

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH C. GARCIA,
Petitioner,

vs.

CARMELLA JONES, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-70031

United States Court of Appeals
Fifth Circuit

FILED

December 2, 2018

Lyle W. Cayce
Clerk

JOSEPH C. GARCIA,

Plaintiff – Appellant,

v.

CARMELLA JONES; ED ROBERTSON; DAVID GUTIERREZ; FRED
RANGEL; BRIAN LONG; FRED SOLIS; JAMES LAFAVERS; GREGORY W.
ABBOTT,

Defendants – Appellees.

Appeal from the United States District Court
for the Southern District of Texas

Before DENNIS, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:

Joseph Garcia was sentenced to death by a Texas jury and is scheduled for execution on December 4, 2018.¹ Garcia filed a complaint under 42 U.S.C. § 1983 against the Texas Governor and the members of the Texas Board of Pardons and Paroles (the Board) alleging that the Board’s composition violated his Eighth and Fourteenth Amendment rights and seeking declaratory and injunctive relief, including a preliminary injunction staying his execution. The

¹ We previously denied Garcia a certificate of appealability in his federal habeas petition. *Garcia v. Davis*, 704 F. App’x 316, 319 (5th Cir. 2017).

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district court denied Garcia's motion for preliminary injunction and dismissed his § 1983 complaint with prejudice pursuant to 28 U.S.C. § 1915A. Garcia appealed. We AFFIRM the district court's judgment and DISMISS Garcia's motion for stay of execution as moot.

I

Garcia filed an Application for Commutation of Death Sentence to Lesser Penalty with the Texas Board of Pardons and Paroles on November 8, 2018. Three weeks later, Garcia filed this § 1983 action in the district court, alleging that the Board as currently constituted violates the requirement under Texas Government Code § 508.032(a) that the Board be "representative of the general public" because six of the seven Board members are former employees of the Texas Department of Criminal Justice or former law enforcement officers and six of the seven Board members are male. According to Garcia, this in turn violates his Fourteenth Amendment due process right to a fair clemency proceeding, and executing him under these circumstances would violate his Eighth Amendment right to be free from cruel and unusual punishment. Garcia simultaneously moved for a preliminary injunction to bar the Board from making a recommendation on his clemency request.² He also asked the district court to stay his execution to allow time to "hear the allegations in his [c]omplaint."

The district court denied Garcia's motion for preliminary injunction on two grounds: (1) Garcia was dilatory in bringing his § 1983 action so as to delay his execution; and (2) the case had no likelihood of success on the merits because Garcia had no constitutional right to clemency or any particular procedures in the evaluation of his clemency request. Moreover, because Garcia had at most alleged a violation of Texas law and § 1983 provides a

² The Board has since voted not to recommend a commutation of sentence.

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remedy only for violations of the Constitution and laws of the United States, the district court dismissed Garcia's complaint for failure to state a cognizable claim. *See* 28 U.S.C. § 1915A(b)(1). Garcia filed an appeal in this court and seeks a stay of his execution.

II

Though we lack jurisdiction to consider a claim requesting that we order the Board to recommend clemency, we have jurisdiction to consider challenges to state clemency proceedings when the relief the party seeks “will not spell speedier release.” *Young v. Gutierrez*, 895 F.3d 829, 831 (5th Cir. 2018) (finding jurisdiction over a challenge to state clemency proceedings that would “result only in a stay until [the § 1983 claimant] is afforded a clemency proceeding commensurate with the Constitution”).

We review a district court's denial of a preliminary injunction for an abuse of discretion. *Jones v. Tex. Dep't of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018). “Factual findings are reviewed for clear error, while legal conclusions are reviewed de novo.” *Id.* (quoting *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017)). We review a dismissal under 28 U.S.C. § 1915A(b)(1) for failure to state a claim de novo, applying the same plausibility standard applicable to Federal Rule of Civil Procedure 12(b)(6) dismissals. *Legate v. Livingston*, 822 F.3d 207, 209–10 (5th Cir. 2016).

III

“To obtain a preliminary injunction, a movant must establish: ‘(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.’” *Jones*, 880 F.3d at 759 (quoting *Byrum v. Landreth*, 566 F.3d 442,

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445 (5th Cir. 2009)). We agree with the district court that Garcia has failed to satisfy the first prong of this analysis.³

Garcia does not assert a constitutional entitlement to clemency, and it is well-established that no such right exists. *See Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981) (“[A]n inmate has ‘no constitutional or inherent right’ to commutation of his sentence.” (quoting *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979))); *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280–82 (1998) (applying *Dumschat*’s reasoning to a death row inmate’s petition for clemency). Instead, Garcia asserts an entitlement under due process to minimal procedural safeguards in clemency proceedings.

In *Faulder v. Texas Board of Pardons and Paroles*, 178 F.3d 343 (5th Cir. 1999), we held that allegations that “the Board . . . violated state law and its own regulations” was not an example of the type of “extreme situation[]” that Justice O’Connor declared a potential constitutional violation in her concurring opinion in *Woodard*. 178 F.3d at 344–45 (citing *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring)); *see also Tamayo v. Perry*, 553 F. App’x 395, 402 (5th Cir. 2014) (holding no procedural due process violation where Board members allegedly communicated with interested parties in violation of the Board’s own rules). Similarly, Garcia’s argument that the Board’s composition violates Texas law does not assert an arbitrary clemency proceeding akin to the flip of a coin or a complete denial of access to the clemency process. *See Faulder*, 178 F.3d at 344 (citing *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring)). Garcia’s allegations do not reflect the complete lack of process

³ The district court also held and Appellees argue on appeal that the dilatory nature of Garcia’s § 1983 action provides an alternative basis for denying his motion for a preliminary injunction. Because we agree with the district court’s conclusion that Garcia failed to show a substantial likelihood of success on the merits, we need not reach the district court’s untimeliness ruling.

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that we have held may violate the minimal due process protections that exist in the clemency context. *See id.* Accordingly, the district court did not err in denying Garcia’s motion preliminary injunction.

For the same reason—because Garcia has not alleged a violation of the Constitution or laws of the United States—the district court correctly dismissed Garcia’s § 1983 complaint on the merits. *See Sw. Bell Tel., LP v. City of Houston*, 529 F.3d 257, 260 (5th Cir. 2008) (noting that § 1983 “provides a remedy for the violation . . . of rights secured under the Constitution and laws of the United States” (quoting *Kirchberg v. Feenstra*, 708 F.2d 991, 1000 (5th Cir. 1983))).

For these reasons, we AFFIRM the district court’s dismissal of Garcia’s § 1983 action and denial of his motion for a preliminary injunction and dismissal of his § 1983 action with prejudice. Because Garcia is not entitled to an injunction or to succeed on the merits, we DISMISS his motion for stay of execution as moot.



Certified as a true copy and issued
as the mandate on Dec 02, 2018

Attest:

Jyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSEPH C. GARCIA,

Plaintiff,

v.

