencies compliance with laws and rules regarding HUB use. The chart, *Purchases from HUBs Fiscal Year Fiscal Year 1995*, shows the HUB use of TCJS in fiscal year 1995.

<b>Purchases from HUBs Fiscal Year 1995</b>	
Total purchases of goods and services	\$24,521
Total spent with certified HUBs	\$15,203
Percent spent with certified HUBs	62%
Statewide average	15.89%
State goal	30%

## ORGANIZATION

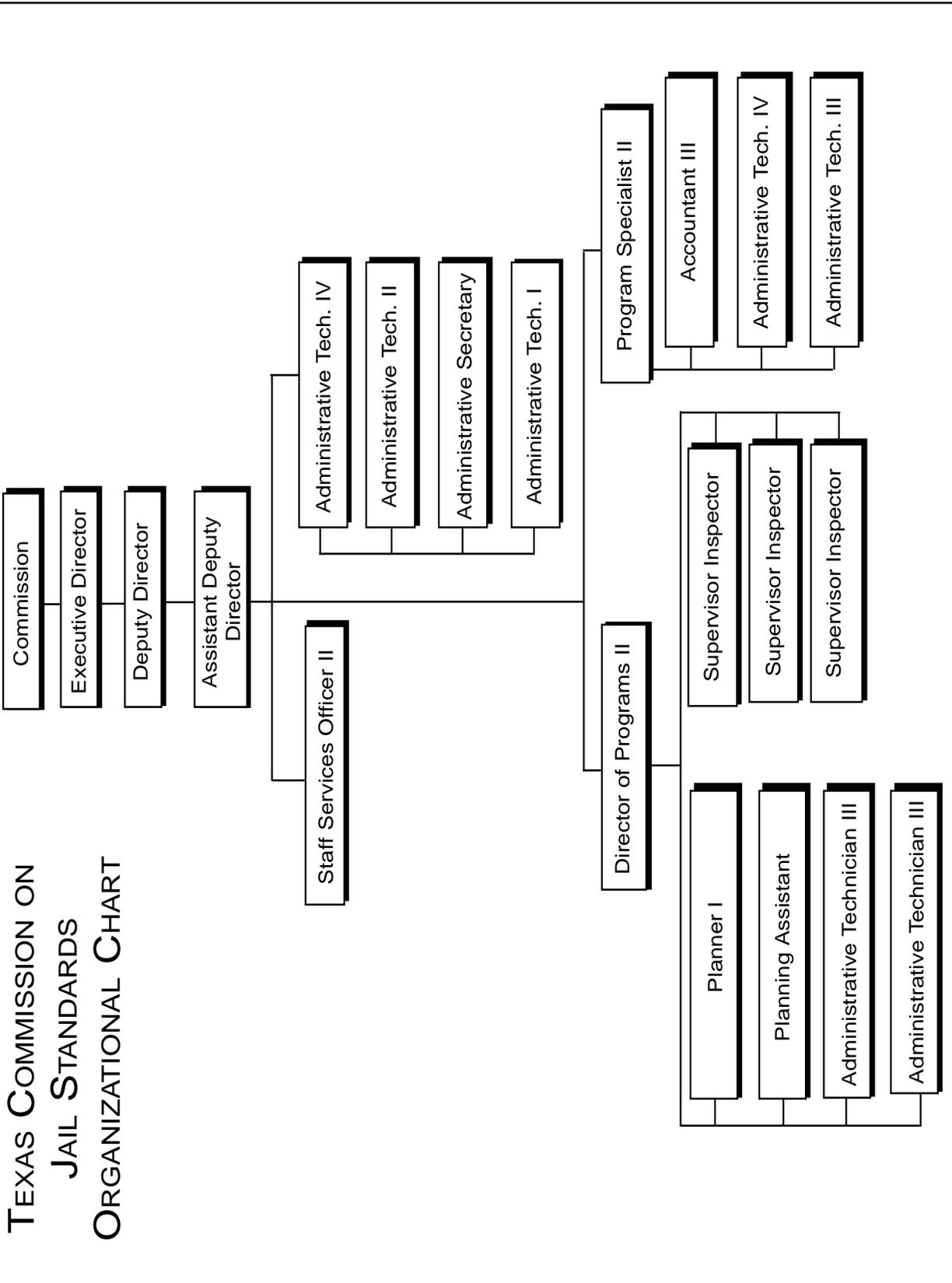
TCJS had a staff of 19 full-time equivalents in fiscal year 1995. All of TCJS's staff are located in Austin except one supervising inspector who is located in Tullia. The organizational structure of TCJS is illustrated in the chart, *TCJS Organizational Chart*.

