



SUNSET ADVISORY COMMISSION

Correctional or
Rehabilitation Facility
Subchapter



Staff Report
August 2002

**CORRECTIONAL OR REHABILITATION
FACILITY SUBCHAPTER**

SUNSET STAFF REPORT

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SUMMARY



Sunset Staff Report

Correctional or Rehabilitation Facility Subchapter

Summary

In 1997, the Legislature enacted a new law giving county and city governing bodies the authority to veto certain correctional and rehabilitation facilities proposed to be built or operated within 1,000 feet of residential areas, schools, parks, and places of worship. The law, entitled the Correctional or Rehabilitation Facility (CRF) Subchapter, provided for the Sunset Advisory Commission to review the effectiveness of these provisions prior to the 78th Legislative session in 2003, when the law will automatically expire. The Legislature directed the Sunset Commission to make recommendations to the Legislature and the Governor on the public necessity for the law, changes to improve the law, and whether the law should be continued, modified, or repealed.

Sunset staff evaluated the need for local officials to have a means to veto facilities they felt were not in the best interests of their community; and if this authority had impeded the

State's ability to operate facilities needed to house and rehabilitate offenders. Sunset staff received input from interested parties both for, and against, continuation of the Subchapter. In addition, Sunset staff interviewed a number of local officials, and staff from the Texas Department of Criminal Justice and the Texas Youth Commission.

Several problems were identified in the public notice, timing, and hearing requirements of the law, but overall, these provisions have not caused the State any difficulty in building or relocating correctional facilities. Of note, these provisions have only been used on a few occasions due to the slowdown in the expansion of Texas' correctional system. Sunset staff could not reasonably predict the impact of these provisions if the correctional system undergoes another significant expansion of its facilities.

Sunset staff concluded that the Subchapter should be continued and re-evaluated as part of the Sunset review of the Texas Department of Criminal Justice in 2009. Reviewing the Subchapter in six years would provide another look at the impact of the local veto authority to determine if any further problems arise, particularly if significant expansion or relocation of correctional or rehabilitation facilities occurs.

This Subchapter applies to facilities proposed to be within 1,000 feet of residential areas, schools, parks, and places of worship.

For more information, contact Christian Ninaud, (512) 463-1300. Sunset staff reports are available online at www.sunset.state.tx.us.

ISSUE / RECOMMENDATIONS

Issue 1

Continue the Correctional or Rehabilitation Facility Subchapter with Improvements to the Notice Requirements.

Summary

Key Recommendations

- Continue the Subchapter and re-evaluate it as part of the Sunset review of the Texas Department of Criminal Justice in 2009.
- Require the State, political subdivisions of the state, or their contractors, to provide to county and city governing bodies notice of intent to construct or operate facilities regulated by the Subchapter.
- Allow a public meeting held by the State under the Government Code to satisfy the meeting requirement under the Subchapter, on approval of county and city governing bodies.

Key Findings

- The Subchapter gives county and city governing bodies the authority to review, and veto, the proposed location of certain correctional or rehabilitation facilities.
- The Subchapter does not provide an effective mechanism to inform county and city governing bodies that the State is proposing to construct or operate a correctional or rehabilitation facility in their area.
- The timing of the 60-day local review period does not ensure enough early consideration of a veto, resulting in the potential for unnecessary costs and disruption of needed services.
- In some instances, the Subchapter requirement for a separate public meeting for the review process may duplicate other statutory requirements for similar public meetings.

Conclusion

The Correctional or Rehabilitation Facility Subchapter allows county or city governing bodies to review and veto correctional or rehabilitation facilities proposed to be within 1,000 feet of a residential area, school, public park, or place of worship. Based on limited use, Sunset staff had difficulty reviewing the need for and effectiveness of the Subchapter. Sunset staff did find that it does not require the State to pro-actively notify county and city governing bodies of proposed facilities, which could result in these officials forfeiting their authority to hold a public meeting for review, and possible veto of, a facility location. In addition, the 60-day review period does not occur early enough in the State's planning processes, which could result in construction cost overruns, or the disruption of services. Also, the requirement for county and city governing bodies to hold a public meeting to review a proposed facility could duplicate other statutory meeting requirements. By

requiring the State to notify county and city governing bodies, and starting the review period upon receipt of notice, these officials would not risk losing the opportunity to evaluate if the facility is in the community’s best interest. In addition, State and local planning processes would be improved, and these parties could eliminate holding duplicative public meetings.