CARMELLA JONES, *et al.*,

Defendants.

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CIVIL ACTION H-18-4503

FINAL JUDGMENT

For the reasons set forth in the Court’s Memorandum and Order issued this day,
Joseph C. Garcia’s complaint is dismissed with prejudice.

Signed at Houston, Texas on November 30, 2018.



Gray H. Miller
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSEPH C. GARCIA,

Plaintiff,

v.

CARMELLA JONES, *et al.*,

Defendants.

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CIVIL ACTION H-18-4503

MEMORANDUM AND ORDER

Plaintiff Joseph C. Garcia is a Texas death row inmate. He is scheduled for execution on December 4, 2018. Defendants are the Governor of Texas, and members of the Texas Board of Pardons and Paroles (“Board”).

Garcia filed a civil rights complaint under 42 U.S.C. § 1983, alleging that the makeup of the Board violates his rights under the Eighth and Fourteenth Amendments. He seeks declaratory and injunctive relief, including a stay of his execution.

I. Background

The facts of the underlying capital murder case are not relevant to the complaint in this case. Garcia is scheduled for execution on December 4, 2018. He filed this complaint on November 29, 2018, three business days and five calendar days before his scheduled execution. His complaint notes that Texas law requires that the Board be “representative of the general public.” He alleges that the current Board consists of seven members, six of whom are current or former officials of either a law enforcement agency or the Texas Department of Criminal Justice, and that the seventh is a former state government employee. He further states that six of the seven Board members are

male. Garcia contends that: for these reasons the Board, in violation of Texas law, is not representative of the general public; this violation of Texas law deprives him of a constitutionally protected liberty interest; and allowing his execution under these circumstances would violate his Eighth Amendment right to be free from cruel and unusual punishment.

II. Analysis

Section 1915A of title 28 of the United States Code requires a federal district court to “review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” The court must dismiss the complaint if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915A(b)(1).

A. Standard For Injunctive Relief

There are four prerequisites for the extraordinary relief of a preliminary injunction. A court may grant a preliminary injunction only when the movant establishes that: (1) there is a substantial likelihood that the movant will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury [to the movant] outweighs the threatened harm to the defendant; and (4) the granting of the preliminary injunction will not disserve the public interest. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir.1987) (citing *Canal Auth. of the State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir.1974) (en banc)). The party seeking injunctive relief must prove each of the four elements before a preliminary injunction can be granted. *Mississippi Power & Light Co. v. United Gas Pipeline*, 760 F.2d 618, 621 (5th Cir.1985); *Clark*, 812 F.2d at 993.

Because a preliminary injunction is considered an “extraordinary and drastic remedy,” it is not granted routinely, “but only when the movant, by a clear showing, carries the burden of persuasion.” *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir.1985). The decision to grant or deny preliminary injunctive relief is left to the sound discretion of the district court. *Mississippi Power & Light Co.*, 760 F.2d at 621. Even when a movant establishes each of the four *Canal* requirements, the decision whether to grant or deny a preliminary injunction remains discretionary with the court, and the decision to grant a preliminary injunction is treated as the exception rather than the rule. *Mississippi Power & Light*, 760 F.2d at 621.

B. Timing

Equitable relief should be denied when the plaintiff is dilatory in bringing his action so as to delay execution of his sentence. “Equity must take into consideration the State’s strong interest in proceeding with its judgment . . . A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief.” *Gomez v. United States District Ct.*, 503 U.S.653, 654 (1992) (per curiam).

The current Board membership has been in place for more than five months – since June of this year, when defendant Carmella Jones was appointed. *See* <http://gov.texas.gov/news/post/governor-abbott-appoints-jones-to-board-of-pardons-and-paroles>; http://www.tdcj.texas.gov/bpp/brd_members/brd_members.html (and individual Board member links therein). Garcia filed his clemency application with the Board three weeks ago, on November 8, 2018. *See* Docket Entry 1-3, at 33. Garcia knew as early as June, and certainly no later than November 8, that this Board would be the one reviewing his application. There was no valid reason

for Garcia to wait until three business days before his scheduled execution to seek a stay. The dilatory nature of Garcia's action is sufficient reason to deny relief.

C. Likelihood of Success on the Merits

It is beyond dispute that a prisoner has no constitutional right to clemency. Rather, "clemency and pardon powers are committed, as is our tradition, to the authority of the executive." *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998). As a result, "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981).

Garcia does not contend that he has a right to clemency, but rather that Texas law creates a liberty interest in the makeup of the Board that reviews clemency applications. While it is true that a state can create a constitutionally protected liberty interest through its own laws, there can be no liberty interest in procedures pertaining to a non-existent underlying right.

A state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right. *See Meachum v. Fano*, 427 U.S. 215, 226, 96 S.Ct. 2532, 2539, 49 L.Ed.2d 451 (1976); *Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). Plainly, however, the underlying right must have come into existence before it can trigger due process protection. *See, e. g., Leis v. Flynt*, 439 U.S. 438, 442-443, 99 S.Ct. 698, 701-702, 58 L.Ed.2d 717 (1979).

Dumschat, 452 U.S. at 463. Thus, Garcia has neither a right to clemency nor to any particular procedures used to evaluate his clemency application.

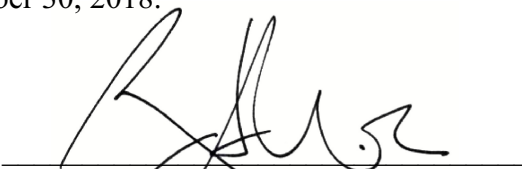
At most, Garcia's complaint alleges a violation of Texas law. Section "1983 confers no substantive rights, but merely provides a remedy for the violation . . . of rights secured under the Constitution and laws of the United States." *Southwestern Bell Tel., LP v. City of Houston*, 529 F.3d 257, 260 (5th Cir. 2008)(internal quotation marks and citation omitted). Therefore, Garcia's complaint fails to state a cognizable claim and must be dismissed.

III. Order

It is ORDERED that Garcia's Motion for Preliminary Injunction (Docket Entry 1-22) is **DENIED**; and

It is FURTHER ORDERED that the complaint (Docket Entry1-2) is DISMISSED WITH PREJUDICE.

Signed at Houston, Texas on November 30, 2018.