A comparison of the agency's workforce composition to the state's minority workforce goals is shown in the chart, *TCJS Equal Employment Opportunity Statistics 1995*.

### Texas Commission on Jail Standards Equal Employment Opportunity Statistics - 1995

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	1	0%	5%	0%	8%	0%	26%
Professional	15	0%	7%	13%	7%	33%	44%
Technical	4	0%	13%	50%	14%	100%	41%
Protective Services	N/A	0%	13%	0%	18%	0%	15%
Para-Professionals	N/A	0%	25%	0%	30%	0%	55%
Administrative Support	2	0%	16%	0%	17%	50%	84%
Skilled Craft	N/A	0%	11%	0%	20%	0%	8%
Service/Maintenance	N/A	0%	19%	0%	32%	0%	27%

# TEXAS COMMISSION ON JAIL STANDARDS ORGANIZATIONAL CHART



## Agency Operations

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The Texas Commission on Jail Standards has one strategic goal that reflects its overall operations - Effective Jail Standards. The six strategies to obtain this goal and the performance measures for those strategies are discussed below.

### JAIL STANDARDS

The first strategy of TCJS is to develop, implement and revise effective standards for facilities under its jurisdiction. These facilities include:

- all county-owned jails whether operated by the county or a private contractor;
- all privately-owned jails that house county inmates; and
- any municipal jails operated by a private contractor.

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*The first strategy of TCJS is to develop, implement and revise effective standards for facilities under its jurisdiction.*

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TCJS staff develop proposed standards the same way as Commission rules are established. TCJS staff gains input from local government officials, sheriffs, and professional associations, and takes into account any relevant court rulings. Staff then presents the proposed standard to the Commission, and upon review and approval, publishes it in the *Texas Register* for public review and comment. Based on this public input, the Commission may modify or reject the proposed standard or approve it and publish the final version of the standard in the *Texas Register* wherein it becomes effective after 20 days.

The Commission may also issue variances from its standards when county officials can show good cause. By law, the Commission can only issue a variance that does not result in unhealthy, unsanitary, or unsafe conditions at the facility. The Commission usually grants a variance to older facilities that do not meet standards, but whose deficiency poses no direct threat to the health or safety of inmates. Requiring a county to comply with those standards could place a large financial burden on the county to correct. Variances typically expire after one year but can be renewed or made permanent by the Commission under certain circumstances. For example, a variance could allow a facility to operate single cells with seven and a half foot ceilings instead of the required eight feet. In fiscal year 1995, the Commission granted variances for 13 facilities.

TCJS established standards in 1976. In 1994, TCJS staff conducted a complete review of the existing jail standards. No major changes to the standards resulted from this review, although the standards were incorporated into the Texas Administrative Code. In fiscal year 1995, TCJS reviewed 100 percent of existing standards.

## INSPECTIONS

The second strategy requires TCJS to develop a process to inspect and monitor compliance of facilities over which the agency has authority. TCJS conducts three kinds of inspections to enforce its standards. Annual inspections are announced examinations of county jail facilities to ensure compliance with Commission standards. Occupancy inspections determine whether a facility is actually built according to standards before it may be used. Special inspections include re-inspections of facilities that failed the annual inspection, and unannounced inspections to determine if standards are currently violated based on reports of problems and/or violations of jail standards. In fiscal year 1995, TCJS conducted 246 annual inspections, 28 occupancy inspections, and 19 special inspections.

If an inspection determines a standard has been violated, the Commission issues a notice of non-compliance to the County Sheriff, and the County Commissioners outlining the violation and the remedy necessary to regain compliance. The facility normally has 30 days to initiate corrective action, however, the Commission can grant a county up to a year to regain compliance. If a county does not regain compliance within the allotted time, the Commission can issue a remedial order. A remedial order typically places limits on a facility's capacity or restrictions on a particular operational practice. If, after a reasonable period of time, the facility is still not in compliance, TCJS can take legal action in district court. In fiscal year 1995, TCJS staff found 55 facilities violating standards. The Commission issued one remedial order but took no court action. Currently, 30,394 inmates are housed in certified jails and 208 of 242 county jails are in full compliance with TCJS standard. The map, *Compliant and Non-Compliant County Jails*, on page 38, shows which counties meet TCJS standards, which do not and also shows which counties do not have a county jail.

