

The logo for the Texas Sunset Advisory Commission is a semi-circle with a thick black border. Inside the semi-circle, the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a bold, white, sans-serif font.

**Texas  
Sunset  
Advisory  
Commission**

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Summary of  
**RECOMMENDATIONS**

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to the  
GOVERNOR OF TEXAS  
and  
Members of the  
SEVENTIETH LEGISLATURE

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February 1987

**SUNSET ADVISORY COMMISSION**

**Recommendations  
to the  
Governor of Texas  
and  
Members of the Seventieth Legislature**

**February 1987**

# SUNSET ADVISORY COMMISSION



Senator Ray Farabee  
Senator Bob McFarland  
Senator John Montford  
Mr. Pete Snelson, Public Member

Senator Chet Edwards, Chairman  
Representative Patricia Hill, Vice Chairman

Representative Bruce Gibson  
Representative Al Granoff  
Representative Jack Vowell  
Mr. Charles Edmonds, Public Member  
Representative Charles Evans, Ex-Officio

Bill Wells, Executive Director

February 1987

The Honorable William P. Clements  
Governor of Texas

Honorable Members of the Seventieth Legislature  
Assembled in Regular Session

Ladies and Gentlemen:

The Sunset Advisory Commission, established in 1977 by the Sixty-fifth Legislature, is directed by statute to: 1) review and evaluate the performance of specified agencies; 2) recommend the abolition or continuation of these agencies; 3) propose needed statutory changes or management improvements to the operations of the agency; and 4) recommend legislation necessary to implement any proposed changes.

Between August of 1985 and January of 1987, the members of the Commission have worked to develop recommendations for the 21 agencies currently scheduled to terminate, unless continued by this Seventieth Legislature. During the period of 19 months, the Commission scheduled 21 days of public hearings for the purpose of finalizing its decisions. The amount of time and effort expended by the Commission was well justified. The nature of the agencies under review is substantially different from those reviewed in the past, both in terms of size and in the complexity of their regulation or service delivery. The manner in which these agencies are finally dealt with by the legislature will be the true test of the sunset process.

The members of the Sunset Advisory Commission are pleased to forward to you their findings and recommendations in this report. As with any undertaking, the Commission has not been unanimous in its decisions concerning all the agencies covered in the report, but it does represent the affirmative approval of a majority of the members of the Commission. We are hopeful you will find this report informative and useful to the final decisions concerning the agencies subject to termination.

Respectfully submitted,

Chairman

Sunset Advisory Commission

**MEMBERS OF THE SUNSET ADVISORY COMMISSION**

**Senator Chet Edwards, Chairman**  
Duncanville  
(Term 1983 - 1987)

**Representative Patricia Hill, Vice-chairman**  
Dallas  
(Term 1983 - 1987)

**Senator Ray Farabee**  
Wichita Falls  
(Term 1985 - 1987)

**Representative Bruce Gibson**  
Cleburne  
(Term 1983 - 1987)

**Senator John Montford**  
Lubbock  
(Term 1985 - 1989)

**Representative Al Granoff**  
Dallas  
(Term 1985 - 1989)

**Senator Bob McFarland**  
Arlington  
(Term 1985 - 1989)

**Representative Jack Vowell**  
El Paso  
(Term 1985 - 1989)

**Mr. Pete Snelson**  
Public Member - Midland  
(Term 1985 - 1987)

**Mr. Charles Edmonds**  
Public Member - Fort Worth  
(Term 1985 - 1987)

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## INTRODUCTION

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that unless legislative bodies are forced to act, no systematic review will be directed toward the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which this can be accomplished on a regular systematic basis.

A variety of approaches to the basic sunset concept have been enacted into law by different states, including one shot reviews of all agencies, staggered review of designated agencies over a defined time period, reviews that allow the reviewing body to determine the time periods and agencies, and reviews that are directed not to agencies but to selected functional groupings of state services.

The sunset process and approach finally adopted by Texas in 1977 was developed around concepts proposed by the Constitutional Convention in 1974 and the Joint Advisory Committee on Government Operations in 1976. Under the Texas Sunset 200 state agencies and advisory committees are scheduled for review or automatic termination at specified intervals. Under the provisions of the Act, agencies created after the effective date of the original Sunset Act are automatically scheduled for termination 12 years after their creation. To assist the legislature in its decision to continue or abolish an agency, the Act provides for a Sunset Advisory Commission. Membership of the commission consists of four members of the House of Representatives and one public member, who are appointed by the Speaker of the House, and of four members of the Senate and one public member, who are appointed by the Lieutenant Governor. Legislative members serve staggered four-year terms and public members serve two-year terms. The chairmanship and vice-chairmanship alternate every two years between the two membership groups appointed by the Speaker of the House and the Lieutenant Governor, each of whom designates the presiding officer from his respective appointees. The commission is authorized to appoint a director and to employ sufficient staff to discharge its responsibilities in regard to agency reviews. The Sunset Advisory Commission is responsible for recommending to the legislature whether the agencies under review and their functions should be abolished or continued in some form.

The process of arriving at commission recommendations moves through four distinct phases beginning with an agency self-evaluation report to the commission. The second phase involves the preparation of an evaluation report by the staff of the Commission. The third phase involves a public hearing at which the information contained in the reports and testimony by the public is considered. The final phase is the determination by the Commission of its recommendations to this legislature and incorporation of those recommendations into proposed legislation.

To date the Commission has reviewed 139 agencies. Actions taken by the Sixty-sixth through the Sixty-ninth Legislatures, under the sunset process, have been positive in terms of incorporating the concept into the existing legislative process.

This report to the Seventieth Legislature contains the Sunset Advisory Commission's recommendations concerning the 21 agencies under review for 1987. As with the Commission's recommendations to prior legislatures, this report is intended to serve as a starting point for legislative deliberations on this group of agencies. In developing recommendations on these agencies, the Commission scheduled 21 days of public hearings from August 1985 through February 1987.

As with all agencies reviewed by the Commission, certain standards developed during the past reviews have been applied to the agencies currently under review. These standards have been developed to address common problems that can be categorized as a lack of public representation on the various boards or commissions, the lack of responsiveness to complaints by the public, lack of responsive enforcement powers and the avoidance of legislative review of expenditures through the appropriations process. The recommended approaches to these overall problems are set out and briefly explained below:

**SUNSET COMMISSION  
ACROSS-THE-BOARD RECOMMENDATIONS BY CATEGORY**

**Recommendation/Justification**

**I. GENERAL** (applicable to all agencies)

**1. Require public membership on boards and commissions.**

The purpose of government is to protect the health, welfare and safety of the public. However some agencies do not have public members on their boards. Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This potential problem can be addressed by giving the general public a direct voice in the activities of the agency through representation on the board.

**2. Require specific provisions relating to conflicts of interest.**

An agency may develop close ties with professional trade organizations and other interested groups which may not be in the public interest. Conflict of interest provisions are necessary to prevent these kinds of relationships from developing.

**3. Prohibit persons registered as a lobbyist under Article 6252-9c, V.A.C.S., from acting as general counsel to the board or serving as a member of the board.**

Apparent conflicts of interest resulting from the dual performance of agency and lobby related activities by board members and board counsel are prohibited by this guideline.

- 4. Specify that appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.**

It is essential that state agencies be fair and impartial in their operations. The achievement of this goal is aided by the existence of policy-making boards whose appointees have been chosen on the basis of impartial and unbiased standards.

- 5. Specify grounds for removal of a board member.**

Several of the preceding across-the-board provisions set out appointment requirements for board members (e.g., conflict-of-interest requirements). This provision specifies directly that it is grounds for removal of a board member if these requirements are not met. In addition, the provision clarifies that if grounds for removal exist, the board's actions taken during the existence of these grounds are still valid.

- 6. Require the board to submit annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.**

Increased legislative overview of agency fiscal activities is provided for through the requirement of annual reports of all agency receipts and disbursements.

- 7. Require the board to establish skill-oriented career ladders.**

This recommendation would help enhance career mobility within the agency.

- 8. Require a system of merit pay based on documented employee performance.**

This recommendation would create a framework for rewarding outstanding performance by agency employees.

- 9. Require an audit of the financial transactions of the agency by the state auditor at least once every biennium.**

Fiscal or other problems in agency management often are first apparent in the financial records of an agency. This provision is aimed at uncovering any such problems in a systematic fashion and insuring the continuing financial accountability of the agency.

- 10. Provide for notification and information to the public concerning board activities.**

The sunset review has shown that the public is often unaware of the regulatory activities of licensing agencies. Consequently, the effectiveness of licensing agencies in serving the general public may be limited. To help insure public access to the services of licensing agencies, steps should be taken to provide information on their services to the general public.

**11. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditure through the appropriation process.**

Various licensing agencies are not subject to legislative control through the appropriation process of the state. This lack of fiscal control by the legislature severely weakens the accountability of those agencies to the legislature and, ultimately, the public at large. By bringing these "independent" agencies within the appropriations process, the legislature and the public could be assured of: 1) full accountability for all state funds on a uniform basis for all agencies; 2) periodic review by the Governor's Budget Office, the Legislative Budget Board, and the legislature; and 3) increased efficiency of state operations through implementation of uniform budgeting, accounting, reporting, and personnel policies.

**12. Require files to be maintained on complaints.**

The sunset review process has shown that complete and adequate complaint files are not maintained by some agencies. This situation has increased the time involved in resolving complaints and limited the agencies' ability to protect the consuming public. The suggested approach would serve to lessen the problem by insuring that, at a minimum, files be developed and maintained on all complaints.

**13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.**

This provision ensures that all parties to a complaint are made aware of the status of the complaint and are provided with current information regarding the substance of the complaint as well as agency policies and procedures pertaining to complaint investigation and resolution.

**14. Require development of an Equal Employment Opportunity policy.**

This recommendation would require an agency to develop a written, comprehensive Equal Employment Opportunity plan which would be filed with the governor's office and updated annually. In addition, agency efforts in this area would be enhanced by requiring the agency to file semi-annual progress reports with the governor's office.

**15. Require the agency to provide information on standards of conduct to board members and employees.**

This recommendation requires the board to inform its members and employees as to the provisions in state law setting standards of conduct for state officers or employees.

**16. Provide for public testimony at agency meetings.**

This requirement promotes public input and participation in activities of the agency.

- 17. Require the policy body of an agency to develop and implement policies which clearly separate board and staff functions.**

This recommendation establishes the executive director/administrator as the individual in charge of managing the agency's day to day activities. It removes the possibility of the board administering the agency in addition to setting agency policy.

## **II. LICENSING (Applicable to agencies with licensing functions)**

- 18. Require standard time frames for licensees who are delinquent in renewal of licenses.**

Variations occur among licensing agencies in requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This provision is aimed at insuring comparable treatment for all licenses, regardless of their regulated profession.

- 19. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.**

This provision insures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores.

- 20. Provide an analysis, on request, to individuals failing the examination.**

This provision insures that examinees are informed of the reasons for examination failure. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as protecting the public by insuring that deficiencies are adequately addressed and corrected before reexamination.

- 21. Require licensing disqualifications to be: 1) easily determined and 2) currently existing conditions.**

The statutes of many licensing agencies contain licensing disqualifiers which are vague and hard to define (such as the requirement that licensees be of "good moral character"). In addition, many provisions can permanently disqualify a person for licensure even though the disqualifying condition (such as drug addiction) is corrected. This across-the-board approach has been applied on a case-by-case basis in an effort to eliminate such vague and inequitable disqualifying provisions.

- 22. (a) Provide for licensing by endorsement rather than reciprocity.**

A policy of licensure by endorsement provides for the licensing of any out-of-state applicant by Texas without examination if the applicant is licensed by a state which possess licensing requirements substantially equivalent to, or more stringent than, Texas' requirements. The endorsement policy protects the public interest, imposes uniform requirements on all applicants, and spares the already-licensed practitioner the cost and time required in "retaking" an examination previously passed in another state.

**(b) Provide for licensing by reciprocity rather than endorsement.**

In a reciprocal licensing agreement, Texas and other states agree to allow a licensee to change states and receive a new license without the need to retake a licensing examination. This insures equal treatment for all out of state licensees and spares the already licensed practitioner the cost and time required in retaking an examination previously passed in another state.

**23. Authorize the staggered renewal of licenses.**

This type of provision encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient utilization of agency personnel by establishing a uniform workload throughout the year and eliminating backlogs in licensing efforts and the need for seasonal employees.

**24. Authorize agencies to use a full range of penalties.**

As a general principle, an agency's range of penalties should be able to conform to the seriousness of the offenses presented to it. However, in many cases, licensing agencies are not given a sufficient range of penalties. This provision is intended to ensure that appropriate sanctions for offenses are available to an agency.

**25. Specify board hearing requirements.**

The statutes of varying licensing agencies contain board hearing provisions which parallel or were suspended by the provisions enacted in the Administrative Procedure and Texas Register Act. This across-the-board approach is a "clean-up" provision which directly specifies that a person refused licensure or sanctioned by a board is entitled to a hearing before the board, and that such proceedings are governed by the Administrative Procedure Act.

**26. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.**

The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy". Elimination of these rules or statutes restores a degree of free competition to the regulated area to the benefit of the consumer.

**27. Authorize the board to adopt a system of voluntary continuing education on an annual basis. (optional)**

This provision was applied on a case-by-case basis. It was determined that, with respect to certain professions, proper protection of the public was dependent on practitioners having a working knowledge of recent developments and techniques used in their trades. The continuing education requirement provides one proven means of ensuring such upgrading.

## **Introduction**

### **THE ADULT CORRECTIONS SYSTEM IN TEXAS**

The corrections system in Texas is managed through three agencies having primary responsibility for adult offenders, the Texas Adult Probation Commission (TAPC), Board of Pardons and Paroles, and Texas Department of Corrections (TDC). An offender becomes involved in adult corrections through the judicial system, which has a complex structure in Texas. This is due to the large variety and number of courts in the state, including district courts, county courts, county courts-at-law, probate courts and others. Judges bear the primary burden for hearing cases and sentencing offenders because over 90 percent of all cases result in guilty pleas with sentences assessed by a judge and not a jury.

Generally, when a defendant pleads guilty or no contest to an offense or is convicted, he/she can be sentenced to a term of imprisonment (prison time for felony offenses and jail time for misdemeanors), or he/she can be placed on probation. A judge may not grant probation if a person is found guilty of capital murder, aggravated kidnapping, aggravated sexual assault, aggravated robbery, or when a deadly weapon was used in the commission of or flight from an offense. In cases where a person pleads guilty or no contest, the court may also defer adjudication and place the person on probation. Because there is no conviction in deferred adjudication, the offense does not appear on a person's record. The court can defer adjudication in every type of offense, except involuntary manslaughter, driving while intoxicated and certain drug offenses.

For those placed on probation, the imposition of the sentence is actually suspended and the person must comply with certain terms of probation or risk going back to court for a revocation. The terms of probation are set by the court and may include but are not limited to any of the following: paying a probation supervision fee, court costs, fines associated with the offense, attorney fees, and victim restitution; performing community service work hours; attending a treatment program; being placed in a special probation program or facility and placement in a contract work program. Courts can add other reasonable conditions to the terms of probation and can modify terms at any time. The period of probation can be no longer than 10 years for felony offenses and no longer than the maximum period of confinement prescribed for misdemeanor offenses.

Probationers come under the supervision of the court and consequently become the responsibility of a probation department. Due to the local structure of adult probation services in Texas, nearly every court trying criminal cases in the state uses adult probation officers in overseeing the supervision of probationers. Currently, 110 judicial district adult probation departments have elected to participate in the state funded probation system, while seven departments have elected not to participate. These seven departments operate their own probation system and do not receive state funding assistance. The population of the non-participating counties represents less than two percent of the state's total population. Participating probation departments in compliance with TAPC guidelines receive state aid which funds probation services, residential facilities in some departments and probation officer salaries, fringe benefits, travel and other expenses. In 1985, approximately 1,800 probation officers statewide provided direct supervision to an average of 74,000 felony and 98,000 misdemeanor probationers and indirect supervision to an additional 73,500 probationers.

Probation departments may be involved with offenders before the court sentencing phase through pre-trial diversion programs and writing pre-sentence investigation reports used by courts in sentencing. However, the main involvement of the department comes after a person has been placed on probation by the court. Once an offender is received from court, the probation officer generally interviews the person to review conditions of probation that must be followed and to assess problem areas and level of supervision needed. Through the use of the case classification system, a probationer's needs and risks are assessed and a supervision plan is developed.

Probationers who successfully comply with probation conditions can be released early or upon completion of the full probation term. Violations of probation terms, however, can lead to revocation of probation. In such cases, the court holds a revocation hearing, after which probation may be revoked, modified or continued.

There are three main ways a felony offender can enter TDC: directly from court after sentencing; through probation revocation; and through parole revocation. See Exhibit I for percentage of admissions from each source. Once a person is sent to TDC, that person is under TDC's jurisdiction until his/her sentence is served out. TDC has two main responsibilities in dealing with inmates -- to confine the inmates in secure facilities during their incarceration and to provide them

programs and services to assist with their special needs and overall rehabilitation. Currently, there are over 38,000 inmates housed in the 26 units of TDC.

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**Exhibit 1**  
**Source of TDC Admissions for Selected Months - 1985**

	<u>January 1985</u>	<u>August 1985</u>	<u>September 1985</u>	<u>Average</u>
Returned Parolees	28%	29%	27%	28%
Revoked Probationers	37%	33%	37%	36%
From the Courts	<u>35%</u>	<u>38%</u>	<u>36%</u>	<u>36%</u>
	100%	100%	100%	100%

---

An inmate can be released from TDC in one of four ways: shock probation, release on parole, mandatory release, and release after serving his/her complete sentence. "Shock probation" can be granted by the judge within 180 days of the time of sentencing. The offender is released after a short period of incarceration to the supervision of a local probation department. Most inmates are either paroled or released to mandatory supervision. Parole eligibility generally occurs when an inmate's flat time served and awarded good time equal one-third of his or her sentence. Mandatory release occurs when time served at TDC and good conduct time awarded to the inmate equal his/her sentence. Because of granting of good conduct time to inmates by TDC, very few inmates ever serve their entire sentence at TDC.

Parole decisions are made by the Board of Pardons and Paroles. The board, and nine parole commissioners employed by the board, form three-member panels to review all inmates for parole as they become eligible. Inmates approved for release on parole are then supervised by board staff. Currently, the board has 658 employees in parole supervision. Actual supervision is done by employees working out of 42 district offices located in eight geographical regions. Parolees remain under the board's supervision until they serve out the remainder of their sentence not served in TDC. In addition to parolees, all inmates receiving a mandatory release from TDC are also under the supervision of the board for the remainder of their sentences. Exhibit II shows the number of releasees under active supervision of the Board of Pardons and Paroles for the last five years.

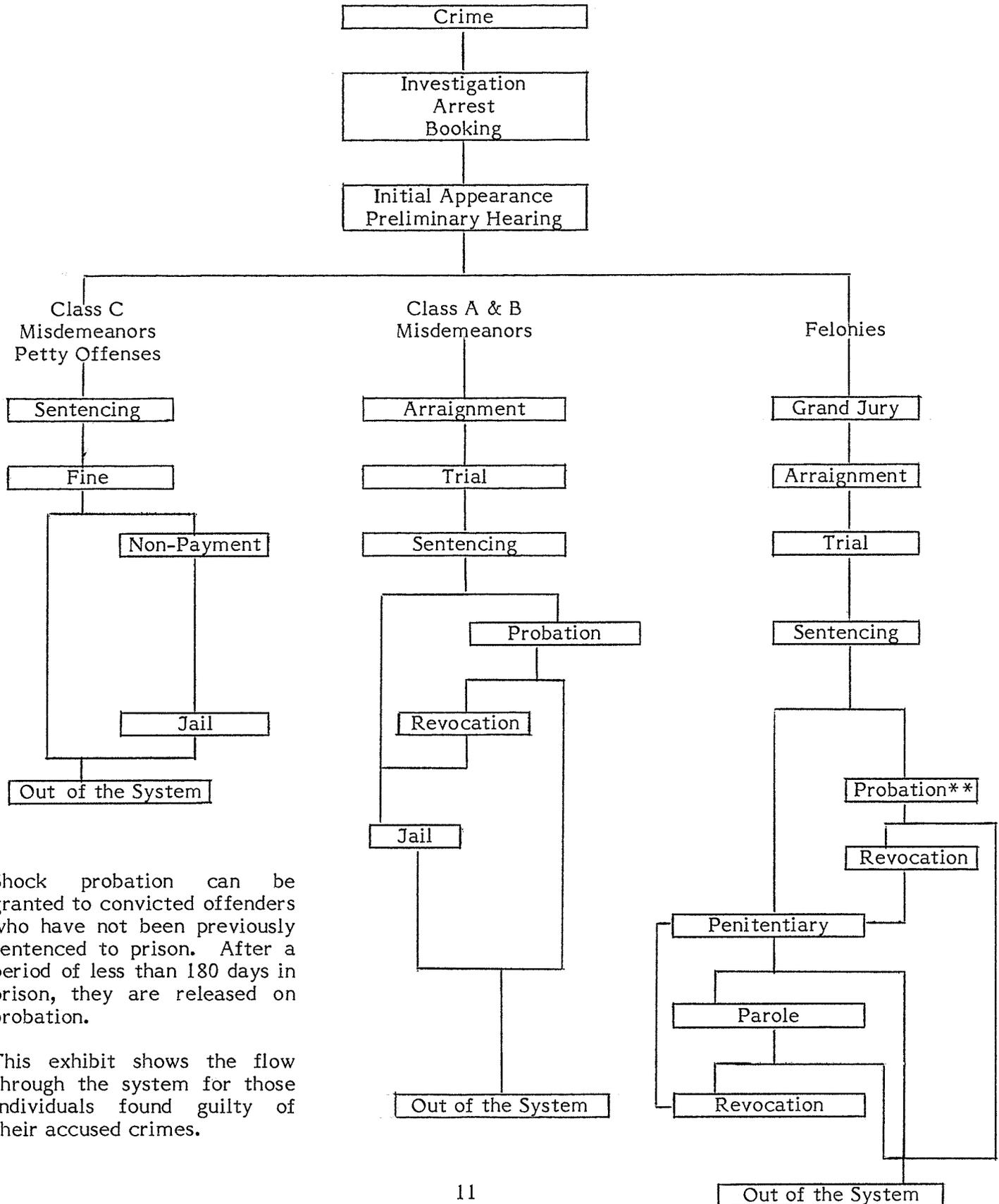
**Exhibit 2**  
**Releasees Under Active Supervision**

<u>Type of Release</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Parolees	10,929	12,945	14,415	17,279	17,820*
Mandatory Supervision Releasees	3,148	5,004	8,344	12,422	15,181
Parolees in Texas from other states	<u>1,389</u>	<u>1,635</u>	<u>1,613</u>	<u>1,761</u>	<u>1,812</u>
TOTALS	<u>15,466</u>	<u>19,584</u>	<u>24,372</u>	<u>31,462</u>	<u>34,813</u>

\* This figure includes inmates participating in the agency's pre-parole transfer program.

At the end of fiscal year 1985, there were 17,820 parolees and 15,181 mandatory releasees under the active supervision of the board. Exhibit III, which follows, provides an overview of the adult criminal justice system.

**Exhibit 3  
Adult Corrections System\***



\*Shock probation can be granted to convicted offenders who have not been previously sentenced to prison. After a period of less than 180 days in prison, they are released on probation.

\*\*This exhibit shows the flow through the system for those individuals found guilty of their accused crimes.



## TEXAS ADULT PROBATION COMMISSION

### Background

#### Creation and Powers

The Texas Adult Probation Commission (TAPC) was created in 1977 by the 65th Legislature and is currently active. The commission was established to make probation services available throughout the state, to improve the effectiveness of probation services, to provide alternatives to incarceration and to establish uniform probation administration standards through distribution of funds to local departments.

While the commission's structure is fairly new, roots were established for adult probation in Texas with the Suspended Sentence Act of 1913, which provided for the release of convicted offenders without imprisonment. This Act was amended several times over the years but remained in effect until 1965. Passage of several other important laws caused probation to evolve over time into its current form. Enactment of the Adult Probation and Parole Law in 1947 provided the first legislative mandate for probation in the state. The law gave responsibility for adult probation to the State Board of Pardons and Paroles. While the Board's staff was to work with the courts and offenders, no funds were appropriated by the legislature and probation programs never developed.

In 1957, a second adult probation and parole law was enacted. This law separated the administration of probation and parole, designating probation as a function of county government and parole a function of the state. It authorized the commissioners court to employ and set salaries of probation officers in each county and to combine two or more counties within a single judicial district to share expenses. However, no provision was made for state subsidy, oversight or control of probation. The Revised Code of Criminal Procedure was enacted in 1965 and mandated significant changes in probation. Under this code, the Suspended Sentence Act was eliminated and probation was expanded to include misdemeanors. District judges were vested with the authority to employ probation personnel and administer the department, although fiscal support required the advice and consent of the commissioners court. Two years later, courts were given authority to assess a fee as a condition of probation and the revenue was to be used by that judicial district to offset operational expenses.

It was not until 1977 that the legislature created the Texas Adult Probation Commission as a separate agency charged with overseeing adult probation depart-

ments in Texas. Originally, the commission consisted of six district judges and three public members, all appointed by the judiciary. State funding was appropriated to the commission in 1978 for administration of agency programs and for distribution to judicial district adult probation departments. Programs have been expanded since that time to include establishment of intensive supervision probation, court residential treatment centers, restitution centers, specialized caseloads and contract residential services.

### **Board Structure**

The structure of the Texas Adult Probation Commission is unique in state government due to the judiciary's responsibility for appointing the nine commission members. The Chief Justice of the Supreme Court appoints three district court judges and two citizen members, while the presiding judge of the Texas Court of Criminal Appeals appoints three district court judges and one citizen member. The chairman of the commission is selected by the members. All members serve staggered six-year terms. Senate Bill 454 of the 69th Legislature recently added three county court-at-law judges to the commission, bringing the total number of commissioners to 12.

### **Funding and Organization**

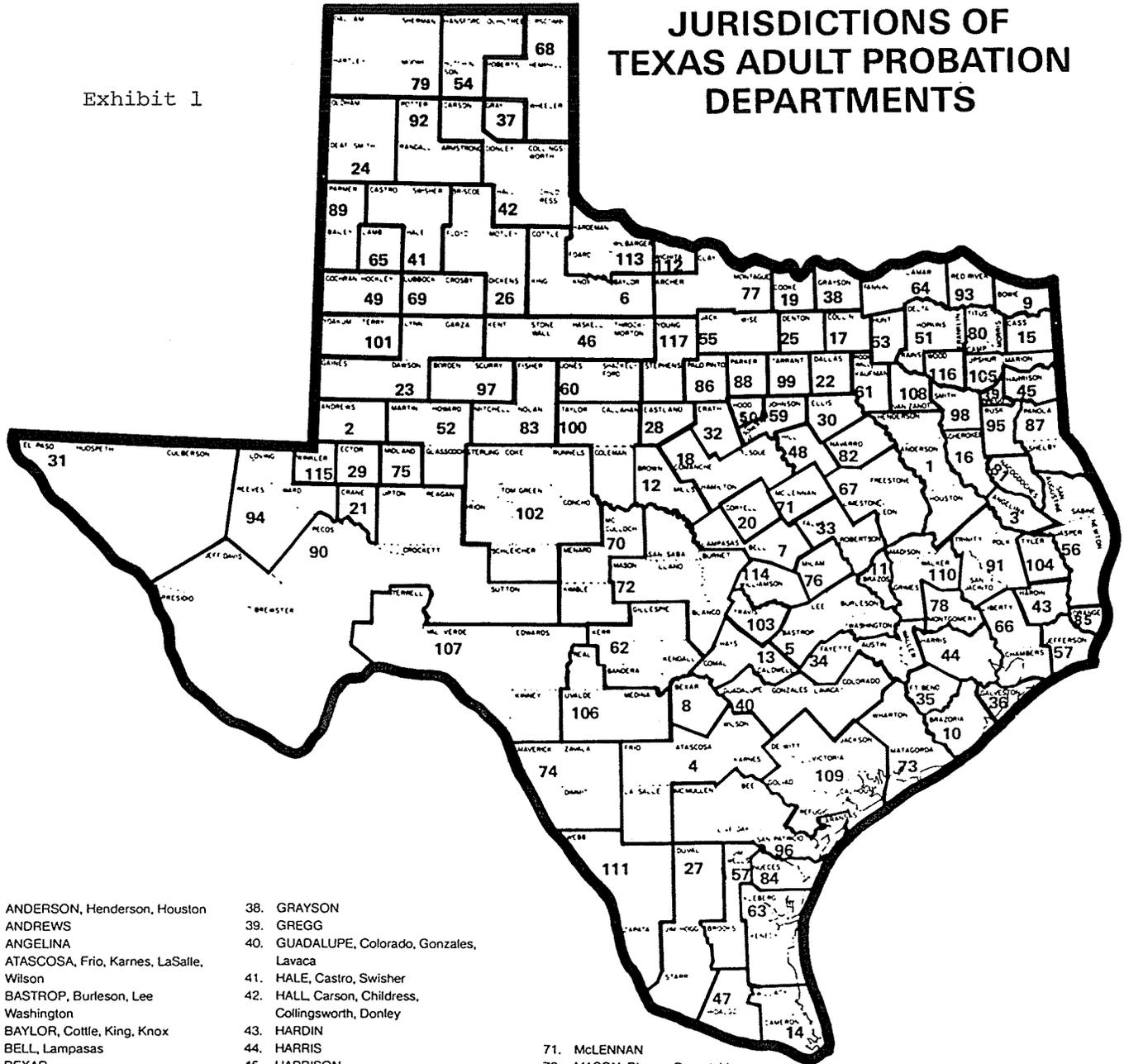
The commission employs 61 people, with headquarters in Austin, Texas. There are no branch offices. Funding for fiscal year 1986 totals \$44,662,057, all of which is from general revenue. About 95 percent of the agency's funds are distributed to local probation departments in the form of state aid.

Currently, 110 out of a total of 117 judicial districts have elected to participate in the TAPC system and receive state aid. Exhibit 1 illustrates the judicial district boundaries. By electing to participate, judicial district adult probation departments are subject to state guidelines for establishing probation services in order to continue receiving state aid. These departments employ approximately 1,900 probation officers and in fiscal year 1986 provided direct supervision to an average of 78,328 felony cases and 110,944 misdemeanor cases. An additional 81,319 adult probationers were receiving indirect supervision.

The adult probation system in Texas requires coordination between state and local personnel to oversee probation services in the field. Because district judges have primary responsibility for overseeing probation department activities, budgets and hiring of chief personnel, probation department staff are considered employees of the judicial district and not the county. Counties contribute office space,

Exhibit 1

# JURISDICTIONS OF TEXAS ADULT PROBATION DEPARTMENTS



- |   |  |  |  |
|---|--|--|--|
| 1. ANDERSON, Henderson, Houston             | 38. GRAYSON  | 71. McLENNAN   | 98. SMITH  |
| *2. ANDREWS                                 | 39. GREGG  | 72. MASON, Blanco, Burnet, Llano, San Saba                                 | 99. TARRANT  |
| 3. ANGELINA                                 | 40. GUADALUPE, Colorado, Gonzales, Lavaca          | 73. MATAGORDA, Wharton   | 100. TAYLOR, Callahan, Coleman                                     |
| *4. ATASCOSA, Frio, Karnes, LaSalle, Wilson | 41. HALE, Castro, Swisher                          | 74. MAVERICK, Dimmit, Zavala   | 101. TERRY, Yoakum   |
| 5. BASTROP, Burleson, Lee, Washington       | 42. HALL, Carson, Childress, Collingsworth, Donley | 75. MIDLAND  | 102. TOM GREEN, Coke, Concho, Irion, Runnels, Schleicher, Sterling |
| 6. BAYLOR, Cottle, King, Knox               | 43. HARDIN   | 76. MILAM  | 103. TRAVIS  |
| 7. BELL, Lampasas                           | 44. HARRIS   | 77. MONTAGUE, Archer, Clay   | 104. TYLER   |
| 8. BEXAR                                    | 45. HARRISON                                       | 78. MONTGOMERY   | 105. UPSHUR, Marion  |
| 9. BOWIE                                    | *46. HASKELL, Kent, Stonewall, Throckmorton        | 79. MOORE, Dallam, Hartley, Sherman  | 106. UVALDE, Medina, Real  |
| 10. BRAZORIA                                | 47. HIDALGO  | 80. MORRIS, Camp, Titus  | 107. VAL VERDE, Edwards, Kinney, Terrell                           |
| 11. BRAZOS                                  | 48. HILL   | 81. NACOGDOCHES  | 108. VAN ZANDT   |
| 12. BROWN, Mills                            | 49. HOCKLEY, Cochran                               | 82. NAVARRO  | 109. VICTORIA, Calhoun, DeWitt, Goliad, Jackson, Refugio           |
| 13. CALDWELL, Comal, Hays                   | 50. HOOD   | 83. NOLAN, Fisher, Mitchell  | 110. WALKER, Grimes, Madison                                       |
| 14. CAMERON, Willacy                        | 51. HOPKINS, Delta, Franklin, Rains                | 84. NUECES   | 111. WEBB, Zapata  |
| 15. CASS                                    | 52. HOWARD, Glasscock, Martin                      | 85. ORANGE   | 112. WICHITA   |
| 16. CHEROKEE                                | 53. HUNT   | 86. PALO PINTO   | *113. WILBARGER, Foard, Hardeman                                   |
| 17. COLLIN                                  | 54. HUTCHINSON, Hansford, Ochiltree                | 87. PANOLA, Shelby   | 114. WILLIAMSON  |
| 18. COMANCHE, Bosque, Hamilton              | 55. JACK, Wise                                     | 88. PARKER   | *115. WINKLER  |
| 19. COOKE                                   | 56. JASPER, Newton, Sabine, San Augustine          | 89. PARMER, Bailey   | 116. WOOD  |
| 20. CORYELL                                 | 57. JEFFERSON                                      | 90. PECOS, Brewster, Crockett, Jeff Davis, Presidio, Reagan, Sutton, Upton | 117. YOUNG, Stephens   |
| *21. CRANE                                  | 58. JIM WELLS, Brooks                              | 91. POLK, San Jacinto, Trinity   |  |
| 22. DALLAS                                  | 59. JOHNSON, Somervell                             | 92. POTTER, Armstrong, Randall   |  |
| 23. DAWSON, Gaines, Garza, Lynn             | 60. JONES, Shackelford                             | 93. RED RIVER  |  |
| 24. DEAF SMITH, Oldham                      | 61. KAUFMAN, Rockwall                              | 94. REEVES, Loving, Ward   |  |
| 25. DENTON                                  | *62. KERR, Bandera, Gillespie, Kendall,            | 95. RUSK   |  |
| 26. DICKENS, Briscoe, Floyd, Motley         | 63. KLEBERG, Kenedy                                | 96. SAN PATRICIO, Aransas, Bee, Live Oak, McMullen                         |  |
| 27. DUVAL, Jim Hogg, Starr                  | 64. LAMAR, Fanin                                   | 97. SCURRY, Borden   |  |
| 28. EASTLAND                                | 65. LAMB   |  |  |
| 29. ECTOR                                   | 66. LIBERTY, Chambers                              |  |  |
| 30. ELLIS                                   | 67. LIMESTONE, Freestone, Leon                     |  |  |
| 31. EL PASO, Culberson, Hudspeth            | 68. LUBBOCK, Crosby                                |  |  |
| 32. ERATH                                   | 69. LUBBOCK, Crosby                                |  |  |
| 33. FALLS, Robertson                        | 70. McCULLOCH, Kimble, Menard                      |  |  |
| 34. FAYETTE, Austin, Waller                 |  |  |  |
| 35. FORT BEND                               |  |  |  |
| 36. GALVESTON                               |  |  |  |
| 37. GRAY                                    |  |  |  |

utilities and equipment to probation departments. For this reason, probation staff who work closely with county employees are often housed in county courthouses and generally follow county personnel guidelines. The state is involved in probation through the establishment of uniform standards for services statewide and through distribution of state aid, which primarily pays for probation services, residential facilities and probation officer salaries, travel and fringe benefits.

### **Programs and Functions**

As described earlier, TAPC's primary activities are to provide funding to departments, set and monitor compliance with probation standards and establish new probation programs statewide. To fulfill these responsibilities, the agency is organized into four major divisions which include Administration, Fiscal Services, Program Services and Data Services. Although these programs reflect the agency's general categories of activity, the sunset evaluation was structured around an analysis of the actual functions of the agency. In reviewing the performance of the Texas Adult Probation Commission, the following four functions were identified and analyzed: 1) administration and support services, 2) probation policy and program development, 3) state aid distribution, and 4) monitoring and enforcement. A description of these functions is set out below.

#### **Administration and Support Services**

Public Information. The agency's public information officer and two specialists develop written and audio-visual materials for local departments, legislative groups, the public and media. The department maintains a small library of publications containing factual reports on probation and TAPC activities. Local departments can use the library and related resources in a variety of ways. For instance, TAPC graphics specialists assist local departments in developing customized brochures and they loan audio-visual presentations illustrating state-wide probation efforts to departments .

Legislative and media requests are also handled through the department by recording and making available commission meeting minutes and answering requests on probation issues and policies. Since 1983, public information has published over 38 manuals, brochures, workbooks, directories and reports, as well as a bi-monthly newsletter distributed to all local departments. In addition, they have developed nine video or slide/tape presentations used to promote and explain adult probation in Texas.

General Counsel. Located within the executive administration division of TAPC, the general counsel acts as the agency's legal advisor. The counsel's primary duties include legal research, providing written opinions for the commission and legal information bulletins for probation departments, drafting standards for publication in the Texas Register, interpreting standards, and acting as the liaison between the attorney general's office and the agency. Although the county attorney provides assistance to local probation offices, legal assistance is also provided by the general counsel in clarifying laws or standards upon request of local departments. Complaint files are also maintained by the agency counsel. Written complaints are first reviewed by the executive director and, if warranted, are sent to the legal counsel for further investigation.

Training. The training section currently consists of a coordinator and a staff of five within the Program Services Division. Professional development training is provided statewide to probation officers in order to meet TAPC requirements that officers receive at least 20 hours of professional training annually and to assist local departments in improving delivery of probation services. Training has been made available to 2,100 personnel as of fiscal year 1984, including chief probation officers, supervisors, probation line officers and support staff.

Probation officers receive their 20 hours of annual training from three primary sources. First, TAPC has developed a comprehensive case classification training system which assists probation officers in determining the level of supervision needed by probationers and in establishing an appropriate supervision plan. Besides this fundamental training provided by TAPC trainers, courses are offered in intensive supervision probation and restitution center supervision and management to probation departments statewide. Additional workshops are offered on a periodic basis to probation administrators and line officers who work with special groups such as DWI offenders. In fiscal year 1985, TAPC sponsored workshops in 32 locations statewide for a total of 2,880 training hours delivered. Second, training for newly employed probation officers is offered in cooperation with Sam Houston State University. In fiscal year 1985, the university provided 16,336 hours of training to 538 juvenile and adult probation officers. The university uses a TAPC-approved curriculum for training new adult probation officers and provides approximately 40 classroom hours. Currently, approximately 75 percent of new adult probation officers attend basic training. Third, officers

may attend any other outside workshops or courses approved by TAPC that are shown to be relevant to adult probation. These courses may be offered in the local community or at state or regional conferences.

Data Services. The data services division, with 17 authorized employees, is responsible for: 1) data processing, 2) statistical reporting, 3) management information systems, and 4) interstate compact transfers. With the exception of the interstate compact, the functions performed in this division are closely related.

The division is responsible for the design, operation and maintenance of the commission's computerized information systems. Data processing duties primarily involve entering and tracking probationer data, programming, and maintenance of the system. Monthly workload summary reports received from all probation departments are processed in this division in order to compute per capita state aid payments. The agency's statistician prepares monthly reports from the workload summary reports received from departments, updates and maintains the telephone directory which contains listings from all probation departments, provides technical assistance to probation offices and analyzes data to develop probation population projections and offender profiles.

The management information specialist serves as a resource to local departments by designing and implementing standardized computer programs for local departments and by providing technical assistance and software programs to departments for accounting, budgeting or tracking persons on probation. Management information systems have been installed in 15 local probation departments.

The Interstate Probation and Parole Compact is a binding agreement among all 50 states and some provinces regarding supervision of probationers who want to reside outside the state where they were placed on probation or parole. Each state has a compact administrator who is responsible for overseeing the compact rules. The governor of Texas appoints the administrator for our state, who in turn appoints two deputy administrators, one for probation and one for parole. The executive director of the Texas Adult Probation Commission (TAPC) currently serves as the deputy compact administrator for probation. This function is currently assigned to the data services division which is responsible for tracking the high volumes of transfers to and from the state. For example, from July 1, 1984 through June 30, 1985, Texas received 2,616 probationers from other states and sent out 4,085 probationers.

members. The agency's legal counsel would then review the standard and draft language before it is approved by the executive director. Sometimes standards are reviewed by local probation officers either in writing or through their review at commission meetings. After final approval from the commission, the standard is published in the Texas Register, inserted in the manual and all departments notified of the new rule. The standards are currently undergoing a revision process which is being carried out by the agency's advisory committee. After the committee reviews the standards and determines changes needed, recommendations will be presented to the commission.

Program development generally begins with ideas generated through the legislature, probation departments, or agency staff. For agency-initiated program ideas, the process begins with identifying probation needs in Texas, obtaining information about new programs that have been successful in other states and, in some cases, identifying potential grant money available to fund a study or pilot program. New programs are discussed internally at TAPC to determine impacts on known probation needs and trends in Texas. Ideas that are approved internally go through the commission for approval before funding is requested from the legislature for programs that appear to be successful. Programs developed by TAPC are operated through local probation departments. TAPC primarily provides funding, sets standards for the programs and monitors program activities once they are in place.

The major programs funded by TAPC and operated by local probation departments are described as follows:

Basic Probation Services. As mentioned earlier in the report, in 1985 an average of 1,800 probation officers in the state were responsible for supervising 74,000 felony and 98,000 misdemeanor probationers. Supervision efforts typically include: intake and screening of probationers; assessing needs and risks of probationers in order to develop appropriate supervision plans; drug and alcohol testing; in-office counseling with probationers; visits to the probationers' home or job site; referral services; and documentation of progress. Probationers placed on regular probation are assigned to one of three levels of direct supervision: maximum supervision, which requires two contacts per month with a probation officer; medium supervision, which requires one in-office visit per month and one visit outside the office every three months; and minimum supervision, which requires an in-office visit once every three months and submission of monthly written reports.

In addition to supervising probationers, adult officers are often responsible for collecting from probationers court costs, fines, attorney fees, probation supervision fees and victim restitution payments ordered by the court. Probation officers may also be involved in coordinating community service work for probationers if ordered by the court. Basic per capita funding provided by TAPC at \$.75 per day for felony probationers and \$.40 per day for misdemeanor probationers helps pay for basic probation services in local departments.

Intensive Supervision Probation (ISP). The ISP program was created in 1981 to serve felony offenders who are documented diversions from TDC. To be eligible for court placement in ISP, an offender must meet one or more of the following criteria: one or more prior commitments to jail or prison; one or more convictions; documentable employment, drug, alcohol or mental/emotional problems; and commitment of a serious current offense. Probationers placed in the program receive more frequent contacts with probation officers than do those on regular direct supervision. Caseloads for officers supervising ISP probationers are limited to a maximum of 40 people in order to allow for a more intense level of supervision. Assignment to the program is generally for one year, unless the court extends the term. Performance reviews are done every 90 days and probationers showing significant progress may be transferred to a regular probation caseload. In fiscal year 1985, 49 probation departments received state funding from TAPC for ISP caseloads.

Restitution Centers. Established by the legislature in 1983, restitution centers provide a community-based residential sanction for non-violent felony offenders who would have otherwise been incarcerated at TDC. The program's goal is to assist probationers in seeking employment and paying restitution to their victims through supervision in a structured residential setting. The salary earned by the probationer is turned over to the center director for deposit in a special fund after deducting victim restitution, court-ordered fees and fines, room and board expenses, and dependent support. Probationers are assigned to the center for a maximum of one year and evaluations occur every three months. Upon being successfully discharged from the facility, a probationer is placed on intensive supervision probation for two months before eventually going to a regular probation caseload. At the end of fiscal year 1985, 12 restitution centers were operational, with 323 probationers residing at the centers. Fifteen centers will be funded by

TAPC in fiscal year 1986, of which three are contract operated facilities and the remainder department run.

Court Residential Treatment Centers (CRTC). The first community-based correction program funded by the commission in 1978 was the court residential treatment center. This residential facility provides a structured setting for felony offenders in need of mental health treatment, drug or alcohol treatment, job training and basic education. Probationers are classified according to need and are assigned to a treatment program during their stay in a CRTC. In addition to regular probationers, those on intensive supervision probation can also be served in the CRTC. When probationers have made significant progress in their treatment plan, they are discharged from the facility and placed on regular probation. Three CRTCs -- in El Paso, Waco and Houston -- are currently funded by TAPC. While all existing CRTC facilities are operated by local probation departments, contract arrangements are also permitted. At the end of 1985, there were 187 CRTC residents.

Specialized Caseloads. A specialized caseload is created when probationers sharing the same type of problem, such as alcohol abuse or assaultive behavior, are grouped together and are assigned to a probation officer who specializes in dealing with the problem. TAPC has funded specialized caseloads for alcohol and drug abusers, sex offenders, mentally ill and mentally retarded probationers, and assaultive probationers. Those on specialized caseloads are given a needs assessment so that a personal treatment plan can be developed and treatment services arranged by the probation officer. Services may be provided through a contract arrangement, volunteer groups or by a specially trained probation officer. This program serves both felony and misdemeanor offenders. There are currently eight probation departments receiving specialized caseload funding from TAPC.

#### Monitoring and Enforcement

Fiscal Auditing. The fiscal audit staff, composed of one supervisor and eight field auditors, do field audits of adult probation departments statewide to determine their compliance with fiscal standards established by TAPC. Approximately 60 fiscal audits are conducted annually.

The first step in a departmental audit involves about 10 to 40 hours of pre-audit work done in Austin. This includes doing a review of a department's financial records, previous audits and other related correspondence. A letter is then sent

out to the department's probation staff, judges and county fiscal officer notifying them of the upcoming audit. The second step involves an on-site review of financial records. Here, auditors check to verify caseload data for financial eligibility, examine the department's revenues and expenditures and review general accounting procedures such as their receipting system and methods for handling vouchers and payments. County contributions for utilities, facilities and equipment are also checked. The time required to conduct on-site audits ranges from 40 to 160 hours, depending on the size of the department. After the review is completed, an exit interview is conducted with the chief probation officer, chief fiscal officer and the judges to discuss problems and adjustments. The audit report is then prepared by the auditor and reviewed by the supervising auditor.

The audit report then goes through an approval process at TAPC beginning with the audit review committee, composed of four commission members. After the report receives committee approval, it is sent to the department's district judge, chief probation officer and fiscal officer with a request for a written response to the findings and plan for initiating corrective action. The department's response receives a second review by the audit review committee and the final draft of the report then goes before the entire commission for approval or disapproval.

In addition to performing fiscal audits, the audit staff is available to provide technical assistance to the probation departments in the areas of internal control, accounting systems, efficiency of operations, budgeting and cost control.

Program Monitoring. The program audit staff, composed of a supervisor and five management auditors, review the main programs operated by probation departments, including the basic and supplemental per capita programs, ISP, restitution centers and CRTCs. Audits primarily focus on management functions of local departments including use of case classification and supervision plans, re-evaluation of supervision plans, use of pre-sentence reports and intra-state transfer procedures. They also verify the number of probationers claimed by the department for state aid per capita payment. In fiscal year 1985, there were 67 on-site program audits. All departments are generally audited at least every four years on a priority basis, with large departments and departments with compliance problems receiving more frequent audits.

The first step in the program audit is to send out three forms to the department -- a program questionnaire, a management questionnaire and a self-

evaluation form -- which are completed and returned to TAPC prior to beginning the on-site review. When this information is received by the audit staff in Austin for review, a statistical sample is then selected from all probationers claimed for per capita reimbursement. The sample is used to determine compliance when the on-site audit is conducted in lieu of looking at data on every probationer receiving supervision. It is assumed that any problems or trends found within the sample would be representative of the entire group.

During the on-site audit, samples developed in Austin are reconciled with an examination of department files to determine the department's error rate. For error rates over an acceptable level, the department may be requested to refund a certain amount of money back to the commission. Generally, the on-site audit takes from three to five days for between two and five TAPC program monitors and is followed by an exit interview to discuss areas of non-compliance with TAPC standards.

During the exit interview, time frames are established for when corrective action or compliance will be achieved by the department. Some citations issued to departments for non-compliance with standards may require immediate action, while others can be waived. Waivers to some standards not dealing with legal matters can be granted by the executive director when inadequate resources or circumstances warrant it. In other instances, waivers can only be granted by the commission, such as for standards on experience of probation officers or the county's ability to provide adequate facilities to the department. In these instances, the corrective action plan from the audit is reviewed by the program services committee and a recommendation is made to the full commission. Waivers are issued to departments for a limited period of time, with a corresponding compliance date that departments must meet.

Following the on-site review, a draft report is prepared and sent to the probation department for comments and the signature of the chief probation officer. Afterwards, a final report containing the corrective action plan is published. Further follow-up reviews and documentation may be performed with some departments to check their progress on areas where citations were issued.

#### **Scope of Sunset Review**

The Texas Adult Probation Commission is a fairly small agency with only 61 employees at the headquarters office in Austin. However, the commission is responsible for funding and monitoring 110 adult probation departments across the

state which employ about 1,800 probation officers. Because of the large size of adult probation field operations, a two-pronged approach was used during the review. First, interviews were held at the headquarters in Austin to get a basic understanding of probation programs. These were followed by field visits and interviews with probation offices in different areas of the state. The field visits were designed to get an orientation to both large and small scale probation programs, along with a look at the special programs operated by probation departments such as restitution centers, intensive supervision probation and specialized caseloads. Where possible, interviews were held with the district judges responsible for overseeing the probation departments. Reports and studies regarding the agency were also reviewed.

In doing the sunset review of TAPC, it was necessary to get a general overview of how the entire corrections system works together, from juvenile probation to the adult corrections and parole system. The trend in adult corrections in recent years has been to focus on relieving TDC prison overcrowding and improving prison conditions as a result of the Ruiz vs. McCotter lawsuit. Since corrections funding is often viewed along a continuum, adult probation funding has suffered some financial setbacks due to the more urgent situation at TDC. The TAPC has, subsequently, had to make fewer probation dollars stretch further. This has been compounded by the rapidly growing probationer population in the state due to state growth and increased pressure on the probation system to do its part in diverting offenders from placement in TDC facilities.

Because of the importance of evaluating probation programs as a means of diverting offenders from going to TDC, issues related to this were addressed during the sunset review of TACP. The review also focused on the commission's effectiveness in overseeing probation programs with special emphasis on these areas: 1) the structure of probation services which involves a partnership between TAPC, the district judges who oversee the probation departments and the counties which contribute office space and other support to the departments; 2) the standard setting, funding and monitoring functions performed by the commission; and 3) the use of special programs funded by the commission such as restitution centers. While improvements were needed in several areas, they generally dealt with diverting offenders from TDC, making probation programs and policies more consistent between departments, allowing more flexibility in the sanctions used for probationers and giving the commission additional enforcement authority over non-

compliant probation departments and counties that fail to provide adequate support to departments.

### **Need to Continue Agency**

The sunset review of the agency's programs and responsibilities indicated that there is a continuing need for the state to be substantially involved in overseeing the management of adult probationers. The review indicated that while the agency has generally met its goals and objectives in an efficient and effective manner, a number of improvements should be made in the event the legislature decides to continue the agency. The recommendations are presented in the material that follows.

**Sunset Commission Recommendations for the  
TEXAS ADULT PROBATION COMMISSION**

**CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be changed to clearly authorize TAPC to appoint advisory committees as needed and to specify the purpose, duties, selection and reporting requirements through agency rules. (Statutory)**

The agency has no clear authority to have advisory committees to assist the commission. To clarify the agency's authority for the existing advisory council and any others deemed necessary in the future, the statute should be changed to expressly authorize TAPC to appoint advisory committees and to establish purposes and procedures for the committees through the rule-making process.

**Overall Administration**

- 2. The statute should be amended to clearly authorize TAPC to provide training and technical assistance to local probation departments. (Statutory)**

While TAPC performs an important service to local probation departments through training and technical assistance efforts, no clear authority exists for these activities in statute. Training activities are necessary for standardizing probation supervision across the state and for promoting compliance with agency standards. To clarify the agency's authority, the statute should authorize TAPC to provide training and technical assistance.

- 3. The statute should: a) require TAPC to establish a certification program for adult probation officers, and b) require completion of the certification course and examination prior to appointment as a probation officer. (Statutory)**

Currently, about 75 percent of all newly hired probation officers attend a pre-service probation training course, although there is no requirement to do so. Pre-service training helps promote consistency between probation departments across

the state and improve service delivery to probationers. In order to ensure that all new officers receive basic training, the statute should be changed to require TAPC to develop a pre-service certification process, including training coursework and examination, and to require completion of the coursework and examination within the first year of employment as a probation officer.

### Evaluation of Programs

#### Probation Policy and Program Development

- 4. The statute should be changed to clearly authorize TAPC to fund and set standards for the intensive supervision probation (ISP) program. (Statutory)**

While the ISP program currently funded by the agency was established to divert felony offenders from incarceration at the Texas Department of Corrections, there is no clear authority for the program in statute. In order to ensure continuation of a necessary diversion program, the statute should authorize TAPC to administer ISP programs through local probation departments.

- 5. Remove current restrictions on restitution centers and change the name of those centers and court residential treatment centers to "community rehabilitation centers". (Statutory)**

Currently, "violent offenders" may not be sent to a restitution center as a condition of probation. Removing the restriction would allow a judge to use these facilities for "violent" offenders when warranted and make the use of the facilities consistent with that of court residential treatment centers (CRTCs). By merging the funding for the two types of centers, a "community rehabilitation" concept can be strengthened and better allow the development of more secure community centers for diversion of offenders from TDC.

- 6. The statute should be changed to clearly authorize TAPC to fund and set standards for community rehabilitation centers. (Statutory)**

Of the two types of residential programs funded by TAPC, clear statutory authority exists for one program, restitution centers, but not the other, CRTCs. Once the two types of centers are changed to "community rehabilitation centers", the statute should be changed to clearly authorize the commission to fund and set standards for the centers.

**7. The statute should be amended to require TAPC to adopt formal policies and procedures in agency rules for administration of programs and facilities. (Statutory)**

The Administrative Procedure and Texas Register Act requires an agency to adopt rules describing the nature and requirements of all formal and informal procedures. The Texas Adult Probation Commission currently has rules for some of its major programs but not others, including the supplemental grant program, contract residential services, specialized caseloads and court residential treatment centers. To ensure that all probation departments have access to program guidelines and to allow public input into decisions on agency programs, TAPC should adopt rules on all current and future programs and facilities.

**8. The statute should be changed to allow short-term furloughs, as defined in agency rules, to community rehabilitation center residents. (Statutory)**

Short-term furloughs are permitted for residents of court residential treatment centers whereby probationers may receive leave passes as a reward for good behavior. Short-term furloughs are not generally permitted for restitution center residents, however. In order to make policies consistent between the two types of facilities once the centers are renamed community rehabilitation centers, the statute should permit all such residents to be eligible for short-term furloughs. Minimum requirements for issuing such furloughs should be established in agency rules.

**9. The statute should require TAPC to evaluate program outcomes to determine effectiveness of programs. (Statutory)**

Texas Adult Probation Commission's program evaluation focus has, in the past, concentrated on tracking persons while on probation, including examination of demographic data, offender profiles and numbers of probationers. As a new agency experiencing rapid growth, this information has been a necessary priority. However, in order to determine what affect TAPC-funded programs are having on probationers, more program evaluation efforts are needed for the future.

10. **The statute should authorize courts to impose a short-term jail sentence, not to exceed 30 days, for felony probationers who commit misdemeanor offenses or administrative violations of probation terms. (Statutory)**

Courts may require probationers to submit to a period of detention as an original condition of probation. Additionally, courts have authority to amend conditions of a person's probation at any time. However, there is no clear authority to impose a short-term jail sentence on felony probationers that fail to comply with probation conditions, such as committing a misdemeanor offense or violating administrative terms of probation, including failure to report to the probation officer or failure to pay fees. Short-term jail time could eliminate the need for some current probation revocations and could make another sanction available to courts for dealing with offenders that don't take their conditions of probation seriously.

11. **The statute should require probation fees to be a mandatory condition of probation, with a minimum monthly fee of \$25, unless waived, reduced or suspended by the court. (Statutory)**

Courts have permissive authority to charge a probation fee of persons placed on probation in Texas. Currently the fee, which helps defray some of the costs of supervision, was recently raised to a maximum of \$40 per month. However, variance exists in the fee amounts assessed by judges. This variance can create revenue problems for probation departments who depend on the fees, along with state funding, to pay for probation services. In order to improve assessment efforts, the fee should be made mandatory, with a \$25 minimum. Courts should be permitted to waive, reduce or suspend the fee in cases of financial hardship.

12. **The statute should be modified to allow persons who have been on intensive supervision probation (ISP) to be admitted to a community rehabilitation center. (Statutory)**

The Texas Adult Probation Commission funds a continuum of probation programs ranging from less restrictive to highly restrictive sanctions. For the most part, probationers may be moved from one program to the next as their behavior improves or worsens. The one exception is that those on ISP are permitted entry into court residential treatment centers but not restitution centers. This restriction appears unnecessary once the centers are renamed community rehabilitation centers and may prohibit some probationers from receiving proper supervision.

**13. The statute should be changed to allow community rehabilitation center discharge review at three months. (Statutory)**

The statute currently requires that probationers must serve a minimum of six months in a center before being evaluated for discharge from the center. For offenders exhibiting good behavior while in the center, this six month time frame is unnecessary. If the minimum time before review for discharge were lowered to three months, more probationers could be served and supervision efforts could focus on probationers who most need to be in the centers.

**14. The statute should permit adult probation departments to contract with the Board of Pardons and Paroles for provision of probation services. (Statutory)**

The Board of Pardons and Paroles (BP&P) can currently contract with TAPC to provide supervision services where deemed more efficient. Probation departments, however, do not have similar authority to contract with BP&P. To provide probation with another management option for supervising probationers, the statute should permit contracting with BP&P.

**15. The statute should permit the establishment of an electronic monitoring program for offenders and direct the appropriate agencies to seek funding for the program as a priority. (Statutory)**

The potential use of electronic monitoring has been reviewed by a committee appointed by the Criminal Justice Policy Council. The committee indicated that the program could provide a less costly alternative for both probationers and parolees. To initiate a program in Texas, statutes need to be modified to allow electronic monitoring as a condition of probation and specifically authorize its use in parole. The programs should be started on a pilot basis targeted at the metropolitan areas of the state. Offenders participating in the program should be those that would have otherwise been incarcerated at TDC. The Board of Pardons and Paroles and the Texas Adult Probation Commission should pursue funding for this program and emphasize its use in their supervision efforts.

- 16. The statute should require TDC, BPP and TAPC to develop a program to help illiterate offenders learn to read and write and should provide incentives to encourage participation in the program. (Statutory)**

Judges would be authorized to require certain offenders to attend education classes teaching functionally illiterate persons to read as a condition of probation. The Texas Adult Probation Commission would also require local probation departments to continue efforts to locate educational opportunities for probationers.

#### **Monitoring and Enforcement**

- 17. The statute should authorize TAPC to reduce state aid payments or impose budget controls over departments in substantial non-compliance with agency standards, as defined in agency rules. (Statutory)**

When probation departments fail to comply with standards set by TAPC, the statute currently permits the agency to withhold state aid payments. This sanction is undesirable in some cases because it may cause a department to cease functioning. Additional sanctions such as authority to reduce payments or impose budget controls over non-compliant departments would provide TAPC with greater enforcement power without jeopardizing probation services and public protection. The Texas Adult Probation Commission should define in its rules what constitutes substantial non-compliance.

- 18. The statute should require TAPC to define in its rules what constitutes an adequate level of county support to probation departments and to participate in county budget processes for those counties failing to provide adequate support. (Statutory)**

Counties are currently required to provide facilities, utilities and equipment to local probation departments. Variations exist in the state, however, in terms of the adequacy of support provided by the counties. By requiring TAPC to define what constitutes an adequate level of support from counties and to participate in the budget process of counties that are found to be providing inadequate support, better contributions for office space, utilities and equipment for probation departments might be obtained through negotiations with the county.

- 19. The statute should be changed to give the agency the responsibility for developing general guidelines for the organization and operation of local probation departments. When appropriate, these guidelines should be incorporated into agency compliance standards. (Statutory)**

This would establish an advisory committee on probation department management which would present to the commission guidelines for organization, management and operation of local probation departments. The commission would use these guidelines as part of its evaluation process of local probation departments.

#### **Compact Continuation**

- 20. The State of Texas should continue participation in the Interstate Probation and Parole Compact. (Statutory)**

The Interstate Probation and Parole Compact is a binding agreement among all 50 states to provide for supervision of probationers and parolees who want to live outside the state where they were sentenced or released. The review of the compact showed that it has worked as originally intended and, therefore, Texas should continue its participation. This recommendation requires a statutory extension of the compact statute.

#### **Non-Program Changes**

- 21. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the Texas Juvenile Probation Commission are found in the "Across-the-Board Recommendations" section of the report.

- 22. Minor clean-up changes should be made in the agency's statute. (Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modifications of Agency's Statute" section of the report.



## **BOARD OF PARDONS AND PAROLES**

### **Background**

#### **Creation and Powers**

The Board of Pardons and Paroles (BPP) was created in 1936 and is currently active. The board was created by constitutional amendment to recommend paroles and acts of clemency to the governor. In 1983, another constitutional amendment removed the governor from the parole process and made BPP a statutory agency with final authority to parole inmates and to revoke parole when necessary. The board continued to have the responsibility to recommend acts of executive clemency to the governor.

The board is solely responsible for making parole decisions and for supervising those people released from prison. Through its participation in the Interstate Probation and Parole Compact, the board also supervises out-of-state releasees living in Texas and works with other states for the supervision of Texas releasees in other states. Since 1977, the board's supervisory authority has been expanded beyond parolees to also include inmates released to mandatory supervision. By law, these inmates must be discharged when the time they have served and the good-conduct time they have earned equals the length of their sentence. Mandatory releasees are under the supervision of the board for the amount of good time credited to their sentence.

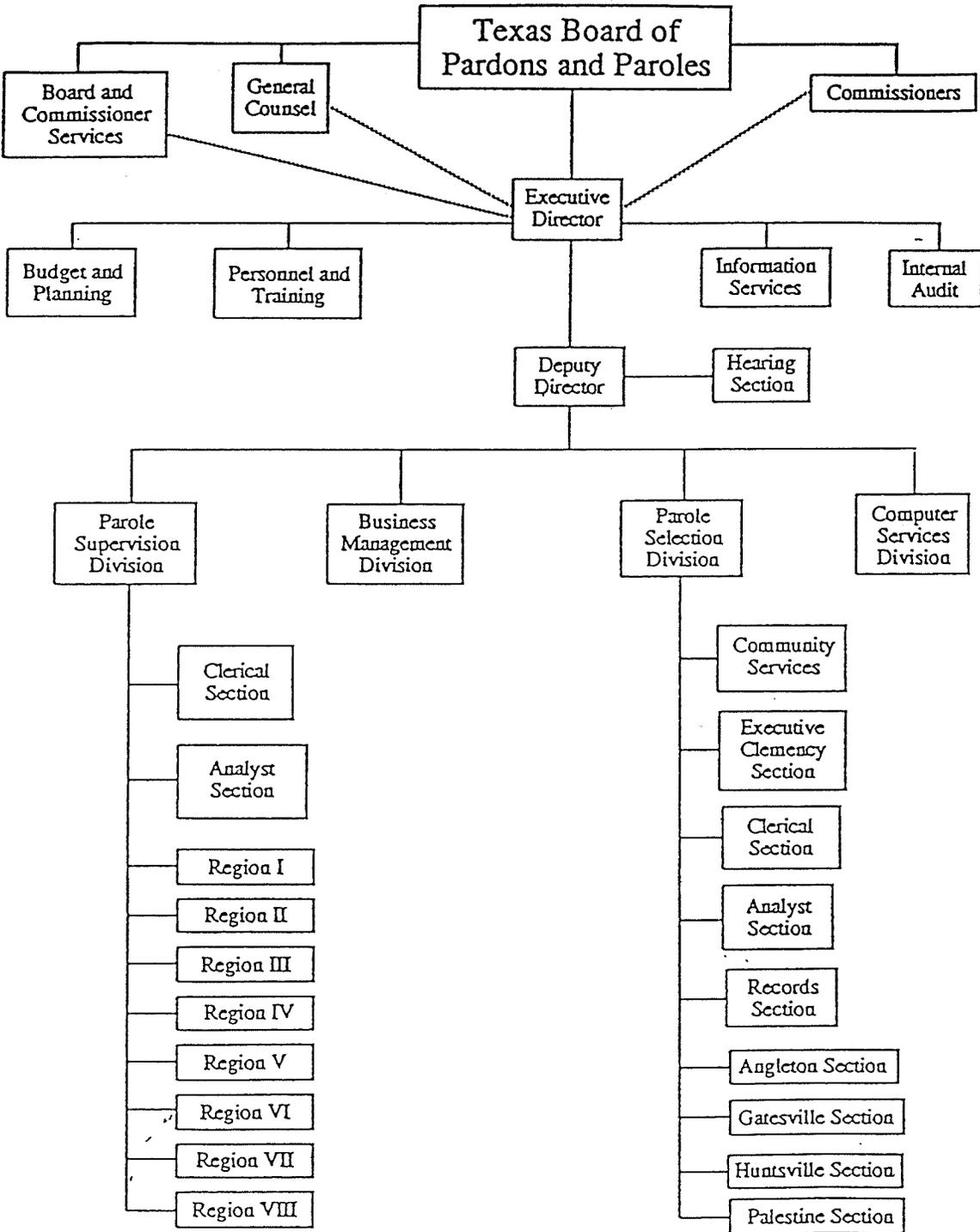
#### **Board Structure**

Currently the board is composed of six full-time members appointed by the governor for staggered six-year terms. The governor also appoints the chairman and vice-chairman of the board from among the membership. In 1975, the legislature authorized the governor to appoint six parole commissioners to assist the board in its parole decisions. The legislature changed the law in 1981 to make parole commissioners employees of the board. While the board is required to hire at least six parole commissioners, nine commissioners are currently employed. Exhibit 1 sets out the organizational structure of the agency.

#### **Funding and Organization**

Funding for the board in fiscal year 1986 is \$33,158,747, coming entirely from general revenue. Administrative costs represent approximately four percent of the agency's total budget. The board has 1,040 employees authorized at the beginning of fiscal year 1986. Exhibit 2 sets out the agency's major programs and activities and their respective budgets and personnel.

**Exhibit 1**  
**BPP Organizational Chart**



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**Exhibit 2**

<u>Agency Program or Activity</u>	<u>1986 Funding</u>	<u>Employees</u>
Administration	\$ 1,430,853	48
Support Services	\$ 3,873,066*	73
Parole Selection	\$ 2,905,899	197
Parole Supervision	\$ 16,714,578	658
Hearings	\$ 1,342,820	32
Community Services (Halfway Houses)	\$ 6,745,815	23
Executive Clemency	\$ 145,716	9

\*This funding also provides salaries for personnel in parole selection and parole supervision

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The agency operates from a headquarters in Austin, and has eight regions which are further divided into 42 districts throughout the state. The agency also has four offices near the prison units of the Texas Department of Corrections where the parole commissioners and institutional services staff are located. Exhibit 3 shows the locations of the agency's field offices.