Gray H. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH C. GARCIA,
PLAINTIFF, §
§

v. §

CASE NO. 4:18-cv-4503

GREGORY ABBOTT, GOVERNOR §

CAPITAL CASE

DAVID GUTIERREZ, CHAIR,
TEXAS BOARD OF PARDONS AND PAROLES §
§

CARMELLA JONES, MEMBER
TEXAS BOARD OF PARDONS AND PAROLES §
§

ED ROBERTSON, MEMBER
TEXAS BOARD OF PARDONS AND PAROLES §
§

JAMES LAFAYERS, MEMBER
TEXAS BOARD OF PARDONS AND PAROLES §
§

FRED RANGEL, MEMBER
TEXAS BOARD OF PARDONS AND PAROLES §
§

BRIAN LONG, MEMBER
TEXAS BOARD OF PARDONS AND PAROLES §
§

FRED SOLIS, MEMBER,
TEXAS BOARD OF PARDONS AND PAROLES §
§

DEFENDANTS. §
§

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Joseph Garcia has filed a complaint pursuant to 42 U.S.C. § 1983 in the above-captioned case, in which he alleges that he will not be given a meaningful

opportunity to be heard on his pending application for executive clemency before the Texas Board of Pardons and Paroles (“Board”), in violation of the Due Process Clause to the Fourteenth Amendment of the United States Constitution. Further, he alleges that his execution following that unconstitutional clemency process will violate his Eighth Amendment right to be free from cruel and unusual punishment. He now respectfully asks this Court for a preliminary injunction, *see* Fed. R. Civ. Proc. 65(a), that would bar the Board from voting and making a recommendation on his application and Governor Greg Abbott from acting on any recommendation that the Board members may give, as such a recommendation would be invalid, unless and until the Governor appoints a Board that is in compliance with Texas Government Code section 508.032, and thereby ensures that Garcia has a fair hearing and a meaningful opportunity to be heard. Garcia seeks injunctive relief barring Defendants and each of them and their agents from acting in a manner that will deprive him of his Fourteenth Amendment due process rights, and in a manner that will result in violation of his Eighth Amendment rights, under the United States Constitution and 42 U.S.C. § 1983. He also asks the Court to stay his execution, in order to allow the Court the time to hear the allegations in his Complaint. *See* 28 U.S.C. § 1651(a).

In light of his pending capital-clemency application and his scheduled execution, a preliminary injunction and a stay is necessary to allow Garcia to litigate

his claim before the unconstitutionally constituted Board votes on his application and before Governor Greg Abbot can act on any Board recommendation that the Board may give, as such recommendation would be invalid. Garcia also requests expedited discovery, oral argument, and an evidentiary hearing on his motion. This motion is supported by the memorandum below.

Memorandum in Support of Motion for Preliminary Injunction

Joseph Garcia, as a death-sentenced prisoner, “remains a living person and consequently has an interest in his life.” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 288 (1998) (O’Connor, J., concurring). In recognition of that protectable life interest, the Due Process Clause provides minimal constitutional safeguards in clemency proceedings. *Id.* at 288–89, 292.

The current Texas Board of Pardons and Paroles is constituted in a manner that violates those minimal constitutional safeguards, because the Board’s membership violates the state statute that establishes the requirements that were enacted to ensure the existence of an impartial Board. The statute requires that Board members be “representative of the general public,” and that no more than three members of the Board be former employees of the Texas Department of Criminal Justice (“TDCJ”). But in violation of those requirements, of the seven members of the current Board, six are former employees of TDCJ, or are former law-enforcement officers, or both. The seventh is a former government employee of the State of Texas.

In other words, 100% of the Board membership comprises those affiliated with state government, and with law-enforcement. Additionally, because the Board has six male members but only one female member, the gender-based distribution of the Board does not meet the provisions of the statute. Board membership is not representative of the general public in either the distribution of backgrounds or gender. In particular, TDCJ-related and law-enforcement viewpoints are starkly overrepresented on the Board, relative to the general public.

Accordingly, Garcia asserts in his Complaint that the composition of the Board, which violates Texas's statute governing Board-member composition, violates his Fourteenth and Eighth Amendment rights: first, the current composition of the board violates the Texas statute designed to protect the impartiality of the Board, and it therefore denies Garcia the process to which he is due under the Fourteenth Amendment (*see* Compl. ¶¶ 14-40); second, a decision on Garcia's clemency application made by the Board as currently constituted will result in the denial of Garcia's due process rights (*see* Compl. ¶¶ 26-29, 34, 40); and third, going forward with Garcia's currently scheduled execution would violate the Eighth Amendment's protection against cruel and unusual punishment (*see* Compl. ¶¶ 41-43).

In light of Garcia's pending application for clemency, which should be ruled on before Garcia's scheduled execution date of December 4, 2018 (five days from

today), a preliminary injunction is necessary to allow Garcia to litigate his claims before his application is ruled on by a Board whose membership violates his constitutional due process rights.

I. Background

The Texas Board of Pardons and Paroles is currently governed by statutes designed to ensure that it is a Board representative of the “general public,” and that it provides a fair hearing to, *inter alia*, capitally sentenced prisoners. In 1997, the Texas Legislature enacted section 508.032 of the Texas Government Code and thereby established membership requirements for the Board. The original membership requirements were simply two: “Board members must be representative of the general public” and a “member must have resided in [Texas] for the two years before appointment.” Tex. Gov’t Code § 508.032 (1997).

The meaning of “general public” in section 508.032 can be understood to refer to that same phrase that appears in multiple state agencies, as explained by a report of the Sunset Commission. That commission, which was created by the state legislature in 1977, provided a report in 1983 to the Governor of Texas and the Texas Legislature, in which it reviewed thirty-two agencies and explained the phrase “general public,” which appeared in agency statutes. As the Sunset Commission explained, the phrase is meant to ensure agency members did not all represent the same interests and envisioned “giving the general public a direct voice . . . through

representation on the board.” (Compl. Ex. 2 at 4.) Accordingly, with the enactment of section 508.032 in 1997, the Texas Legislature required impartiality by preventing the representation of the same interests by Board members and to give the broader general public “a direct voice” through the Board’s membership.

But that language was not enough to ensure that the Board provided a fair and meaningful process. After Texas enacted section 508.032, the Board and the clemency process came under fire through a series of lawsuits and the resulting media coverage. In 1998, Karla Faye Tucker alleged that the clemency procedures in Texas were “so inadequate as to violate her due process rights.” *Ex parte Tucker*, 973 S.W.2d 950, 950 (Tex. Crim. App. 1998). While the court dismissed Tucker’s petition, the dismissal drew a dissent from Judge Charles Baird. In his dissent, Judge Baird stated that “due process commands [that death row prisoners] know what criteria is examined in the clemency process, otherwise there can be no meaningful consideration of their commutation requests.” *Id.* at 954. Judge Baird continued:

This does not seem too much to ask for in a process that is constitutionally guaranteed and statutorily mandated. Indeed, it is this guarantee and this mandate that impose upon us the duty to ensure that commutation requests are meaningfully considered. Is it wrong for the judiciary to insist that such a process be more than a pretext or sham?

Id. at 954 n.7.