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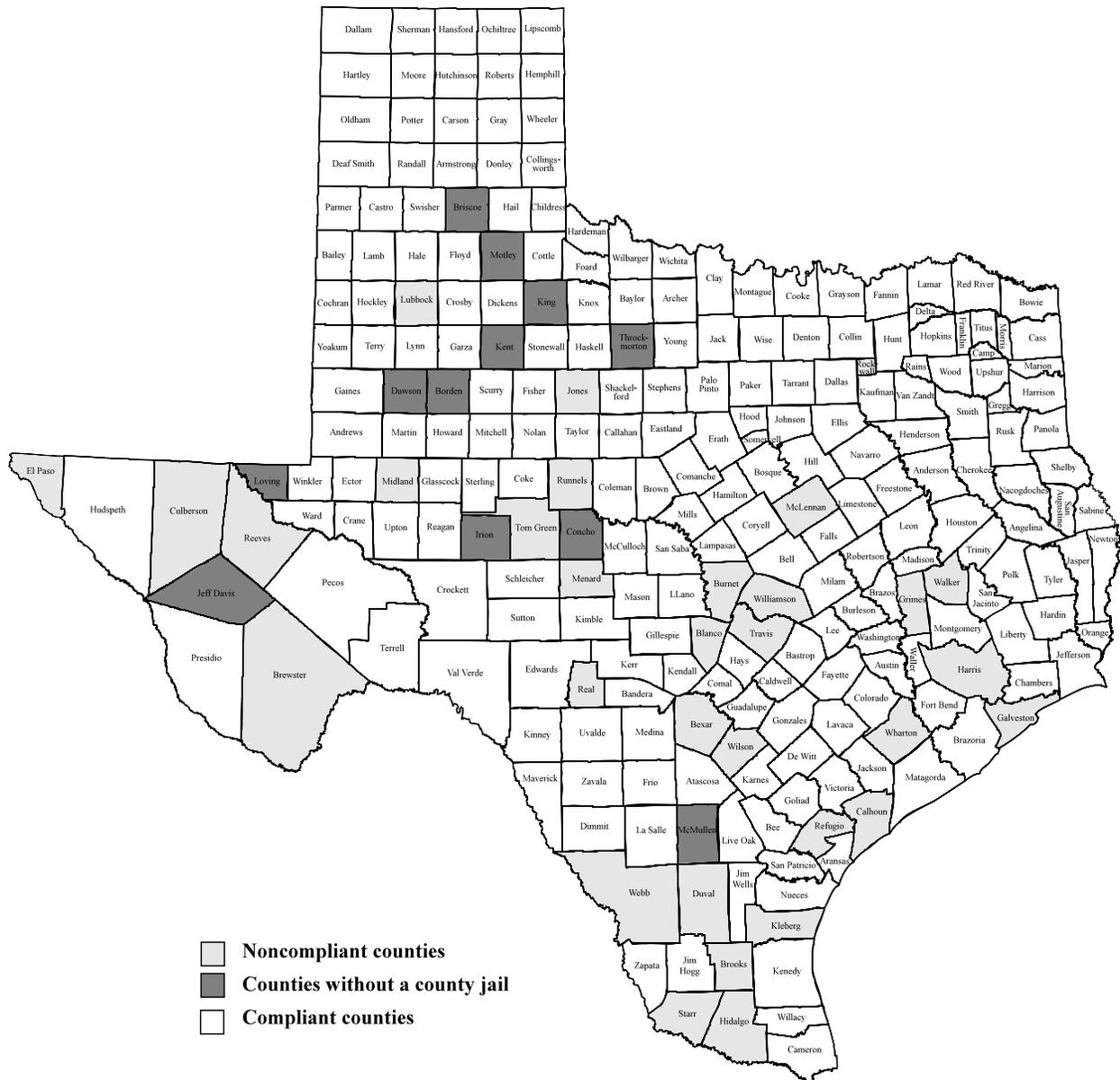
*TCJS conducts three kinds of inspections — annual, occupancy, and special.*

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## CONSTRUCTION PLAN REVIEW

The third strategy requires TCJS to provide technical assistance to jails under its authority for the planning and construction of jails. As part of this strategy TCJS conducts a needs analysis for new jail facilities. The needs analysis helps counties to determine the necessity of a new jail and what size and type of facility to build. Factors used in the needs analysis include county population and crime trends.