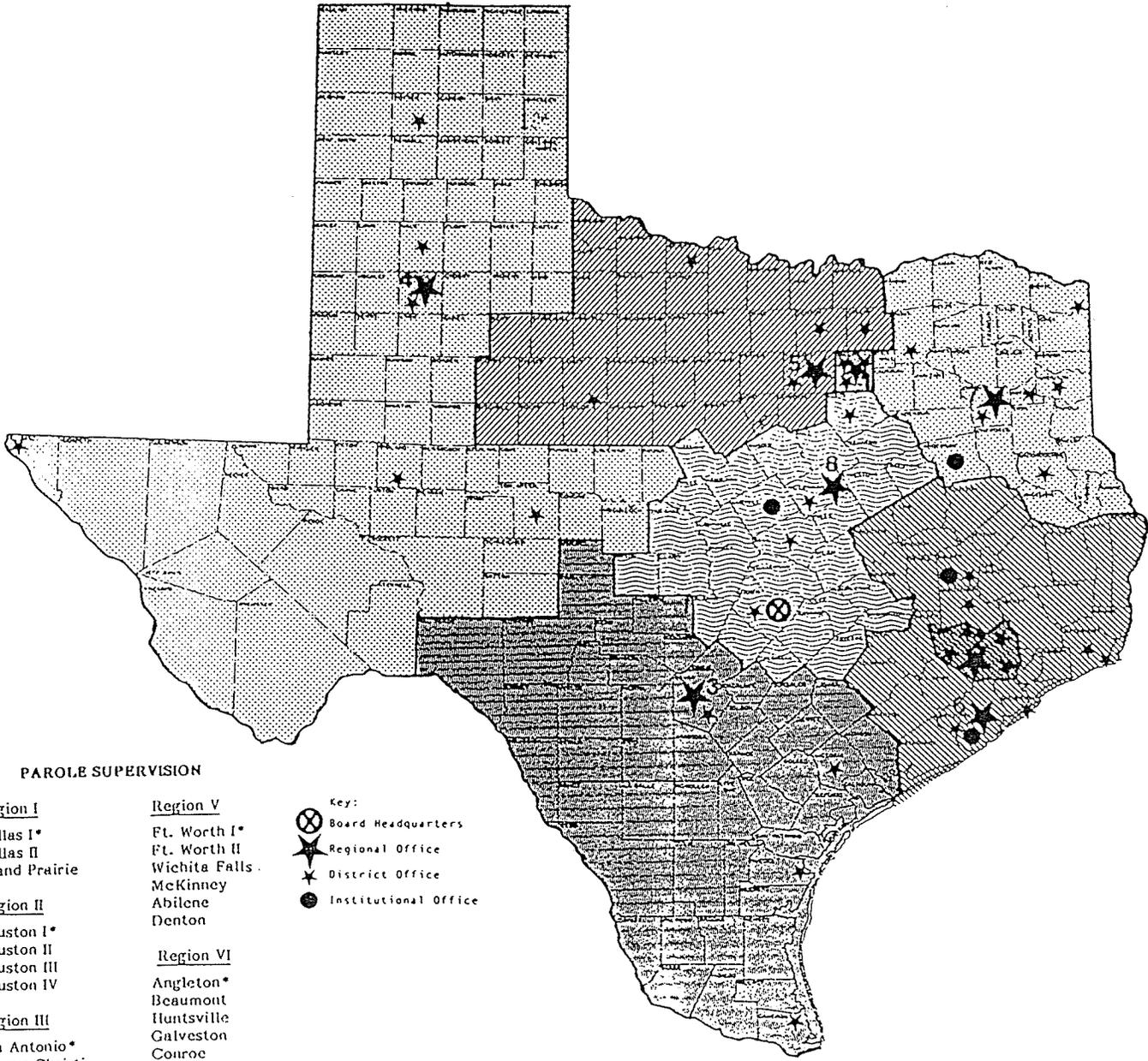
**Programs and Functions**

To fulfill its major responsibilities of selecting and supervising releasees, the board has established the following programs and activities -- parole selection, executive clemency, parole supervision, hearings, and community services. Additional activities such as budget and planning, internal audit, and computer services support the major programs. Descriptions of the programs and support activities are set out below.

**Parole Selection**

The parole selection process is supported by the agency's institutional services division. The process for selecting inmates for parole begins within approximately ten months of an inmate's minimum parole eligibility date. Inmates are generally eligible for parole when calendar time served plus good- conduct time awarded by the Texas Department of Corrections (TDC) equals one-third of their sentence or 20 years, whichever is less. Aggravated crimes and those crimes involving a deadly weapon require that the convicted felon serve calendar time of one-third of the sentence or 20 years, whichever is less, before becoming

**Exhibit 3**  
**Board of Pardons and Paroles**  
**Field Offices**



**PAROLE SUPERVISION**

Region I

- Dallas I\*
- Dallas II
- Grand Prairie

Region II

- Houston I\*
- Houston II
- Houston III
- Houston IV

Region III

- San Antonio\*
- Corpus Christi
- Harlingen
- Victoria

Region IV

- Lubbock\*
- Amarillo
- Midland/Odessa
- San Angelo
- Plainview
- El Paso
- Big Spring

Region V

- Ft. Worth I\*
- Ft. Worth II
- Wichita Falls
- McKinney
- Abilene
- Denton

Region VI

- Angleton\*
- Beaumont
- Huntsville
- Galveston
- Conroe
- Port Arthur

Region VII

- Tyler\*
- Marshall
- Longview
- Greenville
- Nacogdoches
- Texarkana
- Paris
- Mt. Pleasant

Region VIII

- Waco\*
- Austin
- Temple
- Waxahatchie

- Key:**
- Board Headquarters
  - Regional Office
  - District Office
  - Institutional Office

**INSTITUTIONAL SERVICES (Parole Commissioners)**

- a. Huntsville
- b. Angleton
- c. Palestine
- d. Gatesville

\* = Regional Headquarters

eligible for parole. Also, inmates must serve a minimum of two years for these crimes.

Upon becoming eligible for parole, an inmate is interviewed by agency institutional staff. File information is verified and details are gathered concerning the crime committed, family history, mental and physical health, and the inmate's activity while in prison. Agency staff counsel with the inmates, answer questions and explain the parole process. A parole plan is prepared to indicate, if released, where he or she will live and whether a job is available.

Board members and commissioners use the information developed by institutional staff to make parole decisions. Three-member parole panels make the decisions. Panel composition is determined by the length of the inmate's sentence and is outlined below:

- 1) Sentences of less than 45 years
  - two parole commissioners, one board member
- 2) Sentences of more than 45 years
  - initial case review - three board members
  - subsequent reviews - two board members, one parole commissioner

One panel member, generally a parole commissioner, reviews the case file, interviews the inmate and votes on the case. The other panel members only review the file before voting. The vote on a case can go one of three ways:

- 1) parole can be approved for further investigation (FI), which is preliminary approval;
- 2) parole can be set-off, which means parole is not granted and further consideration is set-off to a future time, usually one year; and
- 3) parole can be denied with the inmate being required to serve the remainder of his or her sentence. In this case the inmate would not be reconsidered for parole because, before reconsideration would occur, the inmate would have served enough time to be released under mandatory supervision.

Inmates in federal prison or other states serving a sentence concurrent with a Texas conviction can be considered by the board for parole in absentia. If an inmate gets a favorable vote for parole, the staff notifies the local trial officials (sheriff, judge, and prosecutor) where the inmate was convicted. Trial officials can protest a parole decision as can victims of the crime. The board can reconsider

positive votes for parole based on these protests. The board, as well as other panel members, can place any number of special conditions on the inmate's release. Halfway house placements, drug testing and counseling, and restitution are examples of special conditions. Restitution to a victim is also required if it is specified in the inmate's court judgment.

Once an inmate receives parole, release generally occurs during his or her eligibility month. The releasee then reports to a designated parole officer or, in some cases, a halfway house. Some low-risk inmates up for parole for the first time can qualify for pre-parole release to a halfway house. Pre-parole can occur up to 180 days before the inmate's actual release date and serves as a transition from prison life back into society. In 1985, 155 inmates were released on pre-parole. Of those, 130 were subsequently released on regular parole. In 1985, 9,377 (or 37 percent) of 26,305 inmates considered for parole were approved and subsequently released. This figure includes 77 inmates who received parole in absentia.

In addition to inmates paroled, the board issues release certificates for all inmates released to mandatory supervision. By law, mandatory releases are not approved by the board and must occur when time served and good time awarded equal the length of an inmate's sentence. The board can attach special conditions to all mandatory releases and can revoke the release just as it does with parolees. Mandatory releasees are supervised by the agency until they discharge the amount of good time that was credited to their sentence. There were 11,895 inmates released under mandatory supervision in 1985.

The following exhibit summarizes parole selection and mandatory supervision activities for the last five years.

**Exhibit 4**  
**Parole and Mandatory Supervision Activity**

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Number of Inmates Considered for Parole	22,797	27,472	28,789	28,159	26,305
Number Paroled	7,494	7,504	8,682	10,069	9,377
Number Paroled in Absentia	0*	0*	0*	97	77
Number of Pre- Parole Transfers	0**	0**	0**	141	157
Number of Inmates Released to Mandatory Supervision	3,327	4,522	7,659	10,053	11,895

\*Parole in absentia was begun in 1984.

\*\*The pre-parole program was established in 1983.

Executive Clemency

The governor grants executive clemency upon recommendation of the board. Any person convicted of a criminal act, except treason or impeachment, may apply to the board for executive clemency. Exhibit 5 lists the types of executive clemency that can be granted.

**Exhibit 5**  
**Types of Executive Clemency**

1. Full Pardon and/or Restoration of Rights of Citizenship
2. Conditional Pardon
  - Conditional on any restrictions attached to the pardon
3. Reprieve
  - Medical or Family Emergency
  - Reprieve of Execution\*
  - Commutation of sentence

\*The governor can grant a stay of execution without the board's recommendation for a maximum of 30 days.

Before 1977, all releasees were considered for a full pardon upon discharging their sentences. The 65th Legislature changed that procedure so that automatic consideration applies only to sentences that began before August 29, 1977. All other clemency actions must be initiated by a request from the releasee.

When the board receives a request for clemency, agency staff review that prospective applicant's file for prior federal and out-of-state convictions. All prior convictions must be pardoned before a person may apply for clemency in Texas. Applications are sent to eligible releasees requesting clemency.

Upon receiving a completed application, agency staff update and review the applicant's file for the board, checking particularly for new convictions. The parole officer involved files a report if the applicant is still under active supervision of the board. All information is passed to the board which meets weekly to vote on whether to recommend to the governor that clemency be granted. The board may conduct hearings, mostly in death penalty cases, to assist in making decisions. Once the board makes a decision, the recommendation and related material are sent to the governor's office where a final decision is made. Requests for clemency and action taken for the last five years are described in Exhibit 6.

**Exhibit 6**

**Requests for Clemency/Action Taken**

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Number Considered for Executive Clemency	3,166	2,329	1,837	2,123	1,738
Number Recommended to Governor	169	200	284	546	326
Approved by Governor	157	167	242	60	227

Parole Supervision

The primary responsibility of the parole supervision program is to supervise individuals who are released from a correctional institution to serve the remainder of their sentence in a community setting. Supervision is conducted to:

- 1) assist the releasee in a constructive program of rehabilitation and integration into society; and
- 2) monitor the releasee's compliance with state and federal laws and other terms of release, thereby providing protection for citizens of the state.

To accomplish program responsibilities and objectives, the majority of the program's 658 employees are assigned to 42 district offices within eight geographical regions as illustrated previously in Exhibit 3. Regional supervisors oversee field supervisors and a staff of parole officers and case workers employed in the district offices. The breakdown of personnel into the various geographical areas allows parole officers and caseworkers to establish a supervisory relationship with each releasee. The program director and a small administrative staff are located at the central office in Austin.

The parole supervision process begins with the initial approval of an inmate for parole. Once the inmate is approved for further investigation, the inmate's file is sent to the geographical region where the inmate desires to live after release, and a parole officer is assigned to the case. Parole officers conduct an investigation of the inmate's parole plan, making sure the prospective releasee's information about where he/she will live and work is correct. The pre-release investigation for prospective mandatory releasees and for releasees supervised under the Interstate Compact is the same as that described for regular parolees.

When a Texas inmate is released on parole or to mandatory supervision, though still in the legal custody of TDC, his/her supervision becomes the responsibility of the Board of Pardons and Paroles. Every type of releasee - mandatory supervision releasees, regular parolees, those participating in the pre-parole release to halfway house program, and releasees from other states paroled to Texas through the Interstate Compact - is under the jurisdiction of the parole supervision program. Before being released to supervision, prospective releasees must agree to abide by conditions of parole or mandatory supervision. A partial list of conditions, developed by the board and included on an inmate's release certificate, follows as Exhibit 7.

## **Exhibit 7**

### **Terms and Conditions of Release**

1. Release and Reporting:
  - (A) Go directly to the destination approved by the Board of Pardons and Paroles.
  - (B) Report immediately to a designated parole officer.
  - (C) Submit a full and truthful report to the parole officer each month.
  - (D) Promptly and truthfully answer all inquiries.

2. Employment and residence:
  - (A) Work diligently in a lawful occupation; and support dependents, if any, to the fullest extent possible.
  - (B) Secure the written permission of parole officer before changing residence or place of employment.
3. Travel: Secure written permission from parole officer before leaving the state to which released or traveling beyond the boundaries of the counties adjoining the county to which released.
4. Alcohol and drugs:
  - (A) Shall not use alcoholic beverages or liquors to excess or in a manner injurious to the releasee.
  - (B) Shall not go into, remain about, or frequent business establishments whose primary function is the sale or dispensing of alcoholic beverages or liquors for on-premises consumption.
  - (C) Shall not illegally possess, use, or traffic in any narcotic drugs, marijuana, or other controlled substances and agree to participate in required chemical abuse treatment programs and testing.
5. Weapons: Shall not own, possess, use, sell or have under control any firearms or other prohibited weapon.
6. Associates:
  - (A) Shall avoid association with persons of criminal background unless specifically approved by parole officer in writing.
  - (B) Shall not enter into any agreement to act as an "informer" or special agent for any law enforcement agency.
7. Legal obligation: Shall obey all municipal, county, state, and federal laws.
8. General provisions:
  - (A) Agree to abide by any special conditions of release as stipulated in writing by the Board of Pardons and Paroles or parole officer.
  - (B) Agree to abide by all rules of release and all laws relating to the revocation of release.

- (C) Shall pay fines and court costs during the period of supervision, and any outstanding fines and court costs adjudged by the court of conviction, and agree to provide documentation verifying the payments.

Once inmates are released on parole or mandatory supervision, they must report immediately to their assigned parole officer. Active parole supervision is carried out by the district parole officers and parole caseworkers who work directly with the releasees in a program of personal guidance and supervision. In their first meeting with a releasee, parole officers conduct a post-release conference to review the terms of the parole contract and to establish a reporting schedule. Parole officers must also conduct a special classification interview within 30 days after the releasee reports to supervision.

Case classification is just one component of a comprehensive supervision management system used by the agency. The management system provides information to the parole officer and the agency as a whole. First, the case classification component of the system enables the parole officer to classify cases according to anticipated risk to society and the individual needs of the client. Using the risk and needs assessments, the parole officer places a releasee in one of three levels of supervision: intensive, medium or minimum. The parole officer's frequency of contact depends on the releasee's classification. Minimum parole officer contact requirements for each supervision level are as follows:

**Exhibit 8**

<u>Supervision Level</u>	<u>Minimum Contact Requirement</u>
Intensive Supervision	One office visit per month Two home visits per month
Medium Supervision	One office visit per month One home visit every other month
Minimum Supervision	One office visit per month (to deliver monthly report) One home visit every three months for the first six months (whenever necessary after that)

As another part of the case classification component of supervision, every six months after an initial assessment, parole officers conduct reassessments to evaluate the releasee's progress under supervision. Releasees will continue in the

same classification level or will be moved to a more intensive or less intensive level of supervision depending on the reassessment score. A person will continue under some type of supervision until his/her sentence is completed. The lowest level of supervision is annual report status, where the releasee is removed from active parole supervision and is required only to write a report detailing his/her activities for the year to the executive director of the agency. Generally, only low-risk releasees who have been under supervision for a year can qualify for placement on annual report.

The second use of the agency's comprehensive management system is to standardize supervision. Using an instrument called Strategies for Case Supervision (SCS), parole officers conduct a standardized, semi-structured interview with the releasee to gain information in such areas as correctional history, education, mental ability, vocational skills, and values and attitude. Upon completing and scoring the SCS, the parole officer develops a goal-oriented supervision plan based on the specific needs and characteristics identified. The parole officer must be able to recognize certain behaviors and needs during the time the releasee is under supervision. The parole officer will refer the releasee to other state or private agencies to obtain any needed services such as employment counseling, drug/alcohol abuse screening and counseling, and mental health services.

Another use of the case management system is to balance parole supervision caseloads. When the parole officer conducts the classification interview, the information obtained concerning the releasee is recorded on a one-page form and is then entered into the computer system in the agency's central office. Information quantified from the classification interview includes the releasee's anticipated risk to society, the identified needs of the releasee, and the assigned level of supervision. Agency administrators use the computerized data to examine the distribution of types of cases (intensive, medium, minimum) by region, district, and by individual parole officer. Any caseload discrepancies and imbalances can be identified and corrected.

The agency also can use this same computerized information to assess whether parole officers are effectively assisting and supervising releasees. By quantifying certain key elements of parole supervision, a parole officer's caseload can be evaluated to see whether he/she is referring releasees with serious needs to appropriate treatment programs. This data can be used to see how well needs are

being met statewide, particular areas where needs are not being met, and how the level of services provided changes over time. This information provides objective input for the appraisal of the parole officer's performance.

As of November, 1985, the average parole caseload was 84 cases for each parole officer. A time study conducted by the agency in 1983-1984 established an ideal caseload of 73.5 cases per parole officer. A rider to the agency's appropriation states legislative intent that the agency maintain a ratio of 75 parolees to one parole officer. In fiscal year 1986, the legislature authorized funds for approximately 75 additional parole officer and caseworker positions. These additional personnel should temporarily reduce the caseload ratio to about the same ratio required by the appropriations rider.

As of November, 1985, there were 34,813 releasees under the active supervision of the Board of Pardons and Paroles with 6,000 releases on annual report status. Exhibit 9 shows the number of releasees under active supervision of Texas parole officers for the last five fiscal years.

**Exhibit 9**  
**Releasees Under Active Supervision**

<u>Type of Releasee</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Parolees	10,929	12,945	14,415	17,279	17,820*
Mandatory Supervision Releasees	3,148	5,004	8,344	12,422	15,181
Parolees in Texas from other states	<u>1,389</u>	<u>1,635</u>	<u>1,613</u>	<u>1,761</u>	<u>1,812</u>
<b>TOTALS</b>	<b>15,466</b>	<b>19,584</b>	<b>24,372</b>	<b>31,462</b>	<b>34,813</b>

\*This figure includes those inmates participating in the agency's pre-parole transfer program.

The agency's parole supervision program also oversees the coordination of the interstate compact for adult parolees. The Interstate Compact for the Supervision of Parolees and Probationers is an agreement among all 50 states. The compact provides for reciprocity in parole and probation supervision. As of November 1985, there were approximately 2,200 Texas releasees being supervised in other states and 1,730 releasees from other states receiving supervision in Texas. Releasees paroled under the compact must abide by both states' rules and laws. The compact

also sets up a system of coordination between states for returning a parole violator to the state of origin.

#### Hearings

The board uses the revocation process to enforce the various conditions of release placed on releasees under its supervision. Before they may be released, inmates must agree to comply with the board's general rules governing release behavior and any special release conditions imposed by the parole panel that approved release. A violation of these rules or conditions may result in the revocation of release and subsequent reincarceration of the releasee. After the U.S. Supreme Court ruling in Morrissey v. Brewer, the terms of release cannot be revoked without a hearing to guarantee the releasee's rights of due process. A revocation hearing is not required, however, when a releasee has been convicted and sentenced for a new felony offense (S.B. 842, 69th Legislature). Also, no hearing is required if a releasee waives this right and admits to at least one rule violation.

The hearings process begins with a report by a parole officer that a releasee has violated one or more of the board's rules. The board, meeting in an administrative panel of three members, decides whether to issue a pre-revocation warrant to hold the releasee for a hearing. Because of a bill passed in the 69th Legislature, the board may, instead, issue a summons requiring a releasee to appear without being held in jail. Upon arrest or receipt of a summons, the releasee is given notice of the alleged violations, the right to a revocation hearing and the right to counsel. If the releasee is indigent, counsel will be provided through a contract between the board and the Texas State Bar.

Hearings must be held within 70 days at or near the location of the arrest or service of summons. The hearings are administrative hearings, using the rules of civil procedure except that hearsay testimony is admissible as evidence. Hearing officers employed by the board conduct the hearings in two parts. The first part is to determine from the facts whether a violation did occur, based on a preponderance of the evidence. If there is no finding of fact that a rule violation occurred, the hearing officer concludes the hearing and recommends to the board that the warrant or summons be withdrawn and the releasee continued under supervision. If, on the other hand, the hearing officer finds that a rule has been violated, the hearing moves to the second part to see how well the releasee has adjusted under supervision. In the adjustment phase, the parole officer makes a recommendation

whether to revoke the release or to withdraw the warrant. The hearing officer must then submit a report to the central office detailing the admission of evidence, the finding of facts and conclusions of law, and a recommendation.

At the central office, a hearing analyst reviews the case, makes a recommendation and presents the case to an administrative panel of three board members. If legal questions need attention, the general counsel will also review the case and make a recommendation to the board. In making the final decision, the board may:

- 1) revoke the release, but only upon the recommendation of the hearing officer;
- 2) refer the case back to the hearing officer for further development of factual or legal issues, with instructions to reopen the hearing; or,
- 3) withdraw the warrant, and either continue the releasee under supervision or impose a new condition of supervision.

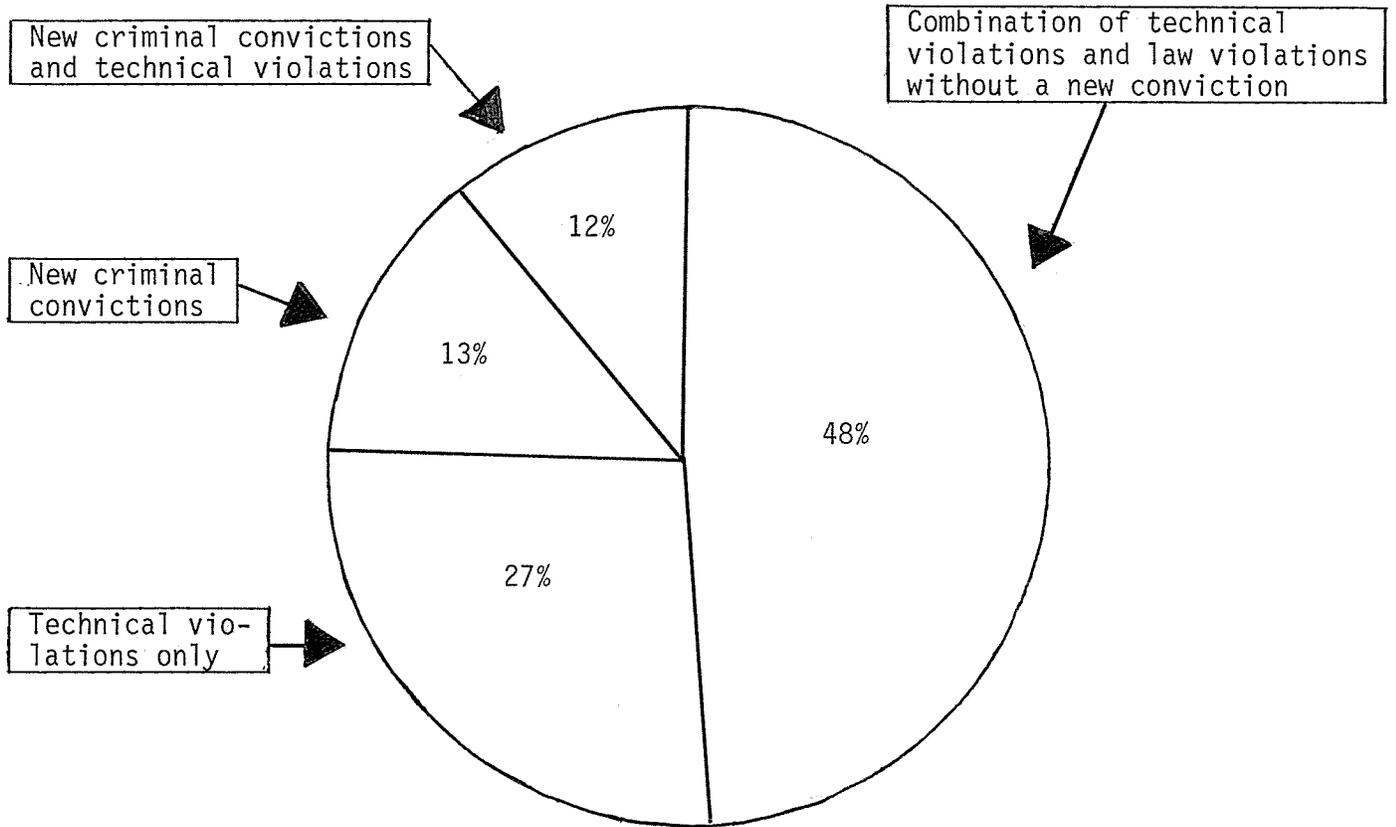
If the decision is to revoke, the releasee has ten days to request reopening the hearing. Requests go through the agency's general counsel to the board and must be based on a claim that:

- 1) new evidence has become available since the time of the hearing;
- 2) the findings of fact and/or conclusions of law are in error; or,
- 3) the hearing officer did not follow proper procedures.

In fiscal year 1985, the board employed 17 hearing officers. They presided over 3,915 hearings, leading to 2,822 revocations. For the same year, 4,070 releasees waived their right to a hearing, resulting in revocation. Altogether, 6,892 releasees were revoked in 1985.

Exhibit 10 shows the reasons for revocation based on an analysis of 527 cases revoked in October, 1985. Approximately 25 percent of the cases were for new criminal convictions and technical violations. Another 27 percent were revoked for technical violations only, while approximately 48 percent were revoked for a combination of technical and law violations without a new conviction. Of that percentage, the agency estimates that almost 13 percent of those people revoked without a new conviction had criminal charges dropped when they agreed to revocation.

Exhibit 10  
Reasons for Release Revocations



### Community Services

The agency's community services program is primarily responsible for obtaining and maintaining contracts with residential treatment facilities (halfway houses) throughout the state. The program has a staff of 25, most of whom are located at the program's administrative office in Huntsville. A community resource officer, also employed by the program, works out of each of the agency's eight regional offices.

The community services program was created in 1976 through a grant from the Governor's Criminal Justice Division. A system of community-based and privately-owned halfway houses provides a structured, supervised transitional environment for the releasee, offering programs and counseling for those with special needs such as alcohol or drug abuse treatment. The houses also provide an alternative to revocation for those releases having difficulty adjusting to the free world.

The community services program is involved in a number of activities relating to halfway houses. Program staff administer halfway house contracts, certify halfway houses according to board standards, place releasees in halfway house programs, provide technical assistance to halfway houses, and monitor halfway houses on a regular basis to assure program accountability.

The halfway house contract process begins before each new fiscal year when agency program administrators request proposals for halfway house services. The agency has recently established a competitive bid process for awarding contracts. Requests for proposals (RFP's) are published in the Texas Register and distributed to most of the state's known halfway house programs. Once the RFP's are completed and returned, agency staff review applications using a standardized rating system and recommend halfway houses to the board for final contract approval. The board bases its decision on the need for halfway house beds in a given geographical area as well as special needs that can be met by a particular halfway house proposal.

For fiscal year 1986, the agency contracted for 723 beds with 29 halfway houses throughout the state for a total of approximately \$5 million. Contracts were based on an average cost per halfway house bed of \$22.83. Releasees placed in halfway houses under board contract are expected to contribute 25 percent of their gross income earned while living at the halfway house. The amount paid by

the board to the halfway house is reduced by the amount actually contributed by the client.

Before a halfway house can receive a contract from the Board of Pardons and Paroles, the facility must comply with minimum program and physical plant standards adopted by the board. Field community resource officers conduct an on-site certification inspection of every facility before a contractual agreement is established. Facility certification is valid for one year.

Once a halfway house receives certification and a contract from the board, the community services program can begin processing releasees for placement in the halfway house. The board is currently making halfway house placements for the following reasons:

- 1) as a condition of release by the board, i.e., the inmate can be released on the condition he/she is placed in a halfway house;
- 2) at the request of the releasee;
- 3) when a releasee is having difficulty adjusting under supervision of the agency;
- 4) due to special needs resulting from alcohol/drug abuse or physical or mental health problems;
- 5) for inmates approved for pre-parole transfer by the board and TDC.

In fiscal year 1985, a total of 4,281 releasees were placed in halfway houses under contract with the board. This number includes 875 releasees having difficulty adjusting under supervision placed in halfway houses from the field. Exhibit 11 shows the number of halfway house placements over a five-year period.

**Exhibit 11**

**Number of Halfway House Placements**

<b>Type of Release</b>	<b><u>FY 81</u></b>	<b><u>FY 82</u></b>	<b><u>FY 83</u></b>	<b><u>FY 84</u></b>	<b><u>FY 85</u></b>
Parole	2,313	2,999	2,506	1,917	1,764
Mandatory Supervision	386	875	1,974	2,416	2,360
Pre-parole	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>141</u>	<u>157</u>
<b>TOTALS</b>	<b><u>2,699</u></b>	<b><u>3,874</u></b>	<b><u>4,480</u></b>	<b><u>4,474</u></b>	<b><u>4,281</u></b>

The pre-parole transfer program was established by the legislature in 1983 to divert suitable low-risk prisoners from TDC who would benefit from a halfway house program. Community services personnel working in the TDC prison units conduct pre-parole interviews with eligible inmates before the pre-parole release

decision is made. To be eligible for pre-parole transfer, an inmate must be serving time for a non-aggravated crime and must be in the process of being considered for the initial parole review. The inmate must not have passed his/her parole eligibility date and must be within 180 days of that parole eligibility date. Board members and TDC officials decide who will be transferred to a halfway house under contract with the Board of Pardons and Paroles. By law, if the inmate serves time satisfactorily in the halfway house, the board must order his/her release to parole on the presumptive parole date.

Another activity performed by the community services program is the monitoring of halfway houses. Community resource officers visit each facility under contract with the board once a month and conduct quarterly unannounced visits to check for compliance with the terms of contract. The agency's business management division performs regular fiscal audits of halfway houses. Community resource officers also provide technical assistance to halfway houses, such as answering questions about agency procedures and requirements.

A final activity carried out by the program's community resource officers is the development of local community resources. Resource officers attempt to develop working agreements with local service agencies and meet with business representatives and other individuals in the community to improve the pool of resources available to releasees. The community resource officer assists both halfway houses and parole officers in finding needed services for releasees.

#### Additional Support Services

Several of the agency's other divisions provide services which support the major programs and activities. Each of the support services is summarized below.

Budget and Planning. In addition to its primary responsibility to prepare and monitor the agency's budget, budget and planning assists parole selection by researching different aspects of release behavior. Research projects have ranged from developing a system to rate the risks of inmates eligible for parole (i.e., the Pablo Scale) to studies of factors affecting recidivism and projections of TDC's population. The division also participates in special projects as required by the board.

Internal Audit. Internal audit assists parole supervision through continued development of the case classification and supervision management system described in the section of the report on parole supervision. This system has allowed the agency to better manage cases under supervision. It also provides

a data base for the agency. The information is used to assess the effectiveness of parole supervision and determine the workload of supervisory staff and the need for specialized projects. Internal audit staff has also begun review the agency's other programs to monitor their effectiveness.

General Counsel. The general counsel provides legal assistance to the board, resolves legal questions arising in revocation hearings, and reviews releasees' requests to reopen hearings. The general counsel also represents the board in grievances against the agency and updates the agency's rules.

Computer Services. Computer services is responsible for supporting the agency programs' data processing and automation needs. One of the major tasks of the division has been the automation of agency files. A new computer system has recently been installed which greatly increases the agency's computer capabilities. Computer staff have also begun automating the information needed in the field and institutional offices. Further automation will help eliminate the statewide transport of hard copy files.

Business Management. As the agency's financial office, business management performs all of the agency's accounting and provides its supplies and equipment. As part of the accounting responsibility, division staff audit the halfway houses under contract with community services. The division also processes incoming supervision and restitution fees before deposit to the state treasury. Finally, the division oversees the agency's building leases including all the field offices located around the state.

Board and Community Services. Board and community services acts as a liaison between the families of inmates and releasees and the board members and commissioners. Staff answer questions for inmates and their families and set up meetings for them with board members as needed. This division also handles the victim's impact statement used in the parole selection process.

Information Services. Information services shares with the public the information collected and generated by the agency. Staff are involved in answering questions from the public and the media and issuing press releases. The division also publishes the agency's bi-monthly newsletter.

Personnel and Training. Personnel and training is responsible for all personnel matters associated with hiring, firing, grievances and worker's compensation. Staff are also responsible for maintaining the agency's EEO Affirmative Action Plan. The division's training staff also provides basic orientation to new field parole officers.

### **Scope of Sunset Review**

The Board of Pardons and Paroles is responsible for making parole decisions and supervising all releasees from the Department of Corrections. Many of the board's functions are interrelated with and dependent on the operations of TDC. The review of board's activities involved an evaluation of the board's major functions and a review of its relationship with TDC. Some of the board's activities that are related to those of TDC were not fully evaluated as part of this review but were examined during the Sunset review of TDC.

In reviewing BPP, staff performed several activities. Overview discussions were conducted with BPP personnel, parole commissioners and BPP board members. Field trips were taken with parole supervision officers and site visits were made in the prison units where parole interviews are conducted. Reports and studies dealing with the board were also reviewed. These activities resulted in the identification of various problems or issues in the agency. These issues were divided into the following categories: administration, parole selection, parole supervision, hearings and community services. These activities concluded that improvements could be made in each of these areas. The resulting recommendations are presented in the material that follows:

### **Need to Continue Agency**

The sunset review of the board's programs and responsibilities indicated that there is a continuing need for state involvement in adult parole services. The review indicated that the board has generally met its goals and objectives in an efficient and effective manner and should be continued for a 12-year period. The review also determined that if the agency is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. These changes are outlined in the "Recommendations" section.



**Sunset Commission Recommendations for the  
BOARD OF PARDONS AND PAROLES**

**CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

No recommendations.

**Overall Administration**

1. **The board should be required to adopt a policy which clearly separates board and staff functions and specifies that the executive director answer directly to the board chairman. The statute should specify that the executive director is responsible for the agency's day-to-day administration. (Statutory)**

The review indicated that some difficulties exist in the separation between the board's responsibilities and those of the executive director. The lack of separation is caused, in part, by the absence of any policy which clearly defines the responsibilities of the board and the agency director. In addition, there is no clear line of responsibility between the board and the agency director. Full-time board members can become individually active in agency administration and give conflicting instructions to the agency director. Finally, the agency's statute does not clearly state that the executive director is responsible for the agency's day-to-day administration. The review indicated several ways to address the problems identified. The solutions identified make up the recommendations listed above.

2. **The board should regularly update its rules and adopt its major policies and procedures as rules. (Non-statutory management improvement)**

The board's rules have not been comprehensively updated since 1981, and some changes in board policy have never been published in the Texas Register. The rule-making process should ensure that those affected by the actions of the agency are aware of its policies and procedures. The board should therefore regularly update its rules and adopt its major policies and procedures as rules in accordance with the Administrative Procedures and Texas Register Act.

- 3. The board should be required by statute to continue efforts to study recidivism of releasees under its supervision and to use this information to evaluate agency operations. (Statutory)**

The agency has established methods to adequately study the recidivism of releasees under its jurisdiction. Also, the information is used by the agency to measure the effectiveness of its programs. However, since the statute does not contain a directive to collect and use recidivism data, the agency could discontinue these efforts at any time. Because recidivism is generally considered the best measure for release and supervision programs such as those conducted by the board, collection and use of recidivism data should be mandated by statute.

### Evaluation of Programs

#### Parole Selection

- 4. Parole commissioners should meet specific education or experience requirements. (Statutory)**

The parole statute does not contain any qualifications for parole commissioners. Relevant experience or education would benefit their decision making. While qualifications for parole commissioners are currently required by board policy, they should be included in the statute to ensure that they continue to be required.

- 5. Decision makers should be required to disqualify themselves from parole decisions involving a possible conflict of interest. (Statutory)**

Decision makers can receive an inmate's case to consider for parole where they have had previous contact with the inmate which could bias the parole decision. In these cases, decision makers should refrain from voting on the case. The board should be required to develop a policy specifying the conflict of interest situations where decision makers should refrain from voting.

- 6. The board should be required to develop standard guidelines for parole decisions. (Statutory)**

The parole law requires that a decision to parole an inmate should be made only in the best interest of society. The board has adopted rules which outline parole selection procedures but has not adopted guidelines for actual parole decisions. While decision factors used by parole panel members are generally the same, decision-makers are not required to use those factors in their decisions. Standard

guidelines would ensure that all parole decisions follow the same procedures using the same decision criteria.

- 7. The board should establish a program to develop preliminary parole plans and a tentative parole month for qualified inmates. (Statutory)**

An inmate does not know what factors are involved in a parole decision until he/she nears parole eligibility; therefore, he/she does not have a good idea of what can be done while incarcerated to improve their chances for parole. Also, an inmate does not have a clear indication of when he/she will receive parole. A preliminary parole plan system would address these problems. Establishing a plan of progress and a tentative parole month for an inmate would let him/her know what factors will be involved in the parole decision and would give a better indication of when parole will occur.

- 8. The Board of Pardons and Paroles and the Texas Department of Corrections should share the responsibility of inmate planning. (Statutory)**

In the previous recommendation, a tentative parole process was established which more closely ties an inmate's release to behavior in prison. Texas Department of Corrections and Board of Pardons and Paroles must cooperate and be committed to meeting the concepts set forth in the tentative parole process if it is to be successful. The two agencies should therefore be statutorily required to develop a memorandum of understanding (MOU) to outline their respective responsibilities in the tentative parole process.

#### **Parole Supervision**

- 9. The parole supervision fee payment schedule should be clarified in the agency's statute. (Statutory)**

The statute requires a releasee under the board's supervision to pay \$10 to the board for each month he/she is required to meet personally with the parole officer. The agency has encountered some confusion and implementation problems due to the statutory language relating to payment of supervision fees. In order to clarify agency directives and reduce administrative fee collection problems, language should be deleted which ties the collection of supervision fees to personal meetings with the parole officer. The statute should instead require a \$10 fee for each

month the releasee is under active supervision, regardless of actual personal contact meetings.

**10. The board should have the authority to collect a supervision fee from other states' releasees receiving supervision in Texas. (Statutory)**

The board does not have the statutory authority to collect supervision fees from releases from other states under supervision in Texas. Currently, the board is only collecting supervision fees from releasees of the Texas Department of Corrections. The statute should be amended to authorize supervision fee collection for releasees from other states now residing in Texas. This would increase the amount of revenue generated from supervision fees and ensure that all releasees under the board's supervision are paying for supervision services received.

**11. Establish an electronic monitoring program for offenders by: a) amending necessary statutes, and b) directing the appropriate agencies to seek funding for the program as a priority. (Statutory)**

The potential use of electronic monitoring has been reviewed by a committee appointed by the Criminal Justice Policy Council. The committee indicated that the program could provide a less costly alternative for both probationers and parolees. To initiate a program in Texas, statutes need to be modified to allow electronic monitoring as a condition of probation and specifically authorize its use in parole. The programs should be started on a pilot basis targeted at the metropolitan areas of the state. Offenders participating in the program should be those that would have otherwise been incarcerated at TDC. The Board of Pardons and Paroles and the Adult Probation Commission should pursue funding for this program and emphasize its use in their supervision efforts.

**12. The board should be authorized to contract with local probation departments for the supervision of releasees. (Statutory)**

The review indicated that there are similarities between the supervision of releasees carried out by the board and the supervision of probationers carried out by local probation departments throughout the state. Because there are over 180 more probation offices than parole offices in the state, probation offices, in some areas are significantly closer to releasees than parole offices. The board should be able to contract with local probation departments for the supervision of releasees

where feasible. Therefore, the board's statute should be amended to specifically authorize contractual agreements with probation departments.

- 13. The Board of Pardons and Paroles should seek a bid from Tarrant County for the provision of parole supervision. If the bid requirements are met, the board should establish a pilot project to determine if cost savings can be achieved by contracting with the local probation department for state parole supervision services. (Statutory)**

As part of the sunset review it was determined that the state could save money if parole supervision were contracted out to probation departments in rural areas. Using certain assumptions, possible cost savings were identified if the process were also applied to urban areas. Tarrant County was chosen for a pilot project to determine actual savings. The Board of Pardons and Paroles would request the Tarrant County probation department to bid for the provision of parole supervision services. The Board of Pardons and Paroles would contract with the probation department if it could comply with the standards, terms, and conditions established by BPP. The standards and conditions of supervision would be the same as those used by BPP in its supervision efforts.

- 14. In conjunction with the proposed Tarrant County pilot project, BPP should develop a process for contracting for parole supervision services statewide and should ask for requests for proposals (RFP's) from any interested probation department. (Statutory)**

This recommendation is similar to the Tarrant County Pilot project, except that this one instructs the board to seek bids from any probation department for provision of parole supervision. The board would bid against the probation departments for supervision services and would be required to contract for those services when its bid exceeds a department's bid by more than 10 percent. The board would specify the terms and conditions under which the supervision would be carried out.

### Hearings

- 15. The board should provide better training for its hearing officers. (Statutory)**

Hearing officers employed by the board conduct revocation hearings to determine whether a releasee has violated a condition of release. Hearing officer recommendations become the basis for the board's decision to send a releasee back to prison.

Although hearing officers make important and difficult decisions, the training they receive has been inconsistent. With better training, hearing officers can more ably conduct revocation hearings, especially with regard to the due process rights of releasees.

**16. The board should request an attorney general opinion on the compliance of its hearing process with federal due process requirements. (Non-statutory management improvement)**

The review revealed some questions as to the compliance of the board's release revocation proceedings with due process requirements set forth by the U. S. Supreme Court in Morrissey v. Brewer, 408 U.S. 471 (1972). A formal attorney general opinion should be requested to help clarify the interpretation of the federal court case and the board's compliance with the case's due process requirements.

**17. The board should develop a system of alternative sanctions for violation of release conditions. (Statutory)**

Because of the prison overcrowding problem, the board has been less inclined to revoke a person's release for a less serious violation of a release condition. The board has not developed any guidelines for the use of alternative disciplinary actions in lieu of incarceration. A system of sanctions would give guidance to agency personnel in imposing the various sanctions available and would also let releasees know ahead of time the consequences of their behavior.

**Community Services**

**18. The statute should be amended to remove the restriction on the pre-parole transfer program which prohibits participation by inmates previously denied parole. (Statutory)**

Inmates currently serving time for an aggravated crime, inmates previously convicted of an aggravated crime, and inmates who have previously been denied parole are not eligible to be considered for the pre-parole transfer program. This program allows the transfer of suitable inmates to halfway houses up to 180 days before their parole eligibility date. The number of inmates placed in the program has been much less than intended, due in part to the statutory restrictions which significantly reduce the pool of inmates eligible for pre-parole transfers. Deleting the statutory restriction prohibiting participation in the pre-parole transfer program by inmates previously denied parole would increase the pool of eligible inmates. Those inmates released would help alleviate overcrowding at TDC. The

more dangerous felons convicted for aggravated offenses would remain ineligible for the pre-parole program.

19. **The board should enter into a memorandum of understanding with the Texas Department of Mental Health and Mental Retardation to increase the availability of MHMR services to releasees. (Statutory)**

The agency attempts to work with other state agencies to provide services for releasees. In addition to other efforts, the agency has begun a project with the Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Department of Corrections to serve the special needs of mentally retarded offenders. The board should develop an agreement with TDMHMR to improve the availability of services to offenders with mental health problems in addition to continuing efforts with the mentally retarded.

20. **The board should ensure that adequate information is available to a halfway house before placement of a releasee in that facility. (Statutory)**

The board contracts with halfway houses to provide care and services to releasees, helping them make the transition from prison to community life. Halfway houses must have information on releasees to determine what programs and services these releasees need. The review indicated that the board has not consistently provided halfway houses with information, particularly for the growing number of mandatory releasees referred to them. Lack of information reduces the ability of the halfway house to deal effectively with a releasee. To enable a halfway house to better serve releasees under its care, the board should ensure that adequate information is available to the halfway house before placing a releasee in that facility.

21. **The board should coordinate development of a memorandum of understanding with other agencies involved in the licensure, certification, or inspection of halfway houses to reduce duplication of effort. (Statutory)**

Several state agencies are currently involved in the licensure, certification, or inspection of halfway houses. The overlap in the halfway house certification/licensure process not only places an administrative burden on the contracted facilities, but also causes state agencies to waste time and money duplicating each other's efforts. The statute should therefore be amended to require the board to coordinate the development of a memorandum of understanding with the Texas

Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Health, and the Texas Adult Probation Commission to reduce duplication of effort in the licensure, certification, and inspection of halfway houses.

- 22. The Board of Pardons and Paroles should be authorized expend funds for contract services for mentally ill and retarded offenders, substance abusers, and sex offenders under the board's jurisdiction. The Board of Pardons and Paroles should seek funding for these services from the legislature as a priority item. (Statutory)**

Currently, BPP does not receive an appropriation to purchase needed services for releasees under their jurisdiction in the community. The reviews of both BPP and TDC identified problems with the availability, in certain areas of the state, of services to releasees with mental health/mental retardation problems. The level of services available to releasees will not improve substantially without adequate funding to purchase services from community providers. To improve the accessibility to needed services and to aid in reducing the high recidivism rate for these special needs offenders, BPP should place a high priority on receiving funding for the contract services through the appropriations process.

- 23. The Texas Department of Corrections, Board of Pardons and Paroles, and probation departments should develop a program to help illiterate offenders learn to read and write and should provide incentives to encourage participation in the program. (Statutory)**

The Texas Department of Corrections currently offers literacy training through the adult basic education courses of the Windham School System. The department needs to intensify these classroom efforts by developing one-to-one tutorial program using inmate volunteers as tutors and using assistance from volunteer organizations such as Literacy Volunteers of America.

The Texas Department of Corrections should award good conduct time for inmate tutors and participants based on completion of an approved tutorial program. In addition, BPP should establish a continuing education program for illiterate releasees by placing a special condition of release on certain inmates requiring them to continue education efforts outside prison. The Board should develop an move with the Texas Education Agency to make education programs available to

released offenders. Finally, judges should have the authority to required certain offenders to attend education classes as a condition of probation, and local probation departments should continue efforts to locate education opportunities for probations.

#### **Compact Continuation**

**24. The State of Texas should continue participation in the Interstate Probation and Parole Compact. (Statutory)**

The Interstate Probation and Parole Compact is a binding agreement among all 50 states to provide for the supervision of probationers and parolees who want to live outside the state where they were sentenced or released. The review of the compact showed that it has worked as originally intended, and therefore that Texas should continue its participation. The recommendation requires a statutory extension of the compact statute.

#### **Non-Program Changes**

**25. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

The Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency. A description of the provisions and their application to the board are found in the "Across-the-Board Recommendations" section of the staff report.

**26. Minor clean-up changes should be made in the agency's statute. (Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of the clean-up changes needed in the statute are found in the "Minor Modifications of Agency's Statute" section of the staff report.



## TEXAS DEPARTMENT OF CORRECTIONS

### Background

#### Creation and Powers

The Texas Department of Corrections (TDC) is managed and controlled by the Texas Board of Corrections which was created in 1927. The Texas Department of Corrections is responsible for operating a prison system to confine inmates convicted of felonies and sentenced to state prison terms. The prison system is designed to be as self-sustaining as possible and also provide inmates with opportunities for education, training, and overall rehabilitation.

The first state prison was built in Huntsville in 1850. The prison system was formally established in 1927 with the creation of the Texas Prison Board. In 1957, the name of the prison system was changed to the Texas Department of Corrections and the prison board became the Texas Board of Corrections. Today, the state's prison system is the second largest in the nation, exceeded only by the California system with its 50,000 inmates.

In 1963, the Prison-Made Goods Act was passed which created an industrial program within TDC to provide products to support TDC and vocational training for inmates. In 1969, the Windham school system was established. The system was the first comprehensive educational system established as a public school district within a statewide prison system.

In 1972, a civil rights suit was filed against the director of TDC. The case, now entitled Ruiz v. McCotter, involved allegations that the civil rights of the inmates were being violated because of the living conditions in the prison units of TDC. The court case involved virtually every aspect of TDC operations. The findings in the case and the subsequent court orders and stipulations have completely altered the operations of TDC. A more detailed discussion of Ruiz can be found later in this report.

#### Board Structure

The Board of Corrections is composed of nine part-time members appointed by the governor for staggered six-year terms. The board chairman and vice-chairman are elected by the board membership. Six members are required as a quorum to transact business. The board chairman appoints members to various committees and each member is appointed to a functional area of TDC operations to assist the board in its oversight of the agency. The Board of Corrections also

serves as the Board of Trustees for the Windham school system which provides educational programs for inmates.

### **Funding and Organization**

The Texas Department of Corrections has its administrative headquarters in Huntsville and operates 26 units located primarily in East Texas. Exhibit 1 sets out the organizational structure of the agency and Exhibit 2 shows the locations of the state's prison units. The department had 12,810 employees as of April 1986 with an operating budget of \$595.5 million. Exhibit 3 sets out the personnel and the budget for each of the department's major programs.

### **Programs and Functions**

To fulfill its responsibilities of confining and rehabilitating inmates, TDC has established the following programs -- finance, health services, and operations. Included within operations is the Windham School System. Additional activities are included in executive administration. A description of the programs is provided in the following material.

#### **Executive Administration**

Certain activities, which report to the executive director, have been established to support the department or to assist the TDC director in overseeing its activities. The support activities include personnel, public information, and general counsel. The other activities include compliance, which monitors the department's progress in meeting Ruiz requirements; internal affairs, which conducts use of force and other internal investigations; and staff counsel for inmates, which provides legal assistance for indigent inmates. Though the TDC organization chart places internal audit under executive administration, this audit function actually reports to the finance director.

#### **Finance**

This program provides the traditional financial support for the department. Budgeting, accounting, data processing and purchasing are either provided or coordinated through this division. The two largest divisions of the program -- agriculture and industry -- are not usually part of a finance program. These two programs are included under finance within TDC because of the revenue generated and spent by the programs.

The agriculture program provides most of the food required to feed the inmates and employees of TDC in the prison units. Exhibit 4 shows the agricultural programs operated by TDC. Inmate labor is used in many areas of agriculture with approximately 7,500 assigned to the division daily.

Exhibit 1

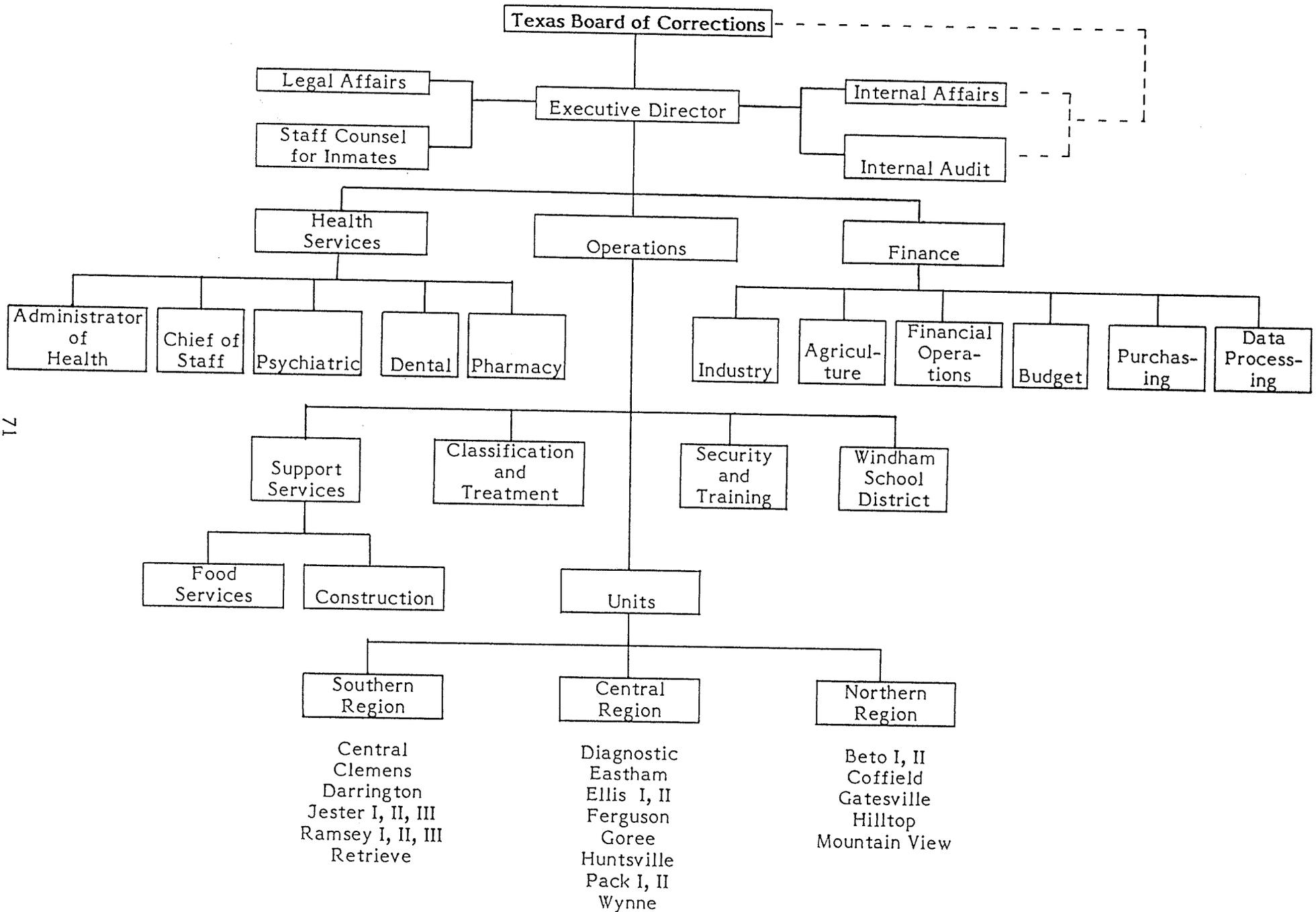
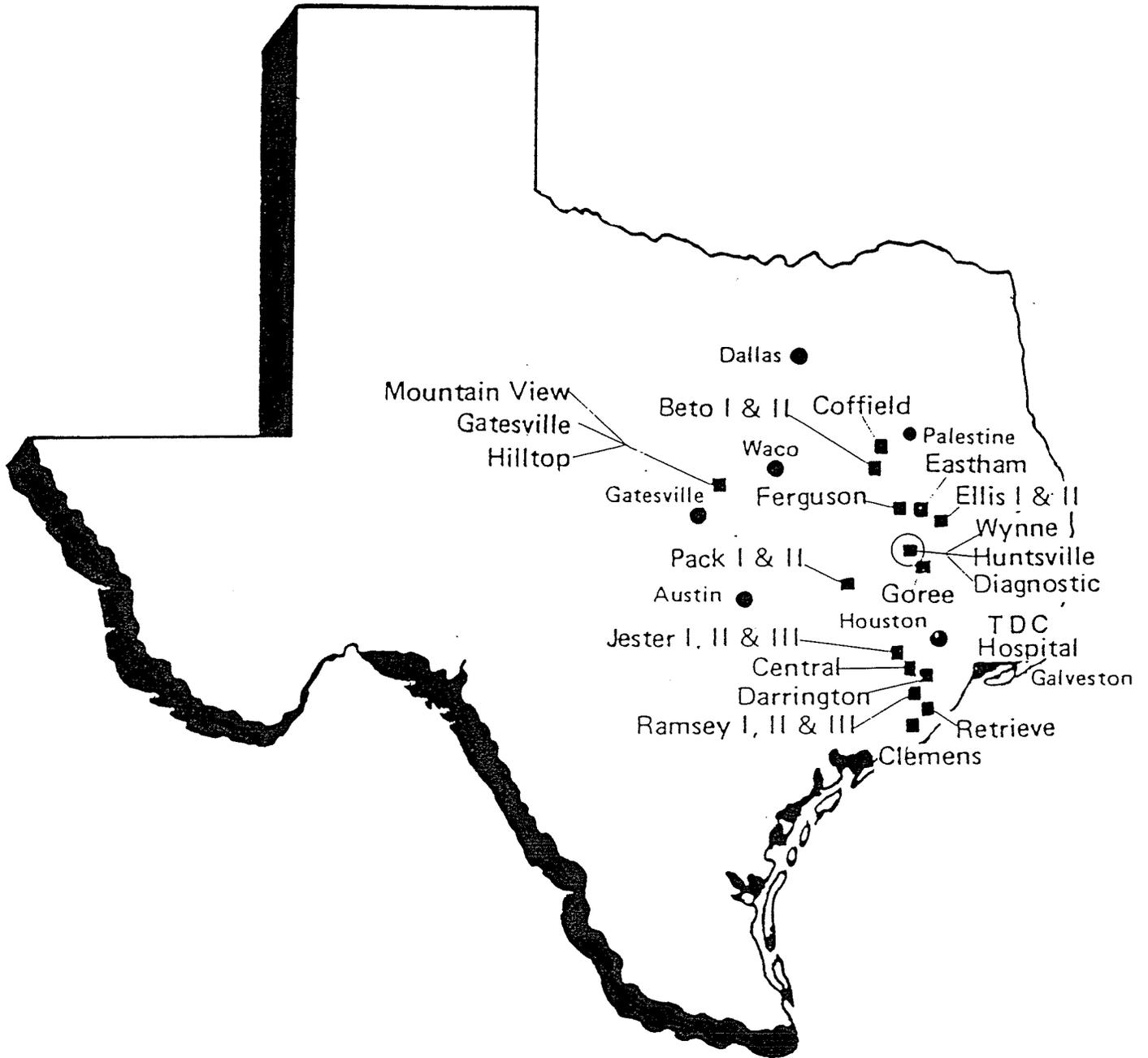


Exhibit 2  
TDC Prison Units



**Exhibit 3**  
**TDC Budget/Employees**

<u>Agency Program or Activity</u>	<u>1986 Funding</u>	<u>Employees</u>
Executive Administration	\$ 3.5M	172
Finance	54.0M	533
Operations	237.0M	10,435
Health Services	54.0M	1,670
Other		
- Utilities	23.5M	--
- <u>Ruiz</u>	1.5M	--
- Construction	<u>222.0M</u>	<u>--</u>
<b>TOTAL</b>	<b>\$ 595.5M</b>	<b>12,810</b>

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**Exhibit 4**  
**TDC Agricultural Programs**

<b>Field crops</b>	<b>Grazing crops</b>
cotton	forage
wheat	
soybeans	<b>Livestock and Poultry</b>
corn	beef
grain sorghum	poultry
feedmill	dairy
	eggs
<b>Edible crops</b>	swine
vegetables	
fruits	<b>Packing Plant</b>
rough rice	<b>Canning Plant</b>

The industry division of TDC has two main responsibilities -- producing goods to meet the needs of TDC and providing a training ground for inmates. Exhibit 5 outlines the industrial programs operated within TDC. Inmate labor is also used in the industrial programs with 5,067 inmates assigned daily. Many of the inmates working in industry are also involved in related on-the-job and apprenticeship training programs. More information on the training programs is provided in the discussion of the Windham school system.

**Exhibit 5**  
**TDC Industries**

Traffic Sign	Mattress
Bus Repair	Mechanical Shop
Record Conversion	Print Shop
Soap and Detergent	Prison Store
Dump Bed	Textile Mill
Metal Fabrication	Stainless Steel Products
Tire Recapping	Furniture Refinishing
Garment	Box Factory
Shoes	License Plate
Woodworking	Validation Sticker
Mop and Broom	

Health Services

This program provides for the mental and medical health needs of the inmates confined in TDC. Complete medical care, one of the main health care programs, psychiatric and psychological services, and dental care are available to inmates. Pharmacy services are also provided for the inmates. Medical care is provided in three ways: primary or basic care in the prison units; secondary care at designated regional care facilities when a greater level of care is needed; and tertiary care at the TDC hospital in Galveston when specialty care and extended treatment is required. The TDC hospital, located next to the John Sealy Hospital in Galveston, is operated and staffed by the University of Texas Medical Branch (UTMB).

Psychiatric services is another of the main programs within the health services division. Within psychiatric services there are two sub-programs: 1) program for the mentally ill and 2) program for the mentally retarded. Inmates identified with more serious mental illness and mental retardation problems are housed and treated separately from the general population in special in-patient facilities. Psychiatric out-patient services are available in the TDC units

for inmates with less serious problems. In the in-patient facilities the clinical staff is organized using treatment teams composed of a psychiatrist, a Ph.D. psychologist, master's level psychological clinicians, at least one case manager, a nurse, and a psychiatric or rehabilitation aide. Exhibit 6 provides some examples of health services available to inmates.

**Exhibit 6**  
**TDC Health Services**

**General Medical**

**Out-patient**

some emergency services  
sick call  
routine medical  
basic laboratory services  
radiology  
respiratory  
physical therapy

**In-patient**

(TDC Hospital)  
extensive emergency services  
in-patient hospital services  
surgery  
neuro-surgery  
out-patient specialty services  
-- e.g. neurology  
nephrology  
ophthalmology  
urology  
burn unit services

**Dental**

extractions  
fillings, crowns  
oral surgery  
root canals  
prosthetics

**Pharmacy**

prescription drugs  
over-the-counter medication  
daily administering of medication

**Psychiatric**

**Mentally Ill/Mentally Retarded**

testing/evaluation  
diagnosis  
therapy  
acute care  
special housing

**Operations**

This program is responsible for the actual confinement of inmates. The department operates 26 prison units to confine approximately 38,000 inmates. Exhibit 7 describes the units. To assist with the oversight and coordination of the unit's operations, TDC has divided the units into three geographic regions, each of which is overseen by a regional supervisor. Several divisions provide staff support for the prison units and help manage the inmates. The classification and treatment division puts all incoming inmates through a diagnostic process to determine their mental and physical health and their classification and custody level. Exhibit 8 details the diagnostic intake process. The classification and custody level is used to assign the inmates to an appropriate prison unit. A further explanation of

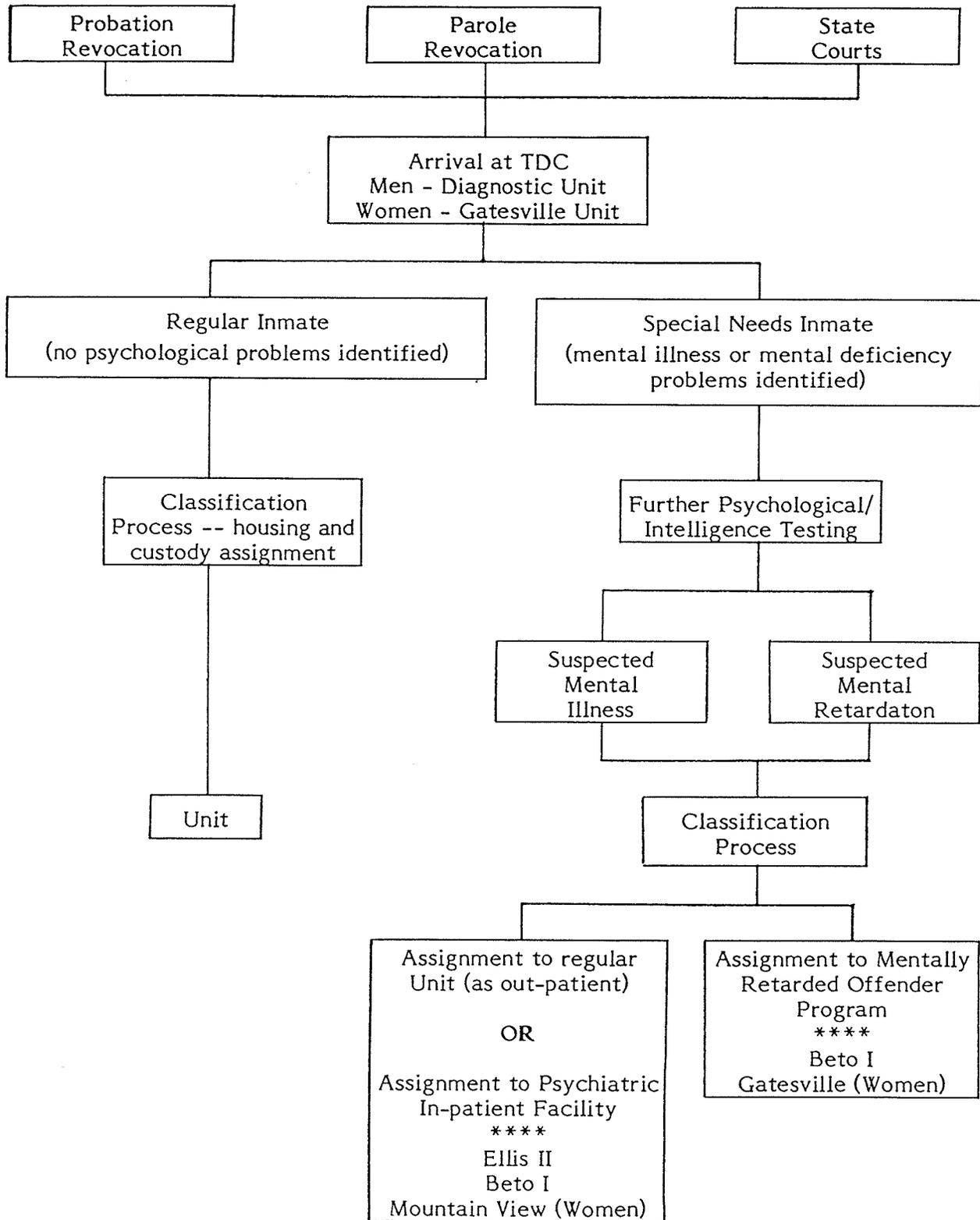
**Exhibit 7  
TDC Unit Profiles**

<u>Unit</u>	<u>Current Unit Capacity</u>	<u>Type of Inmates</u>	<u>Industries/Agriculture</u>
<b><u>Southern</u></b>			
Central	935	First offenders, minimum custody	Soap and detergent, industrial distribution warehouse, transportation; diversified agriculture operations
Clemens	1,001	Second offenders, all custody levels	Field, edible crops, livestock, grain drier and storage
Darrington	1,745	Younger second offenders, all custodies	Tire recapping; eggs, livestock, field, edible crops
Jester I	448	First offenders and recidivists; Pre-release; minimum custody	Extensive edible crops, swine, livestock, and poultry
Jester II	436	First offenders and young recidivists; minimum custody	Edible crops, swine, livestock and poultry
Jester III	1,102	Recidivists; minimum custody	Edible crops, swine, livestock and poultry
Ramsey I	1,619	Recidivists; mostly minimum custody	Furniture refinishing; extensive edible and field crops, stocker cow, dehydrator
Ramsey II	915	Recidivists; all custodies	Extensive edible and field crops grain storage, livestock
Ramsey III	1,295	Recidivists; minimum custody	Canning plant
Retrieve	772	Recidivists; all custodies	Edible crops, livestock
<b><u>Central</u></b>			
Eastham	2,496	Recidivists; all custodies	Garment; diversified agriculture, dairy; feed mill
Ellis I	2,315	Older recidivists; all custodies; death row	Woodworking, shoe shop, bus repair; swine, livestock, field and edible crops
Ellis II	1,823	First offenders and recidivists; adult medical and mental health patients	Textile, logging; field crops

**Exhibit 7  
(cont.)**

<u>Unit</u>	<u>Current Unit Capacity</u>	<u>Type of Inmates</u>	<u>Industries/Agriculture</u>
Ferguson	2,691	First offenders; all custodies	Mop and broom, large vocational shop, field and edible crops, livestock and swine
Goree	1,017	Inmate reception; minimum security inmates maintain facilities	Breed horses for other units
Huntsville (Walls)	2,134	First offenders and recidivists; all custodies; all medical classes	Textile, print shop, mechanical department, construction headquarters
Pack I	1,066	First offenders and recidivists; minimum custody	Field and edible crops, stocker cattle
Pack II	1,334	First offenders and younger recidivists; minimum custody	Stainless steel products
Wynne	2,433	First offenders and recidivists; all custodies	License plates and stickers, microfilm, mattresses, box factory, plastic signs, prison store; field and edible crops, dairy breeding
Diagnostic	948	Inmate reception; minimum security inmates to maintain facilities	No industry or agriculture
<b><u>Northern</u></b>			
Beto I	3,416	First offenders; all custodies; mentally retarded offenders	Traffic signs; swine, stocker cow operations, edible crops
Beto II	1,073	Recidivists; minimum custody	School bus repair, microfilm
Coffield	3,791	First offenders and recidivists; all custodies	Microfilm, metal fabrication, dump bed, diversified agriculture, meat-packing plant
Gatesville	1,186	Female offenders; all classifications and custody levels (includes reception center)	Garment factory
Hilltop	1,308	Younger first and second offenders; minimum custody	Garment; horse breeding, edible crops
Mountain View	796	Female first offender; all custodies; all medical classes; women's psychiatric, death row	Braille reproduction

**Exhibit 8  
TDC Diagnostic Process**



classification and custody levels is provided on page 44. The division employs correctional counselors to work with the inmates in the units. The counselors assist the inmates with their activities while in prison. Alcoholism and drug abuse counseling is provided through this division. Also, religious services are provided for inmates.