Joseph Stanley Faulder also challenged Texas’s clemency process in 1998, alleging that Texas’s procedures violated due process. The federal district court

found that, between 1993 and 1998, no Board member had ever requested a hearing or teleconference on any of the 76 clemency petitions that were conducted during this time. (Ex. 1 at 12 n.5.) The court also found it “remarkable” that the Board has the power to “call hearings, conduct investigations, interview petitioners, and request testimony” in connection with a clemency application but had failed to take any of those actions in the 57 clemency applications the Board had considered between 1995 and 1998. (Ex. 1 at 12.) Testimony presented in the case established that “all pertinent information is not given to all Board members before they vote, and some information is inadvertently never provided to the Board members.” (Ex. 1 at 14.) The court concluded that Texas’s clemency process was “extremely poor” and noted that “a flip of the coin would be more merciful than [the Board’s] votes.” (Ex. 1 at 14 n.9, 16.)

Criticism of Texas’s clemency process over its unfairness and the lack of a meaningful opportunity to be heard came from beyond the courts. In the late 1990s and early 2000s, the media also focused on these shortcomings. One article summarized the attitudes toward the Board and the clemency process: “A federal judge termed their methods ‘appalling,’ a state court judge labeled them lawbreakers and a prominent American Bar Association official called their activities ‘a farce.’ One state legislator suggested disbanding them, and another introduced a bill that would reform their ways.” (Ex 2.) Another article observed that the national

perception of Texas's clemency process was that it was "unfair and merciless." (*See* Ex. 3.)

In response, the Board announced in 1999 that it would change the filing deadline to give more time for a meaningful review of clemency applications and that it would consider requiring face-to-face interviews with prisoners. (Ex. 3.) The challenges and criticism also sparked legislative changes. Immediately after the *Tucker* and *Faulder* challenges, the Texas legislature proposed a bill that "would require the board to hold public meetings for the first time, establish criteria for recommending clemency and mandate more-thorough reviews of each case." (Ex. 3.)

Subsequently, in 2003, in response to the criticism surrounding the Board and Texas's clemency process, the Texas Legislature acted to make the Board more impartial by adding more membership requirements to section 508.032. That year, the Texas Legislature added a new membership requirement aimed at limiting the number of former employees of TDCJ, which oversees the Texas state prisons, who could serve on the Board at one time. The new requirement stated that "[a]t any time not more than three members of the board may be former employees of the [TDCJ]." Tex. Gov't Code § 508.032 (2003). Notably, limiting to three the number of former TDCJ employees who can serve on the Board at any given time ensures that TDCJ-affiliated members are not the majority in the current seven-member Board. That

impartiality of the Board was the intent behind this statutory change is evidenced by the stated legislative intent, which was to make the Board a more independent entity and separate it from TDCJ: “the policy interest is in independence between the pardon and parole board and Texas Department of Criminal Justice” (Ex. 4.)

The current Board membership violates both provisions of the statute. Board membership currently consists of seven members, six of whom are either former TDCJ employees, former law-enforcement officers, or both. The seventh Board member is a former State government employee. Moreover, the distribution of female and male members of the Board does not satisfy the provisions of the statute.

First, at least two Board members are full-fledged former TDCJ employees: David Gutierrez and Brian Long. Gutierrez was the former chair of the Texas Correctional Office on Offenders with Medical or Mental Impairments (“TCOOMMI”), while Long was employed in TDCJ’s parole division. Additionally, one other member, Federico Rangel, also has strong and close ties to the work that TDCJ does. Rangel was the former director of the Angelina County Community Supervision and Corrections Department (“CSCD”), which is funded, trained, and monitored by TDCJ’s Community Justice Assistance Division. *See Community Justice Assistance Division, Texas Department of Criminal Justice, <https://www.tdcj.state.tx.us/divisions/cjad/index.html>*. Rangel also served as a probation officer in Montgomery County, a parole commissioner in the Angleton

Board office, and as the Director of Adult Probation in Angelina County—all jobs that are similar to TDCJ’s work supervising released prisoners through its Parole Division. *See Parole Division*, Texas Department of Criminal Justice, <https://www.tdcj.state.tx.us/divisions/pd/index.html>.

Second, unlike the general population, six out of the seven Board members share a law-enforcement background. James LaFavers and Fred Solis were police officers in Amarillo and San Antonio, respectively. Solis was also a police chief in the city of Olmos Park and an investigator for the Bexar County District Attorney’s Office. Carmella Jones and David Gutierrez were both sheriffs of different counties, Armstrong County and Lubbock County, and Brian Long worked for the Cherokee County Sheriff’s Department. And, as mentioned above, Federico Rangel was a probation officer. Eighty-five percent of the Board members, then, are either former employees of TDCJ, law-enforcement officers, or both. The failure of this Board to be “representative of the general public” is highlighted by the fact that approximately 0.4% of the Texas population are law-enforcement officers and 0.15% are TDCJ employees. The only Board member who does not have a law-enforcement or a TDCJ background, Ed Robertson, worked in different government offices and was an advisor to Governor Greg Abbott. Thus, the Board’s membership consists 100% of law-enforcement personnel and state actors. In contrast, in the general public, approximately 0.4% of the Texas population are law-enforcement officers, and

0.15% are TDCJ employees.¹

Third, there are six men (David Gutierrez, James LaFavers, Brian Long, Federico Rangel, Ed Robertson, and Fred Solis) and one woman (Carmella Jones) on the Board, making the Board approximately 85% male—a distribution that differs vastly from the 50% of the Texas’s population that is female. *See Quick Facts: Texas*, United States Census Bureau (July 1, 2017), <https://www.census.gov/quickfacts/tx>.

II. This Court should grant Garcia a preliminary injunction because he meets the four requirements necessary to secure such relief.

Garcia seeks a preliminary injunction barring the Board from voting on or denying his clemency request and Governor Greg Abbott from acting on any Board recommendation that the Board may give, as such recommendation would be invalid, unless and until the Governor appoints a Board that comports with Texas’s statutes and with the minimal guarantees of due process. *See Fed. R. Civ. Proc.* 65. The purpose of a preliminary injunction is to preserve the status quo until the rights of the parties can be fully and fairly litigated. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (“We have previously stated that where a district court has

¹ The United States Department of Justice conducted a census of state and local law-enforcement agencies in 2008. The published findings state that Texas has 1,913 state and local law-enforcement agencies with 96,116 total personnel. (Compl. Ex. 3 at 15.) The TDCJ counts approximately 38,000 employees in its 2017 annual review. (Compl. Ex. 4 at 51.) The 2010 United States Census lists the population of Texas at 25,145,561. *Quick Facts: Texas*, U.S. Census Bureau (July 21, 2017), <https://www.census.gov/quickfacts/tx>. These figures were used for the above calculations.

determined that a meaningful decision on the merits would be impossible without an injunction, the district court may maintain the status quo and issue a preliminary injunction to protect a remedy”).