## Compliant and Non-Compliant County Jails As of October 15, 1996



Once a county determines the type and size of the facility needed, county officials have a schematic design of the jail developed. TCJS staff then determines the viability of the concept. If staff concludes that the concept addresses the county's needs as identified in the needs analysis, further design development takes place. At this stage, staff provides input on the square footage of the facility, and the types of components needed by the facility such as laundry and kitchen areas. The county uses this input to develop construction plans. Staff reviews these plans and compares them to standards to ensure compliance. Once the facility is built, an occupancy inspection is conducted to ensure the facility was built according to the approved plans and in accordance with TCJS standards. In fiscal year 1995, the agency conducted 71 construction plan reviews.

The agency can charge fees to review certain construction plans. The fee is to cover the cost of reviewing and commenting on construction documents for any county jail with a capacity of 100 or more inmates, of which 30 percent or more are inmates sentenced by non-Texas courts. The Commission assesses this fee on a sliding scale based on the size of the facility, ranging from \$1,500 to \$2,500 + \$5.00 for each bed over 1,000. In fiscal year 1995, the agency collected \$7,100 in fees from six facilities.

### **JAIL MANAGEMENT CONSULTATION**

The fourth strategy requires TCJS to provide technical assistance in jail management. The Commission requires each county to submit a jail operations plan to TCJS to ensure that it meets minimum standards for the health, safety, and welfare of prisoners and the public. Areas addressed by these plans include inmate classification, medical services, sanitation, recreation and exercise, education and rehabilitation, emergency procedures, and visitation policies. If staff determines a plan is substandard, staff identifies areas lacking and suggests corrective changes. In fiscal year 1995, 100 percent of jail operation plans met TCJS standards.

TCJS staff also provide other types of technical assistance including staffing analyses and workshops. A staffing analysis examines the facility design and capacity to determine an adequate level of security and administrative personnel necessary for the safe and efficient operation of a county jail. In fiscal year 1995, TCJS conducted 30 staffing reviews.

TCJS staff also conduct workshops to help county jail personnel identify people with mental disabilities. By educating county jail personnel in identifying the mentally disabled, many individuals can be transferred from the criminal justice system to Texas Department of Mental Health

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*The Commission requires each county to submit a jail operations plan to ensure the health, safety, and welfare of prisoners and the public.*

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and Mental Retardation facilities as treatment programs become available. Other topics covered by TCJS workshops relate to standards compliance and inmate classification. In fiscal year 1995, TCJS staff held eight regional workshops throughout the state.

## POPULATION ANALYSES

TCJS develops reports on the population of county jails as its fifth strategy. In recent years, many state prisoners were held in county jails due to a lack of available space in state penitentiaries. Since the state undertook its prison construction program, the backlog of state inmates at county facilities has been drastically reduced. The chart, *County Jails' Inmate Population*, shows a breakdown of the type of inmates housed at county jails, including the number of state inmates housed at county facilities as of October 1, 1996. Currently, TCJS surveys county jails to determine if any convicted state-ready prisoners are kept in county jails longer than 45 days. By conducting this survey, staff determines whether the state meets its duty to accept state-ready prisoners in a timely manner. If state inmates stay in county facilities longer than 45 days because the state is unable to accept them, the Texas Department of Criminal Justice (TDCJ) may initiate an early release program to speed up acceptance of those inmates.

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*Since the state undertook its prison construction program, the backlog of state inmates at county facilities has been drastically reduced.*

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<b>County Jails' Inmate Population</b>		
<b>Types of Inmates</b>	<b>Number of Inmates</b>	<b>Percentage of Inmates</b>
Pretrial Felons	15,728	30%
Convicted Felons	5,548	11%
Felons Sentenced to County Jail Time	1,273	2%
Parole Violator/Tech. Blue Warrant	2,784	5%
Parole Violator New Charge	2,055	4%
Pretrial Misdemeanants	4,895	9%
Convicted Misdemeanants	5,638	11%
Bench Warrants	899	2%
Federal	4,036	8%
Pretrial State Jail Felons	2,182	4%
Convicted State Jail Felons	512	1%
County Jail Time	0	0%
Convicted State Jail Felons	326	1%
State Jail Time	0	0%
Others	6,090	12%
<b>Total</b>	<b>51,966</b>	<b>100%</b>

TCJS staff performs this strategy by analyzing population reports submitted by county facilities. Staff uses this information to identify which jails under TCJS jurisdiction contain state inmates, and provides the data and analysis to TDCJ to help plan the state's prison needs. TCJS also monitors county jails on a monthly basis to ensure that capacity limits of those facilities are not exceeded.