Other divisions within the operations programs include those which support the units. Food Services is responsible for all the food requirements of the units, serving 146,000 meals each day. Laundry services employs 3,800 inmates in unit laundries to provide clean clothes and linens to the inmates. The construction division handles all the repair, maintenance and new construction projects needs of TDC. Inmate labor is used on most maintenance and repair and small construction with 1,766 assigned daily. Contracts with outside private engineering and construction firms are used on larger projects. Exhibit 9 lists TDC's current construction projects.

The final major division within the operations program, the Windham school system, provides educational programs for inmates. The Windham system is organized as a public school district and receives most of its funding through the Texas Education Agency with some funding through state and federal grants. Academic and vocational programs are offered on a non-graded basis and allow inmates to progress at their individual pace. Exhibit 10 shows a listing of the educational programs offered through Windham. Inmates with an education achievement score below the fifth grade level are required to attend school classes to raise their achievement level to at least a fifth grade level. Approximately 20 percent of all incoming inmates are required to attend classes. Exhibit 11 indicates the participation in the Windham school system for 1985. In general, all inmates who wish to attend academic classes are able to do so. For vocational programs, however, approximately 50 percent of inmates wishing to participate are required to wait for an opening before being able to enroll. Exhibit 12 indicates the waiting list by unit. An estimated 79 percent of all inmates participating in education (GED) programs actually complete those programs, however, vocational programs is around 22 percent. Common reasons for non-completion include disciplinary or medical problems, changes in job or unit assignments, or release from prison.

**Exhibit 9**  
**TDC Construction Projects (Budgeted 1986)**

New Unit No. 1	\$ 60,000,000
Start-up Funds for New Unit No. 2	20,000,000
Trustee Facilities	18,000,000
Additions and Maintenance Required by <u>Ruiz</u> Overcrowding Stipulation	27,750,000
Additions/Renovations to Units	33,177,000
Inmate Recreation Facilities	14,034,000
Health Services Additions	10,905,000
Unit Kitchen Remodeling	8,335,000
TDC Administration Office Space	4,595,000
Central Regional Medical Facility	3,000,000
Agricultural Buildings and Facilities	2,756,000
Security Hardware	2,003,000
Vocational Building and Facilities	2,001,000
School Buildings and Facilities	1,666,000
Laundry Expansion	1,211,000
Employee Housing	706,000
Planning for Future Construction	225,000
Construction Equipment Replacement	300,000
Parole Interview Rooms	120,000
All Other Construction	<u>10,912,000</u>
<b>TOTAL</b>	<b><u>\$ 221,696,000</u></b>

Exhibit 10

Windham School Academic/Vocational Programs

<u>Academic</u>	<u>Vocational</u>
<u>Curriculum</u>	
Communications Mathematics Science Social Science Music Art Typing Bookkeeping Physical Education Life Skills Pre-release	Auto Body Repair Auto Mechanics Auto Transmission Repair Baking Barbering Bricklaying Building Trades *CVAE General Construction Trades *CVAE Office Duplication *CVAE Typing Commercial Cooking Diesel Mechanics Drafting Electrical Trades Floriculture Industrial Cooperative Training Industrial Equipment Repair Machine Shop Meat Cutting Mill and Cabinetmaking Ornamental Horticulture Plumbing Printing Trades Radiator Repair Refrigeration & Air Conditioning Sheet Metal Trades Small Engine Repair Truck Driving Upholstery Vocational Electronics Wall & Floor Trades Welding
<u>Types of Programs Offered</u>	
Basic Academic Special Education/Handicapped Bilingual Education English - Second Language College-Preparatory In-Cell Study Chapter I Federal Program for Young Offenders	
<u>Credential Options</u>	
GED High School Diploma	
*Coordinated Vocational/Academic Education	<u>Credentials</u>
	Vocational Achievement Certificate

**Exhibit 11**

**Participation in Windham School Programs**

	<u><b>FY 1985</b></u>
Number of inmates that received high school and high school equivalency diplomas:	3,080
Number of inmates enrolled in special education:	2,144
Number of inmates enrolled in vocational education:	5,137
Number of inmates that received vocational education certificates:	1,136
Average monthly academic enrollment for the school year:	13,023
Average monthly full-time vocational enrollment for the school year:	1,777
Average monthly special education enrollment for the school year:	1,202
Total average monthly enrollment for the school year:	16,002
<u>Historical data - number of diplomas and certificates awarded since 1970</u>	
High school and high school equivalency diplomas	30,645
Vocational certificates	11,183

**Exhibit 12**

**Waiting List for Windham Vocational Programs - July 1986**

Beto I Unit	62
Beto I MROP Unit	85
Beto II Unit	13
Central Unit	25
Clemens Unit	86
Coffield Unit	24
Darrington Unit	143
Eastham Unit	91
Ellis I Unit	27
Ellis II Unit	3
Ferguson Unit	83
Gatesville Unit	129
Goree Unit	0
Hilltop Unit	150
Huntsville Unit	22
Jester I Unit	0
Jester II Unit	0
Jester III Unit	28
Mountain View Unit	59
Pack I Unit	29
Pack II Unit	70
Ramsey I Unit	46
Ramsey II Unit	34
Ramsey III Unit	5
Retrieve Unit	27
Wynne Unit	28
	<u>1,269</u>

In addition to the education offered through the Windham school, TDC offers a number of junior college academic and vocational programs and senior college academic programs. Associate and baccalaureate degrees are available through these programs. In addition, TDC operates an on-the-job training program in a number of vocational skills areas and has an apprenticeship program in skill areas approved by the U.S. Department of Labor. Exhibit 13 lists the apprenticeship programs available and some of the on-the-job training programs offered. Participation in these programs along with the junior and senior college programs is shown in Exhibit 14.

### Exhibit 13

#### Apprenticeship Programs and Selected Industrial On-the-Job Training Programs\*

##### Apprenticeship Programs

Microfilm	Auto Mechanics
Data Entry	Truck Mechanics
Welders	Machinist
Auto Body	Printers
Computer Operator	Metal Fabrication

##### On-the-Job Training Programs

Drafter	Receptionist	Dental Lab Technician
Computer Programmer	Cook	Furniture Upholsterer
Medical Laboratory Technician	Barber	Sheet Metal Worker
Clerk Typist	Janitor	Automobile Body Repairer
Keypunch Operator	Termite Exterminator	Welder
Terminal Operator	Farm Machine Operator	Electrician
File Clerk	Cannery Worker	Painter
Proofreader	Machinist	Carpenter
Accounting Clerk	Automobile Mechanic	Bricklayer
Stock Control Clerk	Phototypesetter Operator	Truck Driver
Shipping and Receiving Clerk		

\*As of July 30, 1986, 325 on-the-job training programs had been approved in eight TDC divisions.

**Exhibit 14**

**Participation in Post Secondary Education and Vocational Training**

	<u>FY 1985</u>
Number of Inmates Enrolled in Junior College Academic Classes	10,239
Number of Associate Degrees Awarded	351
Number of Inmates Enrolled in Senior College Academic Classes	1,190
Number of Baccalaureate Degrees Awarded	30
Number of Inmates Enrolled in Junior College Vocational Classes	1,805
Number of Junior College Vocational Certificates Awarded	1,057
Number of Apprenticeship and Training Registrations	1,115
Number of Inmates Enrolled in Related Training	1,005
Number of Journeyman Apprenticeship Certificates Awarded	50
Number of Inmates Enrolled in Texas A&M University Extension Programs	127
Number of Texas A&M University Extension Program Certificates Awarded	105
Number of Inmates in OJT Programs	1,164

**Historical Data — Number of Degrees and Certificates Awarded**

Associate Degrees Since 1965	2,860
Baccalaureate Degrees Since 1974	243
Vocational Certificates Since 1967	9,977
Apprenticeship and Training Program Certificates Since 1977	375

### Other Information

In addition to the information previously provided on the various programs and functions of TDC, other information is necessary to provide a better understanding of the agency and some of the constraints under which it operates. The following material briefly explains several state laws and court cases which directly affect the operation of TDC.

### Texas Prison Management Act

The Texas Prison Management Act was passed by the 68th Legislature in 1983 to ensure that TDC would not operate in violation of the federal court order regarding prison crowding. When the inmate population reaches 95 percent of capacity, the act requires the agency to notify the governor of that fact and to credit 30 days of good time to most inmates. If, after 30 days, the prison population remains at or above 95 percent of capacity, the governor must notify the Board of Pardons and Paroles that emergency overcrowding exists, requiring the board to advance parole eligibility for most inmates by 30 days. This procedure is repeated after 60 days if the emergency overcrowding still exists. If the population remains at or above 95 percent after 120 days, the governor must order TDC to award another 30 days of good time. Thereafter, if the emergency overcrowding still exists, the steps above would be repeated until the inmate population stabilizes below 95 percent of capacity. As of September 1986, the TDC population had never reached the level required to trigger the additional granting of good time called for in the act.

### Flat Time

The Adult Parole and Mandatory Supervision Law requires that certain inmates must serve actual calendar time, or "flat time," before they may be considered for parole. Inmates serving "flat" time in TDC are those who have been convicted of capital murder, aggravated kidnapping, aggravated sexual assault, or aggravated robbery or a felony crime involving a deadly weapon (Sec. 3g, Article 42.12, C.C.P.). Though inmates serving flat time may earn good conduct time, they must serve the lesser of one-third of their sentence or 20 years before they become eligible for parole.

### Good Time

The Texas Department of Corrections has the authority to award good-conduct time credits to inmates, reducing the amount of time they must actually

serve in prison. Good-conduct time is counted toward the time needed to become eligible for parole and/or mandatory release. The department uses good time to encourage good inmate conduct and participation in work programs. Inmates are classified and earn good-conduct time basically according to the degree of supervision they require, their level of assaultiveness or vulnerability, and their treatment and programming needs. Exhibit 15 shows the various custody levels and the good-time earning credits for each.

**Exhibit 15**  
**Custody Levels and Good-Time Credits**

<u>Custody Level</u>	<u>Good Time Earned for 30 Days Served</u>	<u>Total Credit for 30 Days Served</u>	<u>With A-Time*</u>	<u>With B-Time**</u>	<u>With C-Time***</u>
SAT I, II, III	45	75	80	85	90
SAT IV	40	70	75	80	85
Line Class I	20	50	55	60	65
Line Class II	10	40	-	-	-
Line Class III	0	30	-	-	-

\*A-Time: 5 days for OJT certification or vocational training completion.

\*\*B-Time: 10 days for educational program completion; vocational and educational program completion; or OJT and vocational program completion.

\*\*\*C-Time: 15 days for OJT and educational program completion; or OJT, educational and vocational program completion.

Upon admission to TDC, most inmates are placed in a custody level of State Approved Trusty (SAT) IV, which assumes good behavior by inmates and provides 70 days credit for every 30 days served. If they behave, they may be promoted to a lower custody level (SAT I, II, or III) earning 75 days for every 30 days served. Conversely, inmates convicted of a disciplinary offense, such as refusing to work, are subject to a loss of good time, a reduction in custody class, and punitive segregation. If these inmates maintain a clean conduct record for three to six months, they must be reviewed for promotion in class and/or restoration of good-time credits. By departmental policy, all previously-earned good-time credits forfeited as a result of a disciplinary action must be restored before the inmate may be eligible for promotion above Line Class I.

In addition to the good-time awards for conduct, TDC has the authority to award additional good time, up to 15 days, for inmates participating in educational

or vocational programs. These additional awards, which are only available for inmates in SAT status, could push the total credit for 30 days served to 90 days. The department may also award good-conduct time for time which the inmate spent in county jail. In addition, TDC can retroactively award or "backdate" SAT good-time earning credits for periods of time when less time credit was earned. Backdating may be full or partial, depending on the inmate's disciplinary record.

#### Custody and Housing Assignments

Through its classification process, TDC not only awards good-conduct time, but also determines custody levels and housing assignments for inmates. The department tries to classify and house inmates according to both inmate and institutional needs. TDC considers the inmate's behavior, prior criminal history and nature of current offense as well as his or her safety, medical, mental health, and intellectual needs. It also considers the inmate's job skills and the department's own labor needs and facility requirements before assigning an inmate to a unit. For example, units with only dormitory housing are suitable only for minimum custody inmates. Most procedures guiding inmate housing and custody assignments are specified in the Classification and Administrative Segregation Plans agreed to by TDC as part of the Ruiz settlement. Other factors complicating the housing of inmates result from Lamar v. Coffield, which is discussed in more detail elsewhere in this report.

Inmates are assigned to units from TDC's Reception and Diagnostic Center. Most inmates are assigned to either minimum, medium, close, or maximum custody. Minimum custody inmates are basically State Approved Trustees who have first priority for dormitory housing, but may be assigned to minimum security celled housing. Medium, close, and maximum custody inmates may only be assigned to celled housing. Exhibit 16 shows the housing assignments as well as good-time earning classes and supervision requirements for each custody level. In addition to these custody levels, the department may place inmates in special custody categories, including: death sentence, pre-release, transient, safekeeping, medical, mental health, and intellectual impairment status. Information showing the types of inmates housed in each unit was shown in Exhibit 7. Exhibit 17 shows current and court-ordered capacities and types of housing for each of the units. As a result of the Ruiz settlement, the department must reduce the number of inmates that can be housed in each unit. The department has agreed to achieve

this de-population in two stages, by reducing the capacities of some units by 1987 and the remaining units by 1989.

Regarding housing assignments, the Classification Plan specifies that no assaultive inmates or inmates recently convicted of a disciplinary offense involving a weapon or assaultive sexual misconduct may be housed in a dormitory. The plan also requires assaultive or vulnerable inmates not suitable for shared housing to be housed in a cell alone. Inmates of different custody levels may not be mixed within a cellblock. Inmates in administrative segregation are classified as maximum custody inmates and must be separated from the prison's general population because they pose a threat to staff or other inmates, they are escape risks, or their own safety is at risk. Though administrative segregation is not a punitive status, it may be used to house inmates whose repeated, serious disciplinary violations are determined to threaten the order and security of the institution.

Punitive segregation, or solitary confinement, is not a custody class, but is a disciplinary status for inmates convicted of major disciplinary violations. Inmates may be held in solitary for a maximum of 15 days and only after a finding of guilt in a disciplinary hearing.

#### Ruiz v. McCotter

The Ruiz v. McCotter litigation affects virtually every aspect of TDC operations. A class action civil rights lawsuit filed as Ruiz v. Estelle in 1972, Ruiz v. McCotter was tried by Federal Judge William Wayne Justice in 1978. The court, in 1980, ruled that conditions in TDC violated the constitution, and ordered the parties to develop remedial plans and suggest a special master to monitor compliance. The state chose to enter into a settlement with the plaintiffs on some points, and signed a consent decree in 1981. That year, the court entered its wide-ranging amended decree covering areas in which agreement had not been reached. Also, the court-appointed special master began to monitor TDC's compliance with Ruiz orders and stipulations.

**Exhibit 16**  
**Chart of Principal Custody Assignments**

<b>Custody Assignment</b>	<b>Good Conduct Time Class</b>	<b>Outside Perimeter</b>	<b>Inside Perimeter</b>	<b>Type of Housing</b>	<b>Housing Custody</b>
Minimum (Out - SAT I)	SAT Class I	no direct supervision	no direct supervision	cell or dormitories	minimum only
Minimum (Out - SAT II)	SAT Class II	periodic, unarmed supervision	no direct supervision	cell or dormitories	minimum only
Minimum (Out - SAT II - Restricted)	SAT Class II	direct, unarmed supervision	no direct supervision	cell or dormitories	minimum only
Minimum (Out - Line Class 1*)	Line Class I	direct, unarmed supervision	no direct supervision	cell or dormitories	minimum only
Minimum (In - SAT III)	SAT Class III	direct, armed supervision	periodic supervision	cell or dormitories	minimum only
Minimum (In - SAT IV)	SAT Class IV	direct, armed supervision	periodic supervision	cell or dormitories	minimum only
Minimum (In - Line Class 1*)	Line Class I	direct, armed supervision	periodic supervision	cell or dormitories	minimum only
Medium	SAT Class IV	direct, armed supervision	periodic supervision	cell	medium only
Close	Line Class 1, 2, or 3	constant, armed supervision	periodic supervision	cell	close only
Maximum	Inmates in this custody assignment shall require the highest degree of custody supervision.				

\*Minimum-Out Line Class 1 and Minimum-In Line Class 1 are custody assignments for inmates who cannot be awarded State Approved Trusty (SAT) good conduct time for a specified period of time because of statutory restrictions.

Exhibit 17  
TDC Unit Capacities by Type of Housing

Unit	Celled Beds	Dorm Beds	Ad. Seg. Beds	Other Beds	Beds Not Useable Due to Single Ceiling Requirements	Total Capacity (Feb. 1986)	First De-population (9/1/87)	Second De-population (9/1/89)
Beto I	1,584	-	444	2,020	(632)	3,416	3,416	3,000
Beto II	-	1,056	11	6	-	1,073	1,073	888
Central	-	929	-	6	-	935	935	0
Clemens	338	428	162	190	(117)	1,001	851	851
Coffield	2,562	340	370	630	(111)	3,791	3,000	3,000
Darrington	744	474	565	120	(158)	1,745	1,612	1,612
Diagnostic	-	180	-	782	(14)	948	926	926
Eastham	888	1,018	527	204	(141)	2,496	2,050	2,050
Ellis I	1,160	685	79	416	(25)	2,315	1,900	1,900
Ellis II	1,008	-	44	771	-	1,823	1,823	2,200
Ferguson	1,248	558	460	442	(17)	2,691	2,100	2,100
Gatesville	-	1,106	42	38	-	1,186	1,079	1,079
Goree	68	249	29	680	(9)	1,017	1,058	1,058
Hilltop	-	1,296	4	8	-	1,308	1,308	1,049
Huntsville	1,730	75	88	304	(63)	2,134	1,900	1,900
Jester I	-	448	-	-	-	448	448	323
Jester II	-	300	-	136	-	436	436	378
Jester III	-	1,088	14	-	-	1,102	1,102	908
Mountain View	-	751	25	20	-	796	718	718
Pack I	-	1,048	12	6	-	1,066	864	864
Pack II	-	1,320	14	-	-	1,334	1,334	1,088
Ramsey I	976	431	130	172	(90)	1,619	1,400	1,400
Ramsey II	138	527	196	138	(84)	915	850	850
Ramsey III	-	1,280	15	-	-	1,295	1,295	1,000
Retrieve	270	417	198	6	(119)	772	770	770
Wynne	<u>1,298</u>	<u>812</u>	<u>433</u>	<u>222</u>	<u>(332)</u>	<u>2,433</u>	<u>2,300</u>	<u>2,300</u>
<b>Total</b>	<b>14,012</b>	<b>16,816</b>	<b>3,862</b>	<b>7,317</b>	<b>(1,912)</b>	<b>40,095</b>	<b>36,548</b>	<b>34,212</b>

In 1982, the Fifth Circuit Court of Appeals provided the state with some relief from the district court's extensive orders by vacating portions of the amended decree. In addition, the appeals court adopted a "wait and see" stance, giving TDC one year in which to comply by relieving overcrowding. After the appeals court's ruling, the parties entered into various stipulations, agreeing on plans to comply with the court's orders. At the end of the court's one year period, the plaintiff's filed their motion for further relief. Consequently, the parties entered into several more stipulations regarding compliance between 1983 and 1985.

In 1985, the Ruiz court-ordered the state to pay the special master's office, \$745,000 and the plaintiff's attorney \$319,000, as costs of monitoring Ruiz compliance. From the beginning of fiscal year 1986 to July 1986, the state paid the special master's office \$676,000, and the plaintiff's attorney \$433,000.

Ruiz affects TDC's daily operation through the court's orders, the parties' settlement agreements and agency plans for compliance. These instruments directly influence TDC operations in the following major areas: crowding, classification, building tenders, staffing, use of force, health care, special needs inmates, administrative segregation and inmate disciplinary procedures. A complete discussion of the Ruiz requirements in each of these areas is beyond the scope of this report. The following is a general discussion of the most important facets of the case as they affect TDC and the State of Texas.

Crowding. The Ruiz decision found that the crowded conditions in the Texas prisons created an environment for prisoners that, in its totality, constituted cruel and unusual punishment. The state was prohibited from housing more than two prisoners in one cell and was limited as to the number of inmates that could be assigned to a dormitory. As part of the Ruiz settlement TDC agreed to an acceptable number of inmates that may be housed in each TDC prison unit. The numbers, which became the maximum capacity for the units, must be achieved in two scheduled depopulations as shown in Exhibit 17. A unit's capacity is also affected by another agreement to place certain assaultive and vulnerable inmates in single cells. Whether TDC is properly single celling inmates is a subject of the contempt hearing.

The TDC files quarterly reports with the special master relating to the number of prisoners housed in cells and dormitories, together

with the square footage of all cells and dormitories in use. The state and the plaintiffs have agreed that certain units will be operating at or below maximum capacity by 1987, and the remaining units will reduce capacity by 1989. Since most units now operate above maximum capacity, TDC will be forced to either build additional prisons or other types of detention facilities, depopulate the prison system, or a combination of both options, to comply with the settlement figures.

Classification. Before the Ruiz litigation, TDC had only a rudimentary system for classifying inmates. Ruiz required the agency to develop a classification plan that would minimize inmate violence, and ensure that only minimum custody inmates would be assigned to dormitories. A more detailed discussion of classification can be found on page 44. The goal of providing more vulnerable inmates with protection from more aggressive inmates is illustrated by the plan's prohibition of housing inmates with different custody levels on the same cell block. The crowded conditions still existing in TDC have forced the department to mix classifications on some cell blocks. Plaintiffs focused upon this issue in the recent contempt hearing, as well as the department's classification and housing of female prisoners.

Building Tenders. The practice of allowing selected inmates, known as building tenders, to supervise the activities of other inmates was prohibited by the Ruiz settlement. TDC has eliminated its use of building tenders. The parties have stipulated that certain inmates may be designated as "support service inmates" to perform specified tasks. Inmates may not occupy positions which give them access to sensitive information about other inmates. Further, inmates may not have any form of supervisory or administrative authority over other inmates. Currently, TDC is considered in compliance with the building tender stipulation.

Staffing. The elimination of building tenders, increased an inmate-to-guard staffing ratio that the court had already found deficient. The court ordered TDC to lower the staffing ratio to six to one. The parties entered into stipulations designed to phase-in complete staffing by January 1, 1985. The agreement determines a minimum number of security staff, and establishes a staffing pattern

for deployment of security officers in each unit. TDC has hired the total number of officers required for each unit. However, the department's compliance with the stipulation is a contempt issue because the plaintiffs contend the deployment of these officers is contrary to the agreed staffing pattern.

Use of Force. The Ruiz decision concluded that the use of physical force by staff was "routine" in TDC. The court required that "only the minimum force reasonably believed to be necessary shall be used" and then only in specific circumstances to be reported to the court. Further, the court decision included provisions related to other uses of force such as chemical agents and required TDC to develop written standards for their use. The Use of Force Plan was developed pursuant to the courts order and now governs the use of force within the agency.

Health Care. Ruiz determined that health care provided to TDC inmates was far below medical standards of care. The court's consent decree required TDC to develop plans to "insure that prisoners receive necessary medical, dental, and psychiatric care from the moment of their arrival in TDC." Plans have been developed which deal with every aspect of health care, including staffing levels and have been accepted by the court. The recent contempt hearing dealt with issues related to staffing in the dental and psychiatric areas and the availability of appropriate space for psychiatric patients.

Special Needs Inmates. Treatment of inmates having "special needs" due to a mental or physical handicap was a subject of the Ruiz case. The parties agreed that TDC would develop a plan for dealing with mentally retarded defenders and with physically handicapped inmates. The mentally retarded offenders plan has been developed and implemented. Essentially, the plan requires TDC to identify, separate, and habilitate mentally retarded inmates. A physically handicapped plan has been prepared, but its adequacy and whether TDC must provide these inmates with all the services of the general population, are subjects of the plaintiff's contempt motion.

Administrative Segregation. Inmates, who are vulnerable or assaultive may require housing separate from the general population.

These "administrative segregation" inmates are the subject of several different Ruiz stipulations and orders. The department has developed an Administrative Segregation Plan, approved by the plaintiffs, which provides the procedures and conditions of confinement for administrative segregation. Generally, an inmate may not be confined in administrative segregation as punishment or without regular review hearings. Because administrative segregation is not punishment, these inmates are entitled to conditions of confinement practically identical to those of the regular population. Administrative segregation inmates are allowed regular recreation, single cells with the same fixtures as general population cells, the same meals as the general population, and essentially the same programs as general population inmates. Compliance with the administrative segregation plan has been very difficult since the population in administrative segregation has increased by about 2,500 inmates since 1982. Consequently, the department was forced to defend its record of compliance with the plan at the contempt hearing.

Inmate Disciplinary Procedures. The Ruiz case addressed fully TDC's use of disciplinary procedures. TDC is required to provide the due process protections outlined by the United States Supreme court in Wolff v. McDonnell 418 U.S. 539 (1974). All hearings must, in addition, be recorded and the recordings preserved. From September 1985 to June 1986, the department recorded over 95,000 disciplinary offenses against inmates.

Other areas touched by Ruiz include death row conditions, access to courts, prohibition of vague disciplinary rules, protection of inmate witnesses, and compliance with certain occupational health and safety regulations. Most observers estimate that the court will remain involved with the TDC until at least 1989, when the last depopulation is scheduled.

As a result of special monitor's reports indicating non-compliance in crucial matters, the plaintiffs filed a contempt motion in Judge Justice's court in 1985. The contempt motion dealt with eight areas of alleged non-compliance: single celling, classification, administrative segregation, medical staff, recreation yards and gyms, staffing, physically handicapped, and female cell housing. These major contempt issues are summarized in Exhibit 18. Attempts to enter into a

settlement failed and the motion was brought before Judge Justice in June of 1986. In his ruling on the contempt motion, Judge Justice ruled that TDC was in contempt of the court's rulings in the RUIZ case and ordered TDC to comply with the requirements in the case and established a fine schedule to be implemented if TDC failed to comply by April 1, 1987.

Lamar v. Coffield

Another court case affecting TDC operations calls for the assignment of inmates to dormitories, cellblocks or other living quarters on the basis of rational, objective criteria and not on the basis of race, color, religion or national origin. To accomplish the racial and ethnic integration in each unit and system-wide, Lamar requires that the proportion of each racial and ethnic group of each prison unit be at least seventy (70) percent of that group's proportion of the total TDC inmate population (excluding inmates undergoing diagnostic and pre-release processing). The court further required that the racial and ethnic composition of each housing unit, excluding cells but including floors and tiers of cellblocks and dormitories, be at least seventy (70) percent of the group's proportion in each particular prison unit's inmate population.

The effect of Lamar is to require racial distribution within TDC and within each unit, and extends to job or work assignments. The seventy (70) percent rule applies to job assignments in which the racial composition of each job category is to reflect the racial composition of the unit and in no case be less than seventy (70) percent of that group's proportion in the unit's population. Specialized job skills are allowed variances; however, specific justification must be documented for each variance.

**Exhibit 18**  
**Major Contempt issues**

1. **Single Celling** - Issues related to providing enough single cells to inmates in general population.
2. **Classification** - Issues related to mixing male inmates of different custody levels.
3. **Administrative Segregation** - Issues regarding violation of the administrative segregation plan, such as failing to provide recreation, showers, hot meals, and imposing blanket personal property restrictions.
4. **Medical Staff** - Issues related to TDC's inability to recruit and retain certain medical personnel at the levels specified by the health services plan (e.g., psychiatry and nursing).
5. **Recreation Yards and Gymnasiums** - Were not built according to time lines agreed upon by the parties.
6. **Staff Postings** - Correctional officers were not posted at stations in inmate living areas as required in the Ruiz settlement.
7. **Physically Handicapped** - Housing, activities, and health services were inadequate.
8. **Female Cell Housing** - TDC had not provided enough single cells for female inmates and was mixing females of various classification in dormitories.

Lamar contains legal requirements and provisions which provide obstacles in changing inmates' unit, housing and work assignments. With the advent of the TDC Classification Plan, unit, housing and job assignments are dependent on custody designations and not on good conduct alone or on racial distribution. As a result, the plan does not complement the legal requirements of Lamar. In order to achieve a reconciliation between the provisions of Lamar and the classification plan, TDC has submitted a proposal to amend the requirement of racial distribution within the total inmate population in the units and the system. The department has proposed that the seventy (70) percent rule apply to certain custody designations and exempt special status categories as well as administrative segregation.

#### Guajardo v. Estelle

Guajardo v. Estelle affects TDC in its treatment of inmate correspondence. The parties in Guajardo developed a set of correspondence rules which TDC must observe in dealing with inmate mail. Generally, mail must be delivered within 48 hours of its arrival at TDC, or within 72 hours on holidays and weekends. The TDC is prohibited from limiting or restricting the amount or type of mail an inmate is to receive. The rules also apply to administrative segregation inmates and punitive segregation inmates unless the agency can show that the inmate's mail constitutes a threat to the security of the institution. If a security threat exists, the department may temporarily limit these inmates' mail and property.

The right to send mail is as unlimited as the right to receive it. Also, TDC may not compromise the confidentiality of an inmate's correspondence in any way, especially by not allowing inmates to keep their attorney's communications in their cells.

#### **Scope of Sunset Review**

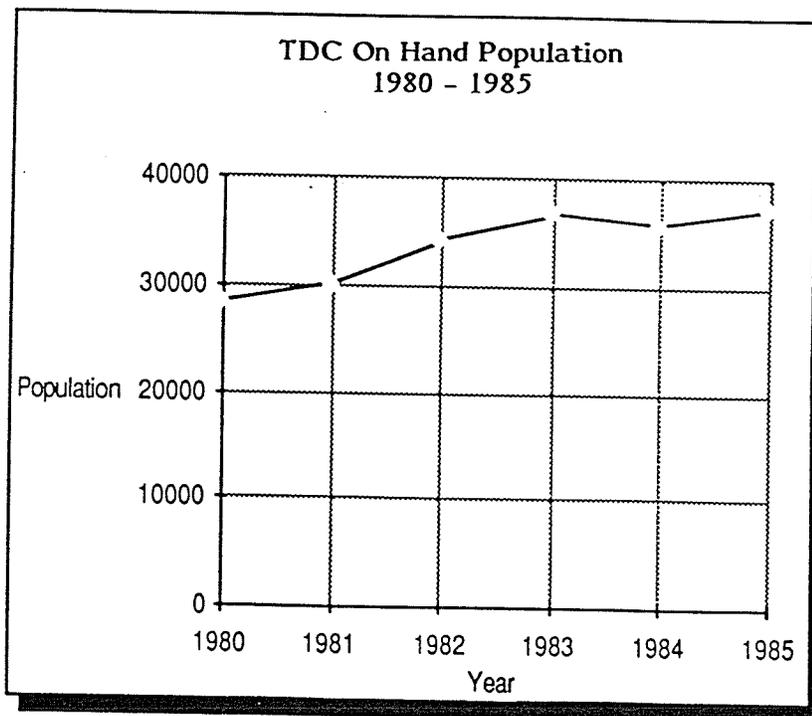
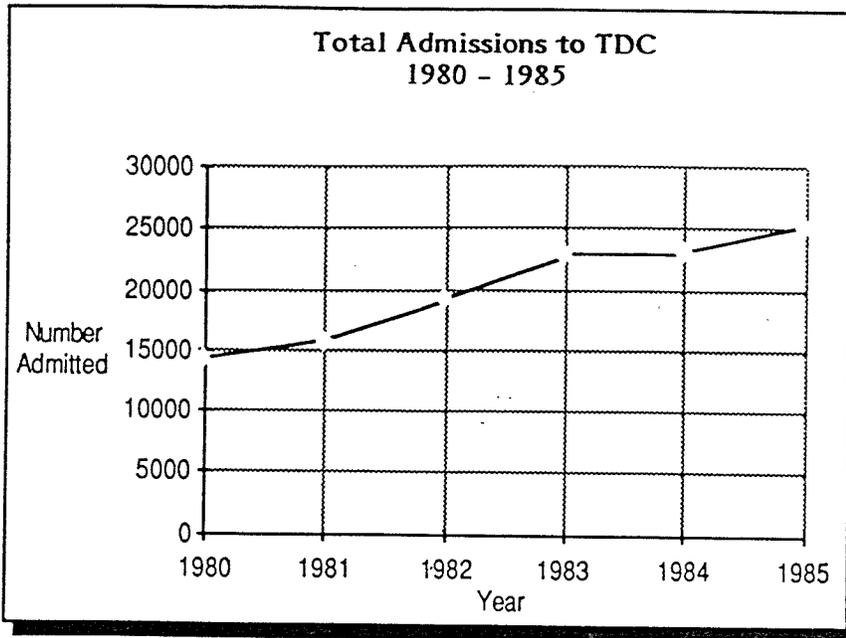
The Texas Department of Corrections is a large agency with a complicated mission. The legislature has appropriated the agency close to one billion dollars in the 1986-87 biennium. The large size of the agency and its appropriation dictates the need to carefully select areas for review. Staff undertook several activities to determine these areas. Overview discussions were conducted with TDC personnel. Site visits were made to a number of prison units. Discussions were held with many individuals particularly knowledgeable about TDC and its problems. Reports and studies dealing with the agency were also reviewed as well as various court cases, such as Ruiz, which affect almost every aspect of TDC operations.

These activities resulted in the identification of various problems or issues within the agency. The major issues divide into the following categories: administration, inmate management, health services, finance, and overcrowding. In the administrative area, rapid changes have taken place as a result of the court suit and have led to concern about the accountability of the agency and the efficiency of its organizational arrangement. Programs and incentives used to train and manage inmates have not been as effective as would be desired in maintaining good inmate behavior in prison and reducing recidivism. Health services was an area of primary concern in the Ruiz litigation. Improvements have been made in this area, but adjustments could be made to ensure better continuity of care for inmates and more efficient operation of the system. Other issues currently being discussed concern the most cost-effective way to run a prison operation -- whether through "privatization" or through the traditional method of state operations. Finally, prison crowding is an overriding issue which affects virtually every prison operation nationwide. Exhibit 19 on the next page, developed by the the Criminal Justice Policy Council, shows the increases in TDC admissions and on-hand population. The crowding issue, because of its size and complexity, is being dealt within a separate report that will be presented at a later date.

After identification of major issues came the more difficult problem of how to approach these areas. Several constraints had to be taken into account in structuring the review of TDC. First, recommendations were avoided that could have a significant impact on the requirements of Ruiz. This constraint was significant in that almost all aspects of the prison's operation are affected by the detailed provisions of Ruiz. In the administrative area, various organizational changes could be made to increase efficiencies. Some of these could not be pursued because of the uncertainty of their impact on Ruiz.

Implementation of recommendations dealing with inmate management were likewise restricted by Ruiz. For example, it was unclear whether TDC could implement a more comprehensive system to promote inmate behavior because of Ruiz limitations on differential treatment of prisoners.

Exhibit 19



Another set of constraints was presented by the overcrowding problem at TDC. In essence, any recommendation which would require a procedure substantially different from those already in place had an impact on the population levels and thus could not be considered. For instance, full analysis of the agricultural and industrial operations were not undertaken because any major change in these programs would affect the operation of prison units and the populations within those units. Changes in good time were limited because it has been used as a tool to manage the overall prison population. Changes could only be made that would not violate the Ruiz court order by increasing the prison population and triggering the provisions of the prison management Act.

A final constraint to be considered was cost. Many improvements could be made if money were available. Additional money is already being required to meet Ruiz standards and to build new prisons. In most instances, recommendations involving additional expenditures of large sums of money were avoided unless considered essential.

While the range of possible recommendations was restricted various improvements of importance were identified. Many of these set the groundwork for improving operations after some of the constraints of Ruiz and overcrowding are mitigated in the future. These recommendations are presented in the material that follows.

### **Need to Continue Agency**

The review determined that there is a continuing need for incarceration of certain felons and, therefore, a continuing need for the Texas Department of Corrections. The agency should be continued for another 12-year period. If TDC is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. These changes are summarized as follows.

**Sunset Commission Recommendations for the  
TEXAS DEPARTMENT OF CORRECTIONS**

**CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

**Board Operations**

- 1. The governor should appoint the chair of the Board of Corrections. (Statutory)**

Currently, the board elects its chair from its membership. Having the governor appoint this position would improve the continuity of policy between the state's highest elected official and TDC.

- 2. The quorum for meetings of the board should be changed from six to five members. (Statutory)**

The TDC statute currently requires that six members of the nine-member board constitutes a quorum for meetings. Having five members constitute a quorum would bring the agency in line with the standard quorum requirement for a nine-member board used in other state agencies.

**Overall Administration**

**Structure of the Audit Function**

- 3. The audits function should be given a high degree of organizational independence within TDC. (Statutory)**

Although the existing organizational chart shows internal audits reporting to the TDC director, the division actually reports to the deputy director for finance. This arrangement dilutes the importance of audit reports and creates a potential conflict of interest for audits of other programs or divisions under the finance deputy's supervision. To assure that audits receive attention from top management and to guarantee independence from divisions that could be criticized in audit reports, the audits function should report to the TDC director, with the ability to report to the Board of Corrections under special circumstances. The chief of audits should be hired by the board on the recommendation of the TDC director and should be fired only with the approval of the board. The audits division should

periodically update the board on its activities and should report to the board on the department's response to audit recommendations.

**4. The function of the audits division should be expanded to include the evaluation of program outcomes and alternatives. (Statutory)**

The existing internal audit division primarily conducts recurring financial and special management audits. The expanded audits division should also evaluate TDC programs to determine how well and how efficiently they achieve their goals and objectives. Based on this information, the audits division should recommend program and management improvements.

**Organizational Structure of the Agency**

**5. TDC should streamline its organizational structure to eliminate duplication and save or reallocate resources. (Non-statutory management improvement)**

Because of TDC's response to Ruiz requirements for new and expanded activities, the department's organizational structure has become cumbersome, with unclear lines of authority and duplication of effort in some areas. Through reorganization, TDC should combine similar activities and functions for better coordination and effectiveness of existing programs. The department should also consolidate duplicative functions, either reallocating resources or achieving a cost savings. Specifically, TDC should: 1) consolidate all administrative functions under a deputy director for administrative services; 2) combine inmate work programs and all support activities for the units in a new institutions division under the deputy director for operations; and 3) eliminate administrative duplication within the Windham school system.

**Improvement of Information Systems**

**6. TDC should pursue computerization of manual systems where cost effective. (Non-statutory management improvement)**

TDC should determine where computerization is cost effective and use this information to develop a plan for automating its files, using, where possible, the resources available from other state agencies. Through automation, TDC can reduce or eliminate many of the manual functions now used to keep the department's files.

### Issues Relating to Privatization

- 7. TDC should develop cost estimates and performance standards for activities that are also available in the private sector, compare these estimates with competitive bids, and contract for the activities whenever the cost of contracting would be less than the department's cost. (Statutory)**

By comparing its activities with those available privately, the department can improve the performance and lower the costs of its operations. Subjecting activities to this process would encourage the department to develop the most efficient operations possible because of competitive pressure from private providers. This process would also enable the department to better account for its costs and expenditures. Because the transfer of an activity within the department to a private firm would involve certain additional costs, private bids should reflect a cost of at least 10 percent less than the department's cost of performing the activity.

- 8. TDC should be granted clear statutory authority to contract for correctional services or facilities. (Statutory)**

Due to constitutional limitations placed on the state with regard to contracting, it is unclear whether the state has the necessary statutory authority to contract for correctional services. Providing statutory authorization to contract will increase the state's options for meeting the future demands for correctional services and facilities. However, the board of corrections should not be able to obligate any state debt without prior legislative approval through the appropriations process.

### Location of New Units

- 9. TDC should consider locating prisons on a regional basis. (Statutory)**

Locating prisons in different regions of the state places prisoners nearer their release destination, improves inmate employment and training opportunities, and provides better access to inmates by family members. In deciding where to locate future prison units, TDC should consider whether prisons could be placed near counties areas with populations of 100,000 or more; whether prisons can be clustered near other prisons for cost effectiveness; whether the location would facilitate the release of inmates close to their residence; and whether the location provides adequate access to educational opportunities and necessary medical care.

## Evaluation of Programs

### Planning an Inmate's Prison Time

- 10. TDC and the Board of Pardons and Paroles (BPP) should share the responsibility of inmate planning. (Statutory)**

In the initial sunset bill dealing with BPP, the primary responsibility for the tentative parole process, a process which more closely ties an inmate's release to behavior in prison, was assigned to BPP. TDC and BPP must cooperate and be committed to meeting the concepts set forth in the tentative parole process if it is to be successful. The two agencies should therefore be statutorily required to develop a memorandum of understanding (MOU) to outline their respective responsibilities in the tentative parole process.

- 11. TDC correctional counselors and BPP institutional parole officers should be used more effectively to develop, manage, and otherwise track the progress of the inmate's individual plan. (Statutory)**

TDC correctional counselors are supposed to monitor each inmate's individual activity plan, checking to see how the inmate is progressing with his/her plan outlined at admission to prison. Currently, because of a shortage of correctional counselors, reviews of the individual activity plans are not being conducted; however, the agency has a plan to increase the number of correctional counselors through a reallocation of existing funds. Should enough correctional counselors be hired to allow them to begin tracking an inmate's progress, they could end up duplicating the efforts of BPP's institutional parole officers, who perform a similar function. In order to enhance coordination and reduce potential duplication, TDC and BPP should be required to develop an MOU which delineates each agency's responsibility in tracking an inmate's progress while in prison.

- 12. TDC and BPP should establish a process to ensure that inmate information is shared whenever possible to reduce duplication of effort. (Statutory)**

Under the tentative parole concept, as the Board of Pardons and Paroles' involvement with the inmate moves to the front end of the inmate's prison stay, the potential for duplication in inmate information gathering increases. Through an MOU, TDC and BPP should be required to outline their respective responsibilities in obtaining inmate information. The MOU should establish an information committee, made up of representatives from each agency, which would meet

regularly to assess information needs, solve any information flow problems, and reduce duplication in information gathering.

**13. The statute should be amended to improve the flow of inmate information coming from counties to TDC. (Statutory)**

The following changes to current law would improve the flow of information coming to TDC from counties: 1) require that the presiding judge of each district designate a person responsible for making sure that all the commitment information required by law gets to TDC; 2) set a date by which counties must begin using the standardized felony judgment forms required by law; 3) require that a checklist be included with the information being sent to TDC; 4) clarify that the standardized judgment forms are a prerequisite to TDC admission; and 5) make presentence investigation and probation revocation reports, if they have been completed on the county level, a prerequisite for entry into TDC.

**Inmate Work and Training Programs**

**14. TDC should be required to pursue arrangements with business and industry for the use of inmate labor. Wages paid to inmates for their work should be apportioned by TDC among court-ordered restitution, the inmate's family, the state, the inmate, and the Crime Victims Compensation Fund. (Statutory)**

Arrangements with business and industry would provide training opportunities for inmates and the possibility of inexpensive labor for business. They would also provide a means to pay restitution to victims, to support the inmate's family, to reimburse the state for the cost of incarceration, and to give the inmate monetary incentives to learn job skills.

**15. Industrial programs should, where cost-effective, be relocated to prison units where more adequate inmate labor is available. (Non-statutory management improvement)**

For a number of reasons, adequate inmate labor is not available at all units where industrial programs are located. TDC should pursue relocations, where cost-effective, and use the industrial revolving fund, where warranted, for those relocations.

**16. An annual review process for TDC agriculture programs should be established. (Statutory)**

TDC agricultural programs have traditionally operated to meet many of the food needs of TDC and to provide work for inmates even though meeting these goals has

not always been the most efficient or economical way to operate agricultural programs. TDC has recently begun to review its programs and make changes to improve operations. TDC should continue to: 1) review all agricultural programs annually for cost-effectiveness; 2) purchase food and other products that cannot be produced cost-effectively; and 3) pursue mechanization where productivity can be increased, cost-effectiveness can be improved, and the security benefits of using manual labor in agriculture can be maintained.

**17. A percentage of the annual profits from agricultural programs should be reinvested in the program to develop new areas of operations. (Non-statutory management improvement)**

With a few exceptions, the TDC agriculture program generates profits from its operations. The profits are used for continued operation of the program but funding is generally not provided for new or innovative programs. Ten percent of the annual profits, not to exceed \$500,000, should be set aside for this purpose.

**18. An agricultural advisory committee should be established. (Statutory)**

The agriculture program is a major program within TDC that would benefit from the expertise of an advisory committee to assist with its operation. The committee should be established as follows: 1) membership should consist of five members knowledgeable in agriculture with a member of the board serving as chairman; 2) one member should be a faculty member from Texas A&M University with agricultural expertise; and 3) the committee's responsibilities should include periodic evaluation of programs, consideration of new areas of operation, review of the need for mechanization and the review of inmate labor needs.

**19. TDC and the Board of Pardons and Paroles should develop a system to evaluate the effectiveness of TDC training programs in improving the employability of inmates. (Statutory)**

The TDC has a number of training programs to improve an inmate's employability once released from prison. The TDC does not have the capability to determine whether skills learned actually help the inmate in finding a job. The BPP maintains information on the employment of TDC releasees and could set up a system with TDC so that the employment information could be used to measure the success of the department's training programs.

- 20. The TDC should have the authority to contract with any state agency or political subdivision for the use of inmate labor, and should pursue the development of such contracts. (Statutory)**

The Texas Department of Corrections is currently authorized to contract with the Department of Highways and Public Transportation and the Parks and Wildlife Department for the use of inmate labor. This program should be expanded to include areas under other state agencies as well as local governments and other political subdivisions. TDC should, where appropriate, be reimbursed for its expenses in providing inmate labor under these contracts.

#### **Incentives for Promoting Good Inmate Behavior**

- 21. TDC should identify useful incentives, some of which may be restricted by court action, and take reasonable steps to provide more incentives for inmates to behave. (Non-statutory management improvement)**

Other than the granting of good conduct time, TDC is apparently restricted by court order from using many available incentives for good behavior. TDC should determine which incentives are actually prohibited by court order and, where reasonable, request that the courts modify the plans and stipulations agreed to in the court settlements so that the department could use the incentives needed.

- 22. The statute should be changed to allow the Board of Corrections to discontinue, under certain conditions, the backdating of good time credits and the reinstatement of good time previously forfeited for disciplinary reasons. (Statutory)**

Increasing pressures on the prison population have caused the implementation of generous good time policies which reduce its significance as an incentive for good behavior. While the current policies have helped keep the TDC population within legal limits, when population pressures ease in the future, the board should have the authority to suspend the backdating of good time and the reinstatement of time forfeited for disciplinary reasons.

#### **Establishment of Pre-release Programs**

- 23. TDC should be statutorily required to include a pre-release component in the unit program of any new units built near urban areas. (Statutory)**

Pre-release programs work best if located in urban areas, and pre-release programs may ultimately reduce the cost of incarceration by preventing recidivism. At least

a portion of any new urban-located unit should be made up of inmates undergoing pre-release training. Although the actual cost of re-entry programs is unknown, if the program is developed, costly maximum security cells will not be required, community resources will be used and the program will be partially self-sustaining through work-release.

- 24. The statute should provide that at least one fourth of the inmates assigned to new urban units participate in a pre-release program. (Statutory)**

**TDC should, however, try to make pre-release programming available to all inmates. (Non-statutory management improvement)**

Requiring at least one-fourth of the inmates assigned to new units to be in pre-release programming will insure the operation of a viable pre-release program component, while simultaneously providing the agency with the flexibility it needs to design units that are self-supporting through industry. The department should try, however, to make the benefits of pre-release programming available to all inmates. To accomplish this goal, the department should include the need for prerelease programming in its facility planning for new and existing units.

- 25. The statute should require that employment counseling, drug and alcohol abuse counseling, and family counseling be a part of the pre-release programming. (Statutory)**

Unemployment, substance abuse, and lack of family support are the three most common elements contributing to recidivism rates. Requiring the programming to be directed at helping to resolve these problems will insure that the offender's needs will be addressed as fully as possible prior to release.

- 26. The statute should require that inmates participating in the pre-release program be within six months of release. (Statutory)**

Limiting participation in pre-release to those inmates recognized as being in a "pre-release stage" will ensure full use of pre-release resources and reduce any risk to public safety.

- 27. The statute should permit inmates to participate in a work-release program, with a part of the offender's earnings to be contributed to help pay the costs of the pre-release program. (Statutory)**

Establishing employment prior to release eases the inmate's transition back into society. Requiring the inmate to pay for the program establishes responsibility and defrays some of the cost of pre-release. Specific statutory authority is necessary to set up this work-release program. The program would be a new effort tailored to the concept of the urban pre-release centers and distinct from the current work furlough program.

- 28. The statute should require a memorandum of understanding between TDC, the Texas Employment Commission, and the Board of Pardons and Paroles defining each agency's role in the pre-release program. (Statutory)**

The requirement of an interagency agreement would establish guidelines and rules of responsibility for providing pre-release program services to inmates.

- 29. The statute should require TDC, BPP and TEC to evaluate the effectiveness of the pre-release programming on a yearly basis. (Statutory)**

Regular evaluation of the pre-release program will increase accountability of each agency involved and makes future program decisions more accurate.

- 30. TDC should be directed by statute to set up a special program within TDC for long-term inmates. The program should emphasize education and counseling. (Statutory)**

The TDC does not have any programs specifically designed to address the needs of inmates serving long sentences. These offenders often have a long criminal history, psychological problems, and difficulty adjusting to re-entry into society. A program focusing on the needs of this group of offenders would improve their chances of success after release and reduce their rate of recidivism. Major elements of the program would be as follows:

- participants should be inmates sentenced to terms of 30 years or longer;
- participants should be inmates in their last year of incarceration;
- participation should be voluntary;

- volunteers should be screened for ability to benefit from the program; and
- programming should include academic and vocational education, employment counseling, and individual therapy.

**31. TDC, BPP, and probation departments should develop a program to help illiterate offenders learn to read and write and should provide incentives to encourage participation in the program. (Statutory)**

TDC currently offers literacy training through the adult basic education courses of the Windham School System. The department needs to supplement these classroom efforts by developing a tutorial program using inmate volunteers as tutors and using assistance from volunteer organizations such as Literacy Volunteers of America. TDC should award good conduct time for inmate tutors and participants based on completion of an approved tutorial program. In addition, BPP should establish a continuing education program for illiterate releasees by placing a special condition of release on certain inmates requiring them to continue education efforts outside prison. The board should develop an MOU with the Texas Education Agency to make education programs available to released offenders. Finally, judges should have the authority to require certain offenders to attend education classes as a condition of probation, and local probation departments should continue efforts to locate educational opportunities for probationers.

**Revision of Release Laws**

**32. Flat time, good time, parole and mandatory release laws should be restructured. (Statutory)**

Current release laws determine how and when inmates are released from TDC and allow control of the prison population through the continued incarceration of some inmates and the release of others. The release laws have caused several problems such as unequal application of sentencing laws, reduced incentives for good inmate behavior, increased disciplinary problems caused by certain inmates, reduced ability of TDC and BPP to make discretionary release decisions and the automatic release of inmates convicted of violent crimes. These concerns have been addressed by a proposal of an interim group created by the governor--the Sentencing Task Force. Under the Sunset proposal, which is similar to that of the task force, several changes would be made. First, automatic release for inmates convicted of violent crimes would be eliminated and BPP would be given complete

release discretion for this group. To accomplish this purpose, the statute would need to be changed so that the mandatory release law does not apply to offenders with violent crimes. The flat time requirement before parole eligibility for aggravated, or "3g," offenders, would be reduced to one-fourth of the sentence or 15 years, whichever is less. Second, good time credits would be changed with a reduced maximum of three days for each day served to a maximum of 2.5 for one. Also, good time would be awarded for diligent participation in work programs. Inmates with non-violent crimes that are not paroled would thus be required to serve more calendar time in TDC before mandatory release (all other inmates would also receive a lesser amount of good time for parole consideration). Third, a safeguard would be provided to ensure that prison crowding is not aggravated by the sunset proposal. The changes suggested above lengthen time served in TDC, particularly for bad parole risks. The increased pressure on prison facilities can be offset by reducing parole eligibility from one-third of sentence length to one-fourth of sentence length or 15 years, whichever is less. This change should maintain the number of parole eligible inmates at its current level. Fourth, TDC should be required to comment on the appropriateness of parole release for inmates. This change gives TDC an additional tool to promote good inmate behavior. This recommendation was developed in such a way that the population level set by court would not be exceeded. The changes should therefore be considered as a group.

#### **Allocation of Release Money**

- 33. Inmates released from TDC should receive \$100 at the gate and \$100 after reporting to the designated parole officer within a time period specified by the Board of Pardon and Paroles. This requirement does not apply to inmates who are released out of state or who are not required to report to a parole officer. (Statutory)**

Each inmate currently receives \$200 upon release from TDC. The purpose of the release money is to provide the released inmate with funds to purchase meals and transportation back to their approved destination; however, the individuals can spend the money any way they wish. Staggered distribution of the release money would provide a more efficient use of state funds and could serve as an incentive for releasees to report to parole supervision soon after their release from TDC.

### Estates of Prisoners Who Die in TDC

- 34. TDC should be authorized to make claims against the estates of inmates who die in TDC to pay a percentage of the cost of their incarceration. (Statutory)**

TDC should study the benefits of establishing a program to file a claim against the estate of inmates who die while in TDC. If TDC establishes such a program, the Criminal Justice Policy Council should monitor its costs and benefits. The Policy Council should have the power to discontinue the program if it determines that program costs exceed benefits.

### Information Provided to Inmates

- 35. The TDC should update and simplify the inmate handbook. (Non-statutory management improvement)**

Inmates should be aware of the rules and procedures governing their incarceration. The handbook currently provided to them is outdated and too complicated. A new and simplified handbook would be more useful for both inmates and TDC staff and would reduce the possibility for the inconsistent application of rules between the units.

### Reduction of Inmate Litigation

- 36. The Texas Department of Corrections should seek and maintain certification of the inmate grievance procedure. (Statutory)**

In 1982, Congress enacted legislation authorizing federal district courts to require inmates to go through the correctional agency's grievance procedure before proceeding with inmate civil rights claims. The requirement to exhaust administrative remedies can only be applied in states that have a certified inmate grievance process. A certified TDC grievance procedure should reduce the burden on federal courts and the attorney general's staff charged to defend the state's interest in inmate cases. Certification of the inmate grievance procedure in Texas could also improve the present grievance system through meeting the requirements of certification, and could help alleviate tension between inmates and prison administrators by providing resolution to grievances in a more timely manner.

- 37. State courts should be authorized to require that inmates exhaust administrative remedies provided by the grievance procedure. (Statutory)**

While judicial certification allows federal courts to require a prisoner to exhaust the remedies provided by the grievance procedure, state courts do not currently

have that authority. Since many inmate claims are filed in state courts, legislation to allow state courts to hold a case for 90 days while the inmate exhausts administrative remedies could save the state time and money by reducing the potential for litigation.

**38. The Texas Department of Corrections should be authorized to reimburse small claims for lost or damaged property under \$500.  
(Statutory)**

Another factor that adds to the potential number of lawsuits filed in federal and state courts is TDC's inability, under current law, to pay small claims for inmate property inadvertently lost or damaged as a result of action by agency personnel. Currently, claims must be processed through the comptroller, audited by the state auditor and verified by the attorney general before payment can be made to the inmate. The benefits of authorizing TDC to process these claims include a potential reduction in the number of claims filed in the court system, a reduction in the time it takes to reimburse inmates for their lost or damaged property, and a reduction in the number of claims being processed through the three state agencies involved in claims reimbursement. A record of claims must be inspected by the state auditor at least once a year.

**Limiting the Suspension of Statute of Limitations for Inmates**

**39. The suspension of a statute of limitations because of a person's imprisonment should be eliminated except in those cases where an employee of TDC is a defendant in a suit by the inmate.  
(Statutory)**

Current provisions suspend statute of limitation laws for the time that an inmate is imprisoned. The law was originally designed to allow prisoners the opportunity to file suits once released because they lacked the opportunity to do so while in prison. Access to courts is now readily available to inmates while in prison and, therefore, this suspension of the statute of limitations is with one exception, no longer necessary. If an inmate desires to file a lawsuit involving an employee of TDC, the inmate should have the ability to delay filing the suit until released from prison to avoid possible retaliation by that employee while in TDC. The statutory suspension should, therefore, be continued in those cases.

### Inmate Accountability for Damaged Property

40. **TDC should be granted the authority to hold inmates liable for damaged state property pursuant to an administrative hearing. The agency would be authorized to seize the contents of the inmate's trust fund or require that the inmate make restitution as a condition of parole or mandatory release. (Statutory)**

Permitting TDC to hold inmates monetarily responsible for damages they cause to state property would increase the department's disciplinary options and help defray the cost of repairs. Provisions to minimize appeals to county court from the administrative process would lessen the burden on the counties.

### Services to Mentally Ill and Mentally Retarded Inmates

41. **The Texas Department of Corrections and the Board of Pardons and Paroles should be authorized to accept transfer or to contract for the use of available TDMHMR facilities. (Statutory)**

The deinstitutionalization of the mentally ill and mentally retarded in the TDMHMR system has resulted in decreased facility utilization at some of the state schools and hospitals. The underutilized TDMHMR facilities could potentially be used to care for the mentally ill/mentally retarded inmates of TDC or as a halfway house or halfway-back house for the mentally ill/mentally retarded releasee under supervision of the Board of Pardons and Paroles. TDC and BPP should be given the authority to receive transfer or to contract with TDMHMR for use of TDMHMR facilities if, in the future, such an arrangement becomes practicable.

42. **The Texas Department of Corrections, the Board of Pardons and Paroles, the Adult Probation Commission, The Criminal Justice Coordinating Council, and other appropriate agencies should be required to study and recommend a program that will allow selected special needs inmates to be moved from TDC into other settings in the community. Special needs groups especially suited for the program would be the mentally ill and mentally retarded, elderly, pregnant, and physically handicapped. (Statutory)**

Certain inmates can be more appropriately held and treated in settings other than TDC. The appropriate criminal justice agencies should examine: 1) eligibility for alternative placement; 2) procedures for removing an inmate from TDC and placing the inmate in an alternative setting; 3) funding for the program; and 4) types of alternative placement. The group should submit its report and any recommended legislation to the legislature in the next regular session.

**43. The statute should be amended to provide for a psychiatric commitment process for seriously mentally ill inmates being discharged from TDC. (Statutory)**

Because the prison overcrowding situation necessitates more expedited release from prison, TDC personnel sometimes do not have enough advance notice of the release of a seriously mentally ill prisoner to initiate proceedings for court ordered mental health treatment in the free world. Until the overcrowding and release process stabilizes, TDC needs a way to make sure that releasees determined to be dangerous to themselves or others, or releasees deteriorating due to mental illness, are provided appropriate treatment. The TDC should be required to set up a commitment process that includes: 1) timely notification of the upcoming release of a mentally ill inmate; 2) initiation of court commitment proceedings as the seriously mentally ill inmate's release approaches; and 3) commitment to a TDC psychiatric in-patient facility to be able to transfer the patient to a free world in-patient facility on notice of release. TDC should also be required to pay the court costs associated with the court commitment proceedings.

**44. State agencies having responsibility for special needs groups should participate in the development of a series of memoranda of understanding (MOUs) to develop a continuity of care system from special needs offenders released from TDC. (Statutory)**

All special needs inmates require some level of continuity of care to ease the transition back to the community after release for TDC. The series of MOUs would define better ways to provide services to deal with the needs of these special populations, which include the mentally ill and retarded, physically handicapped, elderly, severe alcohol and drug abusers, and the chronically unemployed. Agencies involved include Texas Department of Corrections, Board of Pardons and Paroles, Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, Department of Human Services, Commission for the Deaf, Commission for the Blind, Department on Aging, the Texas Employment Commission, and other relevant agencies.

**45. The TDC should be statutorily required to put out a request for proposal (RFP) on a pilot project for diagnostic and evaluation services for offenders at the local level before their transfer to TDC. (Statutory)**

Currently, the screening and diagnostic process set up to identify the mentally ill and mentally retarded inmate takes place during the first weeks of an inmate's stay at TDC. The recent increase of inmates being admitted to TDC has put stress on the entire TDC diagnostic system, which includes not only psychological and intelligence testing for each inmate entering TDC, but also comprehensive sociological and medical evaluations. The review indicated that having all or part of the diagnostic process done on the local level before an inmate's arrival at TDC could provide several benefits. To explore the potential for reducing costs, lowering the misdiagnosis rate, and speeding up the diagnostic process, TDC should be required to send out an RFP for diagnostic and evaluation services at the local level. Contracts should only be awarded if they offer a savings and if the quality of service equals or exceeds the service provided by TDC. Contracts should be limited to two years and the state should not assume additional liability in contracting these services.

**46. The Texas Department of Corrections should separately recruit security staff hired to work with the mentally ill and mentally retarded inmate. (Non-statutory management improvement)**

Currently, security staff working with mentally ill and mentally retarded inmates (called psychiatric and rehabilitation aides) are selected from the general pool of correction officers instead of from direct free world sources. The review indicated that often officers picked to work with the special populations after completion of general security officer training do not want to work with these groups. In addition, once the psychiatric and rehabilitation aides are assigned to the specialty units, they are supervised by security personnel instead of by treatment team personnel, a practice that is contrary to the Psychiatric Services Plan developed pursuant to the Ruiz litigation. To facilitate integration of all aspects of the inmate treatment program and to satisfy the provisions of the Psychiatric Services Plan, psychiatric and rehabilitation aides should be hired directly as aides and should be supervised by treatment team personnel.

**47. The Texas Department of Corrections should be authorized to hire psychiatrists at a competitive salary rate. (Statutory)**

To help in their recruitment of psychiatrists required by the Psychiatric Services Plan, in the spring of 1986 TDC entered into an interagency contract with the Texas Department of Mental Health and Mental Retardation. The TDMHMR is currently authorized to hire psychiatrists at a higher, more competitive salary. Under terms of the contract, TDMHMR hires the psychiatrist for TDC and is then reimbursed. To avoid having to rely on another agency to hire their personnel, TDC should be statutorily authorized to hire psychiatrists at the same rate authorized for TDMHMR.

**Improved Medical Services**

**48. Overnight housing facilities for inmates should be established at the TDC-Galveston Hospital. (Statutory)**

Using some of the vacant space in the TDC-Galveston Hospital to create an overnight holding facility for inmate outpatients, as intended in the original hospital plans, would make delivery of out-patient medical services to inmates smoother and more cost-efficient. Overnight holding facilities would permit TDC to transfer patients to Galveston the night before their appointment, rather than on the day of appointment. The waste of resources, including TDC staff and UTMB physicians' time, caused by mechanical breakdowns would be minimized and some trips by inmates could be avoided. Inmates would not have to make daily trips to Galveston for outpatient services, and they would miss fewer appointments due to mechanical failures. Finally, if the Ruiz plaintiffs agree, it is possible that the cells used for overnight holding could be added to TDC's maximum capacity.

**49. TDC and The University of Texas Medical Branch should be required by statute to enter into a memorandum of understanding defining the relative duties and responsibilities of each agency. (Statutory)**

Requiring a memorandum of understanding will ensure that the TDC-UTMB relationship continues to operate despite changes in leadership, and will help resolve any disputes between the two agencies concerning security, treatment, or maintenance of the hospital.

- 50. TDC and UTMB should jointly review the quality of care and cost-effectiveness of treatment provided to inmates in the TDC hospital. (Statutory)**

The TDC is not currently a part of the UTMB processes for ensuring quality of care and cost-effectiveness of treatment to inmates in the TDC hospital. Requiring joint peer review of quality of care will help increase the quality of medical services provided to inmates, and will promote better communication between each agency of their separate constraints and problems in treating inmates. Requiring joint utilization review for cost-effective treatment will help UTMB identify cost savings methods that will be safe and effective for patients returning to a prison environment. These provisions should be included in the MOU mentioned previously.

- 51. TDC should be authorized by statute to establish medical residencies or rotations programs. (Statutory)**

**The agency and state medical schools should work together and explore the alternatives for residencies. (Non-statutory management improvement)**

Granting TDC permission to establish a residency or rotation program will provide the agency with a possible recruitment tool for areas of medical service where vacancies are high. These programs can also lower the cost of salaries for medical professionals. A directive for TDC and state medical schools to begin exploring alternatives will help ensure that TDC takes the actions necessary to determine the feasibility of residency programs as soon as possible.

#### **Report to Board of Medical Examiners**

- 52. The TDC should be required to notify the State Board of Medical Examiners of any allegations of violations of Sec. 3.08, Art. 4495b, VTCS, directed at physicians employed under contract with TDC. The department should also be required to supply the board with a copy of any investigation and report regarding these allegations. (Statutory)**

The TDC employs and contracts with physicians for medical services. Requiring the department to report to the Board of Medical Examiners concerning problems could lead to revocation of or refusal to review a license of a physician and should improve the board's ability to regulate physicians in the state.

### Alternative Incarceration Program

- 53. The TDC should create a shock probation program for young offenders similar to the Georgia "special alternative incarceration" program. (Statutory)**

Georgia has established a special shock incarceration program dealing with young first-time offenders to discourage them from crime. A similar program in Texas would be useful in dealing with the young offender. The program should allow a judge the option to send the young offender to the program for 90 days. To be eligible the offender must:

- be a male offender 17-25 years of age;
- be convicted of a felony;
- have no previous adult prison incarceration; and
- have no physical or mental handicaps which would preclude strenuous physical activity.