A plaintiff may secure a preliminary injunction when he can show:

(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Alguire, 647 F.3d at 595; *see also Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

For the reasons outlined below, Garcia is able to show (1) a likelihood of success on the merits of his claim that the Board as constituted, and the Governor, will violate his Fourteenth Amendment Due Process and Eighth Amendment rights; (2) that he will face irreparable harm if his capital-clemency application is not considered by a Board that provides a meaningful opportunity to be heard; (3) that the threatened harm of failing to have a hearing that accords with due process on his capital-clemency application outweighs any harm to the Board of an injunction that would allow the Board and Governor the time to comply with the Constitution; (4) and that an injunction to allow the Board and Governor the time and opportunity to comply with the Constitution would serve—rather than disserve—the public. *See Alguire*, 647 F.3d at 595.

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A. Garcia can show a substantial likelihood of success on the merits of his claim that the currently constituted Board cannot provide him with the minimal due process to which he is entitled under the Fourteenth Amendment.

In order to evaluate the likelihood that Garcia will succeed on the merits of his claims, the Court looks to “standards provided by the substantive law.” *Alquire*, 647 F.3d at 596 (quoting *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990)). Garcia “must present a prima facie case but need not show that he is certain to win.” *Id.* (internal quotations omitted).

The substantive law at issue here is the Fourteenth and Eighth Amendments to the U.S. Constitution. The Fourteenth Amendment is implicated by Garcia’s first, second, and third claims for relief, which assert that the composition of the Board, which fails to comport with Texas’s statute governing Board-member composition, deprives Garcia of the minimal due process to which he is entitled under the Fourteenth Amendment. That is, the current make-up of the board violates the Texas statute that is designed to ensure the impartiality of the Board, and therefore it denies Garcia the process to which he is due. (*See* Compl. ¶¶ 14-34.) The Eighth Amendment is implicated in Garcia’s fourth claim that his execution following a clemency proceeding that lacked the safeguards required by due process would violate the Eighth Amendment’s prohibition on cruel and unusual punishment.

When the state does not comport with its own regulations, the state may be in violation of the Due Process Clause. *Woodard*, 523 U.S. at 289 (O’Connor, J.,

concurring). More specifically, that the clemency process in *Woodard* comported with Ohio's regulations was a primary reason that Justice O'Connor found no due process violation in that case. *Woodard*, 523 U.S. at 290. Additionally, Justice O'Connor highlighted the type of process the petition received—namely “notice of the hearing and an opportunity to participate in an interview”—in determining that there was no due process violation. *Id.* In other words, Justice O'Connor's language strongly suggests that, had Ohio's clemency process not provided notice or an opportunity to be heard, in the petitioner's case through an interview, Ohio's process would not have satisfied the minimal due process requirement. The minimal due process required of clemency thus demands at least sufficient notice and an opportunity to be heard during the clemency process. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (internal quotations omitted)); *see also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

Other courts have also concluded that due process entails notice and an opportunity to be heard, even in cases in which no recognized life, liberty, or property interest exists. For example, in immigration proceedings, aliens have no liberty or property interest, but those proceedings must nonetheless afford “minimal procedural due process rights” that include “an opportunity to be heard at a meaningful time and in a meaningful manner.” *Arambula-Medina v. Holder*, 572

F.3d 824, 828 (10th Cir. 2009) (internal quotations omitted). Similarly, proceedings in the penal system, where an individual no longer retains a liberty interest, *see Meachum v. Fano*, 427 U.S. 215, 224 (1976), require minimal due process, *see King v. Higgins*, 370 F. Supp. 1023, 1029 (D. Mass. 1974) (requiring “basic due process safeguards of notice and confrontation” in a prison disciplinary action and defining those safeguards as “prior notice . . . as well as a hearing which provides him with a reasonable opportunity to meet the charges against him”).

A meaningful opportunity to be heard requires an impartial decision-maker. *See Wolff v. McDonnell*, 418 U.S. 539, 559 (1974) (holding that in a parole revocation hearing, minimal due process imposed certain minimal procedural requirements that included a “neutral and detached hearing body” (internal quotations omitted)); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (holding that citizen enemy combatants are afforded some due process, which includes “a neutral decisionmaker”).

Here, Texas has twice created requirements for Board membership designed to ensure a fair and impartial clemency process. Taken together, the membership requirements added in 1997 and in 2003 promote the same objective: the Board must have a degree of impartiality as the decision-maker in order to ensure a fair clemency process and a meaningful opportunity to be heard in Texas’s clemency process for clemency applicants. *See Woodard*, 523 U.S. at 289–90. As the legislative changes

to the Board membership imply, only through this impartiality can the opportunity to be heard be meaningful. Consequently, when Texas violates section 508.032, the meaningful opportunity to be heard during the clemency process has been abridged. *See id.* at 288 (O’Connor, J., concurring).

The current make-up of the Board—six members with law-enforcement background; and six men and only one woman—is not “representative of the general public,” especially when considered in conjunction with the statute’s prohibition against a majority of the Board having prior TDCJ work experience. The Board’s current composition violates the impartiality guaranteed by Texas Government Code section 508.032 and thus Garcia’s due process rights. Consequently, the Board abridges Garcia’s meaningful opportunity to be heard in violation of the due process required in clemency proceedings. *See Woodard*, 523 U.S. at 289–90.

- 1. The law-enforcement bias of the Board violates Texas’s requirement of an impartial Board that represents the general population; accordingly, the Board cannot provide the constitutionally required process to which Garcia is entitled. [First Claim for Relief]**

The Board is constituted of 100% law-enforcement and state-actor members. Through this pro-law enforcement and pro-State composition of the Board, the Board is in violation of section 508.032 because the Board members are not “representative of the general public.” Instead, it is stacked with individuals whose background places them firmly on the side of the State and law enforcement. As

such, the Board will not give Garcia a meaningful opportunity to be heard due to their lack of impartiality, which section 508.032 requires.

The need for an impartial decision-maker—that is, a board “representative of the general public”—is especially acute in Garcia’s case, where the victim was a police officer. A Board constituted of members with law-enforcement and state-government backgrounds, rather than members who represent Texas as a whole (*e.g.*, those with law-enforcement backgrounds; those without law-enforcement backgrounds; those without criminal-justice-system backgrounds), cannot provide Garcia with a meaningful opportunity to be heard, the lack of which violates the minimal due process that the Texas Legislature and the United States Supreme Court have recognized exists in clemency proceedings. *See Woodard*, 523 U.S. at 289–90.

2. The gender-based imbalance of the Board violates Texas’s requirement of an impartial Board that represents the general population; accordingly, the Board cannot provide the constitutionally required process to which Garcia is entitled. [Second Claim for Relief]

The gender-based disparity of the Board violates section 508.032. In the judicial context, the “broad representative character of the jury” is partly a way to assure the impartiality of the jury. *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 227 (1946). Likewise, here, the distribution of the gender of Board members is a way to assure that the Board be representative of the general public, which in turn assures the Board’s impartiality. *See Ballard v. United States*, 329 U.S. 187, 193 (1946)

(“But if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel?”) Currently, there are six men and one woman on the Board, making the Board approximately 85% male.