Support

The Subchapter gives county and city governing bodies the authority to review, and veto, the proposed location of certain correctional or rehabilitation facilities.

- The Correctional or Rehabilitation Facility (CRF) Subchapter, passed in 1997, allows county and city governing bodies to deny consent for the location of certain correctional or rehabilitation facilities proposed to be within 1,000 feet of a residential area, school, public park, or place of worship.
- The Subchapter applies to correctional facilities, such as probation and parole offices, and residential facilities operated, or contracted

Facilities Affected - CRF Subchapter		
Agency	Facility Type	Description
Texas Department of Criminal Justice	Parole Offices	Locations where offenders report to parole officers.
	Probation Offices	Locations where offenders report to probation officers.
	Private Prisons	Secure correctional facilities.
	State Jails	Secure correctional facilities.
	Institutional Units	Secure correctional facilities.
	Parolee Correctional	Facilities for temporary incarceration of parole violators.
	Halfway Houses	Facilities for offenders being reintroduced to society.
	Residential	Rehabilitation and substance abuse treatment facilities.
Texas Youth Commission	Parole Offices	Locations where offenders report to parole officers.
	Halfway Houses	Facilities for offenders being reintroduced to society.
	Institutions	Facilities such as boot camps, state schools, and secure correctional facilities.
	Contract Care	Secure and non-secure residential facilities.

for, by the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission (TYC), or other political subdivisions of the state. The chart, *Facilities Affected - CRF Subchapter*, details which facilities are governed under the Subchapter. The Subchapter covers both newly-constructed facilities, and programs in leased facilities that are relocating to a new areas governed by this law.

- Under this Subchapter, county and city governing bodies must be notified when TDCJ or TYC plans to build or operate a correctional or rehabilitation facility, in their area, but these bodies are only entitled to notice if they request notice in writing. If requested, the State must give notice no later than 60 days before construction or operation of the facility. In addition, the State must post a sign at the proposed location to inform the public of the intent to build or operate a correctional facility at that site. County or city governing bodies have 60 days from the receipt of notice to veto the facility’s proposed location, otherwise consent is granted. To deny consent, the

county or city governing bodies must conduct a public hearing on the matter, determine that the proposed location is not in the best interest of the county or city, and adopt a resolution to that effect.

- Many correctional facilities are exempt from the Subchapter including county jails, expansions of TDCJ and TYC facilities, probation and parole offices located in commercial areas, and all facilities operating before September 1, 1997. Juvenile probation and detention facilities overseen by the Texas Juvenile Probation Commission are exempted from this law.

Limited use of the Subchapter made evaluating its need and effectiveness difficult.

- Sunset staff examined factors affecting the public need for this law. Supporters of the provision argue that local governing bodies need a mechanism to ensure that facilities serving people with known criminal backgrounds are not operated in close proximity to children in residential areas, schools, public parks, or places of worship. In contrast, others interviewed, at both the state and local level, expressed concern that the veto authority, if not used responsibly, could impede the construction or relocation of much-needed facilities if and when Texas' correctional population grows beyond the current capacity.¹
- At the time of this review, no county or city governing bodies had used the provisions of the Subchapter to veto the location of a facility, and only one county had held a meeting on the relocation of a residential substance abuse facility regulated under the Subchapter.² The experience of this case indicated no problems with the provisions. Concerns raised at the public hearing were addressed, and the facility received consent from the county governing body.
- While the potential may exist for problems in the future, Sunset staff could not reasonably judge the impact or effectiveness of these provisions under different circumstances associated with a renewed growth of Texas' correctional population. Both TDCJ and TYC populations are projected to remain within the State's institutional capacity until fiscal year 2006, with no major expansion of correctional facilities on the horizon.³
- Interest groups noted that the Subchapter's mechanism for providing notice may not be effective, while TDCJ and TYC staff expressed concerns that the timing of the 60-day review period could cause disruptions in facility construction or operation.⁴ Sunset staff evaluated if the mechanism for providing notice to county and city governing bodies could be improved. In addition, Sunset staff considered if the timing of the 60-day veto period could affect the State's ability to plan for the operation of facilities, and to transfer clients from facilities that re-open in new locations.