Participants would be separated from the general prison population but could be transferred to a regular unit if their shock probation were revoked.

### Drug Screening

- 54. TDC should implement drug testing programs for employees and applicants to the full extent allowed under the law, and should implement other appropriate security measures where possible. (Non-statutory management improvement)**

TDC has acknowledged that the availability of drugs to inmates is a problem in its prison units. TDC also indicated that some department employees could be responsible for supplying drugs to inmates. The regular testing of applicants for employment and current employees for drug use would provide TDC with a tool to reduce the availability of drugs to inmates. The legality of drug testing of public employees is unresolved and the extent to which TDC can conduct drug testing is not known. The department should, therefore, examine the appropriateness of using tests and other security measures in its efforts to eliminate drugs from its prison units. TDC should pursue the use of these security measures to the full extent of the law.

- 55. The role of Criminal Justice Policy Council should be strengthened. (Statutory)**

Data needs play an important role in decisions concerning the state's criminal justice agencies. The council should be the entity developing this type of

information. The efforts of the council in this area should be strengthened by the following changes.

- The council should be the source of information for budgeting and planning.
- Data areas tracked should include, but not be limited to, cost per day calculations, interagency cost comparisons, and population calculations.
- The council should determine the long-range data needs of the criminal justice system and require that the information be gathered.
- The council should be funded through the member agencies' budgets.

#### Non-Program Changes

**56. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

The Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency.

## **TEXAS JUVENILE PROBATION COMMISSION**

### **Introduction**

A juvenile in Texas is a youth between the ages of 10 and 17. Youths who commit an offense prior to their 17th birthday are originally handled within the juvenile justice system (See Exhibit 1). This system distinguishes between two types of offenses for which a youth can be adjudicated in juvenile court: delinquent conduct and conduct indicating a need for supervision (CINS). Delinquent conduct is conduct resulting in a violation of adult criminal law or the violation of probation requirements. The CINS offenses are defined as status offenses, Class C misdemeanors, DWI, and the illegal use of inhalants. One type of CINS offense, the status offense, refers to conduct which is considered a violation of law for juveniles but not for adults, such as truancy or running away from home. In other words, it is only an offense because of the status of the person as a juvenile.

There are two state agencies directly involved in the juvenile justice system, the Texas Juvenile Probation Commission (TJPC) and the Texas Youth Commission (TYC). TJPC primarily provides funding and technical assistance to county juvenile boards which operate the county juvenile probation departments and juvenile courts. On a statewide basis, TJPC provides 20 percent and counties provide 80 percent of the funding of juvenile probation departments. Each Texas county has a juvenile board, most of which are composed of county and district court judges, although some boards include public members. County juvenile boards are authorized to join together to provide probation services and 108 counties are served by multi-county departments. In all, there are 153 juvenile probation departments which cover all 254 counties in Texas.

The county juvenile departments work directly with juveniles from the point they are detained or referred through the disposition and supervision of a case. In 1984, there were 77,280 referrals to the juvenile justice system. In general, disposition ranges from informal adjustment where no court action is taken, to formal probation, to commitment to TYC. Exhibit 2 provides a graphic representation of this system.

Youths who are placed on informal adjustment or formal probation may receive a variety of services from a county juvenile probation department. These services can include supervision by a TJPC certified juvenile probation officer; counseling for the youth, parents, or both; placement in a foster home; or

**Exhibit 1**  
**Ages of Youth in the Juvenile Justice System**

Age youth can enter juvenile justice system

10 \_\_\_\_\_ 17\*

Age youth can be certified as adults

15 \_\_\_\_\_ 17

Age youth can be on probation or parole

10 \_\_\_\_\_ 18

Age youth can be held in TYC institutions or community-based programs

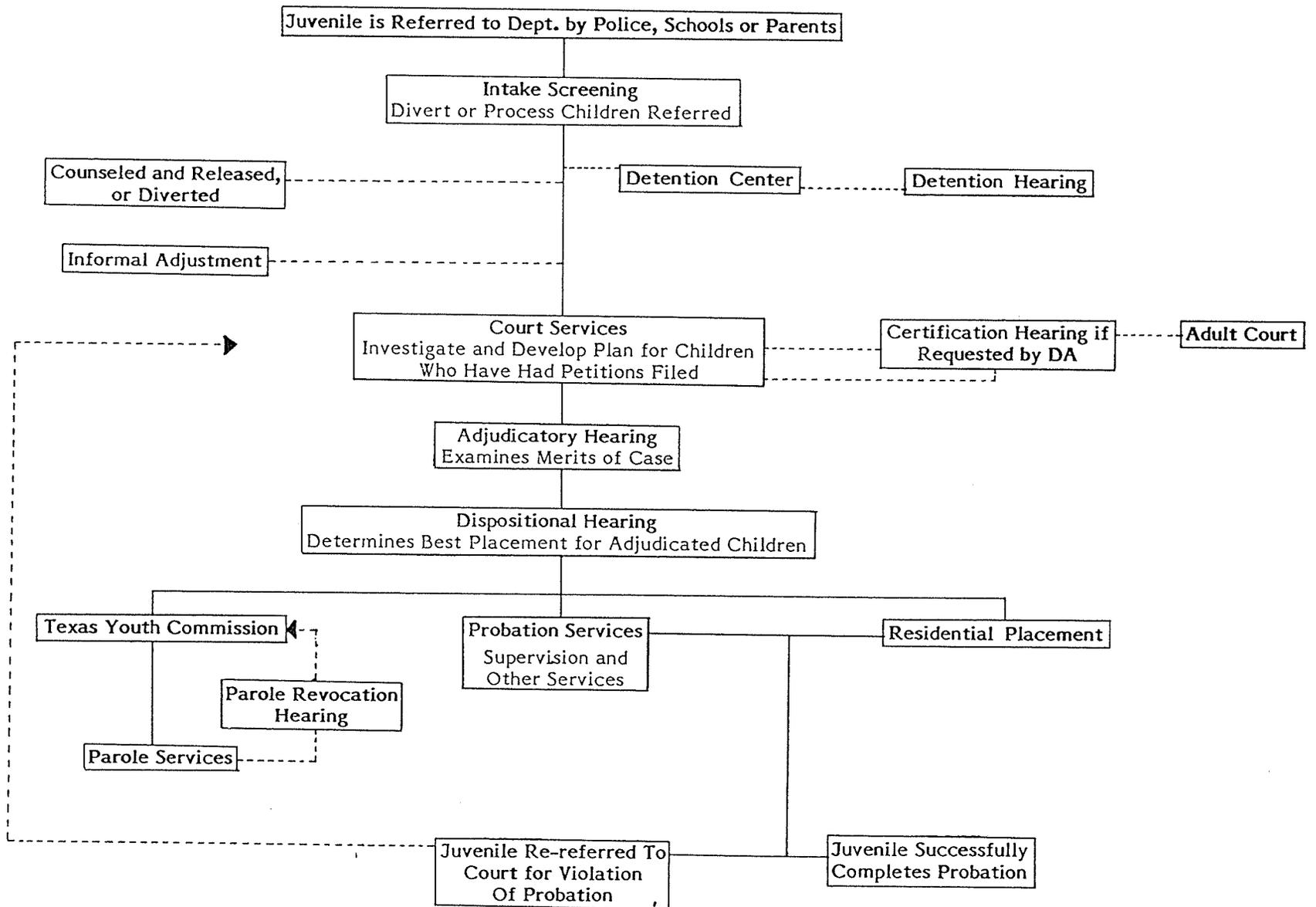
10 \_\_\_\_\_ 21  
\*\*18

**\*If a youth commits a crime after their 17th birthday, he/she is considered an adult and handled through the adult criminal justice system.**

**\*\*Most youth are released on or before their 18th birthday.**

Exhibit 2

Juvenile Justice System



placement in a residential facility or treatment center. In 1984, there were approximately 20,000 juveniles on probation at any one point in time. If, after exhausting available county resources the child has still not made a successful adjustment within his home community, a juvenile judge may determine that the child should be committed to the Texas Youth Commission.

Only about three percent of the delinquent youths in the state are committed to TYC each year. This resulted in 2,623 commitments in fiscal year 1985. When juveniles are committed to TYC, they are taken to the Statewide Reception Center in Brownwood where they are evaluated to determine their needs. In addition, staff assess their ability to function in an open setting against the need to protect the public by housing them in a secure facility. Based on these evaluations and assessments, TYC staff determine if the youth should be sent to an institution or a community-based program. The Youth Commission's goal is to place delinquent youth in the least restrictive setting possible, consistent with the individual's needs, the public's safety, and the agency's budget restrictions.

Youth committed for violent offenses are sent to TYC's maximum security facility at Giddings for a minimum of one year. Youth committed to TYC for murder, capital murder, or voluntary manslaughter are also sent to this facility. Most of these juveniles remain a minimum of two years. The length of time other juveniles remain in a TYC facility is determined by TYC staff. However, all youth committed to TYC remain under the commission's authority until their 18th birthday, even though they may be paroled to their home communities before that time. TYC does have the authority to keep a juvenile under the agency's authority until his or her 21st birthday, if circumstances warrant such action. To date, the agency has not done this, however, this authority only applies to juveniles who have been committed since September 1, 1985. The agency has developed a policy that specifies this authority will be used for three types of offenders, violent offenders, repeat offenders, and individuals whose parole has been revoked; if these persons have not completed their administrative minimum length of stay. In addition, the authority can be extended to cover other individuals designated by the executive director of TYC.

## TEXAS JUVENILE PROBATION COMMISSION

### Background

#### Creation and Powers

The Texas Juvenile Probation Commission (TJPC) was created in 1981 by the 67th Legislature. The commission is responsible, under the Texas Human Resources Code, Chapter 75, for the following:

1. making juvenile probation services available throughout the state;
2. improving the effectiveness of probation services;
3. providing alternatives to the commitment of juveniles by providing financial aid to juvenile boards for the establishment and improvement of probation services; and
4. establishing communications between state and local entities within the juvenile justice system.

There have been no major changes to the enabling legislation since the creation of the commission.

#### Board Structure

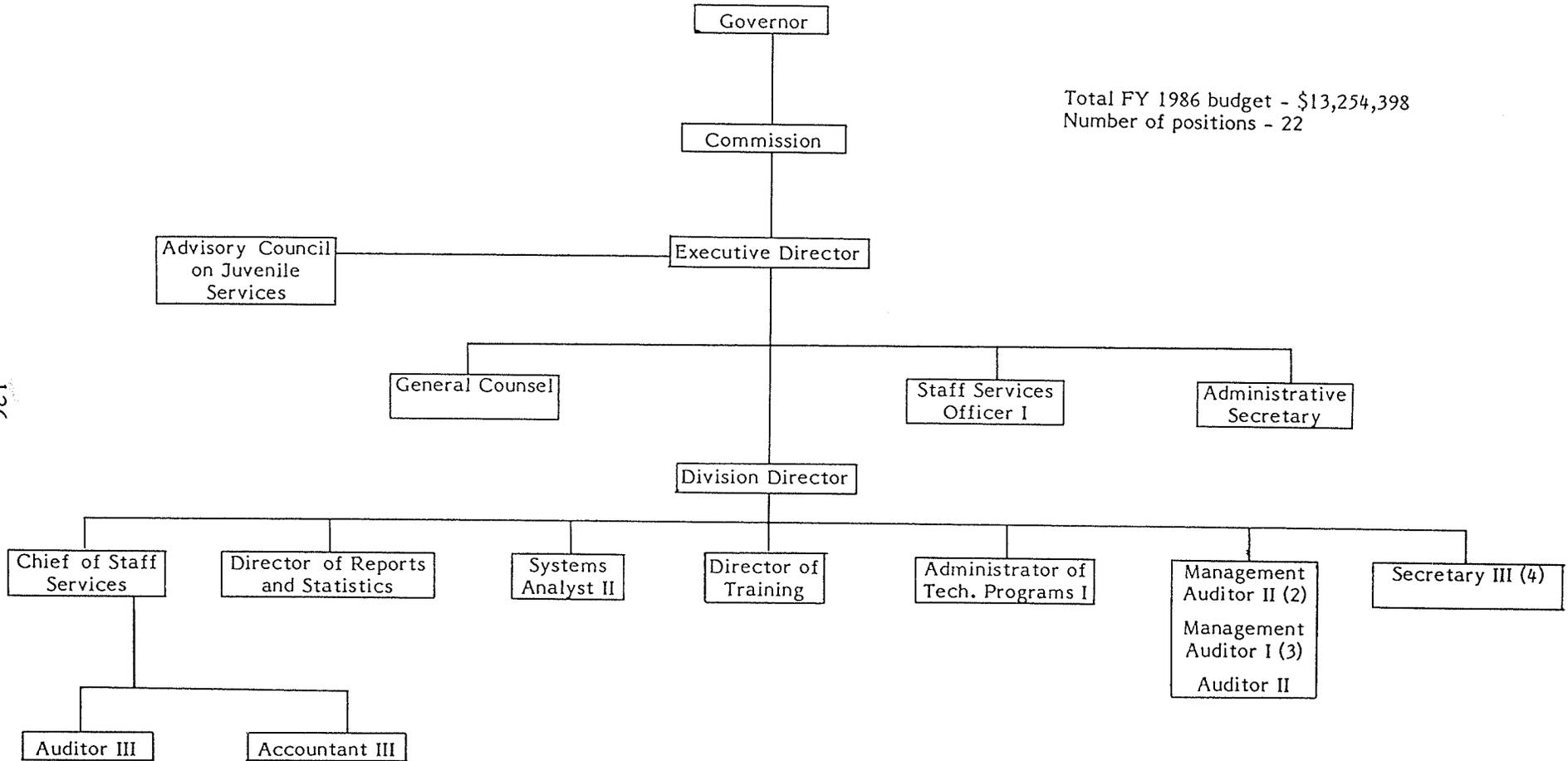
The Texas Juvenile Probation Commission consists of nine members appointed by the governor to staggered six-year terms. The Texas Human Resources Code requires three members to be judges of Texas district courts with juvenile jurisdiction at the time of appointment and six members to be citizens who are not employed in the criminal or juvenile justice system. The chairman and vice-chairman are designated by the governor from among the members of the commission.

In addition to setting policy for the operation of the agency, the board is required to establish minimum standards for the operation and services of county juvenile probation departments, to establish and enforce a code of ethics for probation officers, and to establish a certification program for these officers.

The statutory Texas Advisory Council on Juvenile Services is an eight-member advisory body appointed by the commission to two-year terms. The membership consists of two juvenile judges, three juvenile probation officers, two citizens knowledgeable of juvenile services and a representative of the Texas Youth Commission. The advisory council reports to and advises the executive director of the Texas Juvenile Probation Commission.

# TJPC Organizational Chart

Total FY 1986 budget - \$13,254,398  
 Number of positions - 22



### Funding and Organization

The fiscal year 1986 funding for the commission totalled \$13,254,398, all from general revenue. Approximately seven percent of these funds are used for agency administration. The commission has a staff of 22 employees, all assigned to a central office in Austin.

#### Texas Juvenile Probation Commission Fiscal Year 1986 Funding

State Aid Appropriation	\$ 12,481,508
Two Percent (2%) Transfer to Administration Provided by Rider	<u>(249,093)</u>
<b>Total Available for State Aid</b>	<b>\$ 12,232,415</b>
Administration Appropriation	\$ 772,890
Two Percent (2%) Transfer from State Aid	<u>249,093</u>
<b>Total Available for Administration and Support Services</b>	<b>\$ 1,021,983</b>

Administration and support budget includes agency staff:

Executive Administration	4
Legal	1
Fiscal	2
Contract Administration	1
Training and Certification	1
Audit	1
Reports and Statistics	1
Monitoring and Technical Assistance	6
Data Processing	1
Clerical and Support	<u>4</u>
Total	22
<b>Total Appropriation</b>	<b>\$ 13,254,398</b>
Unexpended Balances from County State Aid Allocations Re-allocated to Discretionary Grant Program	<u>\$ 1,071,299</u>
<b>Total Available to TJPC in FY '86</b>	<b><u>\$ 14,325,697</u></b>

Two primary functions are performed by the agency -- the distribution of state aid and the provision of support services to juvenile probation departments. Descriptions of these functions and related agency activities are provided as follows.

### **Programs and Functions**

#### **State Aid**

The agency distributes about \$12.2 million annually from state appropriations to county juvenile boards through its state aid program. These funds account for approximately 20 percent of the overall funding for the juvenile probation system with the balance contributed primarily by the counties. The agency is authorized to distribute state aid for the following purposes: 1) to make probation services available throughout the state; 2) to improve the effectiveness of those services; and 3) to provide alternatives to the commitment of juveniles to the Texas Youth Commission. TJPC uses two approaches to distribute funds: basic state aid and discretionary grants. These approaches are described below.

In fiscal years 1986 and 1987, \$12.2 million is allocated annually as basic state aid to counties through a three part funding formula. The major part of the formula is based on the county's juvenile age population. The second part is a base component which ensures that even sparsely populated counties receive a minimum amount of funding. Approximately \$10.7 million is allocated in the population and base components of the formula. The third part of the formula is a county match component. The agency allocates \$1.5 million to counties through the match formula as an incentive to increase county contributions. The formula matches a percentage of any new county money greater than the amount spent in the previous year for juvenile probation services. The percentage matched depends on funds available for this purpose in a given year. In fiscal year 1985, TJPC matched 33 percent of new county expenditures on juvenile services. State aid funds may be used by the counties for three purposes: the maintenance of staff services, the purchase of residential services and the purchase of non-residential services such as psychological evaluation and counseling. In fiscal year 1986, basic state aid grants to counties range from \$5,254 to \$1,343,808.

The other type of funding approach is a discretionary grant process. Unexpended balances from the previous year's state aid contracts and agency administration budget are used for discretionary grants. The process allocates funds on an as needed basis to county juvenile probation departments. In fiscal

year 1985, \$1.4 million were allocated through discretionary grants. This approach was developed in response to special needs of counties. Funding priorities for the allocation of discretionary grants include supplements to departments with either inadequate total funding or high rates of delinquency, and funding for special programs to divert children from secure detention or TYC commitment.

The following chart shows the types of programs funded through discretionary grants:

<u>Purpose of Grant</u>	<u>FY 85 Funding</u>
Jail Removal	\$ 733,474
Supplements	\$ 376,662
Foster Care	\$ 233,435
Border Projects	\$ 26,467
Other	\$ 36,967
<b>TOTAL</b>	<u><u>\$1,407,005</u></u>

The major use of discretionary grants is for jail removal. These funds amounted to \$733,474 in fiscal year 1985. The grants are used primarily for the purchase of alternate residential care or secure detention in another county for juveniles who otherwise would be detained in adult jails because of the lack of county resources. Due to the requirements of the federal Juvenile Justice and Delinquency Prevention Act and the associated regulations, alternatives to secure detention are critically needed in counties without separate juvenile detention facilities. Federal requirements state that juveniles can not be held in adult jails after December 1985 and that status offenders cannot be detained over 24 hours in secure detention. Violation of the federal jail removal requirements can lead to the withholding of up to \$3 million annually in federal Department of Justice funding to Texas. Agency records indicated that 12 percent of the 23,138 juveniles held in secure facilities were so detained only because no alternate non-secure placement was available, such as foster care or emergency shelters. The discretionary funds for the jail removal effort could be used to place a portion of that 12 percent in lower cost alternatives to secure detention.

Supplemental funds amounting to \$376,662 were provided in fiscal year 1985 to 43 counties in amounts ranging from \$881 to \$50,000. These funds were awarded on a case-by-case basis to counties with inadequate total funding due to low county contributions, recent population growth, or high rates of delinquency.

Funds amounting to \$233,435 were allocated to foster care programs in fiscal year 1985. As of August 1985, 48 counties use foster care as a low cost method of diverting certain children from secure detention and TYC commitment. About half of children now placed in foster care are placed there as an alternative to secure detention. Some departments also use foster care as resource for children needing mainly out-of-house placement and supervision. For these children TYC was previously one of the primary resources available.

Since September, 1984 when TJPC first provided discretionary funding for the foster care programs, 260 children have received a total of 11,215 days of foster care funded through TJPC at an average cost of \$11 per day. This compares to an average cost of \$50 per day for secure detention and an average overall cost of residential care at TYC of \$54 per day.

Finally, in another approach to diversion, juvenile probation departments in Cameron and Webb counties receive discretionary grants for border projects to enable undocumented Mexican juvenile offenders to receive services in Mexico rather than in Texas. In addition, El Paso operates a similar program with funds from their current budget. In total, these programs have worked with 480 juveniles since September 1984 and received \$41,141 in discretionary grants. The programs are designed to divert a portion of juvenile offenders who are Mexican citizens from receiving services such as formal probation and TYC commitment in Texas. These juveniles consume an average of 25 to 33 percent of the resources of juvenile probation departments along the border. In addition, Mexican citizens accounted for 33,500 bed days at TYC, at a total cost of \$2.1 million in fiscal year 1985. The grant funds from TJPC pay the county department to develop a liaison in the Mexican Consul's office who either provides probation supervision directly or places the juvenile in the appropriate residential resources in Mexico. Since the program began, 52 juveniles have been diverted from commitment to TYC and placed in residential facilities in Mexico. The goal of the program is for juveniles needing rehabilitation to receive services within their own country and cultural environment.

The annual allocation of state aid and discretionary grants is secured by a contract between TJPC and the county juvenile board. The contract, as well as state law, requires the board to maintain services within the minimum standards established by TJPC for department administration and service provision. The department must also comply with agency monitoring efforts and continue county

contributions for delinquency services at a level equal to or greater than the county's funding in 1980. The agency monitors the counties' expenditure of funds and compliance with standards through its team of program monitors and contract administration staff. The agency is authorized by law to withhold state aid if a county fails to comply with the requirements.

In the past three years since the state aid program began, changes have taken place in both the funding and the availability of probation services. Juvenile probation services are now available in all counties, whereas prior to the initiation of the state aid program in 1982, 32 counties did not have juvenile probation services. County contributions for juvenile probation services have increased from \$34.1 million in 1982 to \$50.2 million in 1986. Counties provide 80 percent and the state provides 20 percent, on the average, of the \$62.7 million expended annually on juvenile probation services in Texas. Since September 1982 when the state aid program was first funded, the number of counties that do not provide money for juvenile probation services has fallen from 88 to 43.

#### Support Services to Juvenile Probation Departments

The agency assists county juvenile probation departments by providing an array of support services. These services include providing legal advice, training and certification of probation officers, monitoring of department activities, providing technical assistance, and issuing reports and maintaining statistical data on juvenile activity in Texas. These services are described below.

Legal services are provided by the agency's general counsel. In addition to providing legal services to the agency, the general counsel serves as an information resource for juvenile boards, juvenile judges, and probation officers. The counsel provides advice on legal questions raised concerning juvenile law or operation of probation departments, develops legal briefs on major questions, and conducts training sessions on the legal aspects of juvenile probation.

Direct and indirect training services are provided by the agency's training division. Probation officers and juvenile judges obtain direct training through workshops conducted by the agency at 16 regional training sites. During 1985, the agency conducted 462 hours of training to 1,323 participants. In addition, the agency may provide on-site training to local departments during their monitoring and technical assistance visits. Indirect training involves approving relevant training courses offered by other organizations across the state for continuing education credit and disseminating information on such courses.

The agency certifies juvenile probation officers who have met the statutory education requirement of a bachelor's degree and one year of graduate study or one year experience, and have received 40 hours of basic probation officer training. There are about 1,300 certified juvenile probation officers in Texas. Each officer must also be recertified every two years. Officers are required by TJPC standards to receive 80 hours of training within the two-year period to be eligible for recertification. Documentation of these hours is sent to and reviewed by the agency.

Through the agency's monitoring and technical assistance activities, program monitors evaluate county juvenile probation departments for compliance with standards set by TJPC. The commission has set standards for the operation of county juvenile boards and departments, including provision of services, and standards for probation officers. Technical assistance is often provided during monitoring visits to advise departments of new or more effective procedures, to assist departments in developing programs, or to provide advice in any needed area. An example of the technical assistance made available to juvenile probation departments is the development of a series of computer software packages. These software packages consist of a juvenile statistical information system, a department accounting system, and a juvenile tracking and caseload management system.

The reports and statistics program of TJPC collects information about juveniles referred to the juvenile justice system and the disposition of juvenile cases. The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) requires that the state collect information on juvenile involvement in crime in order to receive federal funding assistance. Documents and statistics provided by the agency are used by probation departments for caseload projections and management, and for targeting future training needs of probation officers. The program also publishes booklets to assist departments with various elements of their operations. Examples of these booklets include "Management of Juvenile Probation" and "Special Programs in Juvenile Justice."

#### **Scope of Sunset Review**

The review of the Texas Juvenile Probation Commission included all activities of the agency and focused on the two primary functions of the agency: distributing state aid funds to county juvenile boards and providing support services to county juvenile departments. In addition, the review examined how the operation of juvenile boards and departments could be improved through changes in

the juvenile justice system. A number of activities were undertaken through the course of the review. These included:

- detailed discussions with agency staff in Austin;
- site visits to various county juvenile probation departments;
- discussions with judges, interest groups and other persons knowledgeable of the agency

These and other activities resulted in a series of recommendations relating to agency operations and to operations of county juvenile departments. In addition, certain discussions also related to problems within the juvenile justice system which do not directly affect the operations of the agency or county juvenile departments. These issues often related to the overall problems of provision of services to youth. Such issues generally concerned the responsibilities of various state and local agencies. These problems are worthy of attention and many of these issues will be addressed in the upcoming reviews of the Department of Human Services and the Texas Department of Mental Health and Mental Retardation. The Sunset review of Texas Juvenile Probation Commission, however, has focused on the operations of the agency and the local departments it was created to assist.

#### **Need to Continue Agency**

The provision of juvenile probation services appears to be an important tool in combating juvenile delinquency and further criminal activity by the youth of our state. The functions of the Texas Juvenile Probation Commission continue to be needed in order to provide financial and technical assistance to the county juvenile probation departments which provide the direct services to Texas youth. The agency has generally carried out its functions in an efficient and effective manner. However, if the legislature decides to continue the agency, various improvements could be made in the operation of these functions and in the juvenile justice system.

**Sunset Commission Recommendations for the  
TEXAS JUVENILE PROBATION COMMISSION**

**CONTINUE THE COMMISSION WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The Texas Advisory Council on Juvenile Services should be responsible for determining the needs and problems of county juvenile boards and departments and for assisting the commission in long-term planning. (Statutory)**

The Texas Advisory Council on Juvenile Services has generally served a review and comment function for the agency, although no specific responsibilities are set out in the statute. Most agency advisory boards fill a specific purpose or need. Giving the advisory council the responsibility to determine the needs and problems of county juvenile boards and departments and to assist in long-term planning should encourage local input and assist the agency in developing programs that will best meet the needs of the juvenile probation system.

- 2. Representatives of the Texas Education Agency and the Department of Human Services should be added to the membership of the advisory council. (Statutory)**

The membership of the advisory council includes citizens, judges, probation officers, and a representative of the Texas Youth Commission. The TYC member provides input as to how policies may affect or can be coordinated with their agency. The Texas Education Agency and DHS also serve significant numbers of youth who may interact with the juvenile justice system. Having the executive director of these agencies or their designees on the advisory council would assist in coordinating policies.

**Overall Administration**

- 3. The Texas Juvenile Probation Commission should be required to conduct studies of the effectiveness of probation programs. (Statutory)**

One of the purposes of TJPC is to improve the effectiveness of probation services. The commission is authorized to distribute state aid, establish minimum standards

for services and train probation officers as means of promoting effective probation services. However, the agency's current research and statistical efforts are primarily management in nature and do not evaluate the actual effectiveness of the services TJPC promotes. To ensure that TJPC promotes the most effective and least restrictive services for the rehabilitation of delinquents, the agency should be required to undertake an on-going study of the effectiveness of probation services and publish its findings prior to each regular legislative session.

- 4. The executive directors of TJPC, TYC, TEA, TDMHMR, and DHS should meet four times a year, in Austin, to resolve conflicts in services to juveniles. (Statutory)**

The statute requires the executive directors of TJPC and TYC to meet quarterly to discuss mutual problems and make recommendations to the legislature. Conflicts exist in the provision of services to juveniles by a number of other state agencies. Including the executive directors of TEA, TDMHMR, and DHS in interagency cooperative efforts should result in resolution of policy conflicts.

### Evaluation of Programs

#### State Aid

- 5. The Texas Juvenile Probation Commission should be required to regularly update county population figures used to allocate state aid funds. (Statutory)**

The agency bases a major portion of its formula for distributing state aid funds on juvenile age population figures from the 1980 U.S. Census. This results in counties that have significantly increased in population since 1980 not receiving corresponding increases in funding. In order to more equitably distribute state aid, the agency should regularly update the population figures it uses in their funding formula.

- 6. A one-time juvenile court fee, which may be waived or reduced for financial hardship, should be assessed to support a special fund for diversion of juveniles from commitment to TYC. (Statutory)**

There is a need for additional services to be made available for diversion of youth from further involvement in the justice system and eventual commitment to TYC. Diversion services can result in an appropriate setting for a youth's rehabilitation and in many cases cost the state considerably less than commitment to TYC. In

order to support such services, a special fund should be established, to be supported by a one-time juvenile court fee of \$20.

### Juvenile Justice System

**7. All juvenile boards should be required to appoint a local advisory council. (Statutory)**

County juvenile boards are responsible for establishing and supervising county juvenile probation services and certifying the fitness of county detention facilities. Approximately 163 of the 184 juvenile boards have no authority to include public members in the board structure. This composition does not provide for community involvement in board activities. Legislation recently authorized some boards to appoint a nine-member citizen advisory council to provide such a forum. To ensure that a forum for public participation is available in each department throughout the state, the statute should require every juvenile board to appoint a citizen advisory council.

**8. Juvenile courts should be required to examine the parents' ability to contribute to the cost of court-ordered residential care and to order parental contribution unless waived by the court. Revenue may only be used for residential care. (Statutory)**

Adequate residential resources are necessary to ensure appropriate placements for the rehabilitation of delinquents. All existing resources to support such services should be examined, including those of the child's family. State law currently authorizes but does not require juvenile judges to look to the family to share in the cost of obtaining the necessary residential services for their child, once that child is placed on probation. However, these provisions are not used uniformly across the state. To correct this problem and provide the additional resources to place probationers in residential care, the current authority provided to juvenile judges to examine parental resources should be made mandatory, and parental contributions to the care of their child should be ordered unless waived for financial hardship.

**9. Allow prosecution of Class C misdemeanors in municipal court or justice of the peace courts. After two convictions prosecution may be made in juvenile court. Convictions of juveniles for Class C misdemeanors in municipal or justice of the peace courts must be sealed six months after conviction, however juvenile courts shall have access to these records for the purpose of proof of two**

**prior convictions for subsequent prosecution in juvenile court.  
(Statutory)**

Juvenile authorities must document commission of three Class C misdemeanors in order to prosecute in juvenile court. This requirement has resulted in very few cases actually being prosecuted due to the difficulty of proving offenses that may have occurred months or even years earlier. In order to rectify this problem, prosecution of Class C misdemeanors could be made in municipal or justice of the peace courts and proof of these convictions could be used in juvenile court if additional Class C offenses were committed at a later time. This approach would also alleviate the concern that juveniles can "get away" with their first two Class C misdemeanor offenses. In order to avoid the problem of a juvenile having a permanent record for a crime of moral turpitude, records of convictions in municipal or justice of the peace courts for Class C misdemeanors by juveniles could be sealed six months after conviction. However, juvenile courts must still have access to these records for use in proving prior Class C offenses if necessary.

**10. County juvenile boards should have the authority to contract with TYC for provision of probation services. (Statutory)**

Currently TYC has the statutory option to supervise parolees through its own employees or to contract for this service through a local juvenile board. This type of management option is not available to juvenile probation departments, even when it could be more cost effective to contract for probation services. Providing the flexibility to contract would give the local departments an additional method to meet future needs.

**11. The state should require probation fees and authorize fees for informal adjustment services. Texas Juvenile Probation Commission should be required to develop standards for consistent application of fees. The agency should withhold funds where fees are not applied consistently. Fees for informal probation services should be no more than fees for formal probation and may be waived or reduced by the chief juvenile probation officer. Both formal and informal probation fees may be waived or reduced because of financial hardship. (Statutory)**

Since 1979, juvenile courts have had the authority to assess a fee of up to \$15 per month while a child is on formal probation. Although the assessment of these fees is not required, the court can order the child, parent, or other person (usually a

guardian) to pay the fee if financially able to do so. Currently, 39 of the 254 counties in Texas indicate that probation fees are assessed, with approximately \$90,000 collected statewide in fiscal year 1984.

A major difference between juvenile and adult probation is that juvenile probation departments receive youths immediately upon arrest or referral, while adult probation departments only receive clients after they are sentenced in court. Therefore many youths receive services prior to, or in place of adjudication. These services are referred to as informal adjustment which includes temporary probation and voluntary probation services.

The review indicated that fees for formal probation should be required, and that juvenile probation departments should be authorized to assess fees for informal adjustment services, but not be required to charge a fee for informal services. Fees could be waived for financial hardship.

#### **Non-Program Changes**

**12. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the Texas Juvenile Probation Commission are found in the "Across-the-Board Recommendations" section of the report.

**13. Minor clean-up changes should be made in the agency's statute. (Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modifications of Agency's Statute" section of the report.

## TEXAS YOUTH COMMISSION

### Background

#### Creation and Powers

The Texas Youth Commission (TYC) is responsible, under the Texas Family Code, for providing care, custody, and control of youths aged 10 through 21 who have been referred by the courts for engaging in delinquent conduct. The agency was originally established as the Texas Youth Development Council in 1949 to help communities develop child services and to administer the state's correctional facilities for youth. At that time there were three facilities to manage: a training school for boys in Gatesville, an orphans' home in Corsicana, and a training school for girls in Gainesville. The commission's activities, responsibilities and target population have changed significantly since its inception in 1949.

In 1957, the legislature changed the composition of the agency's policy-making body, changed its name to the Texas Youth Council, focused its responsibilities more directly on delinquent youth, and authorized the agency to provide parole services. By 1970, the council was administering three state homes for dependent and neglected children at Corsicana, Waco, and Pyote, and four facilities for delinquent youth at Gatesville, Gainesville, Crockett, and Brownwood. (A fifth facility for delinquent youth was opened in 1972 at Giddings.)

The Morales vs. Turman federal civil rights lawsuit, filed in 1971, required major changes in agency policies and procedures, and shifted the method of service delivery toward community-based programs. Today nearly 40 percent of TYC's students are placed in alternate care settings, a significant change since 1975 when 100 percent were placed in training schools. The agency's focus has also shifted away from dependent and neglected children who are now the responsibility of the Texas Department of Human Services. To adjust to changing target populations and methods of treatment, between 1978 and 1982 the Gatesville State School was transferred to the Texas Department of Corrections, the Waco State Home was transferred to the Texas Department of Mental Health and Mental Retardation, and the facilities at Corsicana and Pyote were converted from orphanages to a residential treatment center and a training school for delinquent youth. The agency's name was changed to the Texas Youth Commission in 1983. The most recent change was effective September 1, 1985 when the agency's jurisdiction was extended to include individuals to the age of 21, up from the age of 18.

### **Board Structure**

The Texas Youth Commission has a six-member policy-making board with members appointed by the governor to staggered six-year terms. Members are Texas citizens who are recognized for their interest in youth. The board elects the chairperson.

### **Funding and Organization**

Funding for the agency in fiscal year 1986 totalled \$52,321,845. About \$47 million of this amount is from general revenue, slightly over \$2 million is federal funds, and the balance of \$3.3 million is derived from other state sources. Exhibit 1 indicates the way TYC allocates these funds within the agency's organizational structure.

The commission has 1,592 budgeted employees and operates from headquarters in Austin, with six area offices and 12 district offices located throughout the state. The location of the agency's offices and facilities is shown on Exhibit 2.

### **Programs and Functions**

As mentioned earlier, the primary responsibility of the agency is to provide care, custody, and control of delinquent youth. In order to meet its responsibilities, TYC administers four major programs -- institutional care, community-based services, special services, and parole services. These programs are supported by various other agency activities such as legal and public information services, research, and support administration.

For the purpose of the review, the agency's programs were organized along slightly different lines than TYC currently follows. For this reason, certain budget and employee figures may vary between the staff report and figures published by TYC. Descriptions of these programs and support activities are provided below.

#### **Executive and Administrative Support**

The primary function of TYC's central office in Austin is to administer and support the programs TYC operates across the state. Central office expended \$4,386,926 in fiscal year 1985 with a staff of 132. Please see Exhibit 1 for details of how the budget and staff are distributed among the various functions. The Texas Youth Commission divides its central office operations into the following categories: Executive Support, Administrative Support, Child Care Support, Institutional Support, and Community Services Administration.

Executive Support includes the activities of the executive director and his staff, legal services, information services, internal audit, and planning, research and evaluation. The legal services department has four primary responsibilities: to act as the general counsel of the agency in all legal matters; to develop contracts for services, such as residential treatment, counseling, training, medical assistance, parole supervision, construction and maintenance; to maintain a grievance system for youth in its care, as well as for its employees; and to conduct parole revocation hearings.

Information Services is responsible for press relations, public information, agency publications and brochures, and handling general inquiries. This department also supervises and coordinates the volunteer program, which provides opportunities for TYC youth to volunteer for community service projects, and for members of the community to volunteer their time and resources to help TYC youth.

Planning, Research and Evaluation (P,R&E) performs a broad range of information gathering and analytical services. This department produces a series of monthly, quarterly, and annual reports on topics such as population characteristics, cost per day, and recidivism. It is responsible for staying up to date with what is happening across the nation in the area of juvenile justice. It performs program evaluations to determine how well new projects are working, and what changes might help existing programs work better. The Planning, Research and Evaluation staff also receive requests from other divisions of the agency to gather certain information or evaluate a specific concept or program.

The Internal Audit department analyzes the degree to which the various programs are in compliance with agency rules, policies and procedures. This audit function differs from the program evaluation function performed by P,R&E in that the audit staff's review is limited to how a program works within the current TYC framework. The Planning, Research and Evaluation staff's approach is more outcome oriented and can make recommendations whether or not they are consistent with current policies and procedures.

Administrative Support is responsible for fiscal management, construction and maintenance, staff services, data and word processing, and personnel services. The personnel unit administers the agency's staff training center in Corsicana.

Child Care Support oversees the delivery of direct child care services in TYC's programs. This unit employs experts who provide technical assistance to

staff in the areas of education, mental health, nutrition, nursing, pharmacy, and medical and dental treatment.

Institutional Support is responsible for directing and coordinating the activities of TYC's training schools, the Statewide Reception Center, the Fairfield Camp, the Wilderness Challenge Program and the mobile diagnostic unit that operates out of the South Texas Regional Facility which is currently under construction.

Community Services Administration is responsible for directing the agency's effort to provide treatment to less serious offenders in community-based programs as opposed to institutions. This department administers the agency's nine halfway houses, two group homes, and eighteen parole offices. It is also responsible for contracting with private programs such as residential treatment centers and foster homes. The Interstate Compact on Juveniles is also staffed by this department. It handles transfers of youth on probation or parole from one state to another, coordinates the return of escapees and runaways, and makes arrangements for cooperative institutionalization of special types of youth.

#### Institutional Services

The Texas Youth Commission provides services to delinquent youth within an institutional setting at the Statewide Reception Center in Brownwood and at five training schools located throughout the state. All youth committed to TYC are first taken to the Reception Center in Brownwood for evaluation. The center is a fenced facility, with the capacity to house 114 children on five separate wings within one building. On the average, a child spends less than one month at this facility. During this time, the child is tested to assess his or her psychological, educational, and medical needs. These needs, along with the child's history of delinquency, are evaluated to determine the most appropriate, but least restrictive placement option. Of the 2,496 youth placed from the Reception Center in fiscal year 1985, 59 percent were sent to training schools, 19 percent to contract care facilities, 13 percent to TYC halfway houses, seven percent to TYC camps and two percent to the Corsicana Residential Treatment Program. The Reception Center is operated with a staff of 88 employees and a total operating budget of slightly more than \$2 million for fiscal year 1985. The cost per day per child was \$51.09 for fiscal year 1985.

Youth sent to one of TYC's five training schools have generally committed more serious offenses and require the structure and supervision of a secure facility.

All of the training schools restrict youth to locked buildings and the Brownwood and Giddings facilities are secured by fences. The training school at Giddings is TYC's maximum security facility for youth who were committed for violent offenses. The following table provides some general information on each of TYC's training schools.

<u>Training Schools</u>	<u>Average Daily Population</u>	<u>Average Length of Stay (Months)</u>	<u>No. of Employees FY 1985</u>	<u>Annual Operating Expenditures FY 1985</u>
Brownwood	243	6.38	202	\$ 5,099,974
Crockett	112	5.78	138	3,292,847
Gainesville	263	6.67	218	5,491,216
Giddings	299	11.98	241	5,917,435
<u>West Texas</u>	<u>191</u>	<u>5.88</u>	<u>186</u>	<u>4,365,754</u>
Total/Average	1,108	6.95	985	\$24,167,226

Except for Crockett, which is for boys only, the institutions are coeducational. Each institution has an accredited on-campus academic school, counseling services, and organized recreational activities. The facilities at Brownwood, Giddings, and Gainesville also offer vocational training, including instruction in auto mechanics, paint and body repair, welding, and building trades.

Within each training school, youth live in dormitories ranging in size from 25 to 40 beds each. They eat in a centralized cafeteria and can be cared for in an on-campus infirmary if they become ill. Individual counseling is provided, but the major focus of TYC's treatment is through group counseling. Within each dorm, youth are divided into small groups of 10 to 12 which meet five times a week for group counseling. Any problems which arise during the course of a day are resolved through the group. Youth learn responsibility for their actions by having to identify and understand any inappropriate behavior of a group member. As a group they decide on an appropriate consequence, rather than staff being solely responsible for sanctioning inappropriate behavior.

Youth also earn privileges based on a level system, which ranges from freshman to senior level. Both the group and staff determine when a youth's

behavior indicates he is ready to move to a higher level. Students on senior level are eligible for release.

In fiscal year 1985, a total of 3,024 youth were served in these five training schools. The average length of stay was just under seven months. The total number of employees in the training schools was 985. The cost per day per youth was \$59.57. The total operating expenditures for all five training schools in fiscal year 1985 was \$24,167,226.

#### Community-based Residential Services

The Texas Youth Commission provides community-based residential services for juveniles in nine TYC halfway houses, two TYC group homes, and in 112 privately-run programs that the agency contracts with for services. The development and expansion of these services have been largely in response to the Morales vs. Turman federal litigation, but also represents a nationwide trend in juvenile corrections. These programs provide a less restrictive alternative and diversion from institutionalization for less serious juvenile offenders. They are also utilized for youth returning to the community from institutions who do not have an approved home.

The Texas Youth Commission's halfway house program was established in 1975 and has steadily grown since that time. Currently TYC has eight, 24-bed, all male halfway houses located in the following cities: Austin, Corpus Christi, Dallas, El Paso, Harlingen, McAllen, Richmond, and San Antonio. A ninth halfway house is near completion in Ft. Worth and will be the first TYC halfway house for girls. A primary goal of the halfway house program is to maintain or develop the children's involvement in the community. Youth attend public schools, work in local businesses, or participate in vocational education or GED preparation. They are involved in recreational activities in the community, work as volunteers for social service agencies, participate in community service projects, and attend religious activities of their choice. Group counseling is the primary way in which the residents learn and develop the skills necessary to return home successfully. Individual counseling is provided as needed, and specialized treatment needs are met through resources in the community.

In fiscal year 1985, a total of 760 juveniles were served through the halfway house program. Of youth placed in halfway houses, 49 percent came directly from the Reception Center, 25 percent from training schools, eight percent from parole, six percent from other halfway houses, and 12 percent from other programs. The

average length of stay was just over five months. The total number of staff was 104, with an average of 13 staff per halfway house. The cost per day per resident was \$40.01 and total operating expenditures for all eight houses were almost \$3 million.

The TYC operation of its own group homes is a more recent development, with the San Marcos Group Home for girls opening in 1984 and the Austin Group Home for boys opening in August 1985. Each group home serves a maximum of eight children in a small family-like setting. The staff, or houseparents, actually live in the group home with the children. The purpose of the group homes is to serve less serious offenders who do not belong in institutions but who are difficult to place in contract care because of special needs or past behaviors. Youth attend public school, receive GED or vocational training, or work in the community. All basic needs of the youth are met by the houseparents, with any specialized needs met through community resources. In fiscal year 1985, a total of 25 youth were served in TYC group homes. Total operating expenditures were \$229,697.

In addition to TYC's own community-based services, the agency contracts with 112 privately-run residential programs. The Residential Contract Program was initiated in 1974 and since that time the number of youth served by the private sector has increased each year. The type of programs that are under contract provide a wide spectrum of services. The following is a breakdown of the different types of facilities that TYC currently contracts with: 30 foster group homes, 23 foster homes, 22 residential treatment centers, 14 emergency shelters, 12 basic child care facilities, four therapeutic camps, four maternity homes, two halfway houses and one drug treatment program. The level of care provided in these programs varies, as does the daily rate that TYC pays for these services. Each program provides basic child care, 24-hour supervision, and special services and counseling in accordance with their contract. Most contract programs require school attendance. Work, vocational education and job placement assistance are frequent components. Residential treatment centers provide specialized counseling for severely emotionally disturbed youth. Foster homes emphasize the maintenance of a family environment. This variety provides TYC with the ability to meet the special needs of less serious juvenile offenders in the community.

The Texas Youth Commission maintains contact with and support to these contract programs through the local parole staff that provide casework services to these youth, as well as through the agency's community resource specialists, who

develop the contracts, monitor the programs and provide technical assistance to them, as needed. The commission regularly monitors the contract programs to insure that the programs continue to operate effectively and according to the provisions of their contract.

In fiscal year 1985, a total of 1,494 youth were served in the contract care program. Of the youth placed in contract programs in fiscal year 1985, 33 percent came directly from the Reception Center, 19 percent from training schools, 22 percent from other contract programs, 21 percent from parole, and five percent from other programs. The average length of stay was 7.89 months. The cost per day was \$36.33. Total operating expenditures for fiscal year 1985 were \$5,863,606.

#### Special Services

The Texas Youth Commission provides special services through the following three programs: the Corsicana Residential Treatment Center, the Fairfield Wilderness Camp, and the Wilderness Challenge Program. Each of these programs was developed to serve a special need that could not be met by an existing program or as an alternative to traditional approaches to treatment for juvenile delinquents.

The Corsicana Residential Treatment Center began operation in 1982 to meet the needs of emotionally disturbed youth that were difficult to find services for in the community. The facility at Corsicana has a long history, having originally been created in 1887 as the State Orphan Asylum. During the depression years, over 800 children lived at the home, most of whom were later reunited with their families. With the declining number of orphans and the increased use of foster care for these children, the use of the facility was altered to meet the changing needs of the agency. For the last four years, the facility has moved from serving only dependent and neglected children referred by the Department of Human Services, to serving emotionally disturbed delinquent children committed to TYC.

Currently, the program at Corsicana focuses on the treatment of emotionally disturbed, behaviorally disordered, and learning disabled youth within a therapeutic environment. The size of the program is limited to serve a maximum of 66 youth. Individual attention to each child's needs is facilitated by the fact that Corsicana has nearly twice the number of staff per students as any other TYC program. Admissions criteria focus on children who are non-psychotic, amenable to treatment, and motivated to change. The program teaches basic living skills, as well as providing treatment of specific psychiatric symptoms. The facilities are similar to a training school in that the youth live in 16 to 24 bed dorms and eat in a

centralized dining hall. Most youth attend school on-campus, which has the advantage of small class sizes, and a majority of students are enrolled in special education. Some children participate in the educational and vocational training offered through the local public school. From the time of admission, family services are emphasized, with the goal of returning these youth to a family setting upon discharge.

In fiscal year 1985, a total of 139 children were served at Corsicana. Of the youth placed at Corsicana in fiscal year 1985, 43 percent came directly from the Reception Center, 42 percent came from training schools and 15 percent came from other programs. The average length of stay was 13.55 months. The average daily population was 56. The cost per day was the highest of any TYC facility at \$130.70. The total number of staff for fiscal year 1985 was 110, and total operating expenditures were \$2,803,223.

The Fairfield Wilderness Camp is an alternative program that was started in 1979 to serve younger boys, ages 10 to 14½ years, in a less restrictive environment. Youth live in a camp in the woods outside of Fairfield, Texas. The campers, with the help of staff, construct and maintain their own housing, school and shower facilities, using wood from the immediate area. Youth are divided into four groups of up to 12 campers each, with three caseworkers and one group supervisor assigned to each group. The purpose of the program is to provide the campers with successful experiences in meeting all their basic needs in the wilderness. The major treatment mode is the group session, or "huddle-up", which focuses on solving problems as they arise. The campers attend school five days per week in the camp and cook many of their own meals over a fire.

In fiscal year 1985, 25 staff members served a total of 116 youth in the Fairfield Wilderness Camp program. The average length of stay was 7.59 months. The cost per day per camper was \$54.38. Total operating expenditures for fiscal year 1985 were \$797,499.

The Wilderness Challenge Program is a short-term camping program that lasts 30 days. It serves as a diversion for selected youth, age 15 and above, who are considered a low risk to their communities. The purpose of the program is to learn to overcome physical challenges. Meeting these challenges, coupled with the close interdependence of the group and camp counselors in achieving a set of goals, helps to build the youth's self confidence. Following the trip, the staff and youth meet to discuss the trip and reinforce the youth's positive accomplishments. In

fiscal year 1985, a total of 99 boys were involved in the Wilderness Challenge Program. The total number of employees was nine. The cost per day per youth was \$80.30. Total operating expenditures for fiscal year 1985 were \$207,244.

#### Parole Services

All youth who are under the age of 18 when released from placement are placed under the supervision of TYC parole officers. Usually juveniles remain under some form of parole supervision until their 18th birthday. In addition to providing supervision, parole officers also try to locate needed services for parolees, act as the caseworker for youth in residential contract programs within their districts, evaluate home settings to determine whether they are appropriate for a child to return to upon release, and participate in parole revocation hearings which are conducted by TYC hearings examiners.

During fiscal year 1985, the agency served a total of 4,367 youth on parole with an average daily population of 2,178. The actual cost per day per youth served was \$2.45. Total expenditures for the parole division were \$1,975,272 in fiscal year 1985 and 68 people were employed in this area, including 56 parole officers. The average caseload per parole officer was slightly less than 40. Parole offices are located throughout the state in six area offices and 12 district offices. For locations, please refer back to Exhibit 2.

The parole function of TYC was handled by county probation departments prior to 1961. This concept continues in use on a limited basis currently, with TYC contracting with four county juvenile probation departments for parole services in their areas.

As long as a youth is on parole, the agency has the authority to return the parolee to an institution if parole conditions are not met. Initially, a youth's parole could be revoked simply by a phone call from the parole officer to the parole administrator. However, the Morrissey vs. Brewer federal supreme court decision in 1972 prompted the addition of due process hearings for parole revocations. Youth are now represented by counsel at the hearings and can appeal the decision to the executive director of TYC. The agency held 501 parole revocation hearings in fiscal year 1985, resulting in 417 revocations.

#### **Scope of Sunset Review**

During the Sunset review of the Texas Youth Commission all of the agency's major activities were evaluated. The focus of the evaluation was to determine whether changes were necessary for the agency to more effectively carry out its

mandate of providing care, custody and control of youth that have been referred to the agency by the courts. For the purpose of the review, the agency's programs were divided into the following categories: institutional services, community-based residential services, special services, parole services, and support services. In addition, two other factors had a significant impact on all phases of the review. First, it was necessary to review the TYC as a component of the state's juvenile justice system, which also includes the Texas Juvenile Probation Commission, local juvenile probation departments, juvenile courts and state laws which deal with delinquent conduct. Care was taken to avoid resolving problems at the TYC only to create problems in other parts of the system. Second, several court cases, most notably Morales vs. Turman affect many of the agency's activities. No recommendations were made which would conflict with these lawsuits.

During the review, a number of activities were undertaken by the staff to gain a better understanding of the agency and its operations. These included detailed discussions with the agency's central office staff in Austin, site visits to each of the agency's five training schools, and visits to several TYC halfway houses, parole offices, and private sector contract programs in different areas of the state. The staff also met with interest groups and other parties affected by the agency, and did an extensive review of reports and studies relevant to the agency and the area of juvenile justice.

These activities resulted in a number of recommendations which improve the agency's administrative procedures, help the agency recover the cost of services from responsible parties, and increase accountability. In addition, improvements to the juvenile justice system as a whole have been recommended in the areas of delinquency prevention, elimination of service gaps, and increasing the TYC's use of resources outside the agency such as families, local authorities, and other state programs.

### **Need to Continue Agency**

The sunset review of the TYC's programs and responsibilities indicated that there is a continuing need for the state to be substantially involved in rehabilitative services for delinquent youth. The review indicated that the Texas Youth Commission has generally met its overall goals and objectives in an efficient and effective manner and should be continued for a 12-year period.

The sunset review also determined that if the agency is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. The changes are outlined in the following recommendations.



**Sunset Commission Recommendations for the  
TEXAS YOUTH COMMISSION**

**CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

No recommendations.

**Overall Administration**

- 1. The agency should be authorized to hold funds in trust for children committed to it. (Statutory)**

While at TYC, a youth cannot have more than \$10 in his possession. Any additional money is deposited in a student trust fund until the youth is released. Although the agency has developed appropriate policies governing these funds, the State Comptroller's Office has indicated that TYC should have clear statutory authority for funds held in trust.

- 2. The commission should be authorized to maintain four special accounts in the general revenue fund. (Statutory)**

The Texas Youth Commission currently has four special accounts in the state treasury: the Canteen Revolving Fund, the Student Benefit Fund, the Vocational Shop Fund, and the Conference Account. The Appropriations Act authorizes expenditure of these funds and the agency has developed appropriate policies to govern the funds. However, the State Comptroller's Office has indicated that the agency needs clear statutory authority to maintain these special accounts.

- 3. The Texas Youth Commission should be required to use a standard methodology in calculating cost per day. (Statutory)**

The method of calculating the cost per day per person varies between TYC and other state agencies that operate residential facilities, and even between programs within TYC. This makes it very difficult to determine which methods of providing residential services are the most cost-effective. The Texas Youth Commission's statute should be amended to require that its cost per day calculations reflect true costs to the state and should include depreciation, fringe benefits, and administrative overhead so that cost-effective decisions can accurately be made.

4. **Parents who are financially able should be required to contribute to the cost of their child's commitment to TYC. The attorney general's office should collect the payments. (Statutory)**

Currently children committed to TYC are provided care and rehabilitative services at no cost to their parents. The review indicated that other state agencies can require parents to contribute to the support of their children while the children are in the care of a state agency. There did not appear to be any reason that this practice could not be implemented for youth in TYC's care, as long as appropriate consideration is given to the parent's financial ability to contribute to the cost of the child's care. The responsibility for collection and enforcement should be handled by the attorney general's office since they currently have a process in place for similar collections.

5. **Child support payments for a child committed to TYC should be transferred from the parent to TYC for the time the youth is in a residential program operated or funded by TYC. The attorney general's office should collect and enforce these payments. (Statutory)**

Currently, in a child custody suit, if one parent is ordered to pay child support to the other parent, the parent with custody of the child would continue to receive these payments even if the youth was committed and placed in the care of TYC. This does not appear to be an equitable situation, in that TYC bears the full responsibility for meeting all of the child's needs as long as the child is in TYC's care. Therefore, the child support payments should be made to TYC, rather than continuing to be paid to the parent, as long as TYC is providing residential services for the child. The attorney general's office should collect and enforce these payments. The attorney general's office, upon the request of TYC, should also file a motion in the appropriate court to have the child support payments shift to the appropriate person when a child is released from TYC.

### Evaluation of Programs

#### Community-based Services

6. **The Texas Youth Commission should be required to develop and utilize performance-based contracts, where it is appropriate and practical, for any program serving ten or more TYC children. The**

**agency should also be required to develop performance-based measures for all programs operated by TYC. These measures should be used to evaluate and compare programs. (Statutory)**

The Texas Youth Commission currently contracts with 112 private residential programs. Twenty-two of these contracts have agreed to serve ten or more TYC students at the more expensive levels of care. A potential situation currently exists where buying services for 23 percent of the youth in contract care could consume 75 percent of the contract care budget. To ensure this money is buying the desired outcome, TYC should be required to develop and utilize performance-based contracts, whenever it is appropriate and practical. To further ensure that the state's dollars are producing the desired outcome, TYC should use performance-based measures to evaluate and compare agency-operated programs.

**7. The state should require TYC to contract for future halfway house services, unless appropriate, cost-effective services are not available on a contract basis. (Statutory)**

This recommendation would allow TYC to maintain their current system of nine halfway houses, but prohibit any further development of agency-operated halfway houses unless appropriate, cost-effective services cannot be obtained on a contract basis. This provides the agency with the flexibility to meet the needs of the youth it is responsible for serving, but ensures that the state does not develop programs that can be more economically contracted for in the private sector.

#### Special Services

**8. The Texas Department of Mental Health and Mental Retardation and TYC should be required to provide for a continuum of care for mentally ill or mentally retarded juvenile delinquents committed to TYC's care. (Statutory)**

Lack of coordination between TYC and TDMHMR has resulted in problems in the delivery of services to mentally ill or mentally retarded juveniles committed to TYC. Therefore, the statute should require the two agencies to develop a memorandum of understanding to provide clear procedures for serving these youth. These procedures should be adopted as formal rules of each agency.

9. **The state should expand the "Communities in Schools" program and develop policy statements supporting the expansion of drug and alcohol services for youth, as well as runaway services, when funds are available. (Statutory)**

The Communities in Schools program currently exists in five Texas cities. Through the combined efforts of the private sector, local communities, and the federal government, it has successfully served students who were at risk of dropping out of school and/or becoming involved in criminal activity. Coordination of this program is currently provided in the governor's office through a one-year grant from the Texas Education Agency (TEA). To ensure the program continues and is implemented statewide, a state coordinator with specified responsibilities should be established at TEA.

In addition, expanding drug, alcohol, and runaway services, when funds are available, could reduce delinquency. Currently, the Texas Commission on Alcohol and Drug Abuse allocates less than 17 percent of their grant money for alcohol and drug abuse prevention and treatment programs to programs serving adolescents. Increasing this would appear to have long-term benefits for the individuals served, as well as for the state. Also, the Texas Department of Human Services currently contracts with the private sector to provide a variety of services to truants and runaways. An expansion of this program would have the potential for reducing the number of juveniles who end up in TYC. It is more cost-effective for the state to serve these youth at this point rather than after they are in the juvenile justice system. Therefore, where funds are available, efforts should be made to focus on programs that reduce delinquency.

#### **Parole Services**

10. **The Texas Youth Commission should be required to implement a standardized case management system for parole which objectively measures certain elements, including home evaluations. (Statutory)**

The commission currently does not have an objective method of managing the caseloads of its parole officers. This can result in a disparity of parole officer workloads and of services provided to parolees across the system. Therefore, TYC's statute should be amended to require the implementation of a standardized case management system which includes a case classification system, a case management system, a management information system, and the objective

measurement of key aspects of the parole officers' workloads, including home evaluations.

**11. The state should eliminate the statutory limit on contract rates for parole services. (Statutory)**

The TYC contracts with four county juvenile probation departments for supervision of parolees within their areas. This is a good idea because some local probation departments are able to provide comparable supervision at a lower cost. The review indicated that TYC should expand the use of local probation departments to supervise its parolees. The TYC should be authorized to contract for parole supervision services when it is less costly than TYC providing the service. The statutory limit of \$3 per day and \$60 per month is not needed and can prevent the state from realizing savings in the provision of parole services.

**12. The commission should be authorized to utilize restitution, as well as other appropriate options, as alternatives to parole revocation. (Statutory)**

Currently, if a youth on parole is found guilty of committing an offense, parole is revoked and the youth is returned to a TYC institution for a minimum of six months. This approach does not provide for a less restrictive alternative for youth who commit less serious offenses and who may not require the security of an institution. Restitution is one such alternative. It holds the youth accountable for his offense and is more cost effective as it does not require placement in an institution. Therefore, the statute should be amended to authorize TYC to utilize restitution as well as other alternatives to parole revocation, when the agency determines it is appropriate.

**Cross-program Issues**

**13. The Texas Youth Commission should be authorized to develop programs which encourage family involvement in the rehabilitation of children committed to the agency. (Statutory)**

The Morales vs. Turman Settlement Agreement requires the Texas Youth Commission to maintain policies that encourage contact between youth committed to TYC and their families. The agency is complying with this part of the settlement agreement, but needs clear statutory authority to do so.

**14. The Texas Youth Commission should be authorized to apprehend a child who escapes while under its authority. (Statutory)**

Parole officers are the only members of TYC's staff that have statutory authority to apprehend, without a warrant, a child on escape status. However, in fiscal year 1985, only 26 percent of the 911 escapees were on parole. The remaining 74 percent were students in TYC's institutions, camps, and community-based programs. The staff that works with these students should be authorized to arrest, without a warrant, any child on escape status.

**15. Protection from legal liability should be extended to physicians for actions taken in the performance of services under contract with TYC. (Statutory)**

The state currently provides protection from legal liability, under specific conditions, to physicians who contract with the Texas Department of Mental Health and Mental Retardation and a division of the Texas Rehabilitation Commission. The Texas Youth Commission also contracts with physicians to provide services, but their contract physicians are not protected by the state. This impedes TYC's ability to contract for physician services. Therefore, the statute should be amended to extend this protection to physicians for actions taken in the performance of services under contract with TYC.

**16. Revocation of CINS probation should be prohibited for commission of status offenses and misdemeanors punishable only by fine in the adult system. (Statutory)**

Currently, the Texas Family Code authorizes youth to be committed to TYC for engaging in delinquent conduct. Delinquent conduct is defined as: 1) breaking a penal law which is punishable by imprisonment in the adult criminal justice system; or 2) violating the terms of probation. In addition, juveniles can be placed on probation for certain minor offenses which are not considered acts of delinquency, and can be committed to TYC for violating probation if they commit another similar offense. These offenses which are not considered acts of delinquency but can result in probation and subsequent commitment to TYC are classified as "CINS offenses" or conduct indicating a need for supervision. CINS offenses include status offenses, which are offenses only because of a person's "status" as a juvenile. CINS offenses also include misdemeanors punishable by fine only, violation of local ordinances, illegal use of inhalants, and driving under the influence of alcohol or drugs. The review indicated that it is inappropriate to commit youth to TYC who

commit only status offenses and minor misdemeanors which are punishable only by fine in the adult system. The Texas Family Code should be amended to prohibit commitments of this kind.

### **Non-Program Changes**

**17. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the Texas Juvenile Probation Commission are found in the "Across-the-Board Recommendations" section of the report.

**18. Minor clean-up changes should be made in the agency's statute. (Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modifications of Agency's Statute" section of the report.



# TEXAS DEPARTMENT OF MENTAL HEALTH AND AND MENTAL RETARDATION

## Background

### Creation and Powers

The Texas Department of Mental Health and Mental Retardation (TDMHMR) was created in 1965 by House Bill 3 and is responsible for operating a network of residential and community services for mentally ill and mentally retarded people. It provides and contracts for rehabilitative and educational programs to restore the mental health of Texas citizens and to help mentally retarded persons live as useful and productive lives as possible. The TDMHMR also supervises and financially supports 31 community mental health and mental retardation centers governed by local boards of trustees.

In 1856, Texas established the first institution for the mentally ill in Austin with others soon to follow in Terrell, San Antonio and elsewhere. At that time, little distinction was made between mentally ill and mentally retarded people and their care consisted mainly of supplying a place to live where they could be confined to prevent injury to themselves or others. In 1915, the legislature realized that mentally ill and mentally retarded people should not be served in the same facilities and authorized the first facility for mentally retarded persons. In 1919, as more institutions for the two populations were built, the legislature created the State Board of Control for the purpose of consolidating 21 separate institutions. This board managed and made purchases for all asylums and eleemosynary institutions of the state. Eventually, other state laws enacted in 1949 and 1950 established a Board for Texas State Hospitals and Special Schools and implemented an extensive building program to relieve overcrowded conditions in state facilities.

With more space available, better trained personnel, the introduction of psychotropic drugs, and the passage of the Mental Health Code in 1957, the warehousing of mentally ill patients evolved into a more therapeutic situation. Changing public attitudes and federal policies were also beginning to stress the need for treating patients in their home communities rather than secluding them in distant locations. During the 1960s, laws were passed that provided for federal matching funds to establish mental health clinics in local communities throughout the country.

Negative attitudes toward mentally retarded people slowly began to change in the early 1950s. In the late 1950s and early 1960s, as state schools were added or expanded, a change evolved in the care and treatment philosophy. The custodial approach to care began to gradually be replaced by emphasis on developing the individual's potential through education, recreation, and training in social and vocational skills. Further improvements came with the creation of the community MHMR centers in the 1960s. These provided many mentally retarded citizens with the opportunity to be served in their local communities for the first time. The passage of the Mentally Retarded Persons Act in 1977 was another major milestone in assuring that these people have the opportunity to develop to the fullest extent possible and to live in the least restrictive environment appropriate for their needs. The Act also ensures that mentally retarded people, who have not been adjudicated incompetent and for whom a guardian has not been appointed by the courts, have the same rights and responsibilities enjoyed by all citizens of Texas.

The past decade has seen the decentralization of residential facilities and the expansion of community-based alternative care for both mentally ill and mentally retarded people. Litigation in Texas and other states has reinforced this trend by articulating patients' rights to treatment, education and compensation for labor. Two notable court cases affecting Texas, the Lelsz and R.A.J. suits, have had significant impact on the delivery of mental retardation and mental health services in this state.

Other major changes to the service delivery system were the result of the Legislative Oversight Committee on Mental Health and Mental Retardation. This joint committee was created in 1984 by the lieutenant governor and the speaker of the house to deal with court mandates and to develop state policies to deal with the future direction of mental health and mental retardation services. The committee, comprised of lawmakers, service providers, advocates and other experts, was charged with advising the 69th Legislature on how resources could best be utilized to address client needs now and in the future. The recommendations of the committee were incorporated into S.B. 633 which was passed by the 69th Legislature. The major components of S.B. 633 include more citizen involvement in planning, the development of a long-range plan, the identification of priority client populations, moving from grant-in-aid funding to service contracts between the department and community centers, requirements that department personnel balance clinical and programmatic knowledge with manage-

ment experience, and mandating the availability of certain core services in local service areas. The required core services include 24-hour emergency screening and rapid crisis stabilization; community-based crisis residential or hospitalization services; community-based assessments; family support services, including respite care; and case management services. If a community center cannot provide these services, the department is required to contract with another provider.