Texas, however, is at least 50% female according to the 2010 census, *see* Quick Facts: Texas, U.S. Census Bureau (July 1, 2017), <https://www.census.gov/quickfacts/tx>, which the current membership of the Board fails to reflect. In this manner, the Board’s current gender-based make-up also fails to be “representative of the general public,” in violation of section 508.032 and in violation of Garcia’s due process rights.

3. Texas’s requirement of an impartial Board that represents the general public has created a procedural safeguard intended to protect prisoners in clemency that the current composition of the Board is violating; accordingly, the Board cannot provide the constitutionally required process to which Garcia is entitled. [Third Claim for Relief]

In section 508.032, Texas has provided a procedural safeguard for the meaningful consideration of clemency. As a result, Garcia has a reasonable expectation of and cognizable interest in the application of this statute to his clemency proceeding and a right not to be deprived of a Board that is representative of the general public. Texas is therefore not free to arbitrarily deviate from its own statute without violating the minimal due process owed to Garcia during clemency proceedings. *See Woodard*, 523 U.S. at 290 (O’Connor, J., concurring) (“The

process respondent received . . . comports with Ohio's regulations and observes whatever limitations the Due Process Clause may impose on clemency proceedings.”); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.”).

4. Executing Garcia following a clemency process that lacks the protections of due process would violate the Eighth Amendment’s prohibition on cruel and unusual punishment. [Fourth Claim for Relief]

Because of the State’s conduct, Garcia has been and will continue to be denied due process. This Court should stay Garcia’s execution until Garcia has received the minimal due process to which he is entitled. If not, carrying out a death sentence on a prisoner who was not provided with the due process required in clemency proceedings would violate the Eighth Amendment’s prohibition on cruel and unusual punishment.

B. Without a preliminary injunction, Garcia will suffer concrete, irreparable harm in two ways. First, his application for capital clemency will be heard by a Board that cannot provide the constitutional due process to which he is entitled. Second, he will subsequently be executed without having had a constitutionally appropriate clemency process. These harms are not “mere speculation.”

If the Court denies Garcia’s request for a preliminary injunction, he will be

denied a fair clemency process and will be executed without having had his constitutional claims heard. That harm is irreparable—there is not only “no adequate remedy at law, such as monetary damages[,]” *Alguire*, 647 F.3d at 600, but there is no remedy at all for a person whose life has been extinguished. This harm is a harm in fact; it is more than a “speculative injury.” *Id.* (noting that “a showing of ‘[s]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant’”) (quoting *Productos Carnic, S.A. v. Cent. Amer. Beef & Seafood Trading Co.*, 6221 F.2d 683, 686-87 (5th Cir. 1980) (alteration in original) (internal quotation marks and citations omitted)); *id.* at 601 (“The party seeking a preliminary injunction must also show that the threatened harm is more than mere speculation.”).

C. The grant of preliminary injunction will not disserve the public interest—indeed, the public has an interest in a constitutional clemency proceeding and in a subsequent execution that comports with the Eighth Amendment.

The “balance of harms and service of the public interest[,]” *Alguire*, 647 F.3d at 601, tip sharply in Garcia’s favor. Garcia is not seeking an injunction that would forever prevent the State from carrying out his execution. Instead, he seeks only to have his capital-clemency application heard by an impartial Board—a necessity recognized by the Texas Legislature and by the Fourteenth Amendment—such that in the absence of clemency relief, his execution comports with the Eighth Amendment. *Cf., e.g., Gomez v. U.S. Dist. Ct. for N. Dist. Cal.*, 966 F.2d 460, 462

(9th Cir. 1992) (Noonan, J., dissenting from grant of writ of mandate) (“The state will get its man in the end. In contrast, if persons are put to death in a manner that is determined to be cruel, they suffer injury that can never be undone, and the Constitution suffers an injury that can never be repaired.”).

This Court should not permit the Board to vote on Garcia’s application for clemency before the Court has an opportunity to review Garcia’s claims regarding the illegal constitution of the Board. The balance of harms and the service of the public interest favor this Court’s grant of a preliminary injunction preventing the currently constituted Board from considering Garcia’s application.

III. This Court has the authority to grant a stay of execution, and should do so. Garcia has not delayed unnecessarily in bringing his claim; accordingly, he is entitled to a stay of his execution.

This Court has the authority to grant a prisoner a stay of execution in order that the Court can hear a prisoner’s constitutional claims, provided that the prisoner did not unreasonably delay before asking the Court for a stay. Garcia did not unreasonably delay, and a stay is necessary in order to allow the Court the time to hear his constitutional claims.

The Court can grant a stay authority under the All Writs Act, 28 U.S.C. § 1651(a). *See United States v. N.Y. Telephone Co.*, 434 U.S. 159 (1977) (“This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent

the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained”). If the Court does not grant a stay, Garcia will be executed before the Court can hear his case. The Court’s ability to effectuate its grant of a preliminary injunction would be frustrated.

But before granting injunctive relief that would prevent an execution, the Court must “consider not only the likelihood of success on the merits and the relative harms to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim.” *Nelson v. Campbell*, 541 U.S. 637, 649 (2004).

Garcia did not delay in filing his Complaint. His claim did not become ripe until he faced execution and submitted a clemency application, and therefore knew the constitution of the Board that is to review his clemency application. Once his claim became ripe, he filed this lawsuit.

Accordingly, because this Court has the authority to issue a stay, and because Garcia has met the requirements for obtaining one, this Court should stay his execution and allow him to litigate the claims in his Complaint.

IV. Conclusion

For the reasons outlined in this Memorandum, this Court should find that Garcia has met the requirements for securing a preliminary injunction, and should:

1. Grant a declaratory judgment on each claim for relief, finding that by violating its own statute, Texas Government Code section 508.032, the Board and defendant members of the Board have violated Plaintiff Garcia’s right to due process and to be free from cruel and unusual

punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

2. Grant a preliminary and permanent injunction on each claim for relief, preventing Defendants and all persons acting under their authority, direction, or control, from voting on Plaintiff Garcia's clemency application, and preventing Governor Greg Abbott from acting on any recommendation that the Board members may give until after the Governor appoints a Board that is in compliance with Texas's statutes, namely Texas Government Code section 508.032, and ensures a fair and meaningful opportunity to be heard during the clemency process by providing impartial decision-makers.
3. Because the Board is not in compliance with Texas Government Code section 508.032, stay Garcia's execution that is currently scheduled for December 4, 2018 until the Board is legally constituted.
4. Other such relief as the Court deems appropriate.

Respectfully submitted this 29th day of November, 2018.

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District of Arizona

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CERTIFICATE OF SERVICE

I certify that on November 29, 2018 a true and correct copy of the above pleading was served via process server to:

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c/o James Sullivan
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EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
AUSTIN DIVISION
1998 DE 28 PM 4: 29

U.S. CLERK'S OFFICE
BY: _____ DEPUTY

JOSEPH STANLEY FAULDER

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vs.