As the state inmate backlog in county facilities has declined, many counties have found themselves with excess capacity in their jails. As a result, many counties have started contracting with other states to house out-of-state prisoners in their facilities to generate revenue from their available beds. Out-of-state prisoners in county jails are discussed in the text box below.

#### ***OUT-OF-STATE PRISONERS IN COUNTY JAILS***

In the late 1980s and early 1990s, longer mandatory sentences for offenders in Texas resulted in more incarcerations. However, state prison capacity did not increase with the increase in incarcerations. As a result, many convicted state offenders remained in county facilities after conviction, awaiting beds in state facilities.<sup>1</sup> This backlog of state prisoners in county jails resulted in severe overcrowding at those facilities. Many counties dealt with this situation by expanding their jails, building new facilities, or contracting with private vendors to receive their prisoners. Over time, the state expanded the capacity of the state prison system, relieving county jails from housing state offenders and leaving the counties and private vendors with excess jail capacity. Other states, however, are experiencing overcrowding that, until recently, had plagued Texas, forcing many states to look for facilities to house offenders while they expand their prisons. As a result, several states have contracted with counties and private vendors in Texas to house their inmates.

As part of its regulatory authority over county jails, TCJS reviews all contracts for housing out-of-state inmates between the county and other states. TCJS can cancel contracts with other states if it determines the state needs the county jail space to house Texas inmates.

Although contracts are standard, the price per inmate is negotiated by the county. Currently, the average cost charged by counties to house out-of-state inmates is \$37.50 per day with a range from \$32-\$45 dollars per day per inmate. Because out-of-state inmates generate revenue rather than cost a county money to incarcerate inmates, a strong incentive exists to maximize the number of out-of-state inmates in a county jail.

As of October 1, 1996, out-of-state inmates totaled 4,094 in 10 county facilities throughout the state. The chart, *County and Municipal Facilities Housing Out-of-State Inmates*, provides information about out-of-state inmates currently in county and municipal jails.

In addition to these facilities, a limited number of privately-owned and operated jails that do not contract with a county or municipal government may also hold out-of-state prisoners. These facilities do not report the number of out-of-state inmates they hold because they are not regulated by TCJS or any other state agency. As a result, the actual number of out-of-state inmates in Texas could be larger. The issue of regulating privately-owned and operated penal facilities is addressed in Issue 1 of this report, found on page 7.

<b>County &amp; Municipal Facilities Housing Out-of-State Inmates October 1, 1996</b>					
<b>Entity</b>	<b>Location</b>	<b>State</b>	<b>Contract # of Inmates</b>	<b>Actual # of Inmates</b>	<b>Capacity</b>
Bexar County	San Antonio	Colorado	80	180	3,614
Bexar Co. CTPVF	San Antonio	Oklahoma	133	147	536
Bowie County	Texarkana	Arkansas	469	469	795
Crystal City	Crystal City	Utah Missouri	100 439	0	467
Dallas County	Dallas	Massachusetts New Mexico	500 400	263 137	8,140
Denton County	Denton	Oregon	232	216	857
Dickens County	Spur	Hawaii Montana	97 250	339	486
Frio County	Pearsall	Utah Missouri	100 439	75	295
Karnes County	Karnes City	Colorado	480	473	508
Limestone County	Groesbeck	Oklahoma North Carolina	400 563	168 537	836
Mansfield City	Mansfield	Oklahoma	240	200	240
Newton County	Newton	Virginia Hawaii	735 204	613 203	872
Odessa City	Odessa	Oklahoma	60	74	100
<b>Total</b>			<b>5,921</b>	<b>4,094</b>	<b>17,746</b>

## JUVENILE JUSTICE SURVEY

*TCJS surveys city and county facilities to determine if juveniles have been transferred to the appropriate state juvenile facilities.*

TCJS also performs an annual survey of local jails to determine compliance with the federal Juvenile Justice and Delinquency Prevention Act (JJDP). This federal legislation requires juveniles to be removed from facilities for adults and placed in facilities for juveniles. TCJS surveys city and county facilities to determine if juveniles have been removed from local adult jails and transferred to the appropriate state juvenile facilities. By conducting the survey, the state complies with the JJDP, which ensures continued receipt of \$7 million of federal money by the state. This federal money is used to finance state and local juvenile justice programs throughout the state.

<sup>1</sup> Texas Performance Review, *Texas Crime, Texas Justice*. Office of the Comptroller of Public Accounts, Austin, TX. September, 1992.

**TEXAS COMMISSION ON  
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