### **Board Structure**

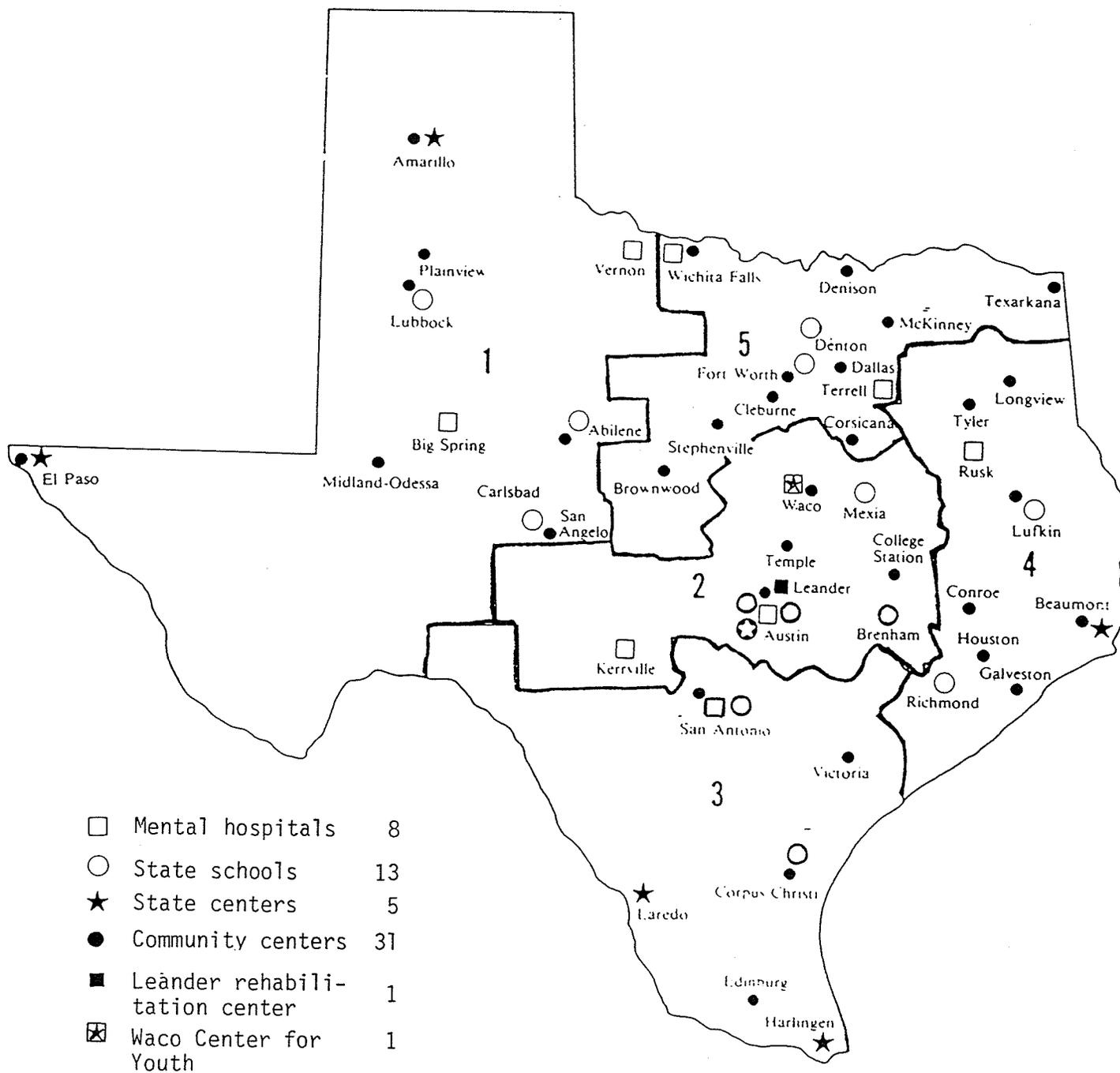
The Texas Board of Mental Health and Mental Retardation is composed of nine part-time members appointed by the governor for staggered six-year terms and one member emeritus. The board chairman is selected by the governor. Five members are required as a quorum to transact business. The chairman appoints all standing and special committees of the board and serves as an ex-officio voting member on all standing committees. A committee of the board has no quorum requirements and can transact business in any manner calculated to expedite its work. There are five standing committees consisting of (a) an executive committee to address broad issues that are neither purely programmatic nor fiscal, (b) a business committee to consider funding and management issues, (c) a program committee to develop programmatic policies, (d) a personnel committee to review applicants for the position of commissioner, as well as approve appointments by the commissioner of facility heads and certain central office positions, and (e) a rule review committee to review any proposed departmental rules.

### **Funding and Organization**

The TDMHMR has its administrative headquarters in Austin and operates eight psychiatric hospitals, 13 state schools for mentally retarded persons, five state centers, the Waco Center for Youth, the Leander Rehabilitation Center, genetics screening and counseling services, and eight pilot programs for persons with autism. It also provides substantial funding to 31 community centers governed by local boards of trustees. Exhibit 1 shows the locations of the state facilities and community MHMR centers. The department has 26,813 full-time equivalent positions authorized and 24,923 employees assigned as of June, 1986 with an operating budget of \$623.5 million. Exhibit 2 shows the personnel and budget for each of the department's major programs.

Exhibit 1

# Texas Department of Mental Health and Mental Retardation Delivery System



**Exhibit 2**  
**TDMHMR Budget/Employees**

<u>Agency Program or Activity</u>	<u>1986 Funding (in Millions)</u>	<u>Authorized Employees (June '86)</u>	<u>Assigned Employees (June '86)</u>
Central Administration	\$ 18.7	653	588
State Hospitals	194.0	9,763	9,180
State Schools	258.8	15,025	13,906
State Centers	28.1	1,372	1,249
Contracted Community Services	101.7	(5,652)*	-
Statewide Support Services	17.5	-	-
Capital Outlay & Construction	4.7	-	-
<b>Total</b>	<u>\$623.5</u>	<u>26,813</u>	<u>24,923</u>

\*Community center employees are not included in the total of TDMHMR employees.

Central Office

The Texas Department of Mental Health and Mental Retardation conducts all of its administrative activities out of the central office located in Austin. Central office has 653 authorized employees for June, 1986. Eighty-five claims personnel located in the state facilities as well as 96 genetics screening and counseling service personnel located in regional clinics are included in that number. The central office appropriation for fiscal year 1986 was \$18.7 million, accounting for three percent of the agency's budget.

At the highest administrative level within the organization is the office of the commissioner which consists of the commissioner, the director of operations and administrative staff. The director of operations assists the commissioner in making sure the department is administered in an effective and efficient manner. The director of operations' position concentrates on operational matters and special assignments of the commissioner and has the full authority of the commissioner in carrying out his duties. Advisory to the office of the commissioner are special assistants for medical and dental services as well as the director of volunteer services.

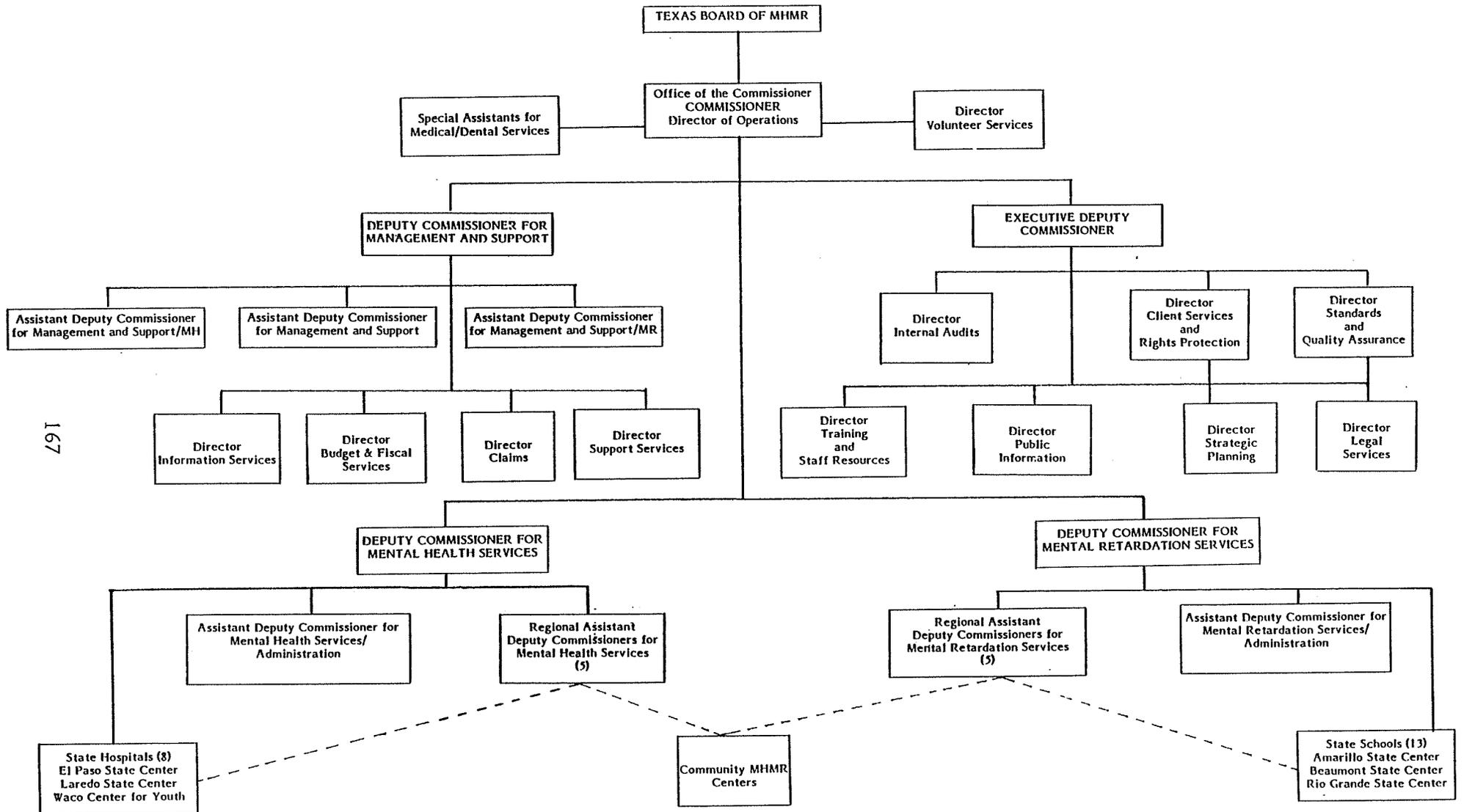
Responsibility for all of the administrative activities of the agency is divided into four areas which report to three deputy commissioners and one executive deputy commissioner. These four deputy commissioners report directly to the commissioner's office and together with the commissioner and the director of operations, make up an executive committee. The division of the responsibilities

for the four areas can be seen on Exhibit 3 which outlines the agency's organizational structure. The functions of the four areas are described in the following material.

Quality Control and Staff Support Services Administration. The executive deputy commissioner is responsible for seven sections which provide quality control and staff support to all areas of the department. The client services and rights protection section investigates and resolves all reports of client abuse and neglect within the MHMR system, administers and monitors placements into TDMHMR's facilities and finds alternative community placements. The legal services section serves as legal counsel for the board, staff, and facilities of the department. It also serves as the liaison with the Office of the Attorney General which represents the department in litigation. The public information section publishes information about the department and manages the department's library and research service. The training and staff resources section administers and directs staff resources, staff development and continuing education as well as manages all personnel functions. This section also administers the statewide case management program. The strategic planning section coordinates the development of the department's long-range plan and serves as the department's principal liaison with other government agencies. The internal audit section provides information to the executive committee on the degree to which agency facilities, programs, and functions are operating in accordance with rules and regulations. Internal audit also conducts management audits of community MHMR centers. The standards and quality assurance section is responsible for reviewing the quality of care and services provided by the state facilities and community centers. This section also licenses private mental hospitals in the state, administers the rules' adoption and revision processes for the department, and conducts department-wide performance evaluation studies.

Management and Support Services Administration. The deputy commissioner for management and support is responsible for the overall management of the department's finances and budget as well as providing facility support services such as food, transportation, and construction. The deputy is assisted by three assistant deputy commissioners for management and support. Two of the three assistant deputies assist state facility superintendents as well as community center executive directors with their financial management and budget concerns. The third assistant deputy is in charge of a small staff and provides management

Exhibit 3



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**Legend**

Line Relationships \_\_\_\_\_

Represents Deputy Commissioner Regarding  
Program Directors/Monitoring of Service

Contracts and Memoranda of Agreement - - - - -

analysis services, oversees the telecommunications system, and conducts special projects. In addition, there are four sections which report to the deputy commissioner for management and support. The claims section is responsible for administering state and federal laws and regulations that provide for reimbursement to the state for mental health and mental retardation services provided by the department. The information services section provides data processing support to the department, develops new systems, and provides training and technical support for users of automated data processing systems. The budget and fiscal services section provides the accounting, budgeting, payroll, and general financial management services for the central office and supervises those activities for the facilities. The support services section assists central office and the facilities in the areas of purchasing, transportation, food service, maintenance, and construction.

The department has recently created the position of "contracts manager" to coordinate and monitor all the activities associated with the department's performance contracts with community MHMR centers. That position is also supervised by the deputy commissioner for management and support.

Mental Health Services Administration. The deputy commissioner for mental health is responsible for overseeing the application of the Mental Health Code in the state and directly supervises the state hospital superintendents and mental health services provided by state centers. The deputy is assisted by six assistant deputy commissioners for mental health. Five of the six are assigned to regions to serve as representatives of the deputy in the regions. The assistant deputies are officed in central office and have no line authority. The assistant deputies also negotiate the performance contracts between the department and community MHMR centers, as well as the performance memoranda between the department and state hospitals. The sixth assistant deputy serves as an administrative assistant to the deputy. The remaining staff in this section are three secretaries and a director of alcohol and drug abuse services.

Mental Retardation Services Administration. The deputy commissioner for mental retardation is responsible for providing programmatic direction and coordination of MR services in state facilities and the community centers. The deputy directly supervises the state school superintendents and mental retardation services provided by state centers and is assisted by six assistant deputy commissioners for mental retardation. Five of the six are assigned to regions to serve as

representatives of the deputy in the regions, but are officed in the central office. They have no line authority. They also negotiate the performance contracts between the department and community centers as well as the performance memoranda between the department and the state schools and centers. The sixth assistant deputy serves as an administrative assistant to the deputy. In contrast to the mental health division, there are additional programmatic areas and staff associated with MR services. These include the Intermediate Care Facilities for the Mentally Retarded (ICF-MR) program, the Intermediate Community Services (ICS) program, the Early Childhood Intervention program, the pilot projects for autism, the federal liaison worker program and a foster grandparent program. Many of these programs are partially or entirely federally funded. There are also eight regional monitors assigned out of MR services to monitor the community placements of the Lelsz class members.

### **Programs and Functions**

The department is responsible for providing and coordinating services for people with mental retardation and mental illness in Texas. Mental retardation and mental illness are separate conditions although they can occur in the same person. Both of these conditions range in severity from mild impairment to total and lifelong incapacitation. The department places a priority on serving people who are the most severely disabled by mental retardation or mental illness.

#### **The Service Population**

Mental illness is often temporary and reversible although, for many people, problems recur throughout life. It may strike at any time during a person's life. There are several factors that contribute to the development of mental disorders including psychological, biological, and genetic factors. Mental illness can cause people to lose touch with reality and often emotions interfere with their normal responses. The major psychoses, which include schizophrenia, are the most severe form of mental illness. These conditions often result in periodic episodes of acute mental illness which are usually controllable through medication.

Mental retardation on the other hand is usually present from birth or early childhood. The person with mental retardation remains mentally handicapped throughout life, although special education, training, rehabilitation services, and proper care can assist the person in attaining his maximum potential. The mentally retarded person develops mentally at a consistently below average rate and has unusual difficulty with learning and social adjustment. The degree of adjustment,

as well as the ability to learn, vary with the degree of mental retardation. Mental retardation has a variety of causes including heredity, biological factors, and brain injury due to trauma or disease in early childhood.

#### Public MHMR Services and Service Areas

The legislature created the TDMHMR in 1965 to provide for the effective administration and coordination of mental health and mental retardation services at the state and local levels. The legislature also authorized the development of community MHMR centers and charged them with developing services locally as alternatives to treatment in large state residential facilities. This combination of state and local initiatives has resulted in the development of a wide array of services for the mentally ill and mentally retarded people of Texas. The effective operation and expansion of this array of services requires a close working relationship between the TDMHMR, community centers and other community providers.

The department has developed several types of service regions throughout the state for the management of the service delivery system. As shown in Exhibit 4, the department has divided the state into 60 local service areas. For each local service area, TDMHMR has designated a mental health authority (MHA) and a mental retardation authority (MRA). These are either a state facility or a community MHMR center. The local authority is responsible for either mental health or mental retardation services or for both types of services within the local service area. The state's 60 local service areas are located within eight state hospital service districts, and 13 state school service districts. The service districts are used to determine which facility provides services to people living in the various service areas of the state.

#### The State's Role in the Direct Provision of Services

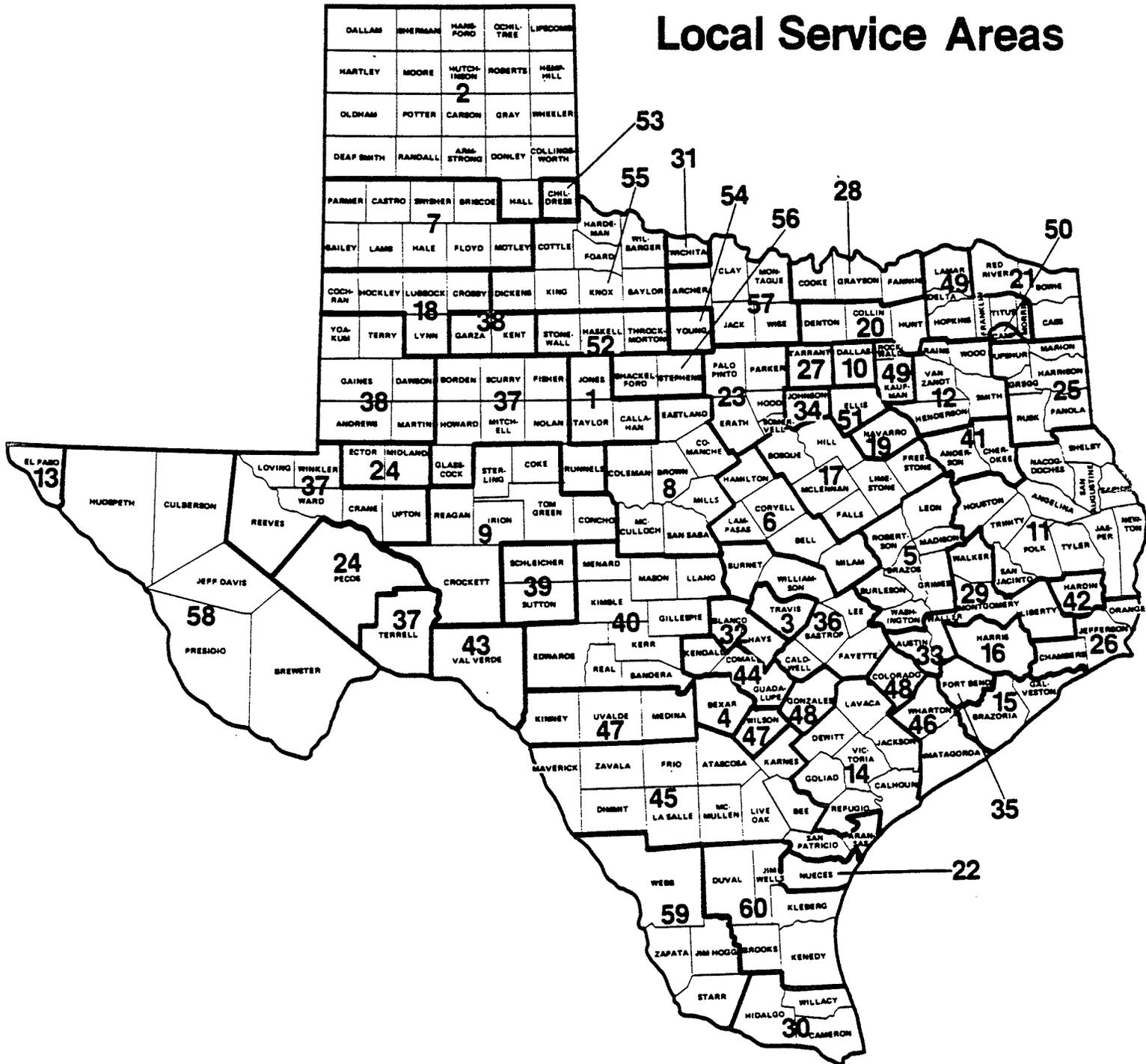
The state offers a wide variety of services through the operation of state residential and community-based treatment facilities and the funding of community MHMR centers. The state's primary responsibilities in direct service delivery include: 1) long-term residential care for people with mental retardation; 2) hospital-based psychiatric care for people with mental illness; and 3) community-based mental health and mental retardation services in areas of the state that do not have community MHMR centers.

The state judicial system has been given authority to order people to participate in both inpatient and outpatient treatment through the TDMHMR.



# Texas Department of Mental Health and Mental Retardation

## Local Service Areas



There are separate commitment procedures for people needing mental retardation services, mental health treatment, and substance abuse treatment. The TDMHMR is required to provide court-ordered services for mental health and substance abuse treatment. However, it must provide residential mental retardation services only when there is space available for the person. In fiscal year 1986, of the 18,314 people admitted to TDMHMR facilities, 11,179 were court committed for mental health services, 2,001 were committed for substance abuse services, 90 were committed for residential mental retardation services. The remaining 5,044 were admitted for mental health, substance abuse, or mental retardation services at their own request.

The department provides its residential services through the operation of 13 state schools, eight state hospitals, five state centers, and the Waco Center for Youth. State schools and state hospitals are facilities which range in size in fiscal year 1986 from Mexia State School with a census of 1,027, a staff of 1,600 employees, and a budget of \$28.2 million, to Big Spring State Hospital with a census of 337, a staff of 770 and a budget of \$14.9 million. In addition to rehabilitative treatment, most facilities operate the following services for the maintenance and operation of the facility: laundry, food service, pharmacy, laboratory, infirmary, barber shop, clothes supply, and ground, vehicle, and building maintenance. State centers operate residential services similar to state schools and hospitals but are much smaller.

State Schools. The department provides residential care for people with mental retardation through the operation of 13 state schools and four state centers. These facilities provide rehabilitative services for people of all ages with varying degrees of mental retardation in a year-round residential setting. The services provided include education, specialized therapies, basic skills training, health care and recreation. Provisions are also made to correct or cope with the residents' secondary physical handicaps. Currently, 12 of the 13 state schools operate special independent school districts for their residents. However, as of September 1, 1987, education services for school-age residents will become the responsibility of the local school district in which the state school is located.

In fiscal year 1986, the 13 state schools and the four state centers provided residential services to an average daily population of 9,093 mentally retarded people. Of those residents, 89 percent had lived in a state facility for over five

years. In fiscal year 1986, the TDMHMR had 13,750 state school employees with a total budget of \$246.3 million.

State Hospitals. The department provides hospital-based psychiatric care for people with mental illness and substance abuse problems through the operation of eight state hospitals and three state centers. People who are acutely mentally ill or have severe substance abuse problems sometimes require psychiatric hospitalization to protect them from harming themselves or others and to provide necessary treatment to control their illness sufficiently to return to community living. The courts are authorized to order people to participate in inpatient treatment in state hospitals for periods of time up to one year. The objectives of state hospital services include: 1) to provide each patient with high quality mental health, substance abuse, and medical services in a safe and humane environment; 2) to enhance the patient's ability to function successfully in the community; and 3) to expeditiously place each patient in the most appropriate, least-restrictive environment possible. To meet these objectives each state hospital provides psychiatric, substance abuse, and medical treatment, specialized therapies, independent living skills training, and social services in a hospital-based setting.

Patients in state hospitals often have very short hospital stays when compared to residents of state schools. People entering a state hospital in fiscal year 1986 stayed for an average of 35 days. In fact, approximately 40 percent of the people in the state hospitals stay less than three months. However, a significant number have been in the hospital for much longer. Approximately 40 percent have been in the hospital for more than one year and 20 percent have been hospitalized over five years. In fiscal year 1986, the eight state hospitals had an average census of 4,164 patients, employed 8,875 staff, and had a total budget of \$172.9 million.

State Centers. The department operates five state centers which provide residential and hospital services much like state schools and state hospitals. However, state centers are much smaller than state hospitals and schools and provide a higher proportion of outpatient services. The five state centers include the Amarillo State Center, Beaumont State Center, El Paso State Center, Laredo State Center, and the Rio Grande State Center which is located in Harlingen. State centers are designed to offer a variety of services and may emphasize either mental health or mental retardation services depending on the other services available in the area. For example, Amarillo and Beaumont State Centers provide

services only to people with mental retardation while the local community centers provide mental health services. The other three state centers provide services to both populations. Services provided by the state centers include short-term residential services, skills training, education, outpatient treatment, and specialized therapies. The El Paso and Rio Grande State Centers also provide long-term residential services and psychiatric hospitalization. In fiscal year 1986, the TDMHMR employed 1,250 people in the five state centers. They had an average inpatient census of 344 and provided outpatient services to 3,600 people. They had a total fiscal year 1986 budget of \$25.6 million.

Waco Center for Youth. The department operates one facility which specializes in psychiatric residential treatment for children and youth. This facility is the Waco Center for Youth. In fiscal year 1986, it had an average census of 82 children, employed 218 staff, and had a total budget of \$4.1 million. Children usually remain in treatment at the Waco Center for approximately four months.

New Psychiatric Hospitals. The 67th Legislature appropriated \$12 million for the planning, construction, and equipping of a new Houston Psychiatric Hospital. Harris County committed additional financial support for the construction of the facility and the Texas Medical Center, Inc. donated the property. The 250-bed hospital opened in October, 1986 and is operated as a teaching hospital by the U.T. Health Science Center at Houston through contractual agreements with the TDMHMR and Harris County. The TDMHMR funds approximately 85 percent of the hospital's \$23 million annual operating budget with Harris County funding the remainder.

The 68th Legislature appropriated \$3 million for the planning and construction of the Fort Worth Psychiatric Hospital with a capacity for 56 patients. The hospital will provide a full range of psychiatric inpatient services to children and adults who live in Tarrant County with an annual budget of \$3.5 million. The hospital operations will be contracted to the Tarrant County MHMR center when opened. This facility is scheduled to open in May 1987.

State Facility Community Outreach Programs. State facilities are designated as the mental health authority (MHA) or mental retardation authority (MRA) for a local service area if there is no community center in the area. State facilities are the MHA in 119 counties and the MRA in 142 counties in Texas. In those counties, the state facility is responsible for providing community-based services to people in the local service area as well as residential services. While

S.B. 633 only established core service requirements for areas served by community programs that contract with the TDMHMR, the department is working to make the core services available to people in all local service areas of the state.

State facility community programs often provide services through small satellite clinics in the counties they serve. In fiscal year 1986, state facilities provided community-based services to 20,500 people through 150 clinic sites. The total budget for facility-provided community programs in fiscal year 1986 was \$56.1 million.

Volunteer Services. Volunteers make many important contributions to the TDMHMR's state hospitals, schools and centers. Not only are volunteers helpful to the facilities in such traditional areas as fund raising and publicity, but volunteers also serve in many roles critical to the clients' welfare. For example, volunteers monitor the civil rights of clients, serve on client abuse committees, advocate for clients and serve as federally mandated surrogate parents for school-age clients. Many are also involved directly in client care and serve on interdisciplinary teams. The Volunteer Services State Council was established 27 years ago and coordinates the efforts of 27 local Volunteer Services Councils located at each of the state facilities. Each local council is a chartered, non-profit organization. In fiscal year 1985, approximately 12,000 volunteers donated over 894,000 hours of service and brought in contributions exceeding \$8.5 million. These contributions represent an almost five-fold return on the state's investment in the TDMHMR's volunteer services budget. A long-range goal of the Volunteer Services State Council is to extend its services to the community mental health and mental retardation centers.

#### The Community Provider's Role in Services

The department's enabling legislation established the state's policy with regard to direct service provision. This policy is to encourage local agencies and private organizations to assume responsibility for direct service delivery when possible. As a result, a number of different types of community providers now offer services to people with mental retardation and mental illness in Texas. Community providers in Texas include charitable organizations, proprietary corporations, community MHMR centers, private ICF-MR providers, individuals who operate boarding homes, private practitioners, independent school districts, and others.

The 119 private ICF-MR facilities in Texas offer a significant resource for long-term residential services for people with mental retardation. The 55 private psychiatric hospitals in Texas have a capacity to treat approximately 5,300 patients. In addition, there are numerous privately operated group homes, boarding homes, and schools which provide a significant amount of mental health and mental retardation services in the state.

Community MHMR Centers. Approximately 83 percent of the state's population lives in the 112 counties where the 31 community MHMR centers provide services. Each community center receives a majority of its funding through the TDMHMR but is managed locally through a board of trustees. Community centers must establish and follow policies which are consistent with those developed by the TDMHMR. Community centers range in size from 700 employees with a total budget of \$34 million to 15 employees with a total budget of \$510,000. The community center is usually designated as the mental health authority (MHA) and mental retardation authority (MRA) and is responsible for the provision of all core services for its local service area as a condition of state funding. These services include crisis services, community-based crisis hospitalization, evaluation services, family support services, and case management. In addition, many community centers provide other services such as outpatient therapy, referral services, day programs, sheltered workshops, group homes, and consultation services for other community agencies. Three community centers only provide mental health services, MHMR of Southeast Texas in Beaumont, Navarro County MHMR Center, and the Texas Panhandle Mental Health Authority in Amarillo. The other 28 centers provide both mental health and mental retardation services.

Community centers provide many residential services for mentally ill and mentally retarded people. All are required to provide crisis residential services since they are a core service. Many also operate long-term beds in group homes, short-term respite care, detoxification units for substance abusers, ICF-MR facilities, halfway houses, and supervised apartment programs.

Community centers provide the majority of their services on an outpatient basis. Crisis services, diagnostics and evaluation, family support services, and case management are core services which are usually provided on an outpatient basis. In addition, many centers provide referral services, medication management services, vocational rehabilitation, social services, and skills training.

In fiscal year 1986, the 31 community centers provided services to approximately 151,000 individuals with a total budget of \$183.6 million. They had a total work force of approximately 5,650 employees. The department provided approximately 60 percent of the community centers' total operating funds.

#### Federal Court Requirements Affecting Services

The policies, operations, and budget of the TDMHMR are greatly affected by two federal class action lawsuits. One suit, R.A.J. vs. Miller involves mental health services and the other, Lelsz vs. Kavanagh involves mental retardation services. Both suits were filed in 1974. The R.A.J. vs. Miller suit was settled in 1981 and the Lelsz vs. Kavanagh suit was settled in 1983. The agency is currently operating under settlement agreements in both cases.

The R.A.J. suit covers all eight state hospitals. The key issues in the R.A.J. Settlement Agreement and subsequent court orders involve requirements for individual treatment plans for clients, staffing levels, patient safety, the prescription of medication, and the level of programming.

The Lelsz case involves some of the same types of issues, but specifically names only three out of thirteen state schools. In addition, the Lelsz Settlement Agreement requires that clients be placed in the "least restrictive environment." The court has ordered the department to place in the community 279 clients residing in the three named state schools: Austin State School, Fort Worth State School, and Denton State School. This order has created a controversy over the court's ability to establish quotas for community placements; an issue which the department has appealed to the Fifth Circuit Court of Appeals.

As a result of these lawsuits, the department has asked for and received additional funds to achieve compliance with the settlement agreements. These funds have been used primarily to provide incentives to community programs to serve people who are currently being served in state schools and state hospitals. In the area of mental health, community programs receive \$35.50 for each reduction in state hospital bed day utilization for which they are responsible. In the area of mental retardation, community programs receive \$55.60 per day for each individual client that is placed from a state school into their jurisdiction.

A third federal lawsuit, Griffith vs. Bynum, is having a significant impact on services in state schools. The Griffith suit was filed in 1982 and settled in 1985. It alleged that school-age residents of state schools were not receiving an appropriate or adequate education. The settlement of the suit requires the integration of

these residents into the special education classes of the local school districts in which the state schools are located.

### **Scope of Sunset Review**

The size of the agency, as well as its involvement in two federal court suits dictated a need to carefully select areas for the review of the TDMHMR. To determine those areas, a number of activities were undertaken, including:

- o overview discussions with key staff people in the TDMHMR's central office;
- o site visits to five state hospitals, five state schools, three state centers, twelve community centers, and the Waco Center for Youth;
- o review of past legislation and reports prepared by the Legislative Oversight Committee on Mental Health and Mental Retardation, as well as other studies of the department; and
- o group and individual meetings with advocacy groups, associations, and other persons knowledgeable of the agency.

These activities provided a general understanding of the various components of the mental health and mental retardation service system and the problems faced by both the service providers and the service recipients. Some of the identified problems could not be addressed because of their relationship to the R.A.J. and Lelsz lawsuits. Others are more appropriately addressed by the appropriations process. The remaining problems were related to the following five key questions.

- o Who should be served by the state?
- o What organizational structure could best provide those services?
- o What services are needed?
- o How can the agency's limited resources be maximized?
- o How can accountability be increased while eliminating duplicative or unnecessary monitoring?

To answer those questions it was necessary to examine the direction the state was moving in the provision of mental health and mental retardation services and how that should be modified. The goal was two-fold: 1) to develop a streamlined organization with clear policies and plans for providing a balanced array of services to those people with the greatest needs; and 2) to provide the funding mechanisms

and public accountability requirements that would ensure that services demands could be met.

### **Need to Continue Agency**

The sunset review of the TDMHMR's programs and responsibilities indicated that there is a continuing need for the state to be involved in overseeing the care of mentally ill and mentally retarded people. The review indicated that the department has generally fulfilled the purposes for which it was created and should be continued for a 12-year period.

The sunset review also determined that if the agency is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. These changes are outlined in the recommendations that follow.



**Sunset Commission Recommendations for the  
TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

**CONTINUE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

**Citizens' Planning Advisory Committee**

- 1. The size of the committee should be reduced from 21 to 9 members. (Statutory)**

The 69th Legislature created the Citizens' Planning Advisory Committee (CPAC) to advise TDMHMR on the development and implementation of the agency's long-range plan. Currently the CPAC has 21 members appointed by the board. Limiting the size would improve its ability to make decisions in a timely fashion. Providing input to the board in a timely manner is a necessity if the board is to use this information for key policy and budgetary decisions.

- 2. The composition of the committee should be specified in statute. (Statutory)**

The purpose of the committee should not be to represent any particular consumer group or special interest but rather to guide the department in its planning for the provision of a balanced array of services. This committee should be structured to provide a formal mechanism for input that would not otherwise be available in the planning process. To ensure this, the statute should be amended to require the board to appoint: a) three members who have demonstrated an interest in and knowledge about the TDMHMR system and the legal, political, and economic environment in which it operates; b) three members who have expertise in the development and implementation of long-range plans; and c) three members of the general public. At least two of the nine members should have the additional qualification of being a consumer or family member of a consumer of services for mentally ill or mentally retarded persons.

- 3. The role of the CPAC should be clarified in statute. (Statutory)**

Currently the CPAC's responsibility to advise the department on its long-range plan is broadly stated. To ensure that the plan becomes an integral part of the decisions and policies set by the board, the following statutory changes are

needed: 1) the committee shall review the development, implementation, and any necessary revisions of the department's long-range plan; 2) the committee shall review the department's biennial budget request and assess the degree to which it allows for implementation of the plan; 3) the committee shall advise the board on the appropriateness of the plan, any identified problems related to its implementation, any revisions to the plan that are necessary, and the adequacy of the department's budget request; and 4) the committee shall provide copies of its reports to the board, as well as to the governor, lieutenant governor, speaker of the house, and the appropriate committees of the legislature.

**4. The board's and the department's responsibilities relating to the CPAC should be statutory. (Statutory)**

For the CPAC to fulfill its duties, the department must provide certain information and support. The statute should require the department to do the following: 1) prior to any presentation to the board related to the development, implementation or revisions of the plan, the information to be presented shall be provided to the members of the CPAC in a timely fashion; 2) prior to submitting the agency's biennial budget request to the board for discussion or approval, a copy shall be provided to the members of the CPAC in a timely fashion; and 3) the staff support necessary to allow the CPAC to fulfill its duties shall be provided.

To ensure that the input of the CPAC is given full consideration, the board should be required to: 1) review the committee's reports in conjunction with information provided by the department on the long-range plan or the biennial budget request; and 2) allow the committee opportunities to appear before the board as needed.

**Overall Administration**

**Operational Planning**

**5. The department should develop an operational plan, based on the long-range plan, with specific short-term goals, objectives, timetables, and desired outcomes. (Non-statutory management improvement)**

The statute currently requires the development of goals and objectives as part of the department's long-range plan. To date, this has not been completed. Development of an operational plan would show the steps necessary to achieve the agency's

long-range plan. Planning and budget development by the field facilities would also be facilitated by a clear operational plan.

- 6. The office of strategic planning should be reorganized under the deputy commissioner for management and support. (Non-statutory management improvement)**

This organizational modification would strengthen two closely related management functions by placing the activities of planning and budgeting under one deputy commissioner. Greater coordination would result which should strengthen the department's ability to develop, implement, and make necessary modifications to its long-range plan.

#### Modification of Commissioner Qualifications

- 7. The requirement that the commissioner of the TDMHMR be a physician should be eliminated. (Statutory)**

Forty-four states have commissioners from professions other than medicine; primarily psychology and social work. The current language limits the range of professional talent upon which Texas may draw to lead the department. Removal of this restriction and the addition of management qualifications increases the board's ability to hire a person with the qualifications needed to lead an agency of this size.

- 8. The statute should authorize but not require a chief of medical services. (Statutory)**

With the removal of the requirement that the commissioner of the TDMHMR be a physician, additional authorization is needed to ensure that adequate medical leadership exists. The commissioner should be authorized, subject to the board's approval, to designate or appoint a qualified person to serve as chief of medical services. This person should be responsible for developing policies relating to medical care in departmental facilities and for the supervision of medical services provided by the department, subject to the commissioner's final approval.

#### Removal of Statutory Titles and Facility Names

- 9. The statute should be modified to mandate only the designated titles of commissioner, deputy commissioner for mental health services and deputy commissioner for mental retardation services. (Statutory)**

Currently the statute mandates five key positions below the commissioner. Naming all key administrative staff below the chief executive officer places

unnecessary constraints on the organizational pattern and is not a usual practice found in state law. Removing the titles of the director of operations, executive deputy commissioner, and deputy commissioner for management and support would provide flexibility in how the agency is structured to efficiently carry out its function. However, references to the deputy commissioner for mental health services and the deputy commissioner for mental retardation services is needed to ensure that appropriate clinical and programmatic knowledge is available in the agency's administration.

**10. The names of specific facilities and institutions operated by the department should be removed from statute. (Statutory)**

The need to maintain facility names in statute no longer exists since the appropriations bill was modified to allow the transfer of funds between facilities to meet changing agency needs. This recommendation would provide consistency between the statute and the appropriations bill. In addition, this change would facilitate any efforts to reorganize the agency in the future.

**Role of Assistant Deputy Commissioners**

**11. Formal communication between regional assistant deputy commissioners and members of the department's central office executive committee should be strengthened. (Non-statutory management improvement)**

Currently, the agency has no mechanism to ensure that input from the assistant deputy commissioners, who represent the deputy commissioners' authority in the field, is given adequate consideration by the central office decision makers. Also, there is no mechanism that ensures that the assistant deputies are promptly informed of policy, programmatic, or budget changes which are made by the executive committee. Establishing regular meetings between the assistant deputies and the department's executive committee would improve communications between the field and central office. Needs of the regions would be recognized and services improved by this change.

**12. The regional assistant deputy commissioners' activities should be balanced between time spent in the region and time spent in central office. (Non-statutory management improvement)**

Currently the regional assistant deputy commissioners are often involved in central office projects and spend less than 20 percent of their time in the region. Requiring greater participation in the field would facilitate a better understanding

of local needs and provide more opportunities to offer needed programmatic and technical assistance.

- 13. The department should institute management and programmatic training as necessary to sharpen the skills and effectiveness of regional assistant deputy commissioners. (Non-statutory management improvement)**

This change would ensure that assistant deputy commissioners stay up to date with developments in their respective program areas. This capability would allow the most efficient and effective programs to be implemented as human service technology improves. The training would also ensure that the assistant deputies have the management skills necessary to effectively carry out their responsibilities.

- 14. The department should revise the position descriptions for the regional assistant deputy commissioners. (Non-statutory management improvement)**

The review identified confusion over the assistant deputy commissioners' level of authority and responsibility. A revision of job responsibilities would clarify the roles of assistant deputy commissioners so that administrative policies can be implemented more effectively.

### Regional Planning

- 15. The department should establish regional planning councils that correspond to the agency's mental health and mental retardation service districts and are composed of the chief executive officers of state facilities, community centers, and designated providers of core services, to coordinate planning, budgeting, and service delivery. (Non-statutory management improvement)**

The review showed no formal mechanism to coordinate local planning and services. Establishing regional councils would maximize local efforts by reducing duplication and encouraging cooperative efforts to solve regional problems.

- 16. Each council should be chaired by the department employee who is responsible for the services in a region. The chairperson should be fully integrated into the departmental decision making framework. (Non-statutory management improvement)**

This change would ensure that local input is given consideration in the development of agency policies, plans, and budgets. It would also provide a

stronger management link between central office and the facilities which should encourage the implementation of department policies statewide.

17. **Each council should develop a long-range regional plan that describes the appropriate use of facilities, the configuration of the service delivery system, and includes a comprehensive needs assessment and resource inventory that can be used by central office to revise and update the statewide long-range plan. (Non-statutory management improvement)**

The need for greater regional planning that is more sensitive to various geographic, demographic, and cultural differences was identified during the review. Collectively, the long-range regional plans would be utilized in developing and modifying the statewide plan required of the department.

18. **Each council should develop an operational plan for its region based on the department's long-range plan and the corresponding allocation of funds and responsibilities to each community center, designated provider, and state facility, as defined in their performance contracts and memoranda. (Non-statutory management improvement)**

As agency policies are developed, regional operational plans would let the people providing services decide how they can best implement the policies in their region. Regional implementation would allow for geographic, demographic and cultural differences throughout the state.

19. **Each council should hold at least one public hearing annually to receive citizen comments which may be incorporated into regional planning as deemed appropriate by the regional planning council. (Non-statutory management improvement)**

Public hearings will allow opportunities for consumers and citizens to identify local problems and make suggestions on ways services could be improved.

#### **Better Coordination Through Local Service Area Planning**

20. **All TDMHMR facilities and community centers which operate facilities in the same local service area should submit annual agreements to their regional planning council and to the TDMHMR documenting their efforts to develop a comprehensive array of services and plans to coordinate and/or integrate services to reduce duplication. (Non-statutory management improvement)**

- 21. The regional planning councils should establish time frames and interim reporting requirements to ensure the completion of local service area agreements. (Non-statutory management improvement)**

Local service area planning would be required in communities where more than one MHMR agency operates. The planning would focus on the availability and use of local resources, the reduction of duplication through combined functions, and the development of a comprehensive array of services in the area. The involvement of the regional planning councils would ensure that the plans are completed.

#### Planning for Clients with Special Needs

- 22. The department should evaluate whether distinct groups of people with special needs due to age or type of disability are identifiable among people with mental illness or mental retardation, determine how the department's facilities can best be used to meet the needs of those groups, and develop a plan for providing specialized programming to address the special needs of the groups identified. (Non-statutory management improvement)**

This type of review and planning will provide for the development of specialized programming to respond to the special needs of people with mental illness and mental retardation in Texas.

#### Relationship Between the TDMHMR and Community Centers

- 23. The TDMHMR should not control programs that do not receive state funds and do not use funds that are part of the required local match. (Statutory)**

The TDMHMR currently controls almost every aspect of a community center's operations. This has restricted community centers' ability to respond to local needs with locally funded services. The TDMHMR's control should be limited to programs which use state funds or related matching funds, provide required services, treat former clients of a departmental facility or are affected by lawsuits against the department. This would not prohibit investigations for due cause.

- 24. Contract disputes between the TDMHMR and community programs should be subject to the Administrative Procedure and Texas Register Act. (Statutory)**

The TDMHMR exercises a great deal of control over community programs, yet provides a limited process for resolving disputes. For example, the TDMHMR can

withhold contract funds at its own discretion. Community programs should have a fair process for resolving disputes regarding service contracts.

**25. Community MHMR centers should be authorized to purchase surplus property from the state. (Statutory)**

Community centers are not currently included with other types of political subdivisions which are authorized by law to purchase surplus property from the state. Since these centers are local mental health and/or mental retardation authorities which are designated by the state and receive most of their funding from the state, they should be given access to the state's surplus property.

**26. Community MHMR centers created in the future should be required to serve an area which has a population of at least 200,000. (Statutory)**

There are currently no minimum population requirements for the creation of a community MHMR center. It is not economically feasible to create a community center if the population to be served is too small, because there are certain overhead expenses which are incurred regardless of the size of the center. In order to ensure the long-term viability of newly created community centers, the statute should contain a minimum service area population for newly created community centers.

**Retirement Benefit Transfer**

**27. The statute should allow TDMHMR employees who have been providing educational services to school-age residents to transfer accumulated benefits and service to the Teacher Retirement System (TRS) or the Employees Retirement System (ERS). (Statutory)**

To implement the Griffith v. Bynum settlement agreement, the TDMHMR and the Texas Education Agency have signed a memorandum of understanding. It provides that by September 1, 1987, all school-age residents of state schools will be integrated into the special education classes of the local school districts in which the state schools are located. This eliminates the need for 387 educational positions in the state schools. Elimination of these positions creates a potential retirement benefits problem for these employees since reciprocity between TRS and ERS was eliminated in 1980. If the TRS-covered employees stay with the TDMHMR, they will be required to become members of the ERS system. If the ERS-covered employees go to work for a local school district, they will be required

to become members of the TRS system. For both groups, this split in service will be to their disadvantage financially when they retire. Implementation of this recommendation will ensure these employees do not suffer financial harm as these educational services are transferred to local school districts.

- 28. The statute should ensure that the transfer of benefits does not threaten the actuarial soundness of the ERS or TRS systems. (Statutory)**

Setting limits on the transfer of benefits for TDMHMR employees ensures that this special provision does not threaten the retirement benefits of the current members of both systems. The limits necessary include the following: 1) TDMHMR will provide ERS and TRS with a certified list of personnel who may be eligible; 2) the certified list will include only those TDMHMR employees who are providing educational services to school-age residents; 3) the list will not include employees who have already received a refund or who retire during the covered period; 4) an employee who has intervening employment will not be covered by this provision; 5) coverage will be limited to changes in employment that occur between September 1, 1985 and September 1, 1988; and 6) TRS and ERS, in addition to transferring all amounts in the individual member accounts, will also transfer an amount determined by the TRS and ERS actuaries that ensures the actuarial soundness of both systems.

#### **Reviews of Community-Based Services**

- 29. The department should review the quality and program performance results of all department funded community-based services at least annually and determine the scope of each review on a case-by-case basis. (Statutory)**

Currently, the department's reviews of the quality of community centers' programs and the separate management audits are done in cycles of approximately three years. Contracts with community centers, however, are renewed annually. In addition, the community-based services operated by the department through state facility outreach programs are not reviewed by the department for adherence to the department's community standards. An annual review of all community-based services increases their accountability and treats the department's community-based programs the same as community center programs.

**30. Management audits of the community centers should focus on program performance results to determine compliance with performance contracts. (Non-statutory management improvement)**

The department's management audits of community centers currently focus on the administrative processes and procedures of the centers. Since the department is now contracting for specified performance results, the management reviews should instead focus on determining if those specified outcomes are being achieved. This shift in focus should also eliminate duplications that currently exist between the management audits and independent C.P.A. audits of community centers that are currently required. This change would enhance accountability, yet reduce the administrative burden on community providers.

**31. The department should review its community standards on a biennial basis to determine if each one is necessary to ensure the quality of care. (Non-statutory management improvement)**

There are currently over 660 department standards which can be applied to community-based programs. During the review, concerns were voiced that many of the standards are either insignificant in determining the quality of care, too costly, or process-oriented. To address these concerns, the department should review its community standards regularly.

**32. The department should explicitly identify how each item contained in the management audit or community standards review is to be measured. (Non-statutory management improvement)**

During the review, concerns were voiced that few, if any, of the department's audit or performance standards identify specific measurement criteria. Without such criteria, the reviews are too subjective. This makes it difficult for community programs to know how to meet the department's expectations. To correct this problem, the department should explicitly state how the review standards are to be measured and evaluated.

**Enforcing Standards**

**33. An objective mechanism should be established for evaluating whether a community program meets the department's standards on an overall basis. (Non-statutory management improvement)**

The department's quality assurance reviews of community centers give no overall judgement of "pass" or "fail" for a particular program or a center in general, but

rather only cite deficiencies. Currently there is no way to equate the number or types of deficiencies found with an assessment of whether a program is doing the job it is funded to do. This makes it difficult to assess the appropriateness of approving or disapproving the program for continued funding. An objective mechanism is needed to define overall compliance with standards.

- 34. The department should develop and implement procedures to enforce standards by reducing or withholding funds to a program that is out of compliance. (Non-statutory management improvement)**

Once overall compliance or non-compliance of a community-based program or service is determined, action must be taken to enforce full compliance with standards. The review found that there is currently very little to no follow-up action taken on deficiencies cited in program reviews and management audits. This results in findings and deficiencies repeated from previous audits. Reducing or withholding funds to programs out of compliance encourages voluntary compliance and increases the department's ability to enforce standards.

#### Internal Audit

- 35. The agency's statute should be amended to require that the director of the unit that performs internal audits reports directly to the commissioner, with audit reports submitted directly to the board. (Statutory)**

The department's internal auditor is not organizationally independent within the agency. He currently functions as one of seven section or division directors reporting to the executive deputy commissioner, who in turn reports to the commissioner and the director of operations. The state auditor's repeated recommendations that the director of internal audit report directly to the commissioner have not produced any results. Making this a statutory requirement assures the agency's internal auditor a necessary degree of organizational independence and removes him from controversy regarding to whom he reports.

### Department-Wide Accountability

- 36. The department's internal audit section should be expanded in order to review program results and perform economy and efficiency studies of agency operations. (Non-statutory management improvement)**

Expanded scope audits by the department's internal audit section are needed. This type of audit goes beyond looking at fiscal accountability and helps an agency show that its programs are actually achieving the purposes for which they were authorized and funded and are doing so in an economical way. Any increased costs to expand the section should be more than compensated for by savings which should be identified through these audits.

### Fiscal and Compliance Monitoring Duplications

- 37. The currently required annual independent fiscal and compliance audit of community centers should provide the basis for the department's fiscal review of community centers. (Non-statutory management improvement)**

Community centers, as recipients of federal funds through the TDMHMR, are required to obtain annual independent financial and compliance audits by a certified public accountant (C.P.A.). These audits must meet the requirements for A-128 audits and are known as "single audits" because they are intended to be used as a single audit upon which all governmental agencies can rely. The review found that the department's management audits of community centers duplicate many of the areas covered by the C.P.A. audits. By properly defining the C.P.A. audit guidelines, and monitoring and following up on the performance of the independent auditors, the department's auditors would not have to duplicate the same work in the field.

- 38. The internal audit section should have primary responsibility for reviewing the audited annual reports and supporting workpapers prepared by independent auditors of the community centers. (Non-statutory management improvement)**

Currently, the responsibilities for the review of the independent audits of community centers are divided among two separate divisions within the TDMHMR. The budget and fiscal services section reviews the reports themselves while the internal audit section reviews the supporting workpapers prepared by the independent auditors. These responsibilities should be combined as a single responsibility of one

organizational unit so that the independent audits can be reviewed more effectively. Since the primary purpose of the independent audit is to enhance accountability, and it provides a basis for the internal audit's reviews of community centers, the function should be consolidated under that office.

#### **Program Review Duplications**

- 39. The TDMHMR should identify the other state agencies conducting reviews of programs in community centers and develop a joint memorandum of understanding to reduce duplication of program reviews and maximize the use of each agency's reviews by December 31, 1987, and annually thereafter. (Statutory)**

The programs and services offered by community mental health and mental retardation centers may serve clients sponsored by other state agencies and receive funds from many state sources. As a result, a community center may undergo fiscal and program reviews by up to 11 state agency-related reviewing bodies, in addition to the TDMHMR's standards and quality assurance reviews. Developing a memorandum of understanding among the state agencies involved will provide a formal mechanism to address the concerns of all the agencies that currently prohibit them from relying upon each other's reviews. By not re-reviewing programs and services, the state's resources are conserved, the reviews can be better focused, and the burden on the community centers can be reduced.

- 40. Quality reviews should focus on programs funded by TDMHMR funds and the required local match. (Non-statutory management improvement)**

Community mental health and mental retardation centers receive funds from a wide variety of federal, state and local sources in addition to funds received from the TDMHMR. In addition, funds supplied by the department to community centers are linked to performance contracts which specify the programs and services being funded. By focusing the reviews on those programs and services which the department is specifically contracting for, the department ensures that the state is buying quality services and is able to conduct reviews more frequently.

- 41. The TDMHMR should formally review its community standards and identify standards which exceed or are not addressed by the Joint Commission on Accreditation of Hospitals' (JCAH) consolidated standards. In the annual review of community centers that have received JCAH accreditation under the consolidated**

**standards, the department will focus on those standards which exceed or are not addressed by JCAH standards. In addition, the department will review weaknesses identified in JCAH reports and any other area if the department has reason to suspect there is a particular violation of department regulations; and conduct reviews that are necessary for compliance with court orders. (Non-statutory management improvement)**

The Joint Commission on Accreditation of Hospitals (JCAH) is a voluntary, nationally recognized, independent accrediting body for mental health programs and hospitals. The JCAH consolidated standards are the set of standards by which all of the TDMHMR's state hospitals are currently accredited. For the first time, JCAH has begun accrediting community centers under the same set of consolidated standards. By defining which of the department's community standards are not adequately addressed by JCAH and applying only those to a review of a JCAH accredited center, duplications are reduced which benefit both parties.

#### **Resources For Quality Assurance Reviews**

- 42. The TDMHMR should modify its quality assurance reviews by establishing and training peer review teams composed of qualified staff members of departmental facilities and community centers to assist the department's central office staff in conducting the annual reviews. (Statutory)**

The sunset review indicated a need to review the quality of all community-based programs much more frequently than the present three-year review cycle. Since the quality of care in mental health and mental retardation services depends largely on the professional ability and integrity of the care givers, it appears that peer reviews can be an effective way to improve care. The peer review model for quality assurance is commonly accepted in the field and is used by both the Joint Commission on Accreditation of Hospitals and the Southern Association of Colleges and Schools. Utilization of peer review teams will ensure quality services are available and allow the department to conduct reviews of all community-based programs on a much more frequent basis without the need for additional funds.

### Evaluation Policy

- 43. The TDMHMR executive committee's currently informal coordination of evaluations, monitoring activities and studies should be put into a formal evaluation policy and communicated throughout the agency. (Non-statutory management improvement)**

The review found that the department's currently informal way of coordinating evaluation and monitoring activities could be improved by establishing a formal policy agency-wide. A comprehensive evaluation policy will benefit the agency by defining how resources are to be used, what types of activities have priority, and what types of results are expected.

### Medical Monitoring

- 44. The department should be required to notify the State Board of Medical Examiners of any allegations of violations of Sec. 3.08, Art. 4495b, V.T.C.S., directed at physicians employed or under contract with the TDMHMR. The department should be required to supply the board with a copy of any investigation report regarding these allegations. (Statutory)**

The TDMHMR employs and contracts with physicians for medical services. Requiring it to report to the Board of Medical Examiners problems that could lead to revocation of a license or refusal to review a license should improve the board's ability to regulate physicians in the state. It would also help to ensure that quality medical care is provided to residents of TDMHMR's facilities.

### Fees

- 45. The TDMHMR should be authorized to collect fees which recover the cost of all reviews and inspections that are necessary in the licensure of private psychiatric hospitals. (Statutory)**
- 46. The department should be required to establish, by rule, a fee schedule for parents of persons in state facilities which ranges from no fees for persons at or below the federal poverty level and increases to a point where full costs are recovered when a family can afford it. This provision should replace the fee schedule that is currently in statute. (Statutory)**

In these two areas, the fees that the department can charge are established by statute and do not allow for full recovery of the state's cost. The department

should have the authority to charge fees for its services that recover the state's cost in providing those services when persons receiving the services or their parents have the ability to pay. These measures are expected to generate increased annual revenues of about \$360,000.

#### **Collection of Debts**

- 47. The TDMHMR and community MHMR centers should be authorized to file liens on all non-exempt property of clients or the parents of clients for the amount owed for the provision of MHMR services. (Statutory)**

No mechanism currently exists for the department or community MHMR centers to secure their claims on individuals that owe debts for services which have been provided. Liens are a commonly accepted way of securing debts for other purposes, and should be made available to the TDMHMR and community centers.

#### **Review of Commercial Activities**

- 48. The statute should require the department to perform a competitive review of the commercially available management and support activities it performs to determine whether the same service could be purchased at a reduced cost and whether appropriate quality and performance standards can be assured. Such review should be in compliance with the process established by the 70th Legislature for the competitive review of state services. (Statutory)**

This would require the department to review the management and support activities it performs which are commonly performed by the private sector to determine whether these activities could be purchased at a lower cost than the state can perform them. These activities include janitorial services, food service, laundry, transportation, and facility, vehicle and grounds maintenance. The process recommended for the competitive review is modeled after the federal government's Circular A-76 requirements, which have resulted in savings and increased fiscal accountability. It will require the department to conduct a management study of its activities, determine any efficiency measures that will be taken if the activity continues as an in-house operation, develop bid specifications for the activity, and estimate the total state cost to provide the activity directly. The State Purchasing and General Services Commission (SPAGS) will then advertise the bid specifications, accept bids from qualified bidders, compare the bids and the

in-house cost estimate to determine the lowest and best bid, and notify the department of the outcome of the cost comparison. Based on the purchasing commission's determination, the department should either contract the service or modify operations consistent with the in-house bid. The newly formed Competitive Review Council will oversee the process. The SPAGS will provide staff to evaluate bids and the state auditor will ensure that the estimates of the state's cost of providing the service are accurate. The competitive review process should have a sunset date of September 1, 1991.

#### **Community Center Review of Community-Based Hospital Services**

- 49. The statute should be amended to require community MHMR centers to complete an efficiency and performance review of the crisis residential or hospitalization services they provide, calculate the total cost of the service, solicit competitive bids for the service, and demonstrate that these services are provided through the method that provides the required quality and quantity of services in compliance with departmental standards, at the lowest cost, before contracts are renewed. This process should be repeated every two years prior to contract renewal. (Statutory)**

This change requires centers to provide the state with assurances that community-based hospitalization services are delivered in a cost-effective manner and increases accountability for their costs. It will ensure that alternate methods of service delivery are examined before state funds are used to establish services which may duplicate existing community resources.

- 50. The statute should be amended to require the TDMHMR to adopt rules establishing standards for the community centers' implementation of the required cost-effectiveness review of community-based crisis residential and hospitalization services. (Statutory)**

This change would require the department to establish the procedures for centers to use in conducting efficiency and performance reviews to ensure that the centers' cost estimates and solicitation documents are developed consistently. While the authority to award contracts for community-based services would remain with the centers, the standards would require centers to demonstrate that these services are provided through the method that provides the required quality and quantity of services in compliance with departmental standards, at the lowest cost.

### Use of Assets

- 51. The department should be required to establish objective criteria to determine when facilities may be closed or consolidated. (Statutory)**

Populations in the department's facilities have been declining steadily in recent years. If this trend continues, facility closings or consolidations may be appropriate at some point in the future. By establishing objective criteria for facility closings or consolidations in advance, the department would be prepared to address the situation if it arises. This recommendation would not authorize any closings or consolidations without authorization from the legislature, but would ensure the legislature has objective information on which to make a decision.

- 52. The department should be authorized to sell, lease, transfer, or otherwise dispose of its surplus assets. Also, the department should be authorized to retain the proceeds from these transactions to restructure its system of facilities, subject to control by the appropriations process and standard state real estate transaction procedures. (Statutory)**

The department has surplus property at some of its facilities, and inadequate treatment facilities in other areas of the state. By disposing of property not being used for client care, the department may be able to provide needed services and programs to people not currently receiving them.

### State Facility Funding

- 53. The department should be required to establish budgets for its facilities which are based on uniform costs for specific types of services provided. (Statutory)**

There is currently a wide variation in the cost per client per day among the various state-operated facilities. The TDMHMR does not have the ability to determine whether or not these cost variations are justified. The department should be required to account for differences in cost among its facilities for similar services.

### Allocation of Funds Between State Facilities and Community MHMR Programs

54. **The department should be required to determine the degree to which the cost of operating the state schools and state hospitals, in compliance with applicable standards, is reduced as populations decline. As savings are realized, the funds should be used to increase funding for community MHMR programs. (Statutory)**

Currently, funds used to serve clients in state schools and state hospitals do not flow with the clients when they leave the state facilities to receive treatment in community programs. If the funds would flow in proportion to the flow of clients, community-based providers would develop programs to serve more state facility clients.

55. **The TDMHMR in conjunction with community programs should be required to establish the number of state hospital beds that are needed, provide no more beds than that number, and develop its budget and community contracts on that basis. (Non-statutory management improvement)**

In order to maximize the role of community programs, the state hospitals should serve only patients that community programs cannot or will not serve, and the rest of the patients and related funds should be transferred to community programs.

### Allocation of Community Program Funds

56. **Additional cost savings realized by any closure or consolidation of the TDMHMR's facilities, that are not needed for facility reconfigurations or community contracts, should be used to move toward equalization on a statewide per capita basis. (Non-statutory management improvement)**
57. **In its budget request for fiscal years 1992-1993, the TDMHMR should be required to present to the legislature the amount needed to completely equalize funding of community MHMR programs. (Statutory)**

Previous recommendations which deal with the flow of funds from state facilities to community programs will make the funding system more equitable. The above mentioned recommendations will establish a framework to complete funding

equalization in a timely manner. By phasing in these changes, existing programs will not be disrupted.

- 58. The department should be statutorily required to establish local matching requirements for outreach programs that are consistent with requirements for designated providers. (Statutory)**

Areas served by community MHMR centers are currently required to provide a local match for state funds they receive. Areas served by state facility outreach programs have no local match requirement. Local match requirements should be applied consistently across the state. It is estimated that this provision will generate increased annual revenues of approximately \$5,000,000.

### Evaluation of Programs

#### Purpose and Policy Statement

- 59. The department's statutory purpose and policy statement should be modified to accurately reflect current state policy. (Statutory)**

Although the 69th Legislature directed the department to identify the priority client populations and the minimum array of services necessary to address the needs of these clients, the agency's purpose and policy statement was not modified accordingly. It indicates a state policy that does not exist, i.e. that TDMHMR will meet all the needs of all Texans who are mentally ill or mentally retarded. To ensure that the state is not held accountable for failing to meet this unrealistically high standard of service delivery, a change in the purpose and policy statement appears necessary. The recommended modification will provide guidance to the department in the development of their mission statement, goals, and objectives. Further, it will ensure that those seeking services have a clear picture of the state's intent in providing those services.

#### Broaden Minimum Services Requirements

- 60. The statute should be amended to include additional required core services. (Statutory)**

This change would add two mental health services which were not included in the S.B. 633 minimum service requirements, but are required by TDMHMR policy. The services include medication-related services and psychosocial programs which include vocational services, skills training, and social support. These services are

necessary to enable chronically mentally ill people to remain in the community and are currently provided in all but three service areas. This change will not add to the cost of services but is instead designed to clarify what services are required.

**61. The statute should be amended to apply the minimum service requirements to TDMHMR outreach service areas. (Statutory)**

This change will require that at least minimum services are available in all areas of the state, not just those served by contract with community centers. This is consistent with the original recommendations of the Legislative Oversight Committee on Mental Health and Mental Retardation which led to the current statutory requirements.

**Legally Adequate Consent**

**62. The statute should be amended to clarify that legally adequate consent is not required for nonresidential mental retardation services, including a comprehensive diagnosis and evaluation. (Statutory)**

In order to protect the rights of mentally retarded people, legally adequate consent is required for admission to and participation in all residential or nonresidential mental retardation services. If a person cannot give consent, the statute requires the appointment of a guardian or a court commitment for services. However, it is not always possible to find a guardian and even when an appropriate person is available, sometimes the legal costs are prohibitive. This change would ensure that people who need to be evaluated for services or who would benefit from day treatment and/or training have access to those services.

**Shift Some Hospital Services to Community Providers**

**63. The statute should require the department to periodically assess elderly patients residing in department facilities to determine if the person can be appropriately served in a less restrictive setting and seek such placement when it meets the person's needs. The local MHMR authority should provide continuing care, as needed, once a patient is placed. (Statutory)**

This change would require a review, at least annually, of all elderly patients in TDMHMR facilities to determine whether they can be served appropriately in a less restrictive setting such as a nursing home, personal care home, foster home, or other type of living arrangement. Such determinations should be made by either the treating physician or an interdisciplinary team that has responsibility for the

person's treatment. The department should attempt to secure less restrictive care for the person if the review indicates that such care is appropriate to meet the needs of the person. If needed, the local MHMR authority should provide continuing care for patients placed in their service area in addition to the care the person receives in the community placement.

**64. The statute should require the department to solicit proposals for the operation of geriatric units in a community setting as an alternative to state facility care. (Statutory)**

The department would be required to solicit proposals every two years to determine whether quality residential programs can be established in the community which meet the needs of the elderly residents in MHMR facilities at a similar or reduced cost. The department should require that these facilities operate in compliance with departmental standards. Based on the average cost of geriatric services in state facilities and the community, this change has the potential of reducing the state cost of providing care to these people.

**65. The statute should be amended to require the TDMHMR to actively solicit proposals from community providers for the operation of community-based extended care units, which comply with departmental standards. (Statutory)**

The department would be required to solicit proposals from community providers for the development of community-based residential programs for patients in state hospital extended care units. The department should require that these facilities operate in compliance with departmental standards and provide adequate assurances that the safety and well-being of each patient will be safeguarded. Community-based extended care programs could be more cost-effective and would complement the existing array of community services. Based on the average cost of this type of care in the hospital and community programs, this change could save the state money while also allowing these long-term patients to receive appropriate care in a less restrictive and more normalizing environment than a state hospital.

- 66. The statute should be amended to require the TDMHMR to actively solicit proposals from community providers for the operation of transitional living units which comply with departmental standards. (Statutory)**

The department would be required to solicit proposals for the operation of transitional living programs for patients currently served in state hospital transitional living units. These residential units teach patients the skills necessary to increase their degree of independence. If operated by community providers, these services could be less costly, more effective, and would complement the existing array of community services. The department should require that these facilities operate in compliance with departmental standards and provide adequate assurances that the safety and well-being of each patient is safeguarded.

- 67. The department should identify funds used for the operation of hospital-based transitional living units and use these to fund proposals for community provider operation of transitional living units. (Non-statutory management improvement)**

Many rehabilitative and professional services used by individual units in a state hospital are not currently funded through the units' budgets. The department should analyze all services used by transitional living units and determine the actual state expenditure involved in operating such units. This will allow the department to accurately determine what funds can be made available to providers that agree to assume all of the services of a transitional living unit. In addition, it will ensure that the department can accurately assess the fiscal implications of contracting for this service instead of providing it directly .

- 68. The statute should be amended to require the TDMHMR to review, every two years, the types of services provided by the department and examine whether those services are available at a comparable level of quality through community providers at a reduced cost and submit its findings with its budget request. (Statutory)**

This will establish an ongoing mechanism for the department to review the services it provides directly to clients and report to both the Legislative Budget Board and the Governor's Budget Office as to whether it is necessary for the state to continue direct service provision. This will allow the legislature to monitor whether the

department is implementing its intent that local agencies and private providers be encouraged to administer services, whenever possible.