NO. A 98 CA 801 SS

TEXAS BOARD OF PARDONS
AND PAROLES, *et al.*

DANNY LEE BARBER

§
§
§
§
§
§

vs.

NO. A 98 CA 803 SS

TEXAS BOARD OF PARDONS
AND PAROLES, *et al.*

ORDER

BE IT REMEMBERED that on the 21st and 22nd days of December 1998, the Court held a joint evidentiary hearing in the above-styled and numbered causes. Each petitioner filed in this Court a request for temporary restraining order, preliminary injunction, and stay of execution in the form of a lawsuit against the Texas Board of Pardons and Paroles and its members, along with the Director of the Texas Department of Criminal Justice, pursuant to 42 U.S.C. § 1983. Joseph Stanley Faulder filed his lawsuit at 5:00 p.m. on December 8, 1998 and was scheduled to be executed in Texas on December 10, 1998, at 6:00 p.m. Danny Lee Barber filed his lawsuit December 9, 1998 at 3:00 p.m. and was scheduled to be executed three hours later. Faulder filed a petition for clemency with the Texas Board of Pardons and Paroles on November 4, 1998. Barber filed his petition December 1, 1998. On December 9, 1998, the Board of Pardons and Paroles advised the Governor there was no recommendation of clemency for either petitioner. Each petitioner argues

his execution would violate the Fourteenth Amendment due to deficiencies in the Texas death penalty clemency procedures.

On December 9, 1998, following an evidentiary hearing at which the defendants declined to offer any evidence, this Court entered orders staying both executions. The stays were appealed by the defendants, and the Fifth Circuit panel hearing the appeal in Barber's case upheld the stay, but a separate Fifth Circuit panel vacated Faulder's stay for lack of jurisdiction under Section 1983. This Court was puzzled that a Fifth Circuit panel found a District Court lacks jurisdiction to stay the execution under a Section 1983 attack on a state's clemency procedures for three reasons. First, *Ohio Adult Parole Authority v. Woodard*, 118 S. Ct. 1244 (1998), the leading Supreme Court case on the constitutional due process requirements of state death penalty clemency procedures, was a Section 1983 case. Second, a Section 1983 case is precluded in favor of a Section 2254 habeas corpus case when the relief requested would "challeng[e the] underlying conviction and sentence." *See Preiser v. Rodriguez*, 93 S. Ct. 1827, 1836 (1973). The sentence imposed in the cases before the Court are death sentences, and the petitioners do not seek to have their convictions and death sentences vacated by the Court; instead, they seek procedural safeguards in the form of improved clemency procedures. *See Woratzeck v. Arizona Bd. of Executive Clemency*, 117 F.3d 400, 402-03 (9th Cir. 1997) (finding that § 1983 was the proper vehicle for challenging the clemency process because the relief sought — a new clemency hearing — would not invalidate the petitioner's death sentence). Finally, the Court determined it should exercise jurisdiction because the Court did not

want to abdicate its responsibility by taking the simple route, sitting idly by, denying jurisdiction, and allowing two executions when the petitioners offered compelling constitutional arguments.¹

Before the Court at the present hearing are the Petitioners' Motion for Preliminary Injunction and the Defendants' Motions to Dismiss and Alternatively for Summary Judgment. To obtain a preliminary injunction, the petitioner must demonstrate (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury without the injunction, (3) the threatened injury outweighs the threatened injury to the defendant, and (4) the preliminary injunction will not disserve the public interest. *See Lakedreams v. Taylor*, 932 F.2d 1103, 1007 (5th Cir. 1991). Rule 56(c) of the Federal Rules of Civil Procedure provides for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *See Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2510 (1986). If genuine issues of material fact exist, the motion must be denied. In deciding whether to grant summary judgment, the Court should view the evidence in the light most favorable to the party opposing summary judgment and indulge all reasonable inferences in favor of that party. *International Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257, 1263 (5th Cir. 1991). The Fifth Circuit has concluded that "[t]he standard of review is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the nonmoving party based upon the record

¹ The defendants correctly assert that both Eleventh Amendment immunity and Section 1983 preclude the petitioners from suing state agencies, and the petitioners' causes of action against the Board will therefore be dismissed. Nevertheless, the petitioners' claims for prospective injunctive relief against individual state officials are not barred, and those claims would serve the petitioners' purposes in this case. The petitioners state no constitutional violations against Gary Johnson, and the claims against him will therefore be dismissed.

evidence before the court.” *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986)). However, “[n]either ‘conclusory allegations’ nor ‘unsubstantiated assertions’ will satisfy the non-movant’s burden.” *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (1996).

Clemency refers to an executive procedure delaying, reducing, or excusing a criminal penalty. See Daniel T. Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 TEX. L. REV. 569, 575-578 (1991). It is a traditionally executive power. See *Solem v. Helm*, 103 S. Ct. 3001, 3015 (1983) (“A Governor may commute a sentence at any time for any reason without reference to any standards.”); see also *Ex Parte Grossman*, 45 S. Ct. 332, 337 (1925) (explaining that executive clemency exists because “the administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt”). As such, clemency is rarely subject to judicial review, and substantive clemency decisions are outside the province of the courts. See *Connecticut Board of Pardons v. Dumschat*, 101 S. Ct. 2460, 2464 (1981) (discussing non-capital clemency). In February 1998, this Court held that clemency procedures are not subject to any judicial review because it found there was “no constitutional right to clemency under the federal law.” See *Tucker v. Texas Bd. of Pardons & Paroles*, Cause No. A-98-CA-064-SS, slip op. at 2 (W.D. Tex. February 2, 1998) (citing *Herrera v. Collins*, 113 S. Ct. 853, 867 (1993)). However, an intervening Supreme Court case, *Ohio Adult Parole Authority v. Woodard*, which was decided on March 25, 1998, indicates the reasoning applied by this Court in *Tucker* is no longer good law.

In *Woodard*, the plaintiff challenged the procedure in the Ohio clemency process. The Ohio Constitution gives the Governor the power and discretion to grant clemency. To regulate the

application and investigation process, the Ohio General Assembly created the Ohio Adult Parole Authority. When an inmate receives a death sentence, the Authority is required to conduct a clemency hearing within forty-five days of the scheduled date of execution. Although an inmate may request an interview with one or more of the parole board members prior to the hearing, the inmate is not permitted to have his attorney present during the interview. The Authority is required to conduct the hearing, complete its clemency review, and make a recommendation to the Governor even if the inmate subsequently obtains a stay of execution. If the inmate later discovers additional information relevant to his clemency petition, the Authority has the discretion to hold another hearing or alter its recommendation. *See Woodard*, 118 S. Ct. at 1247-48. Woodard challenged the fact that in Ohio's process, a person seeking clemency could seek a voluntary interview before the parole authority, but such a person would not benefit from the assistance of counsel or immunity for his or her own statements. *Id.* at 1248. Eight Justices agreed that the Ohio clemency procedures did not violate due process, *id.* at 1252, and the voluntary clemency interview did not violate the Fifth Amendment protection against self-incrimination, *id.* at 1253.