The Subchapter attempts to balance the concerns of communities with the need to re-integrate offenders into society.

To date, the Subchapter has not caused the State any difficulty in building or relocating correctional facilities.

Locals could miss their chance to participate due to poor notice requirements.

The Subchapter does not provide an effective mechanism to inform county and city governing bodies that the State is proposing to construct or operate a correctional or rehabilitation facility in their area.

- The Subchapter only requires the State to send notice to county and city governing bodies upon written request from these governing bodies. Because the State is not required on its own initiative to send notice to county and city governing bodies, these officials could inadvertently forfeit the opportunity to hold a public meeting simply because they were not aware of a proposed facility, or their right to participate in the decision. Sunset staff found that requiring a written request for notice places an undue burden on county and city governing bodies, and does not follow accepted state standards for providing notice.

The timing of the 60-day local review period does not ensure enough early consideration of a veto, resulting in the potential for unnecessary costs and the disruption of needed services.

- Both TDCJ and TYC generally work with county and city officials, and vendors, before signing contracts to operate, construct, or lease correctional facilities. However, the Subchapter does not have a mechanism to ensure that if county or city governing bodies have concerns about a facility, that the potential for a veto be resolved early in the planning process, rather than after the State has invested significant resources in planning a particular site.
- State agency staff expressed concern that the Subchapter could result in cost overruns and delays if a contractor has to postpone construction due to a veto option being exercised late in the process.⁵ Under the current provisions, county and city governing bodies could begin the 60-day review period after the State has signed a contract with a vendor, and is ready to begin construction of the correctional facility. In addition, the timing of the 60-day review period could disrupt services if TDCJ or TYC cannot transfer clients to a new location because the local governing body has requested the review period to begin just prior to a facility lease expiring, and those clients being transferred.

Vetoes late in the process could result in cost overruns and delay needed services.

In some instances, the Subchapter requirement for a separate public meeting for the review process may duplicate other statutory requirements for public meetings for proposed correctional or rehabilitation facilities.

- The Subchapter requirements for a public meeting, combined with other statutory meeting requirements, could result in up to three separate public meetings to establish the same correctional facility.⁶ Under the Government Code, a local community justice council, as

well as TDCJ, must hold separate public meetings before taking actions to establish a correctional or rehabilitation facility, and provide 30-day public notice of those meetings.

These requirements apply to facilities such as halfway houses, residential substance abuse facilities, and parole offices, and do not include all the facilities regulated under the Subchapter.⁷ Since the Subchapter governs many, but not all of the same facilities, county or city governing bodies could be required to hold a public meeting on the same facility as TDCJ is required to, for the same purpose and involving the same local officials, contracted vendors, and state agency staff.

The Subchapter risks duplicating other public hearing requirements in state law.

Other state statutes have effective means of ensuring the State provides county and city governing bodies the opportunity to comment on proposed correctional or rehabilitation facilities.

- Sunset staff found that the key feature of other statutory notice requirements is that the State must notify local officials in advance of taking actions to construct or operate correctional facilities, without requiring a written request from those officials. In addition, these statutes require the State to announce a date for a public meeting to consider any community concerns about a proposed facility.⁸ As a result of requiring the State to pro-actively give notice and establish clear time frames for considering public input, the State is able to ensure more effective planning for the operation and construction of these facilities.

Recommendation

Change in Statute

1.1 Continue the Correctional or Rehabilitation Facility Subchapter and re-evaluate it as part of the Sunset review of the Texas Department of Criminal Justice in 2009.