**Study of Consolidating State Centers and Community Centers**

- 69. The statute should be amended to require the department to study the feasibility of consolidating the administration or operation of the five state centers with local community centers and report its findings to both budget offices and the Sunset Commission by August 1, 1988. (Statutory)**

Currently, four of the five state centers are in areas also served by community MHMR centers. Consolidating the administration or operation of the two types of centers could reduce administrative duplication and encourage the development of a well planned, comprehensive array of services in these service areas instead of two parallel service delivery systems. Potential savings available by consolidation and reduced administrative duplication have been estimated to range from \$1.5 million to \$7.9 million, depending on the degree of consolidation. However, due to the nature of the services involved, a careful study should be performed to examine the possible impact of such a consolidation.

The department would be required to study whether consolidation could deliver the same quality and quantity of services more cost-effectively. In performing this study, the department should consider local input, including information provided by families in each area that use the services being studied. In addition, the department should submit specific plans to implement consolidation in each area and identify both the positive and negative aspects of consolidating all or part of the functions in each case.

**State Center Client Eligibility for TDMHMR Programs**

- 70. Mentally retarded state center residents should be eligible for the \$55.60 program. (Non-statutory management improvement)**

Currently, mentally retarded people in long-term placement in two state centers do not have equal access to this effective placement incentive. Requiring access would encourage more cost-effective placement of these residents, when appropriate, and ensure that the areas served by state centers receive the same incentives to develop community resources as do other areas of the state.

**71. State center psychiatric beds should be added to the bed day count for the \$35.50 program. (Non-statutory management improvement)**

Currently, the incentives to treat state hospital patients in less restrictive community programs are not available for state center patients. Changing this would encourage more cost-effective treatment of these patients and ensure that the state center areas receive the same incentives to develop community resources as other areas of the state.

**State-Supported Genetic Services**

**72. An Interagency Council for Genetic Services should be created. (Statutory)**

The review identified inadequate coordination and an inability to evaluate the quality or cost-effectiveness of genetic service providers receiving state funds. An interagency council would bring all state funded genetic service providers together for comprehensive planning and service delivery. It would coordinate the array of services in preventing, identifying and treating genetic disorders. The council should include a representative of the Texas Department of Mental Health and Mental Retardation, Texas Department of Health, Texas Department of Human Services, University of Texas health science centers, two consumers of genetic services, and a representative of the public and private entities that contract with the Texas Department of Health.

**73. The Interagency Council for Genetic Services should be responsible for the development and implementation of procedures to effectively address cost-effectiveness, identification of current and future needs, improved coordination, and guidelines for monitoring genetic services, including laboratory testing. (Statutory)**

This change would address specific problems that need to be satisfied before an efficient and effective statewide genetics system can be developed. It would allow the cost and quality of genetic services to be compared between various providers, promote programs that are effective, and develop an evaluation system to ensure high quality.

**74. The Interagency Council for Genetic Services should prepare and submit a report to the 71st Legislature on recommended changes that would improve the genetic services system. (Statutory)**

Previous studies and the review identified a need to develop long-range planning that would ensure coordination and cost-effectiveness among the major providers of genetic services. A report to the 71st Legislature would provide a means to evaluate progress toward these goals. It would also provide the legislature with an opportunity to make any necessary adjustments to the newly created council or to the way genetic services are currently funded by the state. The council should be authorized to contract for the preparation of this report.

**75. The Interagency Council for Genetic Services should be subject to the Texas Sunset Act and unless continued by the legislature, the council should be abolished September 1, 1989. (Statutory)**

This change would allow the legislature an opportunity to review the council's progress towards ensuring coordination, planning and cost-effectiveness among the major providers of genetic services. Also, necessary adjustments could be made if the council should be continued.

**76. The TDMHMR Genetic Screening and Counseling Service should be allocated additional funding to increase the number of genetic screenings provided and prevent state-funded institutional care where possible. (Non-statutory management improvement)**

According to agency estimates, a \$500,000 increase in funding would greatly enhance the efficiency of the TDMHMR's Genetic Screening and Counseling Service (GSCS). It would allow GSCS to double its current output and screen an additional 3,652 families for genetic problems at a much lower average cost per family. The screenings should identify approximately 620 genetic diseases. Out of the 620, approximately 25 individuals could be identified or treated, thereby preventing the need for a lifetime of institutional care. This has the potential of saving the state approximately \$34.7 million in state funds, based on an average cost per person of \$1.4 million for a lifetime of institutional care. The Legislative Budget Board has been informed of this potential savings and the department should continue to provide the legislature with information about this program, as needed during the appropriations process.

### Autism Services

- 77. The TDMHMR should illicit the cooperation of and coordinate with other state agencies which serve autistic persons to develop a plan for services to autistic persons. (Non-statutory management improvement)**

Autistic people and their families need services from many agencies to help them successfully manage this developmental disability. Coordination of these services will ensure a more comprehensive approach to this problem. Development of the plan should include, but not be limited to, representatives of TDMHMR, the Governor's Task Force on Autism, the Texas Department of Health, the Texas Department of Human Services, the Texas Rehabilitation Commission, and the Texas Education Agency. The plan should emphasize how the state can address the special needs of autistic adults.

### Substance Abuse Services

- 78. The TDMHMR should be required to annually provide the Texas Commission on Alcohol and Drug Abuse (TCADA) with an analysis of hospitalization rates of substance abusers by county of residence. The TCADA should be required to consider hospitalization rates in making allocations of grant funds and include a provision in its treatment and rehabilitation grant contracts that the grant is for a program that will reduce state hospital utilization by a certain percent. (Statutory)**

The legislature has directed the Texas Commission on Alcohol and Drug Abuse and the TDMHMR to work together to develop community-based services that would reduce the use of state hospital beds for individuals with substance abuse problems. To date only minimal reductions have been made. Sharing information on the use of state hospitals by substance abusers should assist the TCADA in allocating grant funds to areas that need to develop, expand, or improve their local services and reduce their use of state hospitals. Requiring the grantee to agree to reduce utilization of state hospitals should also have a positive impact.

- 79. The TDMHMR should use existing funds for substance abuse services to develop contracts with community-based programs to reduce bed day utilization for substance abusers in state hospitals. (Non-statutory management improvement)**

The department has developed an incentive program, known as the \$35.50 program, which encourages community centers to develop local services which will limit the need for a person to go to a state hospital. This program has been very successful and reduced state hospital bed day use by 22 percent in the first 18 months of its operation. Applying this to hospital substance abuse units should have a similar impact. However, this effort by the department should be coordinated with the TCADA to ensure a united approach in meeting the state's goal to serve substance abusers in community programs.

- 80. The TDMHMR and the TCADA should, on a biennial basis, jointly estimate how many, if any, state hospital beds should be maintained for people with substance abuse problems who cannot be served in the community. (Statutory)**

This determination would assist the TDMHMR in the development of its biennial budget request. It would also serve as a mechanism for the legislature to evaluate the progress that has been made on reducing the use of state hospitals for substance abusers.

### **Continuity of Care**

- 81. The statute should be amended to remove provisions which limit responsibility for preadmission screening and discharge planning for mental health patients. (Statutory)**

The department requires a mental health authority to evaluate each person for whom an application has been filed for court-ordered mental health treatment and advise the court as to the appropriate setting for treatment. In addition, the department requires the local authority to participate in developing a patient's plan for care after hospitalization. The statute limits local responsibility with regard to these to functions based on the commissioner's determination of the local provider's capacity to perform the function. Since this has been a department requirement for several years and the department has identified capable local authorities for each area of the state, the limitation is no longer needed. This change should improve the continuity of care provided to mentally ill people.

- 82. The statute should be amended to require local participation in discharge planning for patients and clients of TDMHMR facilities. (Statutory)**

The statutory provisions relating to planning for services following the discharge of a state school resident or state hospital patient do not include participation of the provider who will be responsible for the services following discharge. The department requires that such plans be developed jointly with the TDMHMR facility, the client or patient, and the community center or outreach program for the area where the person will live after discharge. This change will bring the statutory provisions in line with existing department requirements.

- 83. The department should develop procedures which allow facility staff, on the request of the patient, to inform a family member or friend that discharge planning has been initiated. (Non-statutory management improvement)**

This change will assist family members in preparing for the return of their family member after hospitalization and aid their ability to help the person to make a successful transition into community living and aftercare services. The recommendation provides for notice to either family or friends to address the needs of patients who rely on non-family members for support in the community.

- 84. The department should examine its policies to ensure they authorize the treating physician to seek a voluntary commitment for a mental health patient who is involuntarily committed and needs continued hospitalization, but no longer meets involuntary commitment criteria. (Non-statutory management improvement)**

This change will ensure that department policy clearly authorizes the treating physician to ask an involuntarily committed patient to agree to continued voluntary treatment in the hospital, if the patient needs the treatment but cannot secure it due to inadequate alternate treatment resources or financial limitations.

#### **Volunteer Services**

- 85. The department should be authorized to use funds appropriated for volunteer services to expand these services in community centers. (Statutory)**
- 86. The TDMHMR should develop formal policies that encourage the growth and development of volunteer services in community centers. (Non-statutory management improvement)**

The TDMHMR has an office of volunteer services that is responsible for the development of an effective statewide program of volunteerism to benefit clients within its service delivery system. These changes would allow for a more comprehensive program.

#### **Registration of Certain Boarding Homes**

- 87. The local mental health and mental retardation authorities should register boarding homes that accept referrals from the authorities. (Statutory)**

This recommendation would give local authorities the responsibility to evaluate and monitor the condition of the boarding homes to which they refer clients. It will prohibit continued department funding of a local authority that refers clients to boarding homes which it has not registered. This change would build on the existing information network between clients and staff and use existing local technical resources such as the local fire marshal and local health authority. Local registration is also designed to ensure that the standards and procedures used are sensitive to local needs and resources. If the local MRA and MHA are separate providers in an area, they would be required to negotiate a memorandum of understanding to reduce duplication and clarify responsibilities for registering homes in the service area.

- 88. The local mental health and/or mental retardation authorities should be required to submit the guidelines they develop for the registration of boarding homes in their area to the department for approval. (Statutory)**

Requiring the department to approve the guidelines for local registration will encourage statewide consistency. The department should review the guidelines to ensure they provide for an annual site visit by the authority and require compliance with applicable local health, sanitation, fire and safety standards.

#### **Alternative to State Hospital Commitments**

- 89. The mental health and substance abuse commitment laws should be modified to establish a single portal of entry process beginning September 1, 1988 in areas which provide the necessary community-based services. (Statutory)**

This recommendation would authorize a mechanism, in areas providing all necessary services, which strengthens commitment provisions that limit inappropriate admissions to state hospitals. In areas designated as single portal authorities, all

commitments that would have previously been made to the state hospital, would instead be made to the single portal authority. The judicial system would continue its role of determining whether court-ordered inpatient treatment is warranted, but treatment professionals would be given the responsibility to determine whether the treatment is provided through local programs or through the state hospital. The proposed changes would not limit the use of private providers. The provision would take effect September 1, 1988 to provide adequate time for planning, resource development, licensing, designating single portal authorities, and educating the courts and providers. The department would establish rules concerning the single portal authorities' handling of commitments and transfers, and provide for emergency admissions to state hospitals when obtaining approval of the single portal authority could endanger the patient.

**90. The statute should be amended to require the board to appoint a Single Portal Review Committee by September 1, 1987. (Statutory)**

The committee would provide an independent body to determine if a mental health authority provides the necessary services to function as a single portal of entry. It would be responsible for developing the standards to designate single portal authorities, deciding how applications would be evaluated, and evaluating applications. It would be composed of nine members representing the major professional and consumer groups affected by commitment procedures. When the committee reviews area applications for single portal designation, the committee would add three local area leaders to assist in evaluating the application.

**91. The TDMHMR should modify the \$35.50 program policies to ensure that TDMHMR funding of a single portal authority is provided before services are delivered and the fiscal incentive to reduce hospital use is removed. (Non-statutory management improvement)**

This requires a change to TDMHMR's \$35.50 program when a local mental health authority is designated as the single portal authority for an area. The \$35.50 program currently provides fiscal incentives to reduce the use of state hospitals by area residents. This incentive could inappropriately outweigh a clinical decision concerning whether a patient should be transferred to a state hospital. Also, this program funds services after hospital use is decreased. The recommended change would minimize any financial incentives that could interfere with patient-oriented

clinical decisions and ensure that single portal authorities receive adequate funding before they treat patients.

### **Regulation of Inpatient Facilities**

- 92. The statute should be amended to establish a new category within the TDMHMR's authority to license private psychiatric hospitals to regulate community-based facilities which provide court-ordered inpatient mental health treatment. (Statutory)**

The state's regulation of these facilities would provide adults who are committed to free-standing, community-based inpatient programs, regulatory protection similar to that currently provided for patients in private psychiatric hospitals. Comparable free-standing facilities which provide court-ordered inpatient treatment for children, adolescents, and substance abusers are required to be licensed. The department should establish separate standards for crisis stabilization and crisis residential services which are less restrictive than standards for mental hospitals. All facilities licensed as a hospital by the Texas Department of Health or TDMHMR would be exempt.

- 93. The definition of inpatient mental health facility should be amended to allow commitment only to licensed inpatient facilities. (Statutory)**

Community centers are currently defined as inpatient mental health facilities in the Mental Health Code. This change would prevent inpatient commitments to community center facilities which do not have the capacity to provide the protection or treatment required for court-ordered mental health treatment.

### **Enhanced Compliance with Outpatient Treatment**

- 94. The statute should be amended to provide for the conversion of a court-order for inpatient mental health treatment to an outpatient order if, in the original commitment hearing, the judge finds that the person is at risk of deterioration without continued care. (Statutory)**

This change would streamline the existing provisions for converting inpatient commitments to outpatient commitments, thereby making them more useful. Outpatient treatment following court-ordered inpatient treatment is a critical factor in the person's ability to remain relatively symptom free in the community. The change would allow the judge to make a finding when committing a person to inpatient care as to the person's potential for deterioration if treatment is not

continued for the entire period of commitment. When this finding is made and the patient does not require inpatient care for the entire commitment period, then the commitment would convert to an outpatient commitment for the balance of the time period unless waived by the judge.

#### **Interstate Compact on Mental Health**

##### **95. The State of Texas should participate in the Interstate Compact on Mental Health. (Statutory)**

The compact was reviewed by the 69th Legislature and was continued with minor modifications. Continued membership in the compact eliminates the problem of residency requirements and establishes a mechanism which allows people to move closer to their family when it is important to their care and treatment. It also prevents unwarranted transfers of mentally ill or mentally retarded individuals without the state's knowledge and acceptance.

#### **Changes to a Major Funding Strategy**

##### **96. Provider contracts should require \$35.50 funds to be used for mental health services. (Non-statutory management improvement)**

The \$35.50 program funds mental health authorities based on their ability to reduce their area's use of state hospitals. There are currently no restrictions on the use of the \$35.50 funds. This approach to funding is inconsistent with recent performance-based contracting required by the 69th Legislature. Some providers did not initially allocate program funds to mental health services. The change recommended would ensure that community-based mental health services are developed as people are diverted from state hospitals and increase accountability for state funds.

##### **97. Patients sponsored by TDMHMR facilities in residential programs operated by local mental health authorities should be added to the bed day count. (Non-statutory management improvement)**

In addition to \$35.50 funding for keeping people out of state hospitals, a mental health authority can contract with a state hospital to take patients out of the hospital and place them in its residential programs. Since these patients are sponsored in residential placement by TDMHMR facility funds, it is reasonable to conclude they are still in a state supported bed. Therefore, for these patients, the mental health authority should only receive the contract funds and not the \$35.50 program funds. Adding these patients to the bed day count for the \$35.50 program

would prevent programs from receiving dual reimbursement from two parallel funding strategies, and eliminate problems the potential dual funding has created.

### Respite Programs

- 98. The department should modify its requirements concerning the provision of in-home respite care services and modify its community standards relating to respite services using information from providers and families involved in the services. (Statutory)**

The department should modify its requirements and standards for in-home respite care to encourage the development of a service delivery mechanism which recognizes the expertise and concern of family members and their ability to assist in the cost-effective development and monitoring of needed respite services. These requirements should encourage the use of qualified private providers instead of agency provided services. Varying types of in-home respite care should be established as required by the types of clients served and the length of service. Varying qualifications should be established for providers of the various types of care based on the needs of the people using such care. In addition, any standards concerning this type of service would be made more responsive to those needing the service by requiring the department to seek the advice of respite providers and families when formulating any new in-home respite service requirements.

### Vocational Rehabilitation Needs

- 99. All TDMHMR facilities and community centers should annually examine the feasibility of converting entry level support positions into employment opportunities for clients within the service area. (Statutory)**

This change would require the department and community centers to examine their operations for potential vocational training opportunities, enabling them to maximize employment resources for their clients. Many centers currently secure entry level positions in their community, such as custodial positions, for vocational training of their clients. With systematic planning, additional vocational training resources can be made available without any reduction in the quality of support services.

- 100. The department should investigate the feasibility of expanding the Career Village program to make it available in all state hospitals. (Non-statutory management improvement)**

The Career Village program allows ex-patients to live on the hospital grounds in employee housing or cottages and work for pay in hospital jobs. Some programs also offer additional training. The programs are designed for patients who need to stay close to the hospital. Career Village programs are currently operating at Wichita Falls State Hospital, Terrell State Hospital, and Big Spring State Hospital. This change would require the department to examine whether it is feasible to expand this program to make it available to hospital patients in other areas of the state.

#### Coordination of Mental Retardation Services

- 101. The TDMHMR and the Texas Department of Human Services should develop a Joint Long-Range Plan for Mental Retardation Services to be presented to the 71st Legislature. (Statutory)**

Many services to mentally retarded persons are paid for through a combination of federal and state funds. Through just one program, the Intermediate Care Facilities for the Mentally Retarded (ICF-MR) Program, Texas received approximately \$166 million in federal match in fiscal year 1986. The program requires close coordination between the TDHS and the TDMHMR to ensure smooth operation and maximization of the receipt of federal dollars. The review indicated, however, that federal dollars have not been maximized and state eligibility requirements are narrowly constructed prohibiting service to many "developmentally disabled" persons who are eligible under the broad federal regulations governing the program. Solutions to these problems will be difficult to develop since additional state funds to expand the program are scarce. Joint planning efforts between the TDHS, the agency through which the federal funds flow and the TDMHMR, the state's mental retardation authority, should, however, provide an organized forum for the examination of the problems and the development of attendant solutions.

#### Non-Program Changes

- 102. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state

agencies. These "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the Texas Juvenile Probation Commission are found in the "Across-the-Board Recommendations" section of the report.

**103. Minor clean-up changes should be made in the agency's statute.**

**(Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modifications of Agency's Statute" section of the report.

## MEDICAL CARE ADVISORY COMMITTEE

### Background

#### Creation and Powers

The Medical Care Advisory Committee is a statutorily created advisory committee to the Texas Health and Human Services Coordinating Council (HHSCC). The council is scheduled for Sunset review in 1991, but the Medical Care Advisory Committee has a Sunset date of September 1, 1987. To evaluate the need to continue the advisory committee, it is necessary to understand the purposes of the coordinating council.

#### Texas Health and Human Services Coordinating Council

The Texas Health and Human Services Coordinating Council was created in 1983 as a result of the efforts of the Senate Special Committee on the Delivery of Human Services. The findings of the committee were contained in a 1980 report entitled "The Potential in the Patchwork". That report identified the need for a council to coordinate human services in Texas.

The council has nineteen members including the governor, lieutenant governor, speaker of the house, the board chairmen of six major health and human service agencies, four state legislators, and six public members. The authority to appoint the members is divided between the governor, lieutenant governor and speaker of the house. The governor serves as chairman of the council. The main responsibility of the coordinating council is to serve as the primary state resource in coordinating and planning health and human services. To do this, the council is authorized to establish and maintain a central data base for public and private human services, conduct studies, review state and federal policies that impact Texas, and recommend changes necessary to develop a coordinated plan to deliver health and human services. The council specifically focuses on issues which: 1) have long-term implications for service delivery; 2) involve more than one state agency; 3) have major fiscal and legal implications; 4) cut across agencies at the federal, state, and local levels; and 5) require the coordination of several funding sources.

#### Medical Care Advisory Committee

The Medical Care Advisory Committee is one of four committees that exist to provide the coordinating council with technical expertise in specific areas. The Medical Care Advisory Committee advises the HHSCC when it considers issues

dealing with health and medical services. The governor is authorized to appoint the members of the committee. While the law does not specify the number of committee members, they must include physicians, hospital administrators, other health and human service providers, and representatives of consumers. All must be familiar with the medical needs of low-income people. Members of the committee receive no compensation but are entitled to reimbursement for actual and necessary expenses. The committee has never been appointed and is inactive.

#### **Scope of Sunset Review**

The review of the Medical Care Advisory Committee focused on two general areas of concern: 1) whether the need that the advisory committee was created to meet still exists; and 2) whether alternatives are available to perform the functions of the committee. All statutory duties of the committee were reviewed.

#### **Need to Continue Agency**

The review indicated that there was no longer a need for the committee as a statutorily created entity.

**Sunset Commission Recommendations for the  
MEDICAL CARE ADVISORY COMMITTEE**

**THE MEDICAL CARE ADVISORY COMMITTEE  
SHOULD BE ABOLISHED**

The advisory and technical assistance functions for which this advisory committee was created, are being accomplished by other means. Since the committee has never been appointed and the coordinating council has other methods to obtain assistance concerning health and medical care issues, the statutory structure for the Medical Care Advisory Committee should be repealed.



## TEXAS DEPARTMENT OF HUMAN SERVICES

### Background

#### Creation and Powers

The Texas Department of Human Services (TDHS) was created by the Public Welfare Act in 1939. The department is currently active and is directed, as it has been since its inception, by the three-member policy-making Board of Human Services. As identified in the department's mission statement, it is responsible for administering a multitude of state and federal programs designed to "promote the individual's worth and dignity by providing services to families and children, elderly, and disabled individuals to encourage their self sufficiency and prevent long-term dependence on public assistance." To accomplish this mission, the department operates five major programs: Income Assistance, Health Care Services; Services to Families and Children; Licensing; and Services to Aged and Disabled.

The origin of the department has its roots in the early 1900's. The first direct action leading to its current structure was the creation in 1931 of the Child Welfare Division as part of the Board of Control. The creation of the Department of Public Welfare in 1939 provided a state-level structure for implementation of federal Old Age Assistance and Aid to Dependent Children programs. The department also assisted in determining employment eligibility for persons entering Works Progress Administration and Civilian Conservation Corps programs. By 1957 the department had assumed responsibility for two more major federal programs -- Aid to the Blind and Aid to Permanently and Totally Disabled Persons.

The next major addition to the department's responsibilities came with the Medicaid program established in 1965 (Title XIX of the Social Security Act). The state Medical Assistance Act of 1967 outlined the state's role in administering the program which provides services to needy aged, blind and disabled persons and dependent children. The program provides payment for hospitalization, physicians' services and nursing home payments, and help with pharmacy bills. "Medicare" provides similar coverage for those over 65 years of age. The Medicaid program is administered by TDHS, while the Medicare program is a federal function.

Throughout the years, the department has also been involved in administration of food distribution programs for the needy. The food stamp program,

initiated in the mid-sixties, has grown from \$235,174 worth of food coupons distributed in 1967 to over \$750 million in fiscal year 1986.

The department has undergone many organizational changes. Staffing for the agency has fluctuated from 1,059 in fiscal year 1944 to 14,451 in 1977 to 12,122 in fiscal year 1985. Its name has changed twice in the last nine years and it continues to modify its organizational structure to react to changing state and federal program mandates.

### **Board Structure**

The Board of Human Services is composed of three part-time members appointed by the governor for staggered six-year terms. The board chairman is elected by the board members, who are appointed to represent all geographic regions of the state. Each member must have a demonstrated interest in and knowledge of public welfare and experience as an executive or administrator.

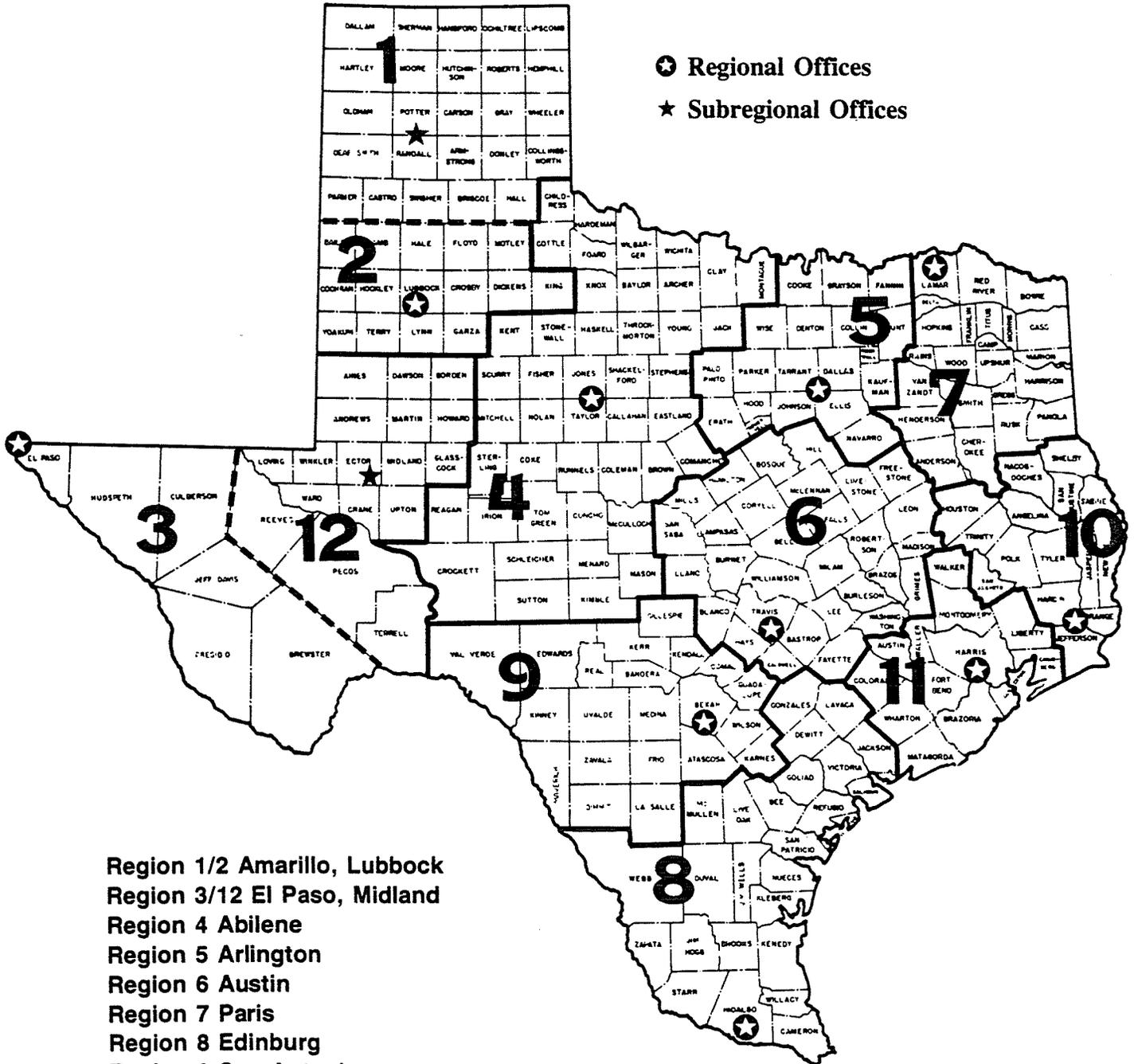
The board carries out general policy making duties which include: approving the biennial budget; submitting the budget to the Legislative Budget Board and the governor; establishing goals, objectives and basic policies to guide to the department in carrying out its duties; adopting rules for program operations; and appointing the Commissioner of Human Services, with the advice and consent of the senate, to serve at the pleasure of the board.

### **Organization and Funding**

The TDHS has its headquarters in Austin and operates through a regional administrative structure. As seen in Exhibit 1, the state is divided into 12 regions with ten major regional offices. State headquarter's employees in Austin provide general policy and administrative guidance while the employees in the regions carry out the many day-to-day activities and responsibilities of the department. The statewide allocation of regional staff represented 84.1 percent or 10,663 of the total 12,679 employees of the department during fiscal year 1986. Exhibit 2 provides a detail of the allocation of staff by region as of May 1986.

Funding for the department comes from both state and federal funds. Overall, funds for fiscal year 1986 total \$2,380,507,882. Federal funds represent 58 percent of the department's fiscal year 1986 budget. The mixture of federal and state dollars varies depending on the program. This mix, as well as general workload information is provided in a summarized chart format in Exhibit 3 for each of the department's major programs.

**Exhibit 1**  
**Texas Department of Human Services**  
**Regional Boundaries**



## Exhibit 2

### TDHS REGIONAL STAFF ALLOCATION

May 1986

<u>Region</u>	<u>Regional Office</u>	<u>Number of Staff</u>
1/2	Lubbock	608.0
3/12	El Paso	725.0
4	Abilene	505.5
5	Arlington	1,767.0
6	Austin	943.5
7	Paris	703.0
8	Edinburg	1,678.5
9	San Antonio	1,098.5
10	Beaumont	632.5
11	Houston	2,001.5
<b>Total</b>	--	<b>10,663.0</b>

#### Programs and Functions

As can be seen in Exhibit 3, the department operates five major programs with some 27 sub-components. To carry out the elements of these programs, the department purchases services, provides grants of assistance, directly delivers services and contracts with other agencies. Exhibit 4 provides a pie chart depiction of how the department's money is spent. Over 88 percent of the department's funding is spent through grants (e.g. AFDC payments and food stamps) and purchased services (e.g. payment of medical expenses for the poor). The general program structures through which these dollars are spent are described in the material that follows.

#### Income Assistance

The income assistance program is composed of two major activities, Aid to Families with Dependent Children (AFDC) and the Food Stamp program, and a smaller program called Food Services. The AFDC program, created and mandated through Title 4-A of the federal Social Security Act, provides financial assistance to families with children who are deprived of support due to the absence or disability of one or both parents. The program began in Texas in 1943 with a caseload of 11,257 families receiving services. In fiscal year 1986, the average

Exhibit 3  
TDHS PROGRAM SUMMARY

Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
<b>I. Income Assistance</b>				<b>\$445,363,295</b>		<b>5,034</b>
A. Aid to Families with Dependent Children	46%	Title IV-A 54%		281,841,601	409,677 AFDC Recipients	
B. Income Assistance Program Delivery	50%	Multi-Source 50%		122,162,799		4,972
1. Eligibility Determination				(104,127,359)	409,677 AFDC Recipients	(4,590)
2. Program Support				(9,831,831)		(380)
3. Food Stamp Issuance				(8,203,609)	407,069 Food Stamp Cases/Month	(2)
C. Food Services (Commodity Distribution)	2%	96%	Commodity Fees	41,358,895	\$ 210.0 Million Total Value of Food Dist.	62
<b>II. Health Care Services</b>				<b>715,126,347</b>		<b>122</b>
A. Purchased Health Services	46%	Title XIX 54%		708,277,433		
1. Aged & Disabled Premiums				(299,925,930)	309,253 Recipient Months	
2. AFDC & Foster Care Premiums				(286,933,344)	445,521 Recipient Months	
3. Children in Two-Parent Households				(35,298,418)	21,286 Recipient Months	
4. Pregnant Women				(12,072,333)	6,434 Recipient Months	
5. Medically Needy				(29,040,548)	11,037 Recipient Months	
6. SMIB Premiums	45%	55%		(41,780,176)	224,624 Recipient Months	
7. Utilization Review	25%	75%		(3,226,684)	Number of On-site Compliance Reviews by TMF - 84	
B. Health Care Services Program Support		Title XIX		4,518,270	See A	114
1. Program Support	43%	57%		(3,917,223)		(81)
2. SMIB Support	50%	50%		(601,047)		(33)
C. Indigent Health Care	100%	-0-		2,330,644	75 Hospitals Qualifying	8

**Exhibit 3**  
**TDHS PROGRAM SUMMARY**  
(cont.)

Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
<b>III. Services to Families &amp; Children</b>				<b>\$227,515,250</b>		<b>3,555</b>
<b>A. Protective Services to Families &amp; Children</b>		Multi-source		123,258,660		2,844
1. Foster Care Payments	73%	27%		(29,306,203)	4,853 Children in Dept. Paid Foster Care/Mo.	
2. Child Protective Services	27%	73%	Fees	(81,452,268)	69,925 Abuse & Neglect Investig. Children Served	(2,595)
3. Alternate Treatment for Youth	100%	-0-		(1,685,167)	164 Children Receiving T&R Svc.	(3)
4. Truant & Runaway Services	-0-	100%		(2,032,576)	5,628 Residential Clients Served	(2)
5. Family Violence Services	10%	90%		(2,444,095)	21,715	(244)
6. Program Support	31%	69%		(6,338,351)		
<b>B. Children's Trust Fund</b>	100%	-0-		6,000	Services Begin in FY 1987	0
<b>C. Family Self-Support Services</b>		Multi-source		104,250,590		711
1. Family Planning Services (XIX)	10%	90%		(9,142,733)	51,020 Title XIX Clients/Year	
2. Family Planning Services (XX)	6%	94%		(16,079,993)	194,909 Title XX Clients/Year	
3. Child Day Care Services	-0-	100%		(32,705,969)	12,719 Children Per Day	
4. EPSDT	46%	54%		(17,813,326)	85,062 Medical/116,909 Dental Screenings/Year	
5. Employment Services	26%	74%		(8,027,299)	17,962 Clients Entering Employment	
6. Program Delivery	41%	59%		(16,841,609)	116,988 Clients Receiving Support Svc.	(622)
7. Program Support	41%	59%		(2,488,161)		(89)
8. Temporary Emergency Relief Services	100%	-0-		(1,151,500)	63,697 Clients Served	
<b>IV. Licensing</b>				<b>10,381,523</b>		<b>338</b>
<b>A. Licensing of Child Caring and Child Placing</b>		Title XX				
1. Licensing of Child Care Facilities	27%	73%		9,110,967	29,954 Day Care Facilities Licensed and Registered	300
2. Program Support	28%	72%	Fees	1,043,334	5,150 Complaints Investigated/Year	34
3. Certification of Social Workers	100%	-0-	Fees	227,222	8,000 Social Workers Certified	4

**Exhibit 3**  
**TDHS PROGRAM SUMMARY**  
 (cont.)

Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
<b>V. Services to Aged &amp; Disabled Persons</b>				<b>\$859,688,870</b>		<b>1,899</b>
A. Long-Term Institutional Care	46%	Title XIX 54%		463,567,543	2,417 Average Recipients/Day 48,678 Average Recipients/Day 2,783 Average Recipients/Day 230 Average Recipients/Month 37 Recipients Served/Month	
1. ICF II Vendor Payments				(18,105,616)		
2. ICF III Vendor Payments				(406,095,678)		
3. Skilled Vendor Payments (XIX)				(36,328,185)		
4. Skilled Vendor Payments (XVIII)				(2,862,294)		
5. Rehabilitation Services	(175,770)					
B. Intermediate Care for the Mentally Retarded	46%	Title XIX 54%		84,950,689	1,150 Average Recipients/Day 1,590 Average Recipients/Day 1,116 Average Recipients/Day 8,619 Average Recipients/Day	
1. ICF-MR I				(20,899,680)		
2. ICF-MR V				(24,201,461)		
3. ICF-MR VI				(21,356,470)		
4. Vendor Payments for State School & State Centers				(10,400,000)		
5. Program Support	(8,093,078)					
C. Vendor Drugs	46%	Title XIX 54%		110,620,347	7,215,439 Prescriptions/Year 3,490 Contracted Providers	30 (30)
1. Vendor Payments				(109,746,827)		
2. Quality Assurance and Consultation	(873,520)					
D. Medical Transportation	46%	Title XIX 54%		4,668,477	705,805 One-way Trips	30
E. Community Care for Aged and Disabled Persons	40%	60% Titles XIX and XX		148,815,403	48,853 In-Home Clients/Month 1,953 Out-of-Home Clients/Month 570 Clients/Month 129 Clients/Month 50 Number of Children	
1. In-Home Services				(138,977,248)		
2. Out-of-Home Services				(5,676,409)		
3. Supervised Living				(3,143,762)		
4. Client Managed Attendant Care				(567,084)		
5. 1915(c) Waiver for Medically Dependent Children	(450,900)					

Exhibit 3  
**TDHS PROGRAM SUMMARY**  
 (cont.)

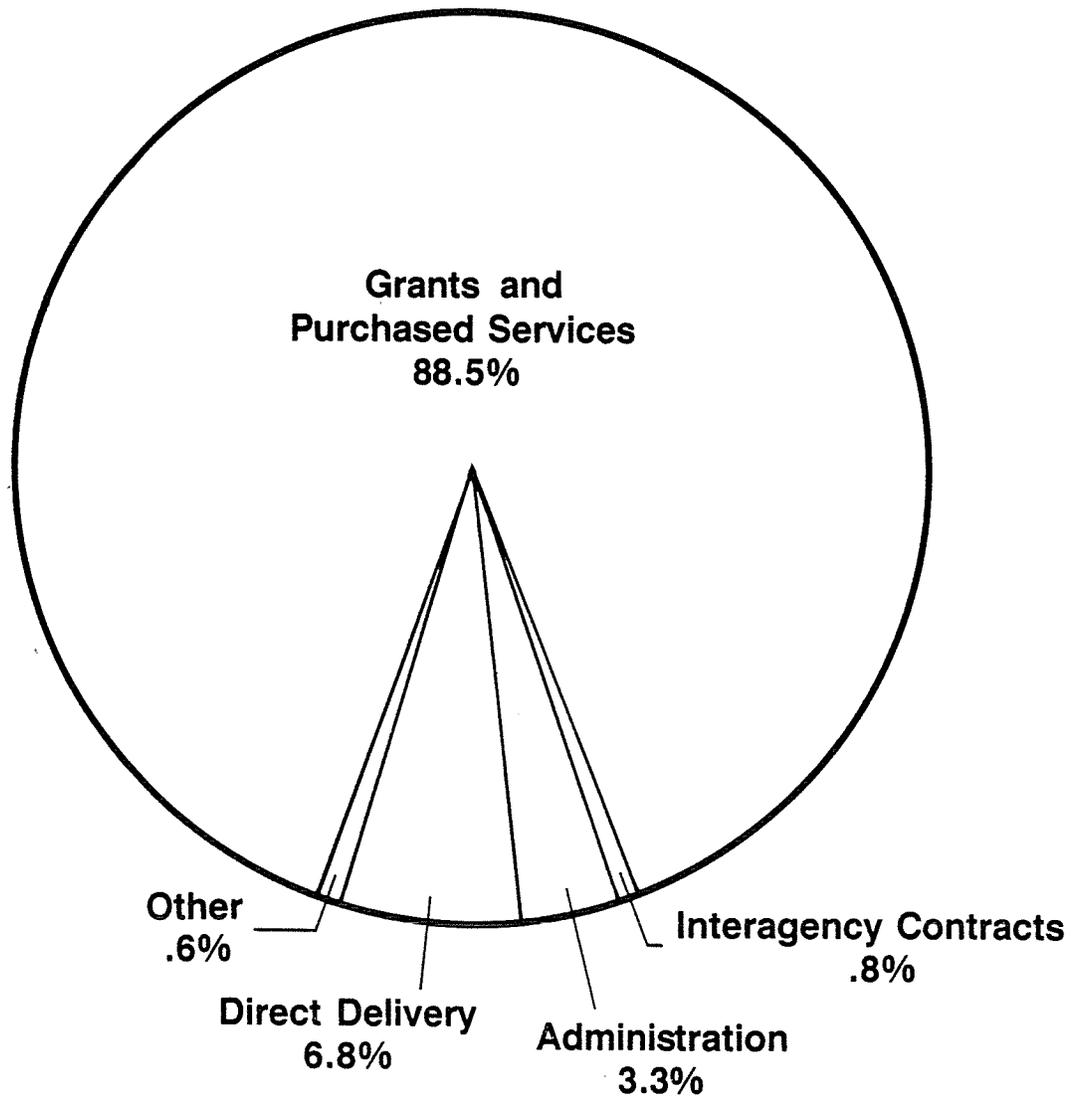
Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
F. Adult Protective Services	5%	Title XX 95%		\$ 6,809,439	13,536 Annual No. of Investigations	223
G. Services to Aged & Disabled Program Delivery	30%	70% Titles XIX and XX		40,256,972		1,616
1. Eligibility Determination			Local	(33,546,184)	190 MAO/Nursing Home Caseload	(1,374)
2. Program Support				(6,710,788)	140 Average Family Care Case Load	(242)
<b>VI. Agency Administration</b>		Multi-source		<b>70,353,939</b>		<b>1,612</b>
A. Central Management Support	44%	56%	Fees	19,417,575	Staff Support Function	525
B. Field Management Support	39%	61%		19,480,938	Staff Support Function	634
C. Information Systems	45%	55%		26,604,372	Staff Support Function	453
D. Renovations & Capital Outlay	88%	12%		4,851,054	NA	-
<b>VII. Other Programs</b>				<b>52,507,855</b>		<b>119</b>
A. Energy Assistance	-	100%		36,316,791	315,188 Households Rec. Heating Asst. 334,112 Households Rec. Heating Asst.	37
B. Disaster Assistance	29%	71%		605,071	280 Cases — 1 Disaster	1
C. Refugee Assistance	-	100%		10,291,400	1,800 Refugee Recipients/Month	46
D. Special Projects	2%	98%		4,865,396	e.g. Long-Term Care Case Mix Project	35
<b>TOTAL</b>	<b>42%</b>	<b>58%</b>		<b>\$2,380,507,882</b>		<b>12,679</b>

Exhibit 4

Texas Department of Human Services

# Budget by Functional Category \*

FY 1986



\*The chart includes all funds appropriated to the department as well as \$850 million worth of food stamps and commodities for which the department is accountable.

monthly caseload was approximately 133,000 families. To be eligible for AFDC, family income and resources cannot exceed certain limits depending on family size and other factors.

AFDC families receive a monthly assistance payment which, in combination with other benefits such as Medicaid, is intended to furnish an income sufficient for ensuring the health and safety of the children. The average AFDC recipient payment was \$57.33 in fiscal year 1986. Families on the AFDC program automatically receive full Medicaid health care benefits and are usually eligible for food stamps and energy assistance. A family of three (one parent and two children) with no outside income could receive an AFDC grant of \$184 and \$185 in food stamps.

The food stamp program helps families and individuals whose low income threatens their ability to maintain minimum nutritional standards for good health. This assistance is provided in the form of coupons used to purchase food. To be eligible for the 100 percent federally funded coupons, a household must have income below 130 percent of the federal poverty level for their family size (currently the poverty level is \$9,120 for a family of three). During fiscal year 1986, eligible households received \$758 million in food stamps and there was an average of 407,069 cases per month. Administrative costs of the program are split evenly with the federal government, and were \$ 8.4 million in fiscal year 1986. Throughout much of the state, individual workers can determine eligibility for AFDC, food stamps and, in some cases, Medicaid benefits.

The department also administers a food program for children and aged and disabled adults who otherwise might not receive needed nutrition. Surplus food is donated by the U.S. Department of Agriculture and is distributed to individuals and families through non-profit organizations. The program is 100 percent federally funded, however, administrative funds received have been insufficient for an entire fiscal year and are supplemented by state funds.

#### Health Care Services

This program provides comprehensive health care services to Medicaid-eligible aged and disabled individuals, AFDC families, foster care children, and certain other eligibility groups which meet income and resource requirements. Medicaid services are provided only after Medicare, personal insurance and other third-party resources are used. Payments for medical services to clients are made directly to physicians and certain other providers by the National Heritage

Insurance Company (NHIC), the department's health insurance contractor. A monthly premium (\$53.67 for AFDC recipients; \$80.82 for Aged and Disabled persons in fiscal year 1986) is paid by the department to NHIC for each person covered by the Medicaid program. Medical services provided and cost control measures are similar to those of other health insurance carriers.

In fiscal year 1985, an average of 17,199 people received inpatient hospital services each month at a cost of \$21,981,913. Another 200,523 clients required the services of a physician each month at a cost of \$13,324,895. Premiums and associated costs for all health care services totalled roughly \$742 million in fiscal year 1985. The Medicaid program is generally funded on a matching basis, with 54 percent paid by the federal government through the Health Care Finance Administration (Title XIX funds) and 46 percent through state appropriations. Administration funds are contributed on a 50-50 or 75-25 federal-state matching basis depending on the function.

In order to control costs, the department and NHIC attempt to identify third-party resources available to the client to pay for medical care. This often necessitates the "recovery" of funds from third-party sources after Medicaid has paid the provider. Other health insurance coverage, workman's compensation and liability settlements from accidental injuries are some examples of third-party resources.

Another program operated through the department's health care services division is the indigent health care program created in 1985 by the 69th Legislature. Through this program, counties must provide basic medical care services to indigent residents who are not covered by any public or private health program. The program provides state funds to help counties meet health care needs of indigent residents and reimburse hospitals which provide a disproportionate share of services to the indigent. Counties and public hospitals are then required to provide certain health care services to indigents.

#### Services to Families and Children

The services to families and children division provides mostly direct services in two basic areas: 1) protective services in cases of child abuse or neglect and in family violence situations; and 2) support services for families to help them attain levels of self-support so department services will no longer be needed.

The largest activity in the protective services area is child protective services. The department is mandated by Chapter 34 of the Family Code to

provide services which protect children from abuse or neglect. The department receives reports of abuse or neglect which are assigned a priority for investigation based on the severity of harm or threatened harm to the child. Investigations of reports involving life-endangering situations are initiated within 24 hours of receipt. When abuse or neglect is indicated, the department may take a series of actions to address the situation. In-home protective services are intended to help prevent recurrence of abuse or neglect through counseling, protective day care and other services. If the situation warrants, temporary foster care can be ordered by the court and provided until the child can be safely returned to the natural family or be placed in a permanent setting. When a child cannot be safely returned to the natural family, a court can terminate parents' rights and the child receives adoption services.

Protective services were provided by a staff of 2,600 workers throughout the state who investigated some 71,000 cases of abuse and neglect in fiscal year 1986. An estimated \$79 million was spent on child protective services (73 percent federal; 27 percent state) and \$29.3 million on payments for foster care (27 percent federal; 73 percent state) in fiscal year 1986, with an average of 4,853 children in foster care each month.

Other protective service programs operated include Alternative Treatment for Youth (\$1.7 million; 100 percent state) which provided treatment for 164 emotionally disturbed and delinquent youth in fiscal year 1986; Truant and Runaway Services (\$2 million, 100 percent federal) which served 4,341 youth in 16 emergency shelters for runaways; and Family Violence Services (\$2.4 million, 90 percent federal, 10 percent state) helped support 46 family violence shelters in Texas which served 21,715 clients in fiscal year 1986.

Family self-support services include family planning, child day care, preventive health care for children, employment assistance and temporary emergency relief services. An estimated \$25.2 million was spent on family planning services in fiscal year 1986 (about 93 percent federal through two federal funding sources; seven percent state) which served approximately 246,000 clients. Unplanned pregnancies impact both the families and government services. For example, national statistics indicate that 31 percent of births to teenage mothers are paid for by Medicaid, and some 60 percent of AFDC mothers have their first child when they are teenagers. In 1985, almost 50 percent of all AFDC children dependent on welfare were born out-of-wedlock. Family planning services available through the

department enable individuals to voluntarily limit family size, space their children, or prevent out-of-wedlock births.

Preventive health care for children is provided through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. The program provides periodic medical and dental check-ups and follow-up treatment for Medicaid eligible children. Problems that are identified early can be more safely and cost effectively treated. For fiscal year 1986, 80,497 medical screens and 110,916 dental treatments were conducted at a cost of \$17.8 million (54 percent federal; 46 percent state).

Child day care services are primarily provided to children receiving protective services and children of parents receiving employment services. An average of 12,443 children receive day care each day at a total fiscal year 1986 cost of \$32.7 million (100 percent federal).

The department's employment service activities are intended to help AFDC clients become self-sufficient. Services are provided to AFDC recipients directly by the department and through contracts with public and private agencies. These services include employability assessment, pre-employment preparation classes, job search activities, job development, placement, and support services such as transportation and day care. Food stamp recipients are provided specialized job search assistance through a contract with the Texas Employment Commission. The department also works with the Texas Department of Community Affairs to help AFDC recipients receive job training through the federal Job Training Partnership Act program. Almost 35,000 AFDC and Food Stamp clients entered employment through all the above programs in fiscal year 1986 at a cost of about \$15 million (61 percent federal, 39 percent state). For 1985, the department estimated that 15,967 AFDC employment placements resulted in net state and federal savings of approximately \$45 million in AFDC, Medicaid and Food Stamp payments as these recipients were no longer eligible for these services.

The Temporary Emergency Relief Program (TERP) is operated jointly with the Emergency Nutrition program created through the Texas Omnibus Hunger Act in 1985. These programs, through cooperative agreements with county commissioners' courts, other political subdivisions, and private non-profit organizations, provide food, utilities, housing, and clothing to needy people throughout the state. Direct cash assistance is not allowed. The state allocations to counties in fiscal year 1986 ranged from \$1,000 to \$100,000 with an average of \$4,533 which was

matched on a 50-50 basis by the community. A total of \$1,151,500 was distributed through the combined programs in fiscal year 1986 and reached some 63,600 clients.

### Licensing

The department's licensing activities include regulation of day care centers, family day homes, 24-hour child care facilities and administrators, and child placing agencies. The purpose of these activities is to protect the health and safety of children under the care of a person or facility outside their own home.

Day care regulation essentially falls into two categories. Day care facilities which care for 12 or more children are required to obtain a license and are inspected for compliance with standards set in department rules. Family day homes which generally take care of 12 or fewer children must register with the department, but are not inspected unless there is a problem with the application or a complaint is received. Three hundred thirty-four licensing staff are located throughout the state to administer the program, inspect facilities and respond to complaints. Approximately 7,537 day care facilities were licensed and 21,700 family homes were registered in 1986. Twenty-four hour child care institutions and child-placing agencies are also licensed. There are currently 439 such institutions in the state which are inspected at least once a year, and may be visited more often in response to complaints. The cost of these activities in fiscal year 1986 was \$8.3 million (27 percent state, 73 percent federal). Fees are required for all facility licensing and registration, with \$1.3 million in revenue received in fiscal year 1986.

The Human Resources Code (Sec. 43.003) requires the licensing of all administrators of 24-hour child care institutions. The licensing program evaluates the qualifications of persons to be administrators, issues biennial licenses and renewals, and investigates complaints against licensed administrators. There are currently 550 licensed administrators in Texas, and only three complaints were investigated in fiscal year 1986. Licensing fees are \$75 for new licenses and \$50 for renewals. Approximately \$15,000 was collected through fees in fiscal year 1986.

The approximately 8,000 social work practitioners in Texas are also certified through a program which pays for itself through fees. The program has a separate sunset date and is scheduled to be considered in 1989.

### Services to Aged and Disabled Persons

To meet the needs of a growing population of elderly and disabled people, the department provides a variety of medical and social services which can often be tailored to an individual's particular needs. The department's philosophy is to design programs which prolong independence as long as possible by providing services in the least restrictive appropriate setting. In addition to medical and social services, the department provides protective services for aged and disabled adults who are abused, neglected, or exploited.

To qualify for community care or institutional services, an aged or disabled person must have a demonstrated need for the service and meet the financial eligibility requirements. Need for service is determined through functional and medical assessments of the person's condition. Financial eligibility is based on resources and income. To be eligible for these Medicaid services, resources could not exceed \$1,700 and income could not exceed \$670.20 per month in 1986.

When institutional care is needed, services are provided through skilled nursing facilities (SNF) and intermediate care facilities (ICF). These facilities receive Medicaid vendor payments based on the level of nursing and medical care needed. The maximum payments are \$32.73 per day for most of the ICF patients and \$44.05 per day for the SNF patients. In fiscal year 1986, the average number of ICF recipients was 51,263 per day, while the SNF average was 2,882 recipients per day. Expenditures for fiscal year 1986 were \$425,775,580 for ICF's, and \$37,655,285 for SNF's (54 percent federal, 46 percent state).

Institutional care is also provided to needy mentally retarded people in three levels of intermediate care facilities for the mentally retarded (ICF-MR). The program is administered through the involvement of TDHS, TDMHMR, and TDH. An average of 3,856 clients per day received care in 160 community-based ICF-MR facilities at a cost of \$66.5 million in fiscal year 1986.

Mentally retarded and developmentally disabled Texans who are eligible for Medicaid also receive care in state institutions. About 8,619 recipients per day were served in state schools and state centers in fiscal year 1986.

The department's vendor drug program pays participating pharmacists for drugs dispensed to persons who are medically and financially eligible for Medicaid, excluding state school residents. The drugs must be medically essential to health care, and there is a limit of three paid prescriptions per month, per recipient. An estimated 7.2 million of these prescriptions were filled in fiscal year 1986 through

3,490 contracted providers (pharmacies) at a cost of \$108.4 million (54 percent federal, 48 percent state).

Under a 1975 federal court order, the department must ensure the availability of non-ambulance transportation for Medicaid eligible recipients to and from allowable medical care. Such transportation is available throughout Texas through competitively procured department contracts with local taxi companies, city and county governments, private corporations, volunteers and other community and service organizations. Medicaid recipients in nursing homes receive transportation from the nursing home provider as required in the home's Medicaid contract. Estimated expenditures for 1986 were \$4.7 million for 705,800 trips to obtain medical care.

The department provides a number of community care services to help low-income elderly and disabled people with chronic health conditions remain at home or in community settings. An array of in-home and out-of-home services are provided to avoid premature, costly nursing home placements. Expenditures for fiscal year 1986 were \$150.5 million with 51,920 clients receiving services. Of these clients, 50,190 received in-home services.

Family care services help functionally limited elderly and disabled adults with personal care activities, housekeeping tasks, meal preparation, and escort services. The department contracts with licensed home health agencies to provide these services to individuals for up to 20 hours per week. Those who are functionally limited due to chronic health problems may receive up to 30 hours a week of primary home care. This care must be prescribed by a physician and is supervised by a registered nurse. These services are also provided through licensed home health agencies.

Emergency response systems help aged or disabled clients deal with emergencies by providing quick response from volunteers through an electronic monitoring and remote telephone calling capability.

The department contracts for congregate and home-delivered meals through community-based provider agencies. Meals are provided in a central location or a client's home and are approved by a registered dietician or nutritionist.

One other in-home service is the shared attendant care program. It is targeted to the needs of younger physically disabled people who need personal help and transportation to maintain living situations in the community. In fiscal year 1986, 129 clients received shared attendant services in three areas of the state.

Out-of-home services are available to those who can no longer live alone, but their impairments are not severe enough to warrant institutional care. Adult foster care provides supervision and assistance with daily living to about 600 eligible adults in 24-hour living settings. The supervised living program provides care to about 600 clients who require access to services at all times, but do not require daily nursing care. All day-to-day needs are provided in facilities that range from apartments to converted nursing homes.

The day activity and health services program provides social and nursing services in adult day care facilities to about 800 clients per month. These services are available at least 10 hours each weekday and can provide respite for clients' families. One other program, special services for the handicapped, provides counseling, personal care, and help with the development of skills needed for independent living for about 500 clients per month.

Adult protective services are provided to elderly or disabled persons who may have been abused, neglected, or exploited. Services are provided to clients without regard to income and on a voluntary basis, unless the person is found to be in a life-threatening situation and a court finds that the client lacks the capacity to consent to service. In confirmed adult protective services cases, the staff assist the client in remedying the situation. This may include removal from the home, provision of supportive services and counseling with the client and their family. In fiscal year 1986, approximately 13,500 investigations were conducted by the department with \$6.8 million (95 percent federal, 5 percent state) expended on the program. Reports of abuse or neglect in nursing homes are investigated by the Texas Department of Health which licenses these facilities.

#### Other Programs

The energy assistance program provides one summer and one winter utility assistance payment per household whose gross income is below 120 percent of the poverty level. Payments reflect average residential utility costs, vary by household size and income and are sent directly to the utility company whenever possible. The 100 percent federally-funded program expended approximately \$34.2 million in payments to over 300,000 households in fiscal year 1986.

The disaster assistance program provides a one-time assistance grant of up to \$5,000 to victims of a major, presidentially declared disaster. Assistance is intended to help victims meet necessary expenses for which insurance or other governmental assistance is either unavailable or inadequate. Only one disaster, a

tornado in Nolan county, occurred in fiscal year 1986. As a result, 325 grants were made at a cost of \$1,034,268 (75 percent federal, 25 percent state). The average grant was \$3,000.

The refugee assistance program is a 100 percent federally-funded activity which provides assistance to eligible refugees and immigrants to enable them to become self-sufficient. The program provides temporary financial, medical, and social services, as well as other assistance, such as courses in English as a second language, job training, and employment services. These services help refugees enter the economic mainstream. An estimated 1,800 recipients per month received services and \$9.8 million was expended in fiscal year 1986.

The department also conducts special projects which look at methods of improving their service delivery systems. One example is the long-term care case mix project which is examining the department's reimbursement system for nursing homes. These projects are 98 percent federally funded. Approximately \$3,723,000 was expended on these projects in fiscal year 1986.

#### Agency Administration

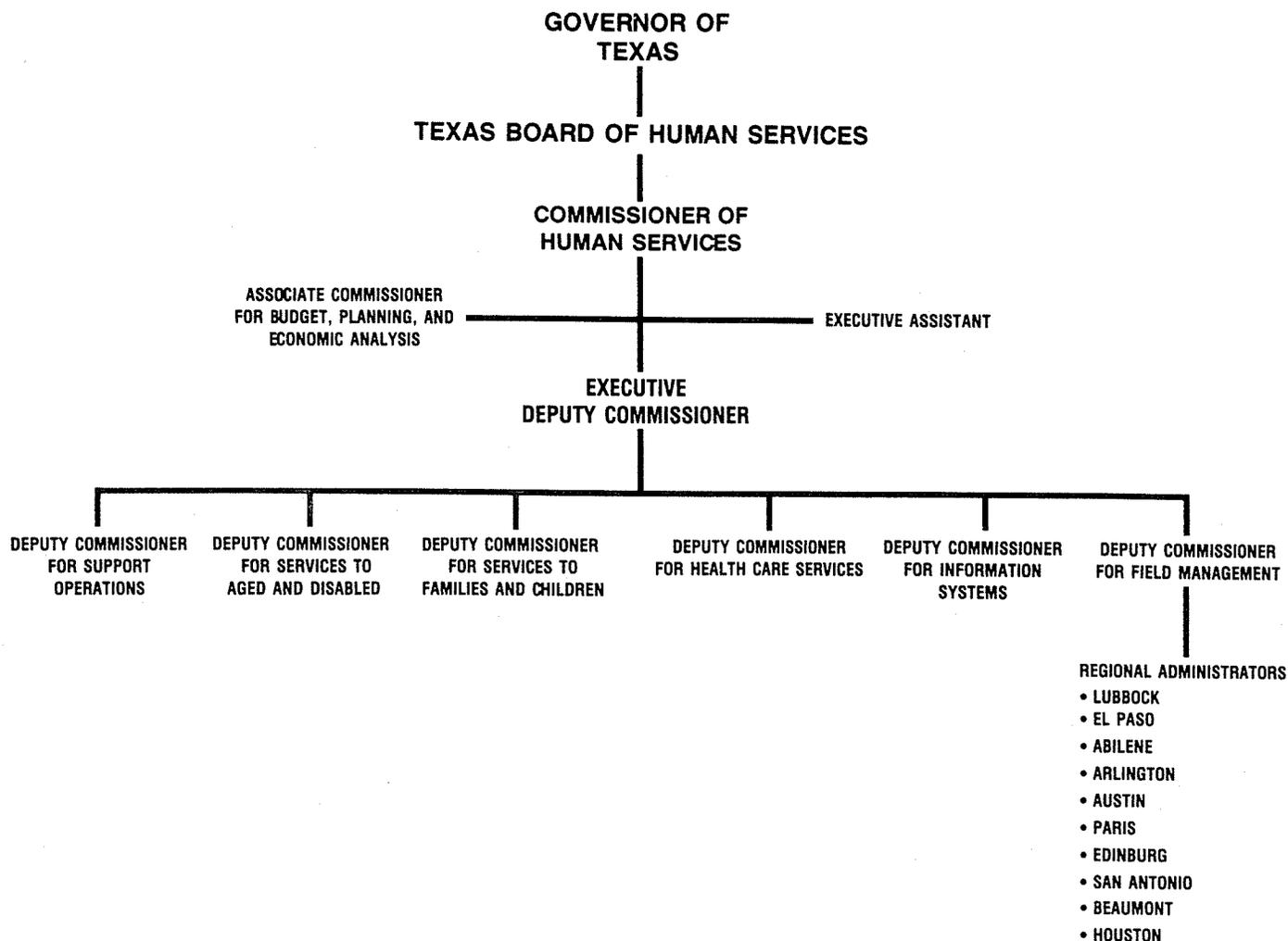
The department's central management support services provide executive administration and leadership so that the department can perform its statutory responsibilities, and develop and implement policies and procedures for the delivery of services to all clients. (Exhibit 5 illustrates the major components of the department's organizational structure). The program provides assistance to the three-member Board of Human Services as needed and provides for the operation of the functions of the commissioner's office, deputy commissioners and central support services.

Central management support staff provide executive direction, legal services, audits and investigations, fiscal and reporting services, training, public information and other support services. During fiscal year 1986, there were 528 employees in central management support with a fiscal year expenditure of \$19.3 million (56 percent federal, 44 percent state).

Field management services provides coordination at the regional level of department programs and administration. This activity provides overall planning, direction, monitoring, and support of service delivery activities at the regional level; a hearings process to review appeals regarding client services and to conduct audits and fraud investigations; and executive direction and leadership through 10 regional administrators and support staff. During fiscal year 1986, there were 632

Exhibit 5

# Texas Department of Human Services State Office Organization



employees in field management support with a fiscal year expenditure of \$19.3 million (61 percent federal, 39 percent state).

The office for information systems plans, organizes and manages the department's manual and automated information systems. This includes the automation needs for service delivery programs as well as statistical support for management functions. Information about each application for service is entered by caseworkers into a system called "WeNet". The system ensures that caseworkers obtain all needed information, simultaneously processes eligibility determinations for AFDC and food stamps, and prints needed information for the case file. The office also works with department users in designing, developing, implementing, and maintaining automated information processing services. During fiscal year 1986, 451 staff were involved in this program, and fiscal year expenditures were \$23.2 million (55 percent federal, 45 percent state).

One final area of department activity involves renovations of rent-free office space and capital outlay for needed equipment. In fiscal year 1986, \$4,500,066 (12 percent federal, 88 percent state) was spent for this activity.

#### **Scope of Sunset Review**

The size of an agency like the Department of Human Services dictates a need to carefully select areas for review. To determine these areas, a number of activities were undertaken:

- overview discussions with top agency staff based in Austin;
- site visits to seven of the agency's 12 regions;
- work session and discussions with interest groups and persons knowledgeable of the agency;
- review of past legislative issues and relevant evaluation studies and reports.

These activities yielded an understanding of the general objectives of the agency's programs and the problems faced by the staff of the department and the recipients for whom its services are designed. The problems identified are numerous but generally divide into problems that can be addressed through increased funding and those that can be addressed through efforts to maximize the use of current systems and dollars.

The problems that can be addressed through increased dollars are generally a result of the state's historical, conservative approach to the provision of human

services. The board chairman's "statement" in the agency's budget request for the 1988-1989 biennium clearly points out the magnitude of the need and the state's general ranking among all states regarding the funding of human services. In fiscal year 1985, for example, less than 22 percent of the child poverty population in Texas was covered by the AFDC program; Texas ranked 46th among the states in the level of financial assistance to dependent children; and Texas ranked 45th in per capita total Medicaid expenditures.

The review of the agency indicated other needs:

- In July 1986 more than 2,200 persons were on waiting lists for in-home Community Care Services designed to prevent or delay institutionalization. The department estimates these waiting lists will grow to over 5,000 people in fiscal year 1988 and 6,900 in fiscal year 1989. Serving these people would cost \$11.8 million state dollars in fiscal year 1988 and \$16.7 million state dollars in fiscal year 1989.
- The income eligibility cap for Medicaid Nursing Home care is \$670.20 (FY 1987) per month while the average cost of a nursing home is estimated to be over \$1,000 per month. This gap between earning ability and purchasing power leaves many people ineligible for Medicaid nursing home assistance but unable to pay for nursing home care. Adjusting the cap to meet the average cost of nursing home care would require an additional \$6.6 million state dollars in fiscal year 1988, and \$12.7 million state dollars in fiscal year 1989. It takes four full years to reach the full impact of adjusting the cap to the maximum. In fiscal year 1992, the state dollar cost would reach \$15.0 million.
- The AFDC grant level average is \$57 per month per recipient which meets 32 percent of the state established need standard. Raising this average payment to \$68 in 1989 (to meet 35 percent of the need standard) would cost \$31.4 million in additional annual state dollars.
- Medicaid health service benefits are only available for four months after an AFDC recipient obtains a job and no longer receives AFDC payments. This is often viewed as a disincentive for former recipients to stay employed, since most jobs available to recipients are generally low paying and do not provide health care benefits. Extending medicaid benefits to twelve months after leaving AFDC when obtaining a job would reduce disincentives to employment at a cost of \$15.4 million additional state dollars for fiscal year 1989.
- Only 35 percent of the families in which abuse and neglect of children has been confirmed are provided services beyond the initial investigation. Providing services to families with an identified need for on-going services would require an additional \$4.2 million in state dollars in fiscal year 1988 and \$6.1 million state dollars in fiscal year 1989.

All of the above areas of need are worthy of attention and many have been addressed in the department's biennial budget request to the 70th Legislature. The Sunset review of the agency, however, focused on trying to solve the second type of problems -- those that can be addressed through better use of existing resources.

The recommendations developed by the commission are the result of using a focus or theme that identified problems for which there are solutions that involve modifications to existing systems without the need for significant additional funding. In many cases, the solutions proposed will actually save the state money or allow it to expand services without additional dollar resource demands.

### **Need to Continue Agency**

As a part of developing the recommendations, the need for the agency's programs was analyzed and the review indicated a continuing need for state involvement in these areas. The department is fulfilling the purposes for which the programs were created and should be continued for a 12-year period. If the department is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. The recommendations regarding these changes are summarized as follows.

**Sunset Commission Recommendations for the  
TEXAS DEPARTMENT OF HUMAN SERVICES**

**CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

**Board Qualifications**

- 1. The board member requirement for experience as an executive or administrator should be deleted. (Statutory)**

This change would remove an outdated provision and allow the governor to appoint any qualified member of the general public to the board. In addition, the qualification for the person to have a demonstrated interest in and knowledge of public welfare should be updated to use the term "human services".

**Senate Confirmation of the Commissioner**

- 2. The statutory requirement that the commissioner of the department be confirmed by the senate should be removed. (Statutory)**

Removing the statutory requirement that the commissioner be confirmed by the senate removes a potential conflict with the Texas Constitution and aligns the appointment process with practices of other state agencies.

**Use and Structure of Advisory Committees**

- 3. Clear statutory directives concerning the department's use of advisory committees should be developed. (Statutory)**

The department actively uses advisory committees but there is a lack of statutory directive concerning their structure and relationship to the board. Several actions are needed: 1) develop clear statutory authority to use and appoint advisory committee; 2) clarify that the board appoints the membership upon recommendation of the commissioner; 3) require that each committee have a balanced composition that represents the viewpoints of providers, consumers and other groups or persons with knowledge and interests in the committee's field of work; 4) require the board to specify each committee's purpose; 5) require the board to specify how the committees are to report to the board; 6) require that appropriate committee(s) have opportunity to comment during the development of rule changes and prior to final adoption except in emergency situations; 7) require reimburse-

ment of committee members to be established in accordance with the appropriation act.

#### **Changes in the Medical Care Advisory Committee**

- 4. Statutory language governing the composition and appointment of the Medical Care Advisory Committee should be modified. (Statutory)**

The current composition of the Medical Care Advisory Committee has an unbalanced representation of providers (23 providers to four consumers) which needs adjustment to provide for greater consumer representation. The size of the committee is unusually large compared to other committees (29 compared to an average of less than 13 for the other committees). The statutory appointment process also needs to be brought in line with current practice to allow the board to appoint upon recommendation of the commissioner.

#### **Merger of Two Advisory Committees on Child Care**

- 5. The department's two advisory committees on child care should be merged. (Statutory)**

Two advisory committees, structured in statute, currently advise the department concerning child care facility standards and child care administrator requirements. It appears one committee could address both kinds of issues and reduce time demands on department staff.

#### **Issues Concerning Services to Disabled Persons**

- 6. The following efforts should be made to address concerns related to the state's delivery of services to disabled persons:**
  - the TDHS Advisory Committee on Services to Aged and Disabled Persons should be directed to examine issues and develop a report related to the department's services to disabled persons;
  - the department should enter into a memorandum of understanding with the Texas Rehabilitation Commission, the Commission for the Blind, the Commission for the Deaf, the Department of Mental Health and Mental Retardation, the Texas Education Agency and the Department of Health to facilitate the coordination of services to disabled persons;
  - the Council on Disabilities should be directed to review the current array of services for disabled persons and develop

**recommendations concerning the role the Department of Human Services should play in the state's efforts to serve disabled persons (Statutory)**

Many state agencies provide services to disabled persons. In recent years, the Department of Human Services has been able to expand services for disabled persons and begin serving them in multi-faceted community based settings, rather than institutional settings. This expansion of services has been beneficial but has begun to blur the lines of responsibility between the many agencies that have, in the past, been established to serve persons with specific disabilities. Certain concerns have also been raised relating to the department's internal efforts to collect data and information concerning its services to disabled persons, its efforts to receive and refer requests for services designed for disabled persons, as well as the affect of its organizational structure in maximizing the services it has to offer disabled persons. To address these concerns it is appropriate to initiate the efforts outlined above and have the work of the department's advisory committee provided to the commissioner and board for consideration in its 1990-91 budget request. This report and the Council on Disabilities report should be submitted to the 71st Legislature (February 1, 1989) for appropriate action. The memorandum of understanding mentioned above should be developed by January 1988. These actions will provide a basis for better coordination of existing services and an examination of future changes that may be necessary to improve the department's and state's structure for delivering services to disabled persons.

**Overall Administration**

**Maximizing Third Party Resources**

- 7. The department should be authorized to match Medicaid recipient data against Workers Compensation claims information to identify private insurance coverage. (Statutory)**

Data matches with the Texas Employment Commission and other state agencies have proved useful in identifying third party resources which can be used to reduce Medicaid outlays. The match against Workers Compensation data is currently prohibited by law. Removing this restriction and using the data match is estimated to reduce Medicaid outlays up to \$168,000 per year.

- 8. The department should be authorized to obtain insurance payments directly from the insurance companies of absent parents of AFDC recipients. (Statutory)**

The department needs clear authority to recover Medicaid expenses for care provided to a child when a parent without custody provides health insurance. The attorney general's office is working to ensure that court orders require non-custodial parents of children on Medicaid to provide insurance for the children whenever employment related insurance is available. When fully implemented in fiscal year 1989, it is expected that these changes will enable the department to recover \$1,332,450 over and above its current annual recovery level in this area.

- 9. The department should examine all accident and trauma Medicaid claims over \$500. (Non-statutory management improvement)**

The department currently examines Medicaid recipient accident and trauma claims over \$1,000. With improved management techniques it appears the department could examine all such claims over \$500 and recover an additional \$100,000 per year from liability settlements related to accidents suffered by Medicaid recipients.

#### **Estate Recovery from Medicaid Recipients**

- 10. The Human Resources Code should authorize the department to recover Medicaid expenses through liens and from the estates of deceased recipients. (Statutory)**

This practice, in place in 18 states, provides for the recovery of Medicaid outlays from the estates of deceased recipients. Preliminary estimates indicate that several million dollars could be recovered from such estates. The TDMHMR already uses this process and recovered over \$2 million in fiscal year 1985. Federal law governing the Medicaid program outlines that recovery can be made from an estate only if the deceased person has no surviving spouse and no dependent or disabled child.

- 11. The Probate Code should be amended to give the department priority as a claimant against the estate of a deceased recipient. (Statutory)**

In addition to the change recommended above, it appears useful to amend the Probate Code to place the department above common creditors in the priority order established for estate division. This change would establish a separate category for the department following claims for taxes, penalties and interest and

establish a priority for payment of publicly funded services. This structure is similar to those used in other states that are active in recovering Medicaid outlays from estates.

### **Public Awareness of Department Programs**

**12. Memoranda of understanding should be developed to provide for distribution of public awareness information. (Statutory)**

Several state agencies the (Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission) have local service delivery components which serve clients who are potentially eligible for services from other state agencies. Having these agencies develop a written understanding with the department for the sharing and distribution of information regarding their various services should help persons obtain a continuum of services for which they may be eligible.

**13. Contracts with service providers should allow the department to require contractors to display public awareness information. (Statutory)**

The department contracts with a wide variety of service providers including doctors, hospitals, etc. These providers may also serve clients who are potentially eligible for services from the department but are unaware of these services. The department should add a clause to appropriate contracts allowing the department to display public awareness information in locations best suited for reaching potential service populations.

### **Contracts for Services**

**14. The statute should require the department to perform a competitive review of the commercially available management and support activities it performs to determine whether the same service could be purchased at a reduced cost and whether appropriate quality and performance standards can be assured. Such review should be in compliance with the process established by the 70th Legislature for the competitive review of state services. (Statutory)**

This would require the department to review the management and support activities it performs which are commonly performed by the private sector to determine whether these activities could be purchased at a lower cost than the state can perform them. These activities include transportation, printing, jani-

torial services, and facility, vehicle and grounds maintenance. The process recommended for the competitive review is modeled after the federal government's Circular A-76 requirements, which have resulted in savings and increased fiscal accountability. It will require the department to conduct a management study of its activities, determine any efficiency measures that will be taken if the activity continues as an in-house operation, develop bid specifications for the activity, and estimate the total state cost to provide the activity directly. The State Purchasing and General Services Commission (SPGSC) will then advertise the bid specifications, accept bids from qualified bidders, compare the bids and the in-house cost estimate to determine the lowest and best bid, and notify the department of the outcome of the cost comparison. Based on the State Purchasing and General Services Commission's determination, the department would either contract the service or modify operations consistent with the in-house bid. A newly formed competitive Review Council will oversee of the process. The state auditor's office and SPGSC will provide an independent staff to evaluate bids and ensure that the estimates of the state's cost of providing the service are accurate. The competitive review process should have a sunset date of September 1, 1991.

#### **Internal Audit Independence**

- 15. The department's statute should be amended to require the Inspector General to report to the chairman of the Board of Human Services for the purpose of accomplishing internal audit functions of the department. (Statutory)**

This change is intended to provide a structure that ensures the independence of the Inspector General in the performance of internal audit functions. For all other functions, the Inspector General would report to the Commissioner.

#### **Range of Sanctions for Medicaid Fraud**

- 16. The Human Resources Code should be amended to allow the department to levy administrative penalties against providers involved in Medicaid fraud. (Statutory)**

The state has a range of sanctions to deal with Medicaid fraud. These sanctions include criminal proceedings that are conducted by the Attorney General's Medicaid Fraud Unit, certain administrative proceedings the department can instigate to exclude providers from the program and civil penalty measures that can be instigated by the federal government. On the average, the federal civil penalty proceedings have taken over one year to complete, with one case taking two years

and four months. Allowing the department to levy the penalties administratively appears to offer a more timely alternative to implement this important sanction.

#### **Enforcement Guidelines for Contractors**

- 17. The department should develop enforcement guidelines relating to service delivery standards required of persons who contract with the department. Such guidelines should be applied consistently across the state. (Statutory)**

The department has developed service delivery standards which provide contractors notice of the type and extent of services the department expects to be delivered. Efforts to evaluate contractor performance, however, can vary between the department's regions. This variation has caused difficulty for some contractor groups and should be rectified through the adoption by the department of enforcement guidelines to be applied consistently across the state.

#### **Notice to Contractors of Changes in Standards**

- 18. The department should notify contractors of changes in or interpretations of service delivery standards at the same time it notifies its regional offices. (Statutory)**

The department, in its primary home care program, notifies its regional offices of changes in or interpretations of service delivery standards. The regional offices are then responsible for notifying the contractors in their region of the changes. This is unlike the procedure used in the nursing home program and has resulted in primary home care contractor noncompliance with standards due to lack of notice concerning changes in the standards. Requiring notice to be sent to the contractors and the regional offices at the same time should help prevent such noncompliance problems in the future.

#### **Report to Board of Medical Examiners**

- 19. The department should be required to notify the State Board of Medical Examiners of any allegations of violations of Sec. 3.08, Art. 4495b, V.T.C.S., directed at physicians under contract with the TDHS. The department should also be required to supply the board with a copy of any investigation report regarding these allegations. (Statutory)**

The department contracts with physicians for medical services. Requiring the department to report to the Board of Medical Examiners concerning problems could lead to revocation of or refusal to review a license of a physician and should improve the board's ability to regulate physicians in the state.

## Evaluation of Programs

### Definition of Child Abuse and Neglect

- 20. The Family Code should include definitions of child abuse and neglect. (Statutory)**

Every state except Texas has definitions of child abuse and neglect in their child abuse laws. Defining these terms in Texas' statute would clarify when a person can be prosecuted for failure to report abuse or neglect, aid the public in more accurately reporting child abuse and neglect, and give the department a clearer mandate as to what should be investigated as child abuse or neglect.

- 21. The department should be authorized in statute to prioritize the investigations of child abuse and neglect within available resources. (Statutory)**

Recognizing that the number of child abuse and neglect reports may exceed the department's investigative resources, the department should be given the authority in statute to prioritize investigations based on the severity and immediacy of harm alleged to a child. This will ensure that the department's resources are focused on the children most in need of protection, and clarify the false expectations that the department investigate every report it receives regardless of severity.

### Changing Requirements for Physical Examinations

- 22. Physical examinations of all children in a home where a child has allegedly been abused or neglected should be optional, however, the department should be authorized to obtain medical examinations of these children when necessary. (Statutory)**

This change will amend the statute to allow caseworkers to physically examine all children in a home where a child has allegedly been abused or neglected only when necessary, and to obtain medical examinations of these children on an as needed basis. The department does not routinely obtain medical exams now due to the cost, although the statute is unclear as to whether these exams are required.

### Protection of TDHS Employees

- 23. The department should be authorized to reimburse adult or child protective service employees for legal expenses up to \$10,000 per employee incurred in criminal actions arising in the course of good faith performance of their duties. (Statutory)**

Adult and child protective service employees of the department are personally responsible for all legal expenses resulting from criminal prosecution for

misfeasance or nonfeasance in the performance of their jobs. This change in the statute would allow the department to reimburse these employees up to \$10,000 from existing funds for these costs when and only if there is a finding of not guilty or the charges are dropped.

#### **Improving Child Abuse and Neglect Investigation Procedures**

**24. Procedures to better protect and clarify the rights of persons being investigated by the department for alleged child abuse or neglect should be implemented. (Statutory)**

The department currently has certain procedures it follows in conducting an investigation, however, the review determined that these procedures should be improved. First, the department should develop and provide to all persons being investigated a brief written summary of the procedures involved in an investigation of child abuse or neglect and their right to a review of the findings. Second, the department should develop formal rules establishing procedures for the resolution of complaints, and for the administrative review of a case if a person feels he or she has been treated unfairly or disputes the department's findings. Finally, the Office of Youth Care Investigations should be authorized to review complaints that cannot be resolved through the department's internal review process. These procedures will better ensure that persons under investigation are aware of the investigative process and their rights under the system.

#### **False Reports of Child Abuse or Neglect**

**25. Knowingly making a false report of child abuse or neglect should be a Class B misdemeanor. (Statutory)**

Currently, there is no penalty in statute for intentionally making a report of child abuse or neglect that a person knows is false. Particular concern has been expressed regarding false allegations of child abuse made in connection with divorce or custody disputes. Knowingly false reports of child abuse tie up TDHS staff in unnecessary investigations and reduce the number of staff available to investigate bona fide reports of child abuse or neglect. This recommendation makes such false reporting a criminal offense.

#### **Clarification of Provisions Regarding Liability in Child Abuse Investigations**

**26. Immunity from liability should be extended to persons assisting in the investigation of alleged child abuse or neglect. (Statutory)**

Currently, the statute provides immunity from civil or criminal liability for persons reporting alleged child abuse or neglect unless the report is made in bad faith or

malice. This recommendation clarifies that this same protection extends to persons assisting the department or law enforcement in the investigation of child abuse, unless the assistance is made in bad faith or malice.

**Clarification of State Agencies' Responsibilities Concerning "Out-of-Home" Child Abuse and Neglect**

- 27. Out-of-home abuse or neglect should be included under the statutory requirements for the reporting and investigation of child abuse and neglect. (Statutory)**

This will clarify in statute that the requirement for reporting child abuse and neglect applies not only to "in-home" abuse of children by their parents, but also any "out-of-home" abuse or neglect by persons responsible for a child's care such as an employee or volunteer in a child care facility. Employees will often only report such incidences to their supervisors, with the expectation that the supervisor will take any necessary action. Reporting to the appropriate state agency will ensure that a full investigation is made, and that local law enforcement officials are properly notified.

- 28. State agencies should have full responsibility for the investigation of alleged abuse or neglect in facilities they operate, license, certify, or register for the care of children, and should adopt and publish formal rules governing how these investigations will be conducted. (Statutory)**

Currently, it is unclear if the TDHS or the state agency that operates, licenses, certifies, or registers a child care facility is responsible for investigating any alleged abuse or neglect. This recommendation clarifies that it is the responsibility of the state agency which operates, licenses, certifies or registers the child care facility to investigate abuse in these facilities, and requires formal published rules concerning these investigations. Due to the potential for a conflict of interest, investigations conducted by a state agency in facilities they directly operate will be overseen by the Office of Youth Care Investigations (OYCI). Because there is no similar potential for a conflict of interest in facilities licensed, certified, or registered by a state agency, these investigations will not be routinely overseen by the OYCI, but the OYCI will investigate any complaints concerning investigations conducted by one of these agencies. The OYCI would be required to execute a memorandum of understanding with these state agencies to clarify each agency's responsibilities.

**29. The functions of the Office of Youth Care Investigations should be modified and placed in the attorney general's office. (Statutory)**

The Office of Youth Care Investigations (OYCI) currently oversees investigations of child abuse or neglect in facilities operated or regulated by the state. The functions should be modified to focus on the oversight of investigations in state-operated facilities, and limit OYCI's oversight of facilities licensed, certified, or registered by a state agency to the investigation of complaints concerning the findings of the an agency's original investigation. The office will also be responsible for reviewing complaints related to "in-home" investigations conducted by the TDHS if the complaint could not be resolved through the department's review process. Moving the OYCI from the department to the attorney general's office will help ensure independent oversight by placing the OYCI in an agency that is not included in its oversight responsibilities. The state agencies involved will be required to jointly fund the OYCI by contract with the attorney general's office to ensure continued funding. Any concerns noted by the OYCI will be reported to the policy-making body of the state agency that conducted the original investigation.

**Participation of the TDHS in Independent Adoptions and Child Custody Cases**

**30. The Family Code should direct the courts to use private agencies or individuals to conduct social studies involving independent adoptions or child custody disputes. (Statutory)**

This change would direct the courts to utilize private agencies or individuals rather than department staff to conduct social studies in independent adoptions and child custody disputes. The department indicates there are a number of qualified professionals willing to conduct these social studies. This action would free up protective services staff time that is currently being used to conduct these social studies to more appropriately be used in investigating cases of child abuse or neglect, and would result in direct savings of \$191,000 per year.

**Interstate Compact on Placement of Children**

**31. Texas membership in the Interstate Compact on Placement of Children should be continued with modifications. (Statutory)**

This recommendation would authorize Texas' continued participation in this compact, which coordinates the placement of children out-of-state, with two minor modifications. The first change is to allow the TDHS commissioner to designate an alternate person to attend national compact meetings, when he is unable to attend.

The second change is to require the department to file public notice of the national compact meetings. Participation in the compact expedites the placement of children who are being placed out of Texas and ensures that financial responsibility for these children is clearly established prior to placement.

#### **Increased Use of Federal Funds for Child Care**

- 32. The Family Code should be amended to allow The Department of Human Services and the Texas Youth Commission to obtain federal funding for IV-E eligible children under the TYC's care. (Statutory)**

Title IV-E provides federal funds for children removed from their home by the courts and placed in foster care. Traditionally, these funds were intended for the child welfare population, however, this recommendation would make it possible to utilize these funds for certain delinquent children. Preliminary estimates indicate that close to \$1 million in federal funds could be obtained each year through this change, which would offset state funds currently being used to pay for the care of these children.

#### **Better Coordination of Youth Services Could Help Children with Multiple Problems**

- 33. An interagency group should be established under the Health and Human Services Coordinating Council to coordinate youth services at the state level. (Statutory)**

This change will establish a mechanism to address the reduction of fragmentation and overlap of services being provided to youth through five state agencies: the Department of Human Services, the Department of Mental Health and Mental Retardation, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Education Agency. The group will also include a representative of a private sector youth agency and a judge involved in placement of children. This state level coordinating group will analyze each agency's capabilities and authority, identify gaps in services, and facilitate cost-effective use of existing resources by developing means for agencies to "split-fund" services for multi-problem youth. This group will also develop a model for initiating local level interagency staffings of multi-problem youth by January 1, 1988.

- 34. Local level interagency staffings of multi-problem youth should be implemented through a memorandum of understanding between the five state agencies serving youth. (Statutory)**

Local level interagency staffings will help ensure that multi-problem youth are afforded the consideration and services available through a variety of local level agencies including TDHS, TDMHMR, TYC, local school districts, juvenile probation departments, and the private sector. Any of the local level representatives to this group will be able to submit a child's case history for consideration when appropriate services cannot be obtained through one single agency.

- 35. The Health and Human Services Coordinating Council should conduct a study of the costs and benefits of combining youth services in Texas. (Statutory)**

Several states have resolved the problems of coordination by centralizing youth services into a single agency. This recommendation will direct the HHSCC to analyze the merits of how this approach could work in Texas, and report their findings to the 71st Legislature by February 1, 1989.

#### **Statewide Distribution of Program Support and Development Funds**

- 36. A memorandum of understanding should be developed to increase programs for the alternative placement of youth. (Non-statutory management improvement)**

Currently, programs for the alternative placement of delinquent and emotionally disturbed youth are insufficient to meet the growing need for these services. This recommendation provides for a MOU to be developed by TDHS, TDMHMR, TJPC, and TYC to increase programs for the alternative placement of youth and to seek funding to develop such programs on an expanded statewide basis.

#### **Provision of Child Day Care**

- 37. The statute should be amended to clearly authorize child day care as a state service. (Statutory)**

The department currently provides day care under its general statutory authority to provide child welfare services and its authority to administer federal day care programs. Specific statutory authority would signify the importance of day care in the array of services provided by the department.

- 38. The department should conduct a study of the relationship between the provision of child day care and AFDC participation. (Non-statutory management improvement)**

The department is currently able to provide day care to only a small portion of those potentially in need of such services. However, one of the factors that causes some AFDC recipients to remain on the program is their inability to obtain day care for their children while looking for a job, training for a job, or while employed. Further study into this matter can provide cost-benefit information needed in order to expand day care services in areas of need.

**Data Collection Efforts for Employment Programs**

- 39. The department should collect information and conduct studies on the effectiveness of the employment programs it funds or operates. (Non-statutory management improvement)**

The department currently does not collect information on its employment programs sufficient to determine the effectiveness of individual programs. Job placements are only followed for 30 days, and it is not know whether the client returns to AFDC or food stamps after this time. Collecting longer term information is essential to determine which programs are the most successful and should be continued, and which programs need to be changed or discontinued.

**Increased Use of Job Training**

- 40. The Job Training Partnership Act policy statement should include emphasis on serving AFDC recipients. (Statutory)**

This addition to the policy statement in the Texas Job Training Partnership Act will provide clear statutory direction for JTPA programs to serve AFDC recipients in order to reduce dependency on public assistance.

- 41. The State Job Training Coordinating Council should be required by statute to assist local councils in developing programs to serve more AFDC clients. (Statutory)**

This duty fits in with the council's current responsibilities for planning and coordination, while placing emphasis on the need to assist local Private Industry Councils and the TDHS local offices in developing effective programs to train greater numbers of AFDC recipients.

- 42. The Texas Job Training Partnership Act should require that a representative of the local TDHS region serve on each Private Industry Council. (Statutory)**

Lack of communication and knowledge of agencies' differing program requirements can often cause difficulties in developing well-coordinated programs. This approach will increase coordination of employment services on the local level and reduce barriers in providing needed services to AFDC recipients.

#### **Coordination of Family Planning Services**

- 43. The department should enter into a Memorandum of Understanding (MOU) to be adopted as formal rules of each agency with the Texas Department of Health to provide for continuing coordination of Family Planning Services. (Statutory)**

Both agencies, the TDHS and the TDH, use a total of four separate federal funding sources to provide family planning services in the state at an annual cost of more than \$38 million. Standards required by the different funding sources are dissimilar as are provider reporting requirements. It is important that the regional funding allocations used by the two agencies ensure, as best as possible, an equitable distribution of funds throughout the state. The development of a MOU on an annual basis will ensure that efforts to coordinate this complicated program and funding structure are maximized.

#### **Follow-up in EPSDT Program**

- 44. The department should follow up Early and Periodic Screening, Diagnosis and Treatment (EPSDT) screenings and encourage treatment of health problems identified. (Non-statutory management improvement)**

Efforts to follow up and treat childhood medical and dental problems are critical to avoid future expenses in programs such as Medicaid. A recent study indicates that as many as 60 percent of children identified as having medical problems may not have received follow-up diagnosis or treatment. Increased efforts to contact families and encourage the treatment of identified problems should help avoid long-term cost implications.

### Temporary Emergency Relief Program

- 45. The Temporary Emergency Relief Program should be continued and combined with the department's emergency nutrition program. (Statutory)**

The Temporary Emergency Relief Program (TERP) is expected to serve approximately 64,000 persons in fiscal year 1986. Through its local match structure, state dollars can be maximized to serve needy people with non-cash assistance in the form of food, utilities, housing and clothing. The need for such a program is ongoing and future legislative action can adjust the dollars funneled through its structure as economic conditions fluctuate. The emergency nutrition program established by the 69th Legislature is currently administered under the TERP program. These two programs should be combined in the statute.

- 46. The statutory maximum for the TERP fund should be increased to \$7.5 million and all counties should be allowed to participate in the program. (Statutory)**

The maximum level for the fund is currently \$1 million for TERP and 2.5 million for the emergency nutrition program. If the programs are combined, the maximum fund level should be increased to at least \$3.5 million. Increasing the maximum level to \$7.5 million provides the legislature with additional flexibility to determine the funds required to meet the need for emergency services in the state while continuing to provide controls over maximum funding. In addition, although all 254 in the state are currently allowed to request funds and participate in the program there is no assurance that this policy will continue in future years. Requiring in statute that all counties be allowed to participate provides this assurance.

### Regulation of Family Homes

- 47. The department should examine the merits of using family home associations to strengthen the department's regulation of family homes. (Non-statutory management improvement)**

Family homes, on the average, care for fewer than five children and operate out of the homes of the care givers. Concerns were noted through the review that the "registration" approach used to monitor the homes may not go far enough to ensure the safety of the homes and the quality of care provided in the homes. One improvement that could be made is to utilize a self-monitoring approach that capitalizes on the exchange of information that can occur within associations of family homes. Although the associations have no regulatory authority they can

provide a valuable information exchange concerning family home care and an informal monitoring function which can alert the department of problems within the care system. The department should examine whether the activities of such associations can be better integrated with the activities of the registration program and then incorporate needed changes into its approach concerning family homes.

- 48. The Human Resources Code should be amended to limit the number of children in family homes to no more than six and no fewer than three. (Statutory)**

This approach will more clearly focus the aim of the department's program on those homes that are in the business of child care. This focus will also remove confusion that exists now between the need to license group day care homes which care for more than six children and the need to register family homes which will care for six or fewer children.

#### **Flexibility in Child Care Facility Licensure**

- 49. The Human Resources Code should be amended to allow the department to determine if an on-site inspection is necessary for all facilities up for biennial license renewal. (Statutory)**

Currently, the department is required by statute to physically inspect each of 7,000 child care facilities prior to their biennial license renewal. The approach recommended would allow the department to determine if the on-site inspection is necessary based on the compliance record of the facility. This would assist the department in maximizing the resources it has to regulate child care facilities.

#### **Use of Local Prosecutors**

- 50. The Human Resources Code should be amended to authorize local prosecutors to represent the department in suits seeking injunctive relief to close a child placing or child care facility. (Statutory)**

The statute currently does not provide specific authority for local prosecutors to represent the department in injunctive relief suits against child care and child placing facilities. Because of this lack of clarity, some prosecutors have been reluctant to assist the department in these kinds of cases. Providing this specific authority would assist the department when it needs to take legal action against child care and child placing facilities.

### Statutory Structure for Regulation of Agency Group Homes

- 51. The Human Resources Code should be amended to add the definition of "agency group home" as a facility that provides care for 7 to 12 children for 24 hours a day. (Statutory)**

The "agency group home" is a type of facility that did not exist when the licensing statutes were developed in 1975. Since this type of facility now operates, a definition needs to be added to the statute that fits into the department's regulatory program.

- 52. The Human Resources Code should be amended to exempt an agency group home from having to obtain a separate license and provide for the licensing of the facility as part of the child placing agency that operates it. (Statutory)**

Agency group homes actually operate as part of licensed child placing agencies. Therefore, there is no need to license the agency group homes as separate entities.

### Penalty for Abuse of Elderly or Disabled Persons

- 53. Failure to report abuse, neglect or exploitation of elderly or disabled individuals should be a Class B misdemeanor. (Statutory)**

Although persons are now required to report abuse, neglect or exploitation of elderly or disabled persons, there is no penalty for failure to report. The statutes governing the reporting of child abuse impose a Class B misdemeanor penalty for failure to report and it appears appropriate to amend statutes related to elderly and disabled abuse in a similar manner.

### Clarification of Responsibilities for Investigation of Abuse of Elderly and Disabled Persons in State-Operated or Licensed Facilities.

- 54. State agencies should have responsibility for the investigation of alleged abuse or neglect of elderly or disabled persons in the facilities they operate license, certify, or register and should adopt rules for conducting these investigations. (Statutory)**

Currently, the department has statutory responsibility for investigation of elderly or disabled abuse wherever it occurs. Abuse can occur in facilities operated, licensed certified, or registered by state agencies that have formal procedures developed to investigate and resolve such problems. It appears unnecessary to require the department to also investigate in these situations. Agencies affected by this recommendation would be directed to ensure that any alleged abuse is

investigated by those agencies rather than the department. The next recommendation addresses the need for oversight of this investigation process.

**55. The Department of Human Services should review investigations of abuse and neglect of elderly and disabled persons in state-operated facilities and in state licensed, certified, or registered facilities when there is a complaint about the original investigation. (Statutory)**

In connection with the preceding recommendation, the department would receive reports regarding the investigations conducted in state-operated facilities. Upon review of the report or receipt of a complaint regarding the investigation, TDHS would examine the problem or problems associated with the abuse situation. Upon completion of their review, the TDHS staff would report findings and recommendations to the policy-making body of the agency involved for appropriate action. In relation to abuse or neglect problems in facilities licensed, certified, or registered by a state agency, the TDHS would become involved only upon a complaint concerning the agency's original investigation. The department would report any findings and recommendations concerning the situation to the policy-making body of the state agency that conducted the original investigation for appropriate action. To clarify state agency responsibilities in the investigation and oversight processes, the department would be required to execute a memorandum of understanding with the involved agencies.

**Coordination of Mental Retardation Services**

**56. The Department of Mental Health and Mental Retardation and the Texas Department of Human Services should develop a Joint Long-Range Plan for Mental Retardation Services to be presented to the 71st Legislature. (Statutory)**

Many services to mentally retarded persons are paid for through a combination of federal and state funds. Through just one program, the Intermediate Care Facilities for the Mentally Retarded (ICF-MR) Program, Texas received approximately \$166 million in federal match in fiscal year 1986. The program requires close coordination between the TDHS and the TDMHMR to ensure smooth operation and maximization of the receipt of federal dollars. The review indicated, however, that federal dollars have not been maximized and state eligibility requirements are narrowly constructed prohibiting services to many "developmentally disabled" persons who are eligible under the broad federal

regulations governing the program. Solutions to these problems will be difficult to develop since additional state funds to expand the program are scarce. Joint planning efforts between the TDHS, the agency through which the federal funds flow and the TDMHMR, the state's mental retardation authority, should, however, provide an organized forum for the examination of the problems and the development of attendant solutions.

#### **Access to Department's Programs**

- 57. The department should be required to prepare and maintain a written plan that describes how persons that do not speak english or those persons with physical, mental or developmental disabilities can be provided reasonable access to the department's programs. (Statutory)**

Although many state and federal statutes address the issue of physical access to state agency facilities, there is little statutory direction concerning access to state agency programs. To address this area, it is appropriate to require the department to develop and maintain a written plan to examine how program access can be provided to persons who might have difficulty because of a disability or the inability to understand English in gaining the benefit of the department's many programs.

#### **Non-Program Changes**

- 58. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

The Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board recommendations are applied to each agency. The commission adopted the "across the board" provisions as proposed in the staff report on the department.

- 59. Appropriate minor modifications to the Human Resources and Family Codes should be made to correct references to the name of the agency, remove obsolete provisions and simplify the use of one agency fund in the state treasury. (Statutory)**

Discussions with agency personnel concerning the agency and its related statutes indicated a need to make minor statutory changes. These changes are non-substantive in nature and accomplish the objectives mentioned above:

- to update the name of the department in 11 places in the Family and Human Resources Codes;
- to repeal an obsolete provision regarding the department's operation of a "geriatric center"; and
- to remove the dedicated fund statutes of "the commodity distribution fund" in the state treasury.



## TEXAS DIABETES COUNCIL

### Background

#### Creation and Powers

The Texas Diabetes Council was created in 1983 and is currently active. The need for the council was identified in a report to the 68th Legislature conducted by the Special Committee on Diabetes Services in Texas. The special committee was established to examine the services available to diabetics, ways to help prevent the onset of its many complications and ways to better inform the public of the warning signs of the disease. In general, services available through state agencies in Texas for diabetes were found to primarily address the severe complications of the disease such as blindness, heart disease, kidney failure and amputations. However, expenditures for the prevention of diabetes and its complications were limited. A major problem identified in the special committee's report was the lack of a comprehensive state plan for diabetes control and limited availability of affordable educational services which could help to avert the complications resulting from uncontrolled diabetes.

In the committee's final report to the legislature, it indicated that state expenditures for fiscal year 1979 exceeded \$36 million for the treatment and care of Texans with diabetes and complications associated with the disease. It also indicated that hospitalization costs to Texas for which diabetes was listed as the immediate cause surpassed \$72.5 million in 1979.

As a result of the special committee's report, the Texas Diabetes Council was created by S.B. 215 (68th legislative session) to develop and implement a state plan for diabetes control which would achieve better health for diabetics and ultimately reduce the cost to Texas for providing health care services. The first state plan for diabetes control was approved by the council and the governor in 1985 and emphasized that diabetes patient education has proven to be cost effective and is a necessary part of diabetes treatment and care. In addition to its mandate to develop and implement a state plan for diabetes control, the council is required by statute to address a variety of issues affecting health promotion in the state. These include such areas as patient education, public awareness efforts and reviewing expenditures made by state agencies for treatment of chronic diseases.

### **Board Structure**

The Texas Diabetes Council consists of six public members and five state agency representatives. The state agencies represented include the Texas Department of Health, Texas Department of Human Services, Texas Education Agency, Texas Commission for the Blind and Texas Rehabilitation Commission. Public members are appointed by the governor with the advice and consent of the senate for staggered two-year terms. State agency representatives are appointed by their respective commissioners and serve two-year terms. The five state agencies represented on the council were selected because of the roles they play in serving diabetics or providing health education. The members of the council annually elect one private citizen member to serve as chairman. Exhibit 1 identifies state programs designed to assist persons with diabetes. State agencies in Texas spent over \$47 million during fiscal year 1985 for diabetes-related services such as medical care, vocational rehabilitation and other services.

### **Funding and Organization**

The council has no state appropriation and does not have a staff. The state agencies represented on the council are required by the council's enabling legislation to provide periodic staff support to the council. The Texas Department of Health (TDH) has provided funds for the council since its creation. These funds totalled \$37,294.00 during fiscal year 1986 and covered the cost of 1-1/2 TDH staff support persons, printing and council member travel expenses.

### **Programs and Functions**

Because the council has no appropriation or staff of its own, there are no substantive programs. The council has, therefore, directed its efforts to projects that can be carried out with limited funds. Some of the major projects which have been undertaken by the council include:

- developing the statewide diabetes plan;
- assisting the Texas Department of Health in obtaining a grant from the Center for Disease Control for education and intervention programs for diabetics at high risk of developing eye disease and hypertension complications;
- establishing a task force to develop third party reimbursement opportunities for diabetes outpatient education;
- planning a conference on the special needs of Mexican-American diabetics;
- reviewing textbook materials containing information on diabetes; and

- initiating revision of criteria for drivers license limitations imposed on persons with diabetes.

### **Scope of Sunset Review**

Because the council does not oversee a staff, budget or any substantive programs, the sunset review of the council focused on the council's effectiveness in meeting its mandate, taking into consideration its lack of funding. It was recognized during the review that the council will not be able to fully accomplish its mandate of promoting diabetes education, treatment and training in the state without receiving a legislative appropriation. However, since the council has served as a resource coordinator for diabetes education and has accomplished several important projects without its own funding, the sunset review focused on the council's continuing ability to perform such useful functions in times of declining state revenues.

To assess the council's performance, sunset staff undertook several activities. Discussions were held with council members, including the private citizens represented on the council and the state agency representatives. Reports concerning the problem of diabetes were reviewed, along with reports published by the council. Other persons involved in health planning functions in the state and private association representatives were also interviewed to determine if council functions could be performed more effectively by other groups.

### **Need to Continue Agency**

The analysis of the council's activities indicated a need to maintain the council as a separate entity with improvements. The council can most effectively focus on the disease of diabetes and perform awareness activities through its current structure which allows for coordination of public and private resources, access to agency-specific data and the legislative process, and use of some staff and financial support from TDH. There are, however, several changes that should be made to the council's enabling legislation that would improve its ability to function in the event the legislature decides to continue the council. These recommendations are presented as follows.



**Sunset Commission Recommendations for the  
TEXAS DIABETES COUNCIL**

**CONTINUE THE COUNCIL WITH MODIFICATIONS**

**Policy-making Structure**

**Council Appointment Process**

- 1. The board chairpersons of the state agencies represented on the council should appoint their respective agency representative to the council. (Statutory)**

Involving the board chairpersons of the agencies in the appointment process would call attention to the work of the council and result in better understanding and support of the council's activities. Consultation between chairperson and commissioner could still occur when selecting the appropriate representative.

**Overall Administration**

**Coordination with Health Planning Bodies**

- 2. Agencies affected by the diabetes state plan should be required to submit funding information concerning the plan to the council and to the state budget offices. (Statutory)**

After reviewing the diabetes state plan, affected agencies would be required to report to the council and state budget offices whether or not they would seek funds to implement any portion of the plan. This requirement would result in the budget offices and council being more aware of the costs of implementing a recommended plan.

- 3. The council should be required to submit a biennial state plan for diabetes control to the State Health Planning and Development Agency (SHPDA) by November 1 of odd-numbered years. (Statutory)**

This change would help to ensure that the diabetes state plan is considered as part of a broader statewide health planning process and would improve coordination between the two planning processes.

- 4. The council should be subject to a review by the Texas Sunset Commission in conjunction with the scheduled review of the Texas Department of Health. (Statutory)**

By conducting concurrent Sunset reviews of the council and the Texas Department of Health, an efficient transfer of functions or coordination of activities between the two bodies could occur if determined appropriate by the review.

#### Availability of Alternative Funding Sources

- 5. The council should have statutory authority to accept gifts and grants. (Statutory)**

Since the council has not received an appropriation since its creation, having the authority to accept gifts and grants would increase the council's flexibility to seek funds and to perform activities designated in its statute.

#### Evaluation of Programs

##### Public Awareness

- 6. The five state agencies represented on the council should work with the council to develop, produce and disseminate public awareness information to clients served by these agencies. (Statutory)**

This recommendation would result in each agency planning for and funding public awareness information on diabetes for its respective target populations, after coordination with the council. This would increase the awareness of persons at risk for diabetes.

##### Use of Advisory Committees

- 7. The statute should authorize the council to appoint advisory committees as needed. (Statutory)**

Amending the statute to give the council general authority to appoint advisory committees as deemed necessary would increase the council's flexibility in obtaining advice.

##### Changing Mandatory Provisions to Permissive Provisions

- 8. The statute should be changed to permit the council to perform certain activities instead of mandating them. (Statutory)**

Without a legislative appropriation, the council cannot meet all of its current statutory mandates. By permitting rather than requiring certain activities, the

council will have flexibility to prioritize the functions it performs and forego activities found to be unneeded.

**Non-Program Changes**

- 9. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

The Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency. A description of the provisions and their application to the board are found in the "Across-the-Board Recommendations" section of the staff report.

- 10. Minor clean-up changes should be made in the agency's statute. (Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of the clean-up changes needed in the statute are found in the "Minor Modifications of Agency's Statute" section of the staff report.



## TEXAS COMMISSION FOR THE DEAF

### Background

#### Creation and Powers

The Texas Commission for the Deaf (TCD) was created in 1979 to replace the short-lived State Commission for the Deaf. The original State Commission for the Deaf was created in 1971 to help deaf and hearing impaired persons overcome the communication barriers they encountered in attempting to get services from state agencies. In 1977, the legislature, dissatisfied with the quality and availability of educational services to deaf people, created a Joint Advisory Committee on Educational Services to the Deaf (the "1880" Committee). As part of this committee's work, the operations of the State Commission for the Deaf were examined. The committee recommended that changes be made in the composition of the commission and that its statutory mandates be broadened to ensure a continuity of general and educational services to deaf persons. These recommendations were adopted by the 66th Legislature in 1979 when the Texas Commission for the Deaf was created.

The Texas Commission for the Deaf underwent review by the Sunset Advisory Commission in 1984. As a result of the final sunset legislation (S.B. 384, 69th Legislature) several changes were made to the TCD and it was continued for two years. The changes made to the commission included limiting the amount of the agency's appropriation that can be used for salaries to 25 percent, requiring an annual public meeting, prohibiting the placement of additional telecommunication devices for the deaf (TDDs), and requiring the commission to reassign TDDs to maximize the benefit received from their use by deaf persons. In addition, the bill appropriated \$38,000 in fiscal years 1986 and 1987 to fund an outdoor training program for deaf children and transferred the deaf-blind program to the Texas Rehabilitation Commission.

Current responsibilities of the agency include the provision of direct services to deaf individuals, the training and certification of interpreters for the deaf, and the development of a directory of interpreters and a recommended fee schedule for the payment of these interpreters. The agency is also active in the placement and maintenance of telecommunication devices for the deaf in state agencies, emergency response centers, local councils for the deaf, and other entities.

### **Board Structure**

The Texas Commission for the Deaf is composed of nine members appointed by the governor for staggered, six-year terms. At least three members of the commission must be hearing impaired, two must be parents of deaf persons, two must be professionals serving deaf individuals, and two must be persons representing the general public. The chairman of the commission is appointed by the governor. Other officers are elected by the commission members.

### **Funding and Organization**

Currently, an executive director and seven other staff members carry out the operations of the commission with state funds totaling \$744,861 in fiscal year 1986. The commission voluntarily reduced its use of state funds in fiscal year 1986 by eight percent or approximately \$61,000. The only other funds the commission receives are fees collected for interpreter certification and training. These amounted to approximately \$7,500 in fiscal year 1986. Exhibit 1 sets out the organizational structure of the agency.

### **Programs and Functions**

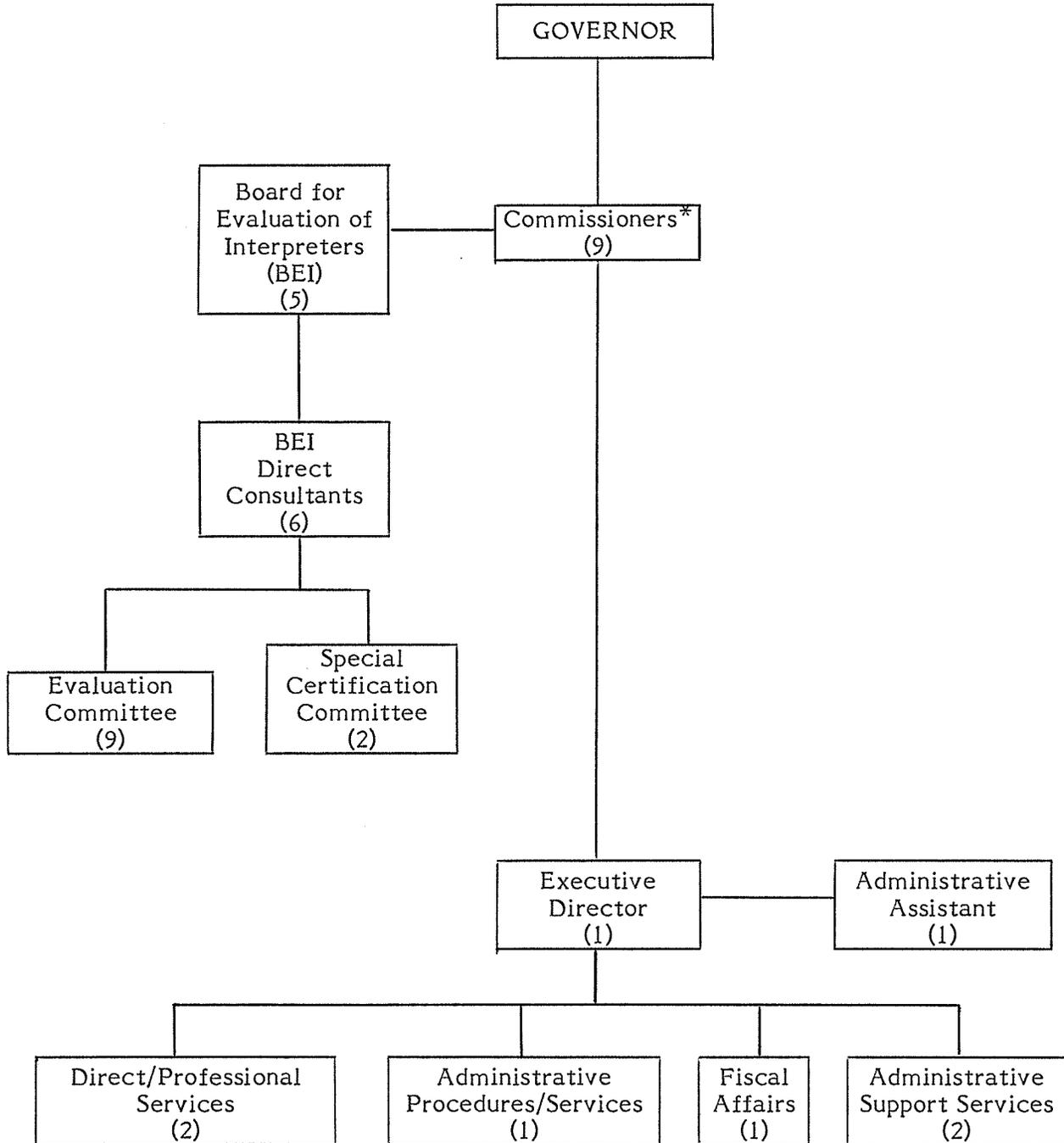
An estimated 122,000 deaf people live in Texas. In addition, an estimated 960,000 individuals, most of them elderly, have suffered a hearing loss that interferes with normal conversation. The agency serves the deaf and hearing impaired population through three main program areas: 1) local contract services, 2) interpreter registry and development, and 3) special services. A description of these programs follows.

#### **Local Contract Services**

To maximize the dollars appropriated to the agency for the provision of services to deaf people, the TCD contracts with other entities for the actual delivery of certain services. These services are interpreter, message relay, information and referral, and services for the elderly deaf. In fiscal year 1986, TCD allocated approximately \$300,000 to 16 non-profit councils for the deaf for these local contract services. Exhibit 2 lists the councils with whom TCD contracted in fiscal year 1986 and Exhibit 3 shows where these contractors are located in the state.

Interpreter services are provided to deaf persons to enable them to communicate in important situations such as legal and medical consultations and proceedings, job interviews, and important business transactions. State law mandates that interpreter services be provided to deaf individuals during legal administrative

**Exhibit 1  
Organizational Structure**



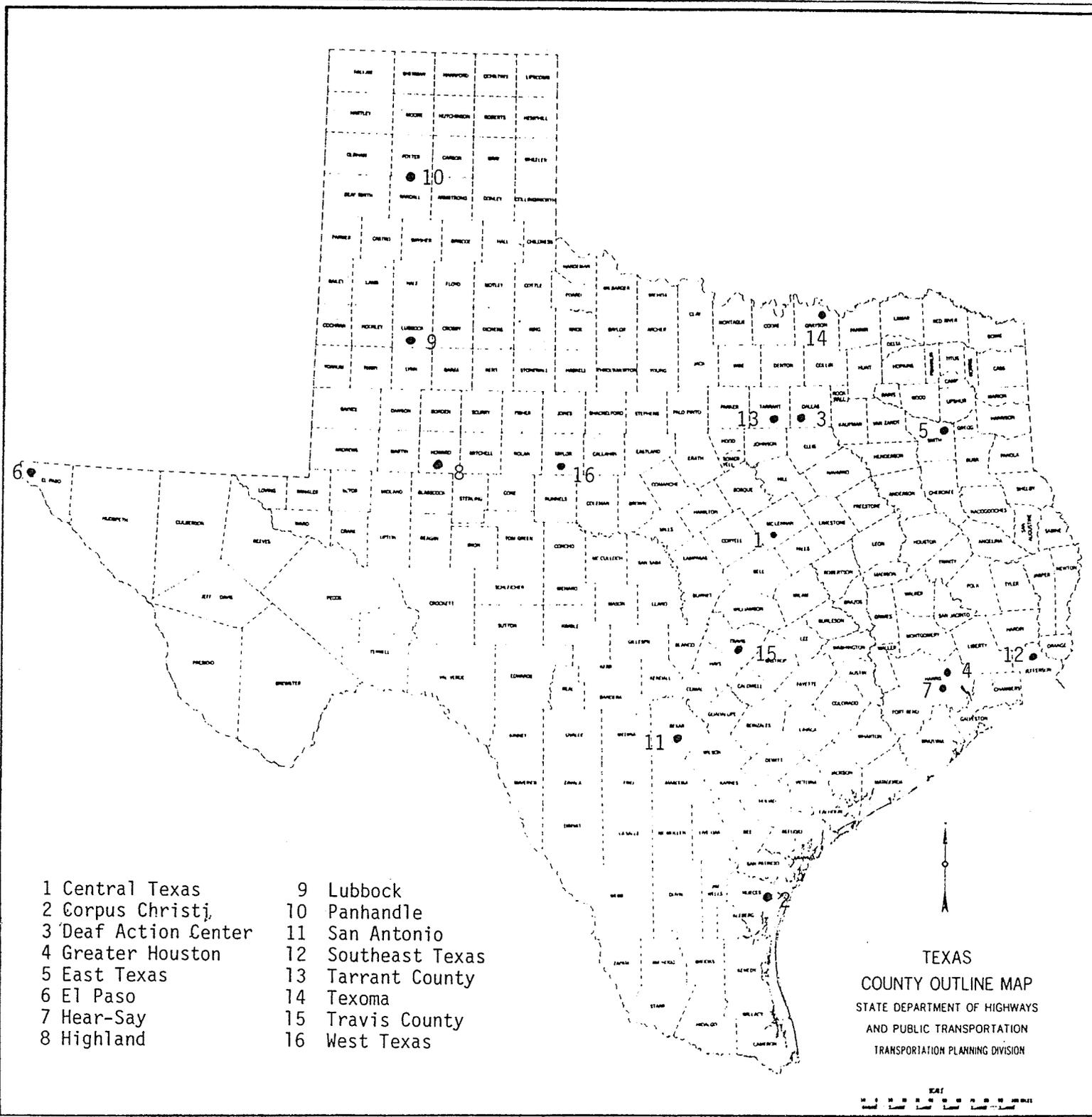
\*Number of persons is indicated in parenthesis.

**Exhibit 2**  
**Texas Commission for the Deaf**  
**Councils Contracting for Provision of Direct Services**  
**Fiscal Year 1986**

<u>Name</u>	<u>Location</u>	<u>Allocation</u>
1. Central Texas Council for the Deaf	Waco	\$ 6,607
2. Corpus Christi Area Council for the Deaf	Corpus Christi	16,799
3. Deaf Action Center	Dallas	46,571
4. Deaf Council of Greater Houston	Houston	49,001
5. East Texas Deaf and Hearing Association	Tyler	3,354
6. El Paso Center of the Deaf	El Paso	22,950
7. Hear-Say	Houston	7,091
8. Highland Council for the Deaf	Big Spring	9,219
9. Lubbock Community Services for the Deaf	Lubbock	4,616
10. Panhandle Council for the Deaf	Amarillo	5,056
11. San Antonio Council for the Advancement of Services to the Deaf	San Antonio	20,479
12. Southeast Texas Council for the Hearing Impaired	Beaumont	9,075
13. Tarrant County Services for the Hearing Impaired	Ft. Worth	38,144
14. Texoma Council for the Deaf	Sherman	7,741
15. Travis County Council for the Deaf	Austin	51,723
16. West Texas Services for the Deaf	Abilene	<u>1,523</u>
		<u>\$ 299,949</u>

### Exhibit 3

## Location of Councils Contracting for Provision of Direct Services



proceedings, civil actions or criminal actions at a cost to the county general revenue fund. In addition, federal and state laws address the responsibilities of schools, employers, and health care facilities to provide necessary interpreters and other aids for their deaf students, employees, and patients. The TCD reimburses for medical, economic, legal, and governmental interpreter services not covered by other state and federal laws. In fiscal year 1986, the 16 contracting councils were reimbursed \$172,195 for 12,502 hours of interpreter services to 5,895 deaf or hearing impaired persons in medical, legal, economic and government related situations.

Message relay services are provided to allow deaf or hearing impaired people to contact hearing people through the use of a telecommunication device for the deaf (TDD). For example, a deaf person with a TDD can contact a message relay service provider, who also has a TDD, and ask that a message be relayed to an employer or a doctor. Deaf persons without TDDs can come in person to the service provider's office to have a message relayed. Since few people, either deaf or hearing, have TDDs, this type of communication between the deaf person and others would not be possible without the message relay service. All 16 of the contracting councils provide message relay services and they were reimbursed \$39,805 for 39,805 units relayed in fiscal year 1986.

Information and referral services include informing deaf people and their families of available services and providing information on deafness to the general public. In fiscal year 1986, the 16 councils were reimbursed \$6,027 for 8,036 information and referral contacts.

Currently, nine of the 16 councils contract with the commission to provide Services to Older Hearing Impaired Texans (SOHIT). The primary objective of this program is to help deaf or hearing impaired persons who are 60 years of age or older maintain their self-sufficiency and reduce their need for placement in a long-term care facility. The services provided under this program are primarily caseworker services. In fiscal year 1986, the councils were reimbursed \$64,227 for 27,769 contacts made with SOHIT clients. Approximately 2,000 clients are served regularly under this program.

#### Interpreter Registry and Development

The TCD currently carries out four main activities related to the development of qualified interpreters for the deaf in Texas. These activities are the certification of interpreters, the training and education of interpreters, the

development of a suggested fee schedule for interpreters, and the publication of a directory of interpreters.

In 1979, the Texas Commission for the Deaf was authorized to establish a program of voluntary certification for interpreters for the deaf. This program was authorized to address complaints brought before the Joint Advisory Committee on Educational Services to the Deaf. Deaf people complained about the quality of interpreter services available to them. At that time, deaf people relied on the national certification board, the Registry of Interpreters for the Deaf (RID), for assurance of competency of their interpreters. The testimony indicated that although RID has numerous levels of certification, possession of a certificate at one level did not consistently indicate a certain level of skills.

The TCD's certification program is administered by a statutorily mandated five-member Board for Evaluation of Interpreters (BEI), whose members are appointed by the commission. The BEI has developed rules for a certification program which recognize the certification programs offered by two private groups, the national Registry of Interpreters for the Deaf (RID) and the Texas Society of Interpreters for the Deaf (TSID). The agency conducts examinations and issues certificates for five levels of interpreter proficiency. However, at the present time the agency will grant an automatic certification for four of its five levels if the applicant is certified by either RID or TSID. For the fifth level an examination is required. As of October, 1986, the TCD had a total of 663 interpreters holding valid certificates: 396 at Level I; 88 at Level II; 111 at Level III; 52 at Level IV; and 16 at Level V. Five hundred and fifty-six of these interpreters were evaluated by the BEI. One hundred and six were granted automatic certification by virtue of having a RID or TSID certificate and one was certified through reciprocity with another state.

In addition to certifying interpreters for the deaf, the TCD has offered training to improve the skills of interpreters. Nine interpreter training workshops were conducted in seven cities in fiscal year 1986 by consultants hired by TCD for that purpose.

By statute, the TCD is required to promulgate a suggested fee schedule for interpreters at varied levels of skill. The fee schedule is recommended for the payment of interpreters by state agencies, courts, and political subdivisions. It is reviewed annually, but has remained the same since it went into effect on October 1, 1982. The current fee schedule is shown as Exhibit 4.

**Exhibit 4**  
**Current Fee Schedule for Interpreters**

<u>Type of Certification</u>	<u>Recommended Hourly Fee</u>
<u>Texas Commission for the Deaf:</u>	
Level V	\$ 16.00
Level IV	\$ 14.00
Level III	\$ 12.00
Level II	\$ 9.00
Level I	\$ 7.00

National Registry of Interpreters for the Deaf:

Specialist Certificate: Legal (SC:L)	\$ 13.00
Masters Comprehensive Skills Certificate (MCSC)	\$ 13.00
Comprehensive Skills Certification (CSC)	\$ 11.00
Reverse Skills Certificate (RSC) - Deaf Person	\$ 11.00
Oral Interpreter Certificate: Comprehensive (OIC:C)	\$ 11.00
Reverse Skills Certificate (RSC) - Hearing Person	\$ 8.50
Transliteration Certificate (TC)	\$ 8.50
Interpretation Certificate (IC)	\$ 8.50
Transliteration Certificate/Interpretation Certificate/Reverse Skills Certificate (TC/IC/RSC or any combination)	\$ 8.50
Oral Interpreter Certificate Spoken to Visible (OIC:S/V)	\$ 8.50
Oral Interpreter Certificate Visible to Spoken (OIC:V/S)	\$ 8.50
RID Provisional Permit (PP)	\$ 5.00

Texas Society of Interpreters for the Deaf:

General Interpreting Skills Certificate (GISC)	\$ 6.50
Basic Communication Skills Certificate (BCSC)	\$ 5.00
Beginning Interpreting Skills Certificate (BISC)	\$ 5.00

<u>Non-Certified Interpreters:</u>	\$ 5.00
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The TCD is also directed by statute to compile a list of qualified interpreters who are available for assignment by a state agency, court, or political subdivision to interpret proceedings for deaf persons. This registry must include recommendations on the appropriate selection and utilization of interpreters for the deaf with various skill levels. The registry is updated annually and distributed to agencies, courts, political subdivisions, and the general public.

#### Special Services

The commission administers a program for the use of telecommunication devices for the deaf (TDDs) in selected state agencies and in emergency dispatch communication centers in selected units of local government. The statute also allows for placement of TDDs in entities other than state agencies and units of local government at the commission's discretion to maximize the benefit to deaf persons from the increased accessibility of these units. The commission has placed TDDs in such other entities as state legislators' offices, local councils for the deaf, and other community services such as counseling services. The commission currently maintains an inventory of approximately 800 TDDs, monitors usage of them, and contracts for the repair of all units. The TCD is not authorized to purchase any new TDDs and funds have not been appropriated for that purpose since fiscal year 1985.

The TCD also provides an annual camp program for deaf children. For five years the commission has provided deaf children with this outdoor skill training and recreational program. The camping facilities are provided by contract. Camp Lone Star in Athens, Texas provided the services the first year, but since that time the camp has been held at Camp Stewart in Hunt, Texas. In August, 1986, approximately 130 deaf children attended the camp and the cost of the program was \$38,000.

#### **Scope of Sunset Review**

The Texas Commission for the Deaf underwent sunset review in 1984 prior to the 69th Legislative Session. Major changes were made to the agency as the result of the final sunset legislation, perhaps the most significant of these being the transfer of the TCD's deaf-blind program to the Texas Rehabilitation Commission and language limiting the amount of the TCD's appropriation that can be used for salaries to 25 percent. During the current review, the agency's performance since the last regular session, as well as all major program areas and activities, were examined. Overview discussions were held with TCD personnel to determine how

well the agency had implemented legislative changes and how effectively and efficiently program operations were currently being performed. A survey of the agency's contractors was conducted. Reports and studies regarding the agency were also reviewed. These activities resulted in the identification of several problems with current agency operations. In the administrative area, the dramatic decrease in the number of staff budgeted to carry out program mandates led to concerns about the accountability of the agency's contractors, the effectiveness of the current organizational framework and the future of services to deaf persons in Texas.

The review found that improvements could be made in the process to certify interpreters and in the placement of telecommunication devices for the deaf (TDDs). In addition, two recommendations were made which could increase dollars for services for deaf people by requiring fees for certain services.

#### **Need to Continue Agency**

The need for each of the commission's functions was analyzed and it was determined that there is a continued need for state involvement in these areas. If the functions of the agency are continued, a number of changes should be made to improve the efficiency and effectiveness of their implementation. These changes are summarized as follows.

**Sunset Commission Recommendations for the  
TEXAS COMMISSION FOR THE DEAF**

**CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

No recommendations.

**Overall Administration**

- 1. The Texas Commission for the Deaf should develop memoranda of understanding (MOUs) with other state agencies that deliver services to deaf people. (Statutory)**

To date, no formal mechanism has been developed to coordinate services delivered to the deaf population by various state agencies. The development of MOUs between the TDC and other agencies involved with service delivery to deaf individuals could help identify service gaps, reduce or eliminate any gaps identified, and reduce duplication of services delivered. Agencies required to develop MOUs for deaf services should include, but not be limited to the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Corrections, the Texas Employment Commission, the Texas Department of Health, the Texas College and University System Coordinating Board, the Texas Education Agency, the Texas Department on Aging, and the Texas School for the Deaf.

- 2. The statutory 25 percent salary limitation should be removed. (Statutory)**

The statute currently limits the salaries of staff to 25 percent of the TCD's total appropriation. Although the appropriation bill authorizes 13 employees, the 25 percent requirement currently limits the TCD to eight employees. The statutory salary limitations were applied to the TCD because of legislative concern about the agency's ability to keep down its administrative costs and to maximize funds available for direct services. However, the small staff size has made it difficult for the agency to carry out statutory mandates and other administrative responsibilities.

3. **Statutory language prohibiting the agency from contracting with former employees should be modified to include a two-year time limit. (Statutory)**

Currently, the Texas Commission for the Deaf is prohibited from awarding contracts or grants to former employees. Since the community of deaf people is relatively small, there are limited professional resources available to the commission. The TCD statute should be modified, consistent with other state agency statutes, to prohibit the commission from contracting with former employees during the first two years after termination of employment. This modification would prevent the agency from contracting with recent employees, while at the same time allowing agency administration access to valuable professional resources and expertise.

### Evaluation of Programs

#### Fees

4. **The TCD should charge fees for some or all of its publications to recover publication costs. (Statutory)**

The commission is directed by statute to publish an annual directory of services available for deaf persons and an annual registry of available and qualified interpreters for the deaf. Although the agency currently sets a fee for these publications, all TCD publications are provided free to deaf individuals, contracting councils and state and local government entities. This leaves very few people who would be interested in purchasing the publications. By requiring a fee for publications, the prices of TCD publications can be reduced and the fees collected could cover the publication costs. However, the statute should clearly state that a deaf person would not be denied access to a TCD publication because of inability to pay.

5. **The TCD and its contractors should use a sliding fee scale developed by the agency for interpreter services reimbursed by the TCD in non-governmental settings. (Statutory)**

Interpreter services are the major service provided by the TCD and are perhaps the most important service to deaf persons, especially those whose only language is American Sign Language. These services are currently provided free of charge to any deaf individual, regardless of income. The funds available for this program are limited and can not satisfy the demand for interpreter services. Collecting fees for interpreter services from those that can afford to pay would increase the funds

available to provide more services to more deaf persons. Excluding interpreter services in governmental settings from the fee requirement ensures deaf people's access to state and local governments.

#### Placements

- 6. The statute should be amended to clarify that no new Telecommunication Devices for the Deaf (TDDs) are to be purchased by the TCD and that reassignments of unused units may be made, but only to public, non-federal entities or to private entities that contract with the TCD to provide services to deaf persons. (Statutory)**

The TCD was directed by S.B. 384 to monitor the usage of TDD units and reassign those that were not used in any six-month period to a new location. The agency was not appropriated any funds for purchasing new TDDs in fiscal year 1986. The statutory language concerning reassignment of TDDs is vague and needs to state clearly that while the agency is not to purchase any new TDDs, it may re-assign the TDDs it already owns to a new location. In addition, the statute should clarify that these pieces of state property are to be placed only in public, non-federal entities or in private entities that contract with the TCD to provide services.

#### Repairs

- 7. The TCD's statute should be amended to allow TCD to bill for the costs incurred in repairing TDDs. (Statutory)**

Currently the TCD is responsible for the repair and maintenance of all TDDs in its inventory. Parts and labor for the maintenance and repair of these units cost approximately \$17,000 in fiscal year 1986. Billing other state agencies and public entities for the parts and labor costs of the TDD units placed with them will spread out the costs of this program. In addition, it is hoped that by paying for the cost of TDD repairs, the units will become more valued by the entities which receive them.

#### Certification Fees

- 8. Interpreter certification fees should be raised and include an examination fee to recover the cost of the certification program. (Statutory)**

The TCD currently charges a certification application fee of \$10 or \$15, depending on the level applied for. It also charges an annual renewal fee of \$10. Unlike other

state certifying/licensing agencies, the TCD does not assess an examination fee. The examination of interpreters is a costly and time consuming process because each applicant must be evaluated individually. The Board for Evaluation of Interpreters and the certification program's current budget could be self-supporting if the TCD were to charge a certification/application fee of \$14, an examination fee of \$14 or \$21, depending on the level applied for, and annual renewal fees of \$7.

### Interpreter Training

9. **The commission should discontinue the interpreter training program and establish a course and workshop approval system in its place. (Statutory)**

The TCD is authorized to conduct interpreter training workshops designed to qualify interpreters for state certification. The agency contracted with individuals to conduct nine workshops in fiscal year 1986. The review found three problems with this program as currently conducted. First, with the limited funds available to it, workshops are not being conducted in sufficient numbers to effectively train interpreters for certification. Second, workshop subjects have not focused on certification preparation but instead have gotten into consumer education and interpreter career development. Third, there is a lack of accountability for course content and desired outcomes. A more appropriate, more common, and less costly way to conduct this function would be for the TCD to establish a course approval system. Training funds currently appropriated for the training activity should be appropriated for direct services or the certification process in future bienniums.

### Registry of Interpreters

10. **The registry of interpreters published by the TCD should list the name, city of residence, and phone number of all certified interpreters in the state. This list should include TCD certified as well as RID and TSID certified interpreters. (Non-statutory management improvement)**

The TCD is directed by statute to annually compile a list of qualified interpreters available for assignment and disseminate it to state agencies, courts, political subdivisions and the general public. For the first time, TCD's 1986 Directory of Interpreters does not list individual interpreter names. Instead, readers of the directory are instructed to contact one of the 16 local councils for the deaf or a statewide 24-hour emergency number. By listing only the councils for the deaf in

the interpreter directory, interpreter placements must now be made through a middleman which increases the cost and time to locate an interpreter, eliminates any "free market" for interpreters and could inevitably result in decreased use of interpreters.

- 11. The Texas Commission for the Deaf should send a separate registry to Texas courts listing only interpreters for the deaf that are qualified for the court setting. (Non-statutory management improvement)**

Concerns were voiced that although mandated by law to provide qualified interpreters for the deaf for court proceedings, Texas courts have not been consistent in the quality of interpreters provided. Directing the commission to send a separate list of interpreters judged as qualified to interpret in the court setting would ensure the courts access to the names of qualified interpreters and minimize the possibility of the selection of unqualified interpreters.

#### **Interpreter Reimbursement Rates**

- 12. The commission's recommended reimbursement rates should not discriminate between those certified by the TCD and those certified by the state association or national registry. (Statutory)**

The TCD recommends hourly fees for the payment of interpreters certified by TCD, as well as those certified by the state association (TSID) and the national registry (RID). For purposes of TCD certification, the commission has determined that certain RID and TSID certificates are comparable to certain levels of TCD certification. However, the hourly fee recommended by TCD for comparable RID and TSID certified interpreters may be as much as one dollar less than that recommended for TCD certified interpreters. If, by rule, the TCD designates certain certification equivalencies, the rates of pay recommended should also be equivalent.

#### **Interpreter Examinations**

- 13. The statute should be amended to authorize the TCD to use other state agency space for interpreter certification examinations, if the space can be obtained free of charge. (Statutory)**

Currently, a rider attached to the commission's appropriation requires that the BEI conduct interpreter examinations in Austin at the TCD office. Since the rider also limits examinations to three per year, at least 100 interpreters are scheduled for testing during each of the six-day testing periods. Requiring that the examinations

be held in Austin helps keep down the staff travel costs, but the agency should not be precluded from using other state agency space for interpreter certification examinations, if the space can be obtained free of charge.

- 14. The number of interpreter evaluations should not be limited. (Statutory)**

Currently, a rider to the agency's appropriation limits the number of interpreter evaluations to three per year. To accommodate the number of individuals applying for certification, these evaluations normally take place over a six-day period. By removing the limit on the number of evaluations, fewer applicants could be tested at each evaluation and the workload could be more evenly distributed throughout the year.

#### Communication Competency Evaluation

- 15. The Board for Evaluation of Interpreters should work jointly with the Texas Rehabilitation Commission to develop a communication competency evaluation for vocational rehabilitation counselors and other TRC staff working with caseloads of deaf and hearing impaired clients. (Statutory)**

There are currently 55 TRC vocational rehabilitation counselors, located in field offices throughout the state, with caseloads of 15 or more deaf clients. In order to ensure that counselors who work with deaf clients can communicate adequately with this population and translate their needs to others, the counselors and other employees working with deaf clients should be evaluated for communication competency.

#### Non Program Changes

- 16. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

The Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency. A description of the provisions and their application to the department are in the staff report.

## **TEXAS AIR CONTROL BOARD**

### **Background**

#### **Creation and Powers**

The Texas Air Control Board was created in 1965 and is currently active. The board is responsible, under the Texas Clean Air Act (TCAA) for safeguarding the air resources of the state from pollution. The board originally operated with staff support from the Texas Department of Health and had limited responsibilities for regulating pollution from industrial facilities. However, the board's responsibilities and activities have increased significantly since 1965.

Board duties and powers were expanded in 1969 to include monitoring and research activities. The board was also allowed to establish air quality control regions throughout the state. In 1970, revisions to the Federal Clean Air Act required the board to determine emission reductions needed by the state to meet national air standards and to prepare plans for meeting the standards. The legislature, in 1971, expanded the board's responsibilities to require that entities constructing or modifying contaminant emitting facilities obtain a permit from the board before beginning construction and operations. Because of the substantial growth in the agency's activities, the board was separated from the Texas Department of Health and made an independent agency in 1973. As a result of requirements of the Federal Clean Air Act of 1977, the legislature in 1979 authorized the board to collect permit fees and regulate radioactive air contaminants, and to begin a project for inspection/maintenance of vehicle emissions in the Houston area. Finally, after the sunset review in 1985, the TCAA was extensively amended. Exhibit 1 summarizes the major statutory changes made in 1985 through Senate Bill 725, 69th Legislature.

#### **Board Structure**

The Texas Air Control Board is a nine-member policy body with members appointed by the governor to staggered six-year terms. Four of the members must meet specific qualifications set in the statute and five are public members. Following a sunset recommendation, one of the public members must have a demonstrated involvement in efforts to safeguard the environment. Also, the governor, instead of the board itself, now designates a chairman from among the board members. Exhibit 2 sets out the organizational structure of the agency.

## Exhibit 1

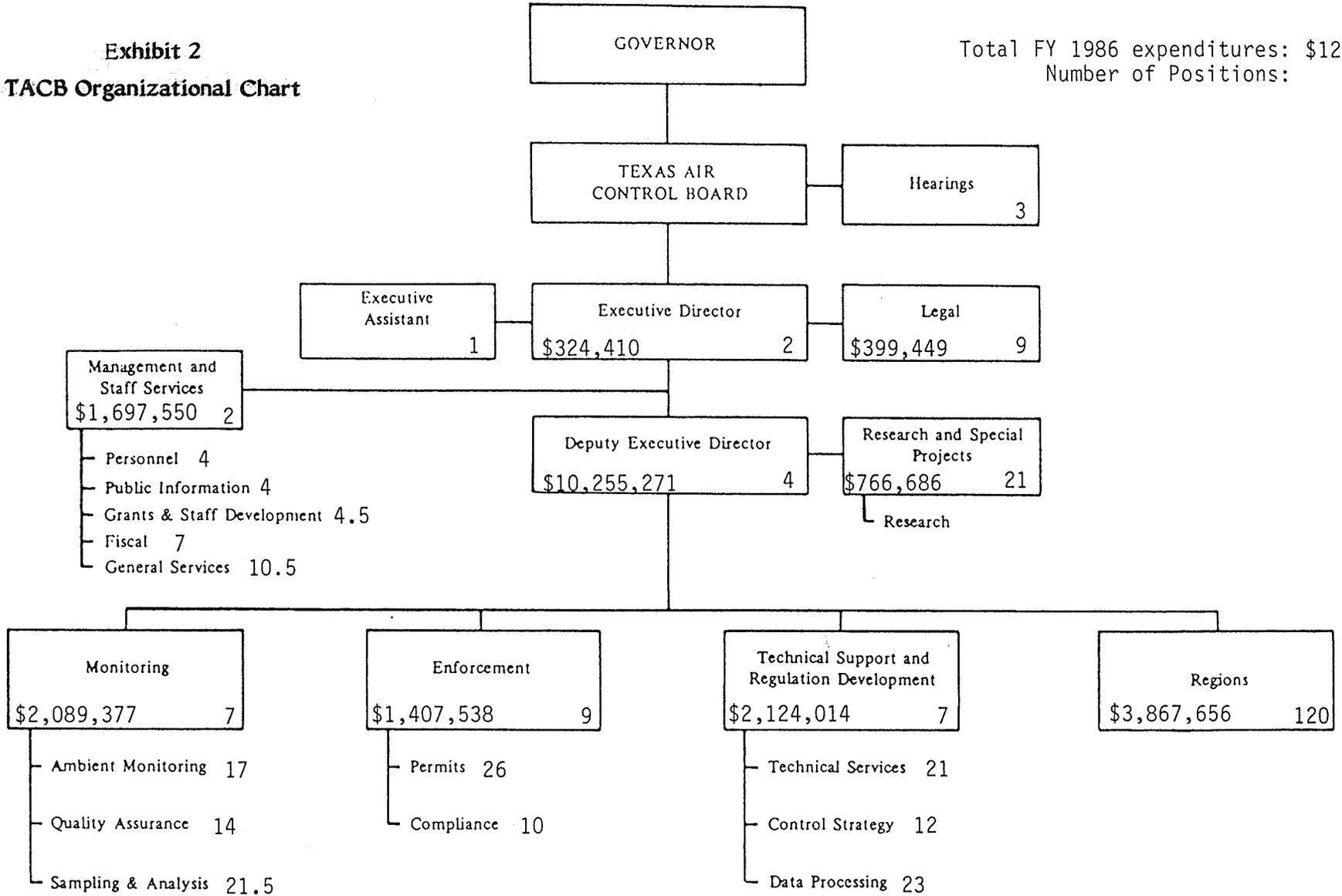
### Major 1985 Changes to the Texas Clean Air Act

1. Public Notice/Hearings      Permit applicants must publish notice of intent to obtain a permit and must post a sign at facility; TACB must conduct a public hearing if requested by a person who may be reasonably affected by emissions or if requested by a member of the legislature.
2. Permit Review/Continuance      TACB operating permits subject to review every 15 years.
3. Grandfathered Facilities      Facilities operating before beginning of TACB permit program must be registered with TACB.
4. Fees      Maximum fees for permits, registrations and inspections increased from \$7,500 to \$50,000. TACB must recover at least 50 percent of expenditures for permitting and enforcement through fees.
5. Enforcement Procedures      Violations continuing past 30 days subject to formal enforcement action. Compliance must be achieved within 180 days unless good faith effort is shown.
6. Civil Penalties      Maximum civil penalty increased from \$1,000 to \$25,000 per day, per violation.
7. Administrative Penalties      TACB authorized to assess maximum administrative penalty of \$10,000 per day, per violation.
8. Clean Air Study Committee      Committee to study and report to legislature on:
  - regulation of grandfathered facilities;
  - issuance of renewable permits;
  - regulation of emissions from ships.
9. Sunset Review      Sunset date for TACB was moved from September 1, 1997 to September 1, 1991.

**Exhibit 2**  
**TACB Organizational Chart**

Total FY 1986 expenditures: \$12,676,680  
Number of Positions: 359.5

291



**REGIONAL OFFICES**

Abilene	Lubbock	Waco	Harlingen	Corpus Christi	Odessa	Houston	Fort Worth	San Antonio	Beaumont	El Paso	Tyler
4	5	8	5	8	6	34	18	8	13	5	6

### **Funding and Organization**

Funding for the board in fiscal year 1986 totalled \$12,676,680. About \$9.5 million of this amount came from state funds, including \$5.1 million allocated from agency fees (total fee collections were \$6.6 million in FY 86). The remaining \$3.1 million came from federal sources. The board has 360 employees and operates from a headquarters in Austin and from 12 regional offices located throughout the state. Exhibit 3 sets out the agency's activities functionally, and shows the percentage of the agency's budget and personnel used for each activity. The location of each of the agency's 12 regional offices is illustrated in Exhibit 4.

### **Programs and Functions**

As mentioned earlier, the primary responsibility of the agency is to safeguard the air resources of the state. To meet its responsibilities, the board performs two primary functions -- permitting of emission sources and enforcement of permit requirements and agency regulations. These functions are supported by various other agency activities such as monitoring and technical support. Descriptions of these functions and support activities are set out below.

#### **Permits**

The Texas Clean Air Act requires that all new and modified pollution emitting facilities obtain a construction permit before construction begins. The permit division reviews applications for construction permits to ensure that the operations of a new or modified source will include the use of best available control technology (BACT) and will not prevent the attainment or hinder the maintenance of any applicable federal air quality standard. The statute authorizes the board to shorten the process by granting special permits to facilities that emit low levels of contaminants. By rule, the board may also exempt facilities from the permit process if they do not significantly contribute contaminants to the atmosphere. An operating permit, which replaces the original construction permit, must be applied for within 60 days after a facility has begun operations.

Since it began requiring and issuing permits in 1971 to the end of fiscal year 1986, the board has issued 9,773 construction and special permits, 7,165 operating permits, and 8,783 exemptions from permit procedures. In fiscal year 1986, the board issued 462 construction and special permits, 449 operating permits and reviewed 503 exemptions. Exhibit 5 sets out the numbers of operating permits by region.

Exhibit 3  
Texas Air Control Board

Functional Breakdown of Programs  
September 1, 1985 – August 31, 1986

Total Estimated Budget – \$12,676,681

Number of Positions – 359.5

293

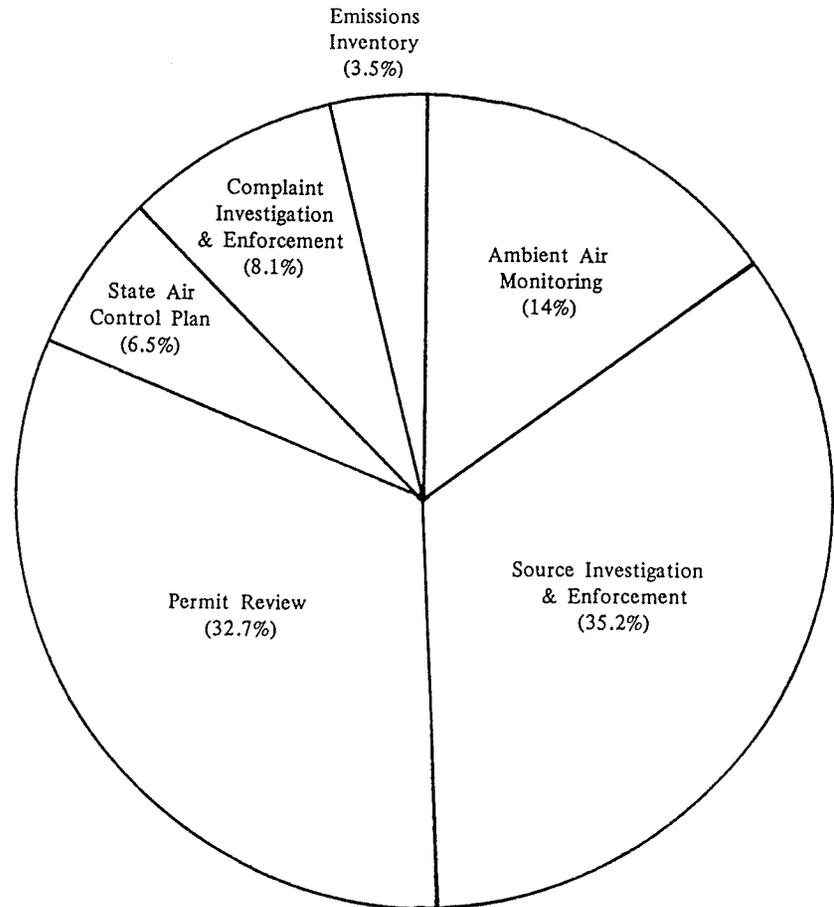
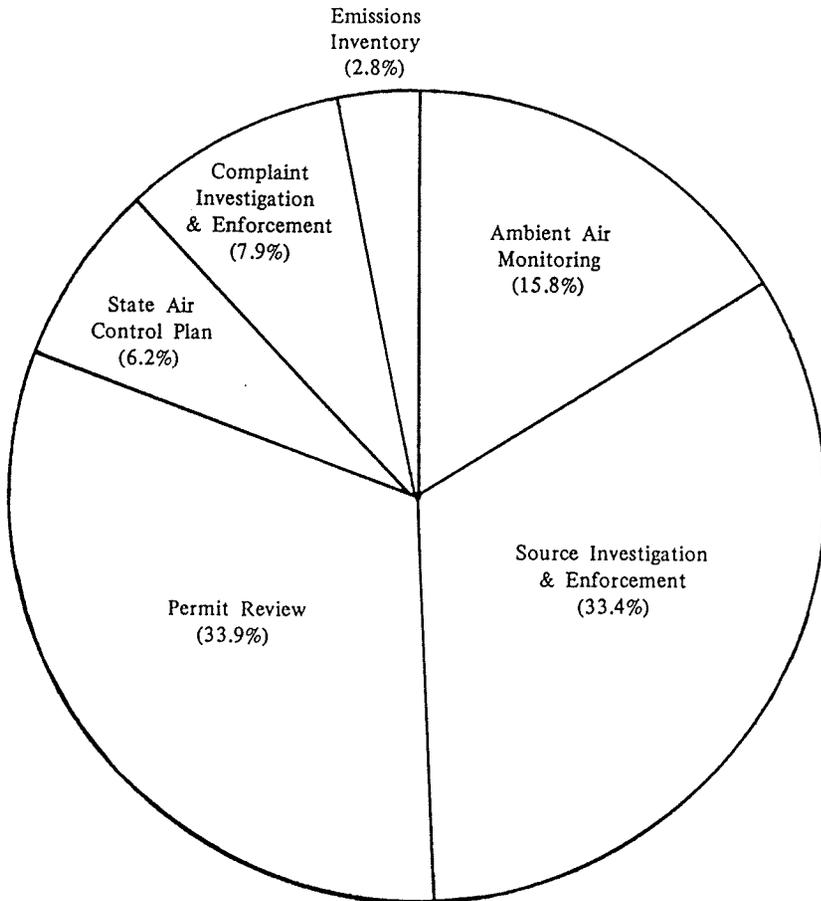
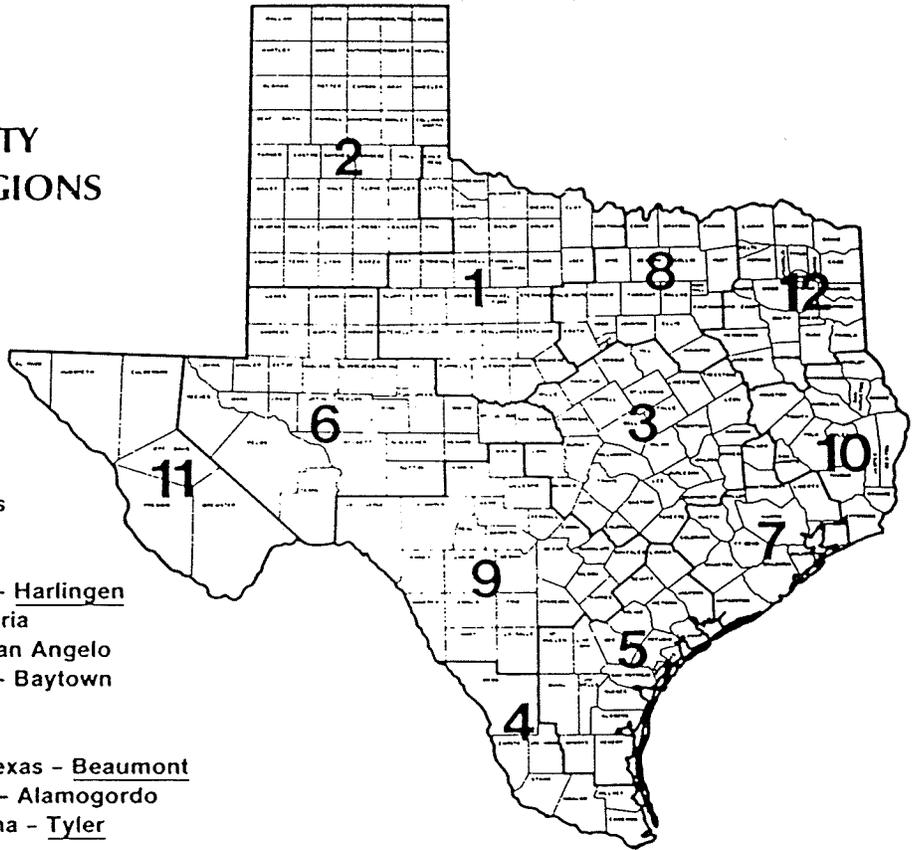


Exhibit 4

**AIR QUALITY  
CONTROL REGIONS**



- 1. Abilene - Wichita Falls
- 2. Amarillo - Lubbock
- 3. Austin - Waco
- 4. Brownsville - Laredo - Harlingen
- 5. Corpus Christi - Victoria
- 6. Midland - Odessa - San Angelo
- 7. Houston - Galveston - Baytown
- 8. Dallas - Fort Worth
- 9. San Antonio
- 10. S. Louisiana - S. E. Texas - Beaumont
- 11. El Paso - Las Cruces - Alamogordo
- 12. Shreveport - Texarkana - Tyler

Interstate Regions

Cities where Regional Offices are located are underlined.

**Exhibit 5**

**Operating Permits by Region**

(August 31, 1986)

<u>Region Number</u>	<u>Office Location</u>	<u>No. of Permits</u>
1	Abilene	391
2	Lubbock	570
3	Waco	411
4	Harlingen	215
5	Corpus Christi	515
6	Odessa	475
7	Houston	2,213
8	Fort Worth	1,013
9	San Antonio	405
10	Beaumont	427
11	El Paso	122
12	Tyler	408

The TACB permit process operates much as it did before last session's sunset review. Changes were made to require public hearings if requested by any person who may be affected by emissions from the proposed facility or if requested by a member of the legislature. The maximum permit fee was increased from \$7,500 to \$50,000 and for the first time fees were applied to agency registrations and inspections. Also, the agency was required to recover at least half of its annual expenditures for permitting and enforcement through fee collections. Exhibit 6 shows fee collections for the last three fiscal years.

**Exhibit 6**

	<u>FY 84</u>	<u>FY 85</u>	<u>FY 86</u>
Permit fees	\$404,898	\$484,692	\$1,551,896
Inspection fees	N/A	N/A	4,842,432
Registration fees	<u>N/A</u>	<u>N/A</u>	<u>175,200</u>
<b>TOTAL</b>	<b>\$404,898</b>	<b>\$484,692</b>	<b>\$6,569,528</b>

Additional changes were made to require the review of TACB operating permits every 15 years and to require the registration of facilities operating before the beginning of the TACB permit program ("grandfathered" facilities). These issues will be discussed in greater detail in the section updating the work of the Clean Air Study Committee.

### Enforcement

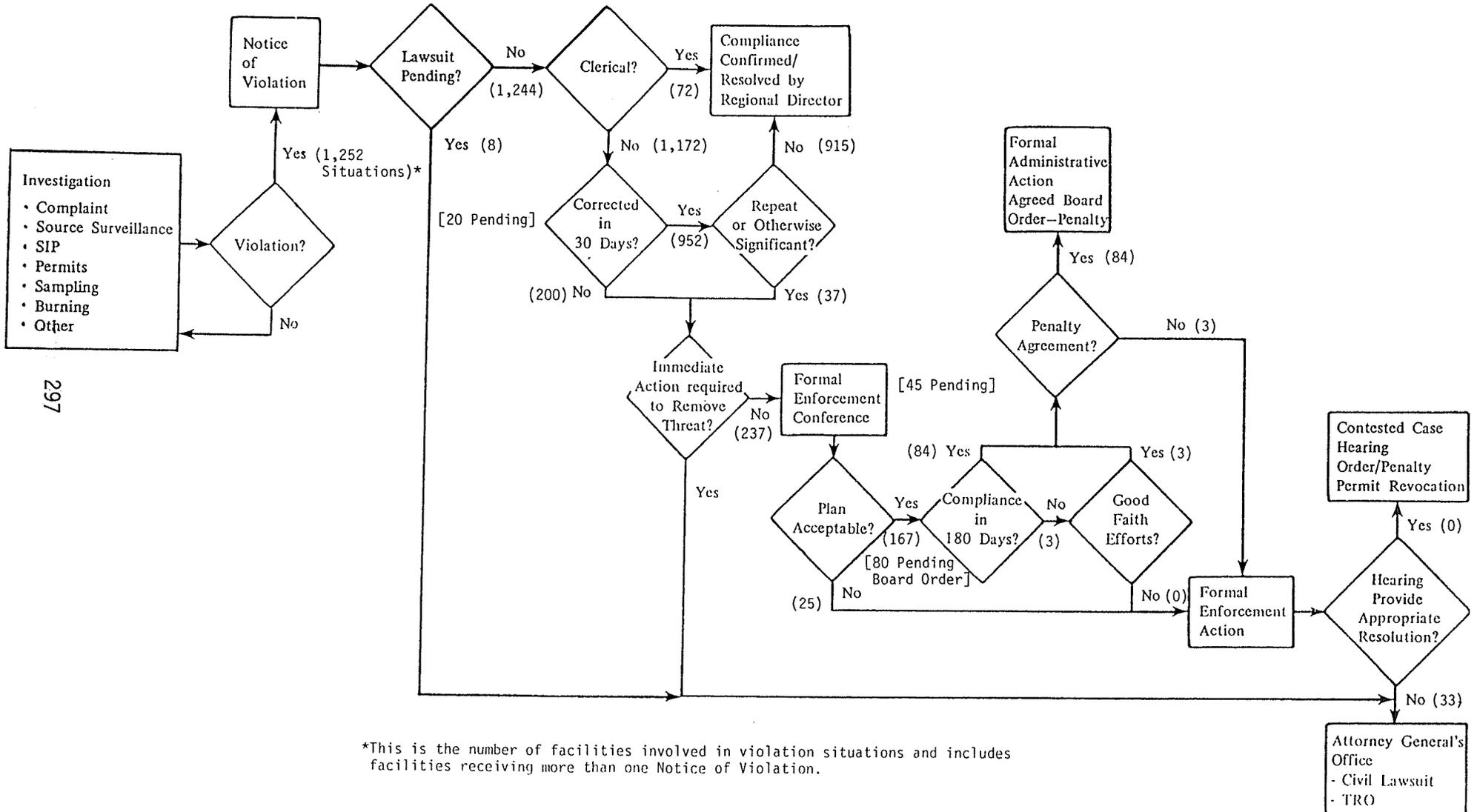
In order to determine if compliance with TACB requirements and federal air quality standards is being maintained, routine inspections are conducted by personnel from the agency's regional offices on major sources including permitted, exempt, and non-permitted facilities (those constructed before the beginning of the permit program). Major sources of emissions are those that emit or have the potential for emitting 100 tons of any contaminant per year. The agency has identified 1,545 major sources in the state. Of these, 1,129 are permitted and 416 are non-permitted sources. The regional offices also conduct investigations of all contaminant emitting facilities in response to air pollution complaints made to the agency by the general public, other governmental entities and public officials. These activities allow the agency to identify sources in non-compliance and take appropriate steps to bring the source back into compliance in a timely manner. In fiscal year 1986, the board was involved in 12,380 inspections, of which 3,704 were complaint investigations.

Inspections and investigations that identify sources out of compliance with permit requirements or agency regulations result in issuance of notices of violation (NOV) by regional office personnel. The regional offices issued 2,256 NOV's in fiscal year 1986. Exhibit 7 shows the flow of TACB enforcement actions. After an NOV is issued, the field staff determines if the violation is clerical or non-clerical. A non-clerical violation involves an illegal emission of air contaminants which is prohibited by the TCAA or by board rule or order. If the situation is corrected in 30 days and confirmed by the regional director, no enforcement action is taken. If, however, the situation cannot be corrected in 30 days or if the corrected situation is part of a pattern of violations or judged otherwise significant, formal enforcement action is begun. Generally, the operator meets with the agency in a formal enforcement conference to draw up a plan to achieve compliance within 180 days. If the plan will bring the facility into compliance within 180 days or if the agency determines that the operator will achieve compliance beyond 180 days with a good faith effort, the agency proposes an agreed Board Order which includes an administrative penalty. The maximum administrative penalty is \$10,000 per day, per violation.

If a compliance schedule cannot be developed or if compliance is not achieved within 180 days or an administrative penalty cannot be agreed to, one of two further actions can occur. Either a contested case hearing is held which may

## Exhibit 7 TACB Enforcement Process

(As of August 31, 1986)



\*This is the number of facilities involved in violation situations and includes facilities receiving more than one Notice of Violation.

result in a Board Order with administrative penalty or, more typically, the case would be referred to the attorney general for civil lawsuit or injunctive relief. The maximum civil penalty for violations was increased last session from \$1,000 to \$25,000 per day, per violation.

In addition to the agency's enforcement activities, five federally-assisted, locally operated air control programs assist in enforcement efforts. Under authority granted by the Federal Clean Air Act and the Texas Clean Air Act, a local government can create a local air pollution control program for the purpose of protecting and enhancing the quality of air in that locality, in accordance with TACB rules and regulations. Five programs, Dallas, El Paso, Galveston, Houston and San Antonio, receive federal funds to assist the TACB in performing such activities as investigations, monitoring the quality of air in their area, and assisting in state permitting activities.

#### Additional Activities

The agency also conducts monitoring and other activities for the support of the primary functions. Ambient air monitoring is conducted to determine if federal air quality standards are being achieved throughout the state, and localized sampling and analysis is conducted to determine if an individual facility is complying with agency rules or with permit requirements. The quality assurance division assures the proper use and development of sampling techniques and equipment and the validity of emission data.

The technical support and regulations development group assists the agency in developing appropriate regulations and supports the activities of the permitting and enforcement functions. Specifically, the group is responsible for evaluating and developing air control strategies and regulations for all facilities which emit air contaminants, including permitted, non-permitted and exempt facilities. The group also supports the agency's enforcement efforts by assisting development of emission control strategies for facilities built before permits were required in 1971. The group supports the permit process by conducting air quality modeling on a proposed facility to estimate what effect the type and amount of pollutants emitted by the facility would have on the surrounding air quality.

Further support for the agency's activities is provided by the management and staff services division and by the research and special projects division. The research and special projects division is involved in efforts to identify new air contaminants and to determine potential health effects of contaminants so that control strategies can be developed.

### Clean Air Study Committee

The Clean Air Study Committee was created in 1985 to study and make recommendations to the 70th Legislature regarding the regulation of "grandfathered" facilities (facilities built prior to establishment of the TACB permit program in 1971), the issuance of renewable permits, and the regulation of emissions to the air from ships. The committee is composed of four members of the legislature, three representatives of business or industry and three public members with a demonstrated involvement in efforts to safeguard the environment. The committee held its final meeting in October 1986, and formal recommendations to the legislature were adopted at that time. These recommendations are discussed in the following material.

In response to their statutory charge, the committee recommended that permitting of grandfathered facilities should not be required, but that they should continue to be reviewed and inspected for compliance with the board's rules and regulations. The committee indicated that retirement or replacement of facilities and equipment are expected to eliminate some facilities or bring most other facilities under the board's permit program within a reasonable time. Two members of the committee disagreed with the above recommendation and issued a minority report which recommends that the TACB adopt regulations to require permitting of grandfathered facilities using a tiered approach based on health effects and emission quantities.

The committee did not recommend changes in the 15-year permit review program as established in statute. The committee report indicates that a 15-year review program could result in a number of air pollution control benefits and air quality improvements. However, the committee specified that the level of permit review should be commensurate with funding from the legislature. If no funding is provided, the committee recommended that the renewal program be repealed. Four members of the committee issued a minority report on this subject. The minority report states that a review program that allows past problems to be corrected or incorporates economically reasonable technological advances, will provide substantial benefits to the state and should be continued. The minority report also recommends that funding for the program be provided through fees charged for permit review and continuance.

The third area of committee study concerns the regulation of emissions from ships. The committee developed a resolution urging Congress to define the U.S.

Coast Guard's jurisdiction over the control of air emissions from ships and barges, and for the Coast Guard to establish regulations following completion of a study on ship emissions currently being conducted by the National Academy of Sciences. The committee recommended that the resolution be passed by the legislature and sent to Congress. No minority report was issued on this subject.

### **Scope of Sunset Review**

The Texas Air Control Board's sunset legislation (S.B. 725) from the 69th Legislature provides that "the policy structure and enforcement activities of the board shall be reviewed under the provisions of the Texas Sunset Act prior to January 1, 1987." Senate Bill 725 significantly changed the board's enforcement authority, and formalized procedures for enforcement of the requirements of the Texas Clean Air Act (TCAA).

Prior to fiscal year 1986, TACB's emphasis when violations occurred was to first attempt to attain compliance through an often lengthy negotiation process with companies. Formal enforcement actions such as referral of the case to the attorney general's office for filing of a lawsuit were used only as a last resort. The TCAA did not require the agency to take formal enforcement action within a specific time frame, and did not provide the agency with effective enforcement tools short of referring a case to the attorney general's office. Senate Bill 725 required the agency to issue notices of violations within five days of confirming the violation, required the board to take formal enforcement action if compliance is not achieved within thirty days, increased civil penalties for violations, gave the board authority to issue administrative penalties and made various other changes in the enforcement provisions of the TCAA.

The review focused on three areas regarding the agency. First, the need for further changes in the agency's policy-making structure was examined. Second, the review focused on the steps that the agency has taken in response to the changes in the enforcement provisions of the TCAA. Third, the review focused on the effects of the enforcement changes on business and industry, communities, and the agency itself.

Although there are other issues relating to the agency or the TCAA which could be examined, S.B. 725 included a 1991 sunset review date for the entire agency. This date allows sufficient time to observe what the full effects of all the changes made through S.B. 725 will be, and to see whether any alterations or

additional changes are needed. This report, therefore, deals with only those areas required by S.B. 725 to be reviewed by 1987: the board's policy structure and its enforcement activities.

#### **Need to Continue Agency**

Because the Texas Air Control Board does not have a sunset date until 1991, the review did not examine the need to continue the agency. Instead, as required by the 69th legislature, the review focused on the policy structure and enforcement activities of the TACB. The review determined that no statutory changes to the board's policy structure or enforcement activities are needed at this time. A complete review of the agency will occur in 1991.



**Sunset Commission Recommendations for the  
TEXAS AIR CONTROL BOARD**

**NO STATUTORY CHANGES TO THE TEXAS AIR CONTROL BOARD  
ARE NEEDED AT THIS TIME**

In the 1985 sunset legislation for the Texas Air Control Board the legislature required a review of the board's policy structure and enforcement activities by 1987. The review indicated that the board has complied with the 1985 act and that no further changes are needed at this time. The agency again comes under a full sunset review by 1991. This date allows sufficient time to observe the full effects of the 1985 Air Control Board legislation and to see whether additional changes are needed.



## TECHNOLOGY TRAINING BOARD

### Background

#### Creation and Powers

The Technology Training Board was created in 1985 by House Bill 553 (69th Regular Legislative Session) to help coordinate and plan the state's efforts in the area of technology-oriented job training. The board is composed of eight members. Three members must be members of the Texas Economic Development Commission. Two members must be members of the Texas Job Training Coordinating Council. One member of the board of regents of the Texas State Technical Institute; the Coordinating Board, Texas College and University System; and the State Board of Education are also on the Technology Training Board. Members are selected by the various boards that they represent. The chair and vice-chair of the Technology Training Board are elected by its membership. Members serve two-year terms that expire on February 1 of each odd numbered year. The executive director and staff of the Texas Economic Development Commission serve as the executive director and staff of the Technology Training Board. The Texas Economic Development Commission was allocated \$25,000 per year during the current biennium in additional funds to support the Technology Training Board. The board has met once since it was originally created.

An important factor that led to the creation of the board is that the state's technology training programs are divided among several different state agencies. Overall, some seven different state agencies have responsibility for various aspects of technology training. For example, the Texas Education Agency (TEA) administers the state's public school system and the Industrial Start-Up Program. These efforts provide many types of vocational training. The Coordinating Board of the Texas College and University System has oversight responsibilities for junior colleges, community colleges and state universities. The board is also responsible for the four Texas State Technical Institute campuses. Much of the state's technology-oriented training is developed in post-secondary schools under the direction of the Coordinating Board. The Texas Department of Community Affairs (TDCA) is responsible for vocational/technical training through the state's Job Training Partnership Act (JTPA) program. Other agencies such as the Texas Economic Development Commission (TEDC), the Advisory Council for Technical-Vocational Education (ACTVE), the State Occupational Information Coordinating Committee (SOICC), and the Texas Job Training Coordinating Council (TJTCC) are

involved in planning, coordinating and carrying out technology training programs. The Technology Training Board was created in response to the need to develop a more coordinated, comprehensive approach to the activities of the various programs mentioned above in the area of technology training. The review indicated that the board has not accomplished this objective, primarily due to a lack of funding, and other mechanisms and initiatives exist which can help the state better meet this goal.

#### **Scope of Sunset Review**

The review of the Technology Training Board focused on three general areas: 1) whether the need which led to the board's creation still exists; 2) if so, whether the board has met or is likely to meet that need; and 3) whether the duties of the board could be carried out by other state agencies.

#### **Need to Continue Agency**

The review indicated that there was no longer a need to continue the agency.

**Sunset Commission Recommendations for the  
TECHNOLOGY TRAINING BOARD**

**THE TECHNOLOGY TRAINING BOARD SHOULD BE ABOLISHED**

The need to coordinate the state's activities in the area of technology training exists and improvements in the state's ability to respond to the changing technology training needs of its businesses are needed. However, the Technology Training Board has not been able to meet these needs, primarily due to a lack of funding and it is unnecessary for it to continue. Other existing mechanisms have similar mandates and can carry out its functions if called upon to do so. Finally, initiatives are currently underway to examine the state's ability to improve its technology training capability and a comprehensive series of recommendations from three task forces and other state policy makers will be made to the 70th Legislature to address the situation.



## **TEXAS CONSERVATION FOUNDATION**

### **Background**

#### **Creation and Powers**

The Texas Conservation Foundation was created in 1969 to address concerns about diminishing financial resources for park land and the loss of available natural resource areas caused by increasing land development in Texas. The foundation was designed to provide a means by which individuals interested in supporting parks and preserving natural resources and historic sites could make tax deductible cash and property gifts to the state through a charitable, non-profit foundation.

#### **Board Structure**

The foundation is governed by a six-member board composed of three public members and three ex-officio members -- the director of the Texas Parks and Wildlife Department, The Texas Land Commissioner, and the director of the Texas Historical Commission. Appointment of the three public members is divided among the governor, the lieutenant governor and the speaker of the house. Public members serve at the pleasure of the appointing official, or for staggered six-year terms. The governor has the responsibility for selecting the board chairman from the existing board membership.

#### **Funding and Organization**

Operations of the foundation are conducted from an Austin office by a staff of two, the executive director and administrative technician, with an appropriation from general revenue of \$86,975 in fiscal year 1986. In 1985, funding for the agency was made along with an appropriations rider directing that the foundation improve its prior performance by raising at least one million dollars during each of the 1984-85 and 1986-87 bienniums.

#### **Programs and Functions**

While current statutory responsibilities of the agency are varied and include such mandates as collecting data and compiling an inventory of natural areas around the state, the agency's primary objective can be divided into two functions - fund raising and negotiating real property transactions for the benefit of state park, historical and natural resources conservation purposes.

### **Scope of Sunset Review**

The foundation came under sunset review during the 1984-1985 biennium. The commission focused on two issues: the need for the agency and its effectiveness. Although the commission found that a need existed for the agency, it determined that the foundation had experienced only limited success in its efforts to raise funds and increase land holdings. The commission recommended, therefore, that the agency be continued for a two-year period, at the end of which the commission would determine whether the foundation's track record had improved enough to justify its continued existence. The legislature adopted the commission's recommendation.

In its current review, the commission examined the foundation's performance for signs of improvement over its previous record. The review focused on the agency's record of land acquisitions and cash donations.

### **Need to Continue Agency**

The Sunset Commission found that the foundations performance improved significantly in the last two years. From 1980 to 1984, the agency raised \$790,000 in donations of cash and real property. During fiscal 1985 and 1986, the total value of donations rose to \$5.2 million. Due to this improvement, the commission determined that the agency should be continued. It should, however, be reevaluated in six years to determine whether the foundation's improved level of performance is maintained.

**Sunset Commission Recommendations for the  
TEXAS CONSERVATION FOUNDATION**

**CONTINUE THE AGENCY FOR SIX YEARS**

**The statute should be amended to change the Texas Conservation Foundation's sunset date to September 1, 1993.**

The need for the agency's services and its improved level of performance indicate that it should be continued. The agency should be reevaluated in six years to determine whether it has been able to maintain its performance at an acceptable level.



## TEXAS BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

### Background

#### Creation and Powers

The Texas Board of Private Investigators and Private Security Agencies was established by the 61st Legislature in 1969 as Article 4413 (29bb), V.A.C.S. The agency is currently active and is managed and controlled by an eight-member board consisting of six members appointed by the governor for six-year overlapping terms and two ex-officio members, the director of the Department of Public Safety and the attorney general or their designated representatives. As identified in the agency's mission statement, the agency is responsible for the protection of the public through the regulation of the private investigations and private security industry in Texas.

The 61st Legislature addressed the need for a comprehensive and uniform approach to the regulation of private security activities through the creation of the Board of Private Detectives, Private Investigators, Private Patrolmen and Private Guard Watchmen in 1969. The agency's name was changed to the Board of Private Investigators and Private Security Agencies in 1971. This Act made it unlawful for any person or firm to offer security services without being licensed by the board or exempted by the Act. The intent of the licensing law was to establish firm control over the manner in which security services are offered, the person authorized to engage in the business, and the financial integrity of security service providers. This intent was addressed through statutory provisions which: 1) imposed an organizational framework upon the industry by requiring the licensure of companies according to the scope of services offered and conditioned upon the qualifications of management personnel for each service offered; 2) restricted entry into the field of persons with unfavorable criminal histories; and 3) required surety bond and insurance coverage for licensees so that compensation for recoverable damages would be available.

The original scope of the board's authority was significantly altered in 1971, 1975 and again in 1983. Regulation of private security was expanded by the 62nd Legislature to include armored car, courier, guard dog and alarm companies. The inclusion of these services within the scope of the Act was in an effort to regulate all aspects of the security industry.

The 64th Legislature in 1975, authorized the board to issue hand gun commissions to qualified security officers and remove the local authority to grant

commissions. This change was in response to the lack of control and uniformity which resulted from the various local practices governing the issuance of hand gun permits. The agency was given the additional responsibility to establish a training program and to develop a commissioned security officer manual to be used in the instruction and training of commissioned security officers. The agency also had to approve training instructors and training schools.

The statute was changed by the 68th Legislature in 1983 to include the word firearm instead of handgun so that a security officer must obtain a commission and complete the required training in order to carry a shotgun or rifle while on duty. The agency was also given the responsibility to register non-commissioned security officers, alarm systems installers, and private security consultants.

### **Board Structure**

The eight-member board directing the agency is composed of three industry representatives, two public members, one local law enforcement representative, and two ex-officio members (the attorney general and the director of the Department of Public Safety or their representatives). With the exception of the ex-officio members, all members are appointed to overlapping six-year terms by the governor with the advise and consent of the senate. The board members currently elect a chairperson from their membership.

The board carries out the general policy making duties which include: determining the qualifications of licensees; investigating violations of the Act along with board rules; promulgating rules and regulations; and establishing standards of conduct for persons licensed, registered, and commissioned by the Act.

The board has the following powers and duties: 1) to determine the qualifications of licensees, registrants, and commissioned security officers as provided in the Act; 2) to investigate alleged violations of the provisions of the Act and of any rules and regulations adopted by the board; 3) to promulgate all rules and regulations necessary in carrying out the provisions of the Act; and 4) to establish and enforce standards governing the safety and conduct of person licensed, registered, and commissioned under the provisions of the act.

### **Funding and Organization**

The legislature, through the enactment of the Private Investigators and Private Securities Act, mandated the Board of Private Investigators and Private Security Agencies to regulate all persons who engage in the business of, or offer services as, private investigation companies or security service contractors.

Guard, alarm systems, armored car, courier and guard dog companies comprise the business entities statutorily subject to regulation as security service contractors. Businesses not subject to regulation under the act include major credit collectors, attorneys-at-law, insurance adjusters, repossessioners of property, locksmiths, persons who own or install burglar alarms on their own property, employees of cattle associations, common carriers engaged in interstate commerce, professional engineers, and salesmen of over-the-counter burglar alarms.

Board regulation of the private investigation and security business is achieved primarily through the licensure of companies, the commissioning of armed security guards, and the registration of individual private investigators, as well as the owners, operators, partners, officers, shareholders, and managers of licensed companies. This regulatory scheme of licensure and registration is designed to ensure 1) that licensed private security and investigation companies are controlled by qualified persons and are financially able to make restitution to persons injured as a result of their services, and 2) that armed commissioned security guards are competent and qualified to carry firearms while on duty. Enforcement efforts of the agency are aimed at ensuring the continued qualifications of commissioned security officers and those persons operating investigations and security companies, licensed under the act, as well as, preventing violations of the act.

Staff for the agency consists of 45 full-time employees. The board was funded by \$1,519,328 out of the General Revenue Fund in 1986. Fees collected by the board are set by statute and deposited in the State Treasury to the credit of the General Revenue Fund. The agency returned over \$925,000 to the state in excess of their appropriation in 1986.

### **Programs and Functions**

As with most other licensing agencies, the operations of the board can be separated into three basic activities; administration, licensing, and investigation.

#### **Administration**

The general objective of any administrative function is to provide for the effective operation of all agency activities. The administrative activity has 13 personnel who open and sort mail, log in checks, enter licensure applications in a computer terminal, do accounting and personnel functions, printing, inventory control, purchasing, telephone switchboard, and act as a liaison with the other state agencies. Agency records and reports are carefully prepared and systematically organized.

### Licensing

The licensing function of the board is handled by 15 employees and ensures that security services available to the public are offered by qualified companies and individuals. The board accomplishes this by licensing security companies, registering employees of licensed companies, commissioning security officers who carry firearms during the course of their work and, approving the schools and instructors involved in the training of security officers. As provided by the Act, licenses are issued to companies, based on the nature of services offered, in the three classes listed below:

- Class A License - Investigation companies;
- Class B License - Security service contractors (including guard, armored car, burglar alarm and guard dog companies); and
- Class C License - Combined companies which offer investigations and security services.

Exhibit 1 identified the numbers of licensed companies by class of license.

**Exhibit 1**  
**Number of Licensed Companies**  
**FY 1985**

<u>Class of License</u>	<u>Number of Licensed Companies</u>
Class A	478
Class B	1,050
Class C	<u>673</u>
<b>TOTAL</b>	<b>2,201</b>

Licensing standards for the three classes are set out in statute. In addition to these standards, a company must show proof of bond and insurance coverage in amounts specified by statute, also the manager of the company must meet certain statutory requirements.

According to these requirements, an applicant must 1) not have been convicted of a felony or any crime involving moral turpitude; 2) obtain a letter of approval from the local police and sheriff; 3) have at least two years experience for a Class A license, three years for a Class B or C license; and 4) successfully complete an examination administered by the board. The examination administered by the board tests the applicants familiarity with the Act and board rules. Exhibit 2 presents examination pass/fail rates for fiscal year 1982-1986.

**Exhibit 2**  
**Licensing Examination Pass/Fail**  
**Rates, Fiscal Years 1982-1986**

<u>Year</u>	<u>Number Examined</u>	<u>Number Passed</u>	<u>Percent Passed</u>	<u>Number Failed</u>	<u>Percent Failed</u>
1982	503	396	79%	107	21%
1983	611	412	67%	199	33%
1984	592	442	75%	150	25%
1985	890	692	78%	198	22%
1986	<u>692</u>	<u>486</u>	<u>70%</u>	<u>206</u>	<u>30%</u>
<b>TOTAL</b>	<b><u>3,288</u></b>	<b><u>2,428</u></b>	<b><u>74%</u></b>	<b><u>860</u></b>	<b><u>26%</u></b>

The board is also directed by statute to collect certain fees associated with licensing services provided. Fees charged to licensees are set by the board but are limited by statute. In 1985, the board collected \$2,139,294 in fees, which went to the general revenue fund. In addition, the board may charge a fee each time an applicant has to resubmit fingerprints if they were not classifiable.

The second licensing activity involves the registration of certain employees of licensed companies. The Act requires that any person employed as a private investigator, manager, or branch office manager be registered by the board. Additionally, an individual with a 25 percent or greater financial interest in the company also must be registered. Registration under the Act requires that an applicant obtain a letter of approval from the local police department and sheriff's office, and that the applicant not have been convicted of any felony or crime involving moral turpitude. Exhibit 3 indicates the number of registrants by type.

**Exhibit 3**  
**Number of Registrants by Type**  
**Fiscal Year 1985**

<u>Type of Registrations</u>	<u>Number of Registrants</u>
Owners, Officers, Partners, & Shareholders	2,183
Private Investigators	2,525
Managers, Branch Managers, & Supervisors	<u>374</u>
<b>TOTAL</b>	<b><u>5,082</u></b>

The agency also issues firearm commissions to qualified security officers. Provisions of the penal code and the board's Act prohibit a security officer from carrying a firearm unless commissioned by the board. Requirements for obtaining a firearm commission provided that an applicant not have been convicted of a felony or crime involving moral turpitude, receive approval from local law enforcement officials, and successfully complete a 30-hour training course approved by the board. Additionally, firearm commissions can only be issued to uniformed guards of Class B or Class C licensees and the hand gun must be worn in plain view. Board rules prohibit the wearing or carrying of simulated firearms. Private investigators are not allowed to carry a firearm. Exhibit 4 shows the number of non-commissioned and commissioned security officers licensed by the board.

**Exhibit 4**  
**Security Officers Licensed 1982-1986**

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Non-commissioned Officer Registrations	5,320	5,897	23,458	48,760	52,250
Commissioned Officer Registrations	15,941	17,934	20,290	21,335	32,215
Total Security Officers Licensed	21,261	23,831	43,748	70,095	84,456

The agency is also responsible for approving the schools and instructors that train security officers. A board-approved school must use the board's training curriculum as set forth in the training manual or submit its own curriculum for approval before being allowed to teach applicants seeking security officers commission. The board supplies the exams to the schools for the students to take upon completion of the 30 hour course. In 1985 there were 192 board approved training schools across the state.

Finally, the board establishes qualifications and approves instructors for security officer training programs, both for classroom instruction and firing range instruction. The board has 334 approved instructors as of August 31, 1985.

Investigation

There are 11 field investigators located in San Antonio, Fort Worth, Dallas, Houston, El Paso, and Austin. While it is the policy of the board to investigate all

complaints filed, limited personnel and resources have forced the board to establish priorities in this area. Consumer complaints have a top priority since these are complaints from actual users of a service provided by a licensed company and its employees. Also, general public complaints are high on the priority list. These are complaints from citizens regarding licensees of the board which involve possible violations of other laws such as theft, burglary, and shoplifting. The staff works in connection with law enforcement agencies across the state and receives licensee violation information from law enforcement personnel routinely. These complaints are also viewed as high priority. Over 5000 complaints were investigated in 1985.

If, upon investigation, a complaint appears to be a valid one, appropriate action is taken. When there is evidence of a criminal violation, the case is filed with the district or county attorney of the county in which the violation occurred. There were 20 criminal cases filed in 1985.

In the event that there is evidence of a civil violation, an administrative hearing is conducted by the agency. Alleged violators are allowed to settle some administrative cases by waiving a hearing and paying a fine. An administrative hearing is set by the agency in which all parties to the complaints are heard. After the hearing has been conducted the hearing officer makes his decision known to the respondent and this decision is brought before the board who make the final ruling on the case. Final decisions of the board can be appealed by filing the case in the Travis County District Clerk's office. Exhibit 5 shows the fines collected for fiscal years 1982-1986.

**Exhibit 5**

**Fines Collected**

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Fines Collected and Deposited in State Treasury	\$ 32,560	\$ 45,915	\$ 84,775	\$139,640	\$314,650

In 1985, 3,752 administrative hearings were held by the board. The majority of these hearings were for violations such as failure to register employees and training violations. As a result of these hearings, 1,476 licenses, commissions, registrations, and letter of authority were suspended. In addition, 48 licenses and 37 commissions were revoked. Exhibit 6 shows the number and disposition of administrative hearings for fiscal year 1982-1986.

### Exhibit 6

#### Administrative Hearings

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
New Cases Filed	358	1,005	2,102	3,752	5,561
Cases Carried Over from Previous Year	<u>18</u>	<u>45</u>	<u>59</u>	<u>358</u>	<u>1,447</u>
Active Cases	376	1,050	2,161	4,110	7,008
Cases Closed	<u>331</u>	<u>991</u>	<u>1,803</u>	<u>2,663</u>	<u>5,674</u>
Cases Carried Over to Next Year	45	59	358	1,447	1,334

#### Dispositions

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Suspensions	164	743	992	1,476	3,357
Revocations	87	111	108	101	545
Applicants Approved	11	19	123	215	192
Applicants Denied	22	9	9	128	198
No Actions and Dismissals	43	11	561	732	1,354
Reprimands	<u>4</u>	<u>98</u>	<u>10</u>	<u>11</u>	<u>28</u>
Total Cases Closed	<u><u>331</u></u>	<u><u>991</u></u>	<u><u>1,803</u></u>	<u><u>2,663</u></u>	<u><u>5,674</u></u>

#### Scope of Sunset Review

The review of the board involved an evaluation of the board's regulatory functions. In reviewing the board, staff performed several activities. Overview discussions were conducted with board personnel based in Austin. Site visits were made to four of the six field offices. Work sessions and discussion were held with interest groups and persons knowledgeable of the agency. Staff also reviewed past legislative issues and relevant evaluation studies and reports pertaining to the board.

#### Need to Continue Agency

The sunset review of the board's programs and responsibilities indicated that there is continuing need for state involvement in the regulation of the private investigation and security industry. The review indicated that the board has generally met its goals and objectives in an efficient and effective manner and should be continued for a 12-year period. The review also determined that if the

agency is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. These changes are outlined in the "Recommendations" section.



Sunset Commission Recommendations for the  
BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

Method of Selecting the Agency Chairperson Should be Changed.

1. **The statute should be amended to require that the governor select the chairman of the agency's board. (Statutory)**

The governor's selection of the chair encourages and helps ensure continuity of policy from the state's chief executive office down to the various agencies which serve the citizens of the state.

2. **One of the two appointed industry board members should be from a contract guard company. (Statutory)**

Contract guard companies make up a large part of the security industries and should be represented on the board.

Overall Administration

Administrative Costs Should be Clearly Identified.

3. **Costs of computer operations should be pro-rated on usage by the three activities and the hearings officers, two secretaries and related expenses transferred to the hearings division. (Non-statutory management improvement)**

Actual costs of the administrative division can be lowered by pro-rating computer costs and removing the hearings officer, staff and related expenses to the hearings division.

Conflict of Interest

4. **The director and employees of the board shall have no financial or business interests in any security services contractor or investigation company and shall not hold any type of license insured by the board. (Statutory)**

The staff has noted that the director and certain employees have had dummy licenses in the past which were used as a check to see if the computer was

functioning properly. A different method for checking the computer operations should be used and no employee names or addresses should be used for any license issued by the board.

### Evaluation of Programs

#### The Board's Ability to Prosecute Unlicensed Companies Should be Strengthened.

5. **The board should be able to prosecute unlicensed companies by having the venue for the offense in Travis County or in the county in which the violation occurred. (Statutory)**

The board has experience difficulties in getting local officials in certain counties to prosecute unlicensed security companies who are operating security businesses without benefit of a license. By having the venue changed to Travis County the board will be able to prosecute unlicensed security firms in those counties where prosecution has been impossible in the past.

#### Current Regulation of Non-Commissioned Security Officers Does Not Provide Adequate Protection.

6. **The board should be given authority to regulate all non-commissioned security officers. (Statutory)**

Requiring a background check of all non-commissioned officers is necessary to ensure the public safety. Currently, only non-commissioned officers employed by licensed companies are required to register. Security officers hired as company employees do not have to be registered and therefore cannot be checked for prior criminal histories. Under these provisions, security officers employed by private companies must be registered by September 1, 1991.

#### Non-Commissioned Security Officers Employed by Political Subdivisions Should be Registered and Required to Pay.

7. **All non-commissioned security officers employed by political subdivisions should be registered by the board and be required to pay registration and renewal fees. (Statutory)**

The public would be better protected if non-commissioned security officers employed by political subdivisions were required to be registered by the board so that a background check could be made. These officers should not be exempt from paying the board's registration and renewal fees. The general revenue fund would be increased by \$75,000 annually by this provision. This provision would go into effect September 1, 1988.

**Licensing Requirements for Non-Commissioned Officers Should be Modified.**

8. **Non-commissioned security guards shall be issued a four-year non-transferable registration. The registration fee shall be \$30 with a \$30 renewal fee. the registration card would follow the non-commissioned security guard. The company would be required to notify the board that it was hiring a non-commissioned officer and would pay a \$10 employee update fee. (Statutory)**

Issuing registrations for more than year to cut down agency paperwork and workload.

**Licensing Requirements for Commissioned Security Officers Should be Modified.**

9. **All commissioned security guards shall be issued a two-year transferable commission card. The commissioned guards shall requalify with firearms prior to obtaining a two-year commission and prior to each renewal. The fee for a two-year commission card would be \$30 and \$30 for a renewal fee. The commission care would follow the commissioned security guard. The company would be required to notify the board that it was hiring a commissioned officer and would pay a \$10 employee update fee. (Statutory)**

The commission recommended that commissioned security guards be issued a transferable commission card that would enable commissioned guards to transfer from company to company without waiting a month or two before being able to go back to work. A two-year transferable commission card would eliminate the problem that commissioned security officers have of providing the board with proof of a 24-month firearm re-qualification. Licensed security companies would be required to inform the board within 14 days of any commissioned guard that terminated employment and would also have to inform the board within 10 days of any commissioned guards they hired.

**Burglar Alarm Monitoring Companies Need to be Licensed.**

10. **Burglar alarm monitoring companies should have a Texas domicile and be licensed by the Board of Private Investigators and Private Security Agencies. (Statutory)**

By having all monitoring companies under the jurisdiction of the board, the public could be assured that these companies would have a Texas manager, have insurance, and be responsible for certain standards of conduct.

**Security Dog Trainers Need to be Licensed.**

11. Security dog trainers need to be licensed by the board so that a background check can be made. (Statutory)

Requiring the board to regulate security dog trainers would ensure that the public would not be injured by an improperly trained dog. In addition, regulating trainers of dope dogs, who routinely handle narcotics in the training process, would help to prevent the illegal use or sale of these narcotics. Security dog trainers would pay a \$15 registration fee and a \$15 renewal fee which will bring approximately \$3,000 a year into the state treasury and would cover the cost of regulation.

**Pre-employment Check for Non-commissioned Security Officers.**

12. Companies hiring non-commissioned security officers shall conduct a pre-employment check prior to employment. (Statutory)

The public would be better protected by requiring security companies to check references and past employment records of any individual prior to employment.

**FBI Fingerprint Check Should be Required of all Commissioned Security Officers.**

13. An FBI fingerprint check would be required of all commissioned security officers within 60 days of issuance of a temporary commission card. The fee for the FBI fingerprint check would be \$15. The up-grade fee of \$5 would have to be eliminated. (Statutory)

Several people indicated that an FBI check would disclose arrest violations not only in Texas, but in all states. It is felt that both an FBI check and a DPS check of fingerprints would better protect the public in disclosing any arrests records that a commissioned officer applicant might have. The FBI check would cost an additional \$15 per individual.

**Burglar Alarm Salespersons, Alarm Installers, and Licensed Security Personnel Patrolling Residential Dwellings Should have a Fingerprint Check.**

14. Burglar alarm salespersons and alarm installers, along with licensed security personnel patrolling residential or apartment dwellings should have a fingerprint check prior to employment. (Statutory)

The review indicated that one of the critical areas of the security industry was residential and apartment dwellings where security personnel patrolled and where

burglar alarm salespersons and installers had access to the public personal property. It is felt that a DPS fingerprint check would protect the public by disclosing any arrest records this group might have.

**Authority to Charge to Fee for Duplicative Commission or Registration Cards.**

15. All security personnel will be required to pay a \$10 fee for the issuance of duplicate commission or registration cards. (Statutory)

The board does not have the authority to charge a fee for duplicate commission or registration cards.

**All Persons Registered by the Board Should be Required to Pay.**

16. Commissioned security officers employed by political subdivisions should be required to pay registration and renewal fees. (Statutory)

Commissioned security officers employed by political subdivisions should pay the cost of regulation. General revenue would be increased \$7,500 annually if this group of commissioned security officers were required to pay registration and renewal fees.

17. Owners, officers, partners, and major stockholders of over 25 percent stock in security firms should be charged registration and renewal fees to cover the cost of regulation. (Statutory)

This would ensure that all groups regulated by the board would pay the cost of regulation. A registration fee of \$15 and renewal fee of \$15 would cover these costs. This would bring in approximately \$33,000 a year to the state treasury.

**Current Insurance Coverage Requirements for Licensed Companies is Inappropriate.**

18. Statute should be changed setting limits of liability to not less than \$100,000 bodily injury and property damage for each occurrence, and \$50,000 personal injury per person or organization and not less than \$200,000 total aggregate. (Statutory)

The Insurance Commission is changing its policy on general liability insurance in Texas beginning April 1, 1987 by going to what is known as single limit insurance. This will make the current liability coverage of \$50,000 bodily injury, \$25,000 property damage and \$50,000 personal injury obsolete. Going to \$100,000 single limits, which combines bodily injury and property damage, along with \$50,000

personal injury coverage, will make it possible for more insurance companies to bid on coverage.

19. **The statute should be changed allowing the board, with the approval of the State Insurance Commission, to adjust the liability insurance rates if it is determined that they are either unavailable or not affordable industry-wide. If the rates are adjusted, the limits of liability cannot be below the current limits. The adjustment must be adopted as a rule and shall be reviewed on a yearly basis to determine if the statutory rates should be reimposed. (Statutory)**

This provision allows for the yearly review of liability insurance rates by the board.

20. **The statute should require that applicants for a company license show their insurance coverage on certificate of insurance forms prescribed by the board. (Statutory)**

Using the certificate of insurance forms issued by the board would help to ensure that the board would be informed of the amount of liability of insurance carried by a company and if any group of employees were excluded from the policy. The agency could then take corrective steps to ensure that all parties that needed coverage were covered by the policy.

#### **Psychological Testing Provisions Are Not Needed.**

21. **Sections 20A and 20B concerning psychological testing should be deleted from the statute. (Statutory)**

The review indicated that psychological testing would be too costly for the number of commissioned security officer applicants and could subject the state to liability claims, if job applicants who were refused employment because of the results of the exams.

#### **Better Coverage is Needed for Manager Exams.**

22. **Managers Examinations should be given in areas other than Austin. (Non-statutory management improvement)**

Persons wanting to take managers examinations would have the option of paying a small fee to take the exam locally or paying travel and expenses by coming to Austin. The exam would be sent to Austin for grading after which the results would be made known to the applicants.

**Unused Provisions Should be Deleted from Statute.**

**23. The license termination fee of \$10 should be deleted. (Statutory)**

This fee should be deleted from the statute because it is impossible to collect.

**Non-Program Changes**

**24. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory)**

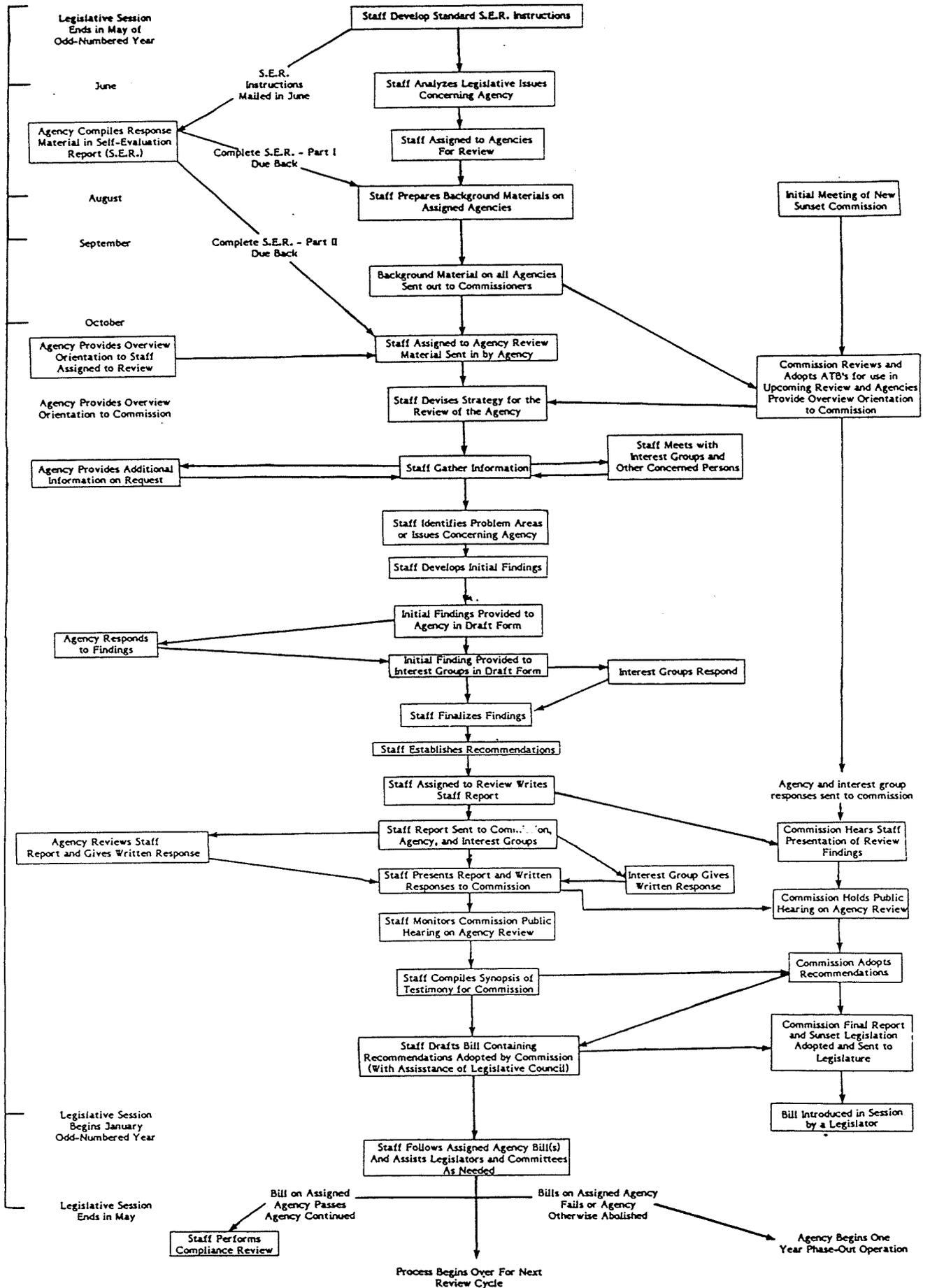
The Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations are applied to each agency. A description of the provisions and their application to the board are found in the "Across-the-Board Recommendations" section of the staff report.

**25. Minor clean-up changes should be made in the agency's statute. (Statutory)**

Certain non-substantive changes should be made in the agency's statute. A description of the clean-up changes needed in the statute are found in the "Minor Modifications of Agency's Statute" section of the staff report.



# OVERVIEW OF THE REVIEW PROCESS FOR AGENCIES SUBJECT TO SUNSET





**OVERVIEW OF SUNSET ACTION  
FROM 1979 to 1985**

	<b>Legislative Session</b>	<b>Number of Agencies Reviewed</b>	<b>Number of Agencies Abolished</b>	<b>Number of Agencies Abolished and Functions Transferred</b>	<b>Number of Agencies Combined</b>	<b>Number of Agencies Separated</b>	<b>Number of Agencies Continued</b>
<b>1979</b>	66th	26	8	1	4	1	12
<b>1981</b>	67th	28	2	3	1	0	22
<b>1983</b>	68th	32	3	0	0	0	29
<b>1985</b>	69th	32	6	0	1	1	24
<b>TOTALS</b>		118	19	4	6	2	87



**MEETING DATES**  
**of the**  
**SUNSET ADVISORY COMMISSION**

The Sunset Advisory Commission met 21 times between August 1985 and February 1987 to hear staff reports, take public testimony, and develop recommendations on the 14 agencies scheduled for sunset termination in September 1987. Meeting dates of the commission were as follows:

August 29, 1985	November 7, 1986
September 20, 1985	November 8, 1986
November 1, 1985	November 23, 1986
March 14, 1986	November 24, 1986
March 15, 1986	December 18, 1986
April 18, 1986	December 19, 1986
June 13, 1986	January 9, 1987
September 26, 1986	January 10, 1987
September 27, 1986	January 26, 1987
October 16, 1986	February 2, 1987
October 17, 1986	



## TABULAR SUMMARY OF SUNSET COMMISSION ACTION

On Agencies Scheduled for Review by the  
70th Legislature, 1987

<u>Agency</u>	<u>Date Created</u>	<u>Commission Decision</u>
<b><u>Criminal and Juvenile Justice Agencies</u></b>		
Texas Adult Probation Commission	1977	Continue w/modification
Board of Pardons & Paroles	1936	Continue w/modification
Texas Department of Corrections	1927	Continue w/modification
Texas Juvenile Probation Commission	1981	Continue w/modification
Texas Youth Commission	1949	Continue w/modification
<b><u>Health and Human Services Agencies</u></b>		
Texas Department of Mental Health and Mental Retardation	1965	Continue w/modification
Medical Care Advisory Committee	1983	Abolish
Texas Department of Human Services	1939	Continue w/modification
Texas Diabetes Council	1983	Continue w/modification
Texas Commission for the Deaf	1971	Continue w/modification
<b><u>Other Agencies</u></b>		
Texas Air Control Board	1965	Continue w/modification
Technology Training Board	1985	Abolish
Texas Conservation Foundation	1969	Continue
Texas Board of Private Investigators and Private Security Agencies	1969	Continue w/modification



**AGENCY AND STAFF ASSIGNMENTS**  
**SUNSET COMMISSION REVIEW SCHEDULE**  
**1985-1987**

**Texas Adult Probation Commission**

Beckye Bates (In-charge)  
Angela Moretti  
Stuart Reynolds

**Board of Pardons and Paroles**

Joey Longley (In-charge)  
Anne Martin  
Joe Walraven

**Texas Department of Corrections**

Karl Spock (In-charge)  
Joey Longley  
Joe Walraven  
Anne Martin  
Larrilyn Russell

**Texas Juvenile Probation Commission**

Ken Levine (In-charge)  
Cyndie Schmitt  
John Frasch

**Texas Youth Commission**

Kathy Hutto (In-charge)  
Ginny McKay  
Jim Cash

**Texas Department of Mental Health and Mental Retardation**

Kathy Hutto (In-charge)  
Jim Cash  
Angela Moretti  
Cyndie Schmitt  
Stuart Reynolds

**Medical Care Advisory Committee**

Cyndie Schmitt (In-charge)  
Stuart Reynolds

**SUNSET COMMISSION REVIEW SCHEDULE  
1985-1987  
(cont.)**

**Texas Department of Human Services**

Tim Graves (In-charge)  
Ken Levine  
Ginny McKay  
Bruce Crawford  
Chris Cook

**Texas Diabetes Council**

Beckye Bates (In-charge)  
Chris Cook

**Texas Commission for the Deaf**

Anne Martin (In-charge)  
Angela Moretti

**Texas Air Control Board**

Ken Levine (In-charge)  
Joe Walraven

**Technology Training Board**

Jim Cash

**Texas Conservation Foundation**

Larrilyn Russell

**Texas Board of Private Investigators and Private Security Agencies**

John Frasch (In-charge)  
Bruce Crawford