In analyzing Woodard's claims, five Justices, a majority of the Court and therefore enough votes to carry precedential value, agreed that a death-row inmate has a life interest in avoiding execution separate and independent from his life and liberty interests at stake in his trial and sentencing, and therefore "some *minimal* procedural safeguards apply to clemency proceedings." *Id.* at 1253-54 (emphasis in original) (O'Connor, J., concurring in part and concurring in the judgment, joined by Souter, J., Ginsburg, J., and Breyer, J.); *see also id.* at 1254 (Stevens, J., concurring in part and dissenting in part) (stating that minimal due process standards must be met in clemency proceedings). "Judicial intervention might, for example, be warranted in the face of a

scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process." *Id.* at 1254 (O'Connor, J.); *see also id.* (Stevens, J.) (suggesting "procedures infected by bribery, personal or political animosity, or the deliberate fabrication of false evidence" are not constitutionally acceptable). The remaining four Justices found no constitutional due process right in clemency procedures, stressing that clemency is an "act of grace." (Rehnquist, C.J.). *But see Biddle v. Perovich*, 47 S. Ct. 664, 665 (1927) (Holmes, J.) ("A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the Constitutional scheme. When granted it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed."); *Gregg v. Georgia*, 428 U.S. 153, 200 n.50 (1976) (Stewart, J., Powell, J., Stevens, J.) (explaining that capital punishment scheme which did not provide the opportunity for executive clemency would be "totally alien to our notions of criminal justice").

Unfortunately, the Supreme Court opened a Pandora's Box with *Woodard*. Not only did the five Justices open up every state clemency procedure to due process review, they did not elaborate or describe what specific types of process was required to meet the "minimal" standards of due process. The scheme employed in Ohio, which included a mandatory hearing and allowed an interview with the Board, was upheld as sufficient, and the flip of a coin or the complete denial of access to the process as a whole was described as absurdly insufficient in dicta, but it is unclear whether the Texas procedure would exceed the Court's minimal threshold. Justice O'Connor did, however, italicize the term *minimal* when describing the "*minimal* procedural safeguards" required in a state's clemency procedure, apparently to stress that only a low threshold is required. Justice

O'Connor reinforces this position by pointing out that "once society has validly convicted an individual of a crime and therefore established its right to punish, the demands of due process are reduced accordingly." *Woodard*, 118 S. Ct. at 1253 (O'Connor, J.) (quoting *Ford v. Wainwright*, 106 S.Ct. 2595, 2612 (1986) (O'Connor, J., concurring in result in part and dissenting in part)).

Two cases decided by Courts of Appeals outside the Fifth Circuit have not been particularly helpful in illuminating how to apply *Woodard*. In *Duvall v. Keating*, 98 WL 864117 (10th Cir. Dec. 14, 1998), the Tenth Circuit upheld the Oklahoma clemency procedures as applied to Duvall. *Id.* at *3. The Tenth Circuit interpreted *Woodard* to stand for the proposition that "the Due Process Clause only ensures a death row prisoner that he or she will receive the clemency procedures explicitly set forth by state law." *Id.* The Court disagrees with this simplistic application of *Woodard* because it eschews Justice O'Connor's critical "*minimal* procedural safeguards" language and replaces it with "in compliance with state law," which is a distinct concept. For example, if a death row inmate was provided with a clemency procedure even more elaborate than that upheld in *Woodard*, the Tenth Circuit's formula would strike down the very procedure upheld in *Woodard* if that procedure failed to comply with the state's more elaborate procedure. Conversely, if a state explicitly provided for an arbitrary, capricious, and whimsical capital clemency procedure, the Tenth Circuit's standard would inappropriately uphold that procedure. The Tenth Circuit's interpretation of *Woodard* would perversely incentivize states to provide very little process to clemency petitioners. The Court declines to follow that tortured reasoning.

At any rate, *Duvall* would not mandate a decision in favor of the defendants in this case. In *Duvall*, the plaintiff "did not challenge the Board's conduct." *Id.* The Tenth Circuit found the procedure as applied to Duvall clearly complied with Oklahoma's clemency procedures. *Id.* In

contrast, it is unclear to this Court whether the Texas clemency procedures in these cases even comply with the Texas Constitution and statutes. That is especially true considering the Texas Supreme Court's and the Court of Criminal Appeals's failures to evaluate the state's clemency on the merits following *Woodard*.² Cases pre-*Woodard* refused to scrutinize the clemency process under the theory that clemency is an executive process, not amenable to judicial review at all. *See, e.g., Sapp v. Patton*, 118 F.3d 460, 465 (6th Cir. 1997) ("The very nature of clemency is that it is grounded solely in the will of the dispenser of clemency. He need give no reasons for granting it,

² Faulder and Barber are also pursuing remedies in the state courts regarding the legality of the Board's procedures under state law. In the interest of comity, the Court would have preferred for the state courts to address this matter as well as the constitutional matters now before this Court on the merits. Despite being given an opportunity, both of the state's highest courts have declined to do so. Faulder and Andre Lewis, both individually and on behalf of all other living persons who are or will be on death row in Texas, filed a Petition and Application for Temporary Restraining Order and Temporary Injunction in Travis County District Court. On November 30, 1998, Judge Paul Davis entered an order requiring the Board of Pardons and Paroles to comply with the Texas Constitution, Art. IV, § 11 by keeping a record of its actions and stating the reasons for its actions. Judge Davis further ordered the Board to post notices as required by §§ 551.041, 551.044 and 551.048 of the Open Meetings Act; to conduct meetings open to the public as required by § 551.002 of the Act and Texas common law; to keep minutes or tape recordings as required by § 551.021 of the Act; to convene in open meetings before conducting a closed meeting as required by § 551.101 of the Act; to deliberate and vote in public as required by the Act and Texas common law; and to act as a body as required by Texas common law. However, this order was meaningless on its face as to these petitioners. Under Texas law, a state district court has no authority to stay or interfere with an execution, and Judge Davis's order expired at 3:00 p.m. on the day of each petitioner's execution. The order set a hearing on the petitioners' request for a temporary injunction on December 14, 1998, days *after* the scheduled execution of these petitioners.

The Texas Supreme Court, instead of interpreting the relevant state law and ruling on the merits, stayed the district court order except to the extent that it set a hearing and maintained jurisdiction over the Board's writ of mandamus, writ of prohibition and injunction challenging Judge Davis's order. The Texas Court of Criminal Appeals denied the Board's application for mandamus in a one sentence order without opinion. This Court bemoans the fact that neither of the state's highest courts have ruled on the merits of these claims or stayed the execution to give themselves time to consider the merits. This