This recommendation would maintain the option for county and city governing bodies to veto certain correctional or rehabilitation facilities if they determine such facilities would not be in the best interests of the county or city. This recommendation would remove the separate Sunset date for the Subchapter. In the future, this Subchapter would be reviewed as part of the regular Sunset review of the Texas Department of Criminal Justice, next scheduled for 2009. Reviewing the Subchapter in six years would provide another look at the impact of the local veto authority to determine if any further problems arise, particularly if significant expansion or relocation of correctional or rehabilitation facilities occurs.

1.2 Require the State, political subdivisions of the state, or their contractors, to provide county and city governing bodies notice of the intent to construct or operate a correctional or rehabilitation facility regulated by the Subchapter.

This recommendation would require the State, political subdivisions of the state, or a vendor proposing to contract with the State or political subdivision of the state, to mail notice to county and city governing bodies in the area when the State is proposing to locate a correctional or rehabilitation facility. This would apply only to facilities within 1,000 feet of a residential area, school, public park, or place of worship. This recommendation would eliminate the provision that county or city governing bodies must request notice from the State, or political subdivision of the state, to be entitled to that notice, and the 60-day period for local review would begin automatically on receipt of notice. This recommendation would retain the Subchapter provisions where local consent is granted unless county or city governing bodies exercise the option of vetoing the proposed location by holding a public meeting and passing a resolution to that effect.

This recommendation would require that the notice state that the proposed facility is governed under the Subchapter, a statement of intent to construct or operate a facility in that area, and the proposed location of the facility. This recommendation would maintain the current requirement that the State, or vendor, post a sign at the proposed location of the correctional facility.

1.3 Allow a public meeting held by the State under the Government Code to satisfy the meeting required under the Subchapter.

This recommendation would allow the requirement for TDCJ to hold a public meeting under Government Code, Sections 508.119 or 509.010, to satisfy the public meeting provisions under the CRF Subchapter, upon written approval of the county or city governing bodies who are in receipt of notice. This recommendation would maintain the opportunity for public input, but reduce the potential for holding duplicate meetings on the same facility.

Impact

These recommendations would ensure more effective use of the Subchapter and improve the ability of the State to plan for operating facilities. County and city governing bodies would have input early in the planning process, and as a result introduce more certainty into State and local efforts to site facilities. The authority, and 60-day period, for county or city governing bodies to review, and potentially veto, the location of a facility would remain in effect, and these recommendations would ensure that the timing of that review period starts upon receipt of notice by the county or city governing bodies. These recommendations would also improve the ability of TDCJ to coordinate public meetings with county and city governing bodies and reduce duplication of those meetings.

Fiscal Implication

These recommendations would have no significant fiscal impact to the State. The cost to TDCJ and TYC of mailing notice to county or city governing bodies would be minimal.

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- ¹ Interviews with Criminal Justice Policy Council staff (Austin, Texas, July 17, 2002), Texas Department of Criminal Justice, Community Justice Assistance Division staff (Austin, Texas, June 13, 2002), and Texas Youth Commission staff (Austin, Texas, May 22, 2002).
- ² Public notice and meeting held by Community Justice Council of Williamson County and Williamson County Community Supervision and Corrections Department, Granger, Texas, November 27, 2001.
- ³ Criminal Justice Policy Council, *Adult and Juvenile Correctional Population Projections, FY 2002-03*, (Austin, Texas, June 2002), p. I.
- ⁴ Interviews with Texas Department of Criminal Justice, Community Justice Assistance Division staff (Austin, Texas, June 13, 2002), and Texas Youth Commission staff (Austin, Texas, May 22, 2002), Charles Schotz, Government Relations, CRS & Associates (Austin, Texas, July 29, 2002), and telephone interview with Maxine Aaronson (Alice, Texas, June 26, 2002).
- ⁵ Interview with Texas Youth Commission, Legal Staff and Chief of Staff, (Austin, Texas, June 18, 2002).
- ⁶ Memorandum from Texas Department of Criminal Justice to Community Supervision and Corrections Departments, November 4, 1997.
- ⁷ Government Code, sec. 509.010 (a) and (f).
- ⁸ Government Code, secs. 508.119 and 509.010 (a) and (f).
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**SUNSET REVIEW OF THE
CORRECTIONAL OR REHABILITATION
FACILITY SUBCHAPTER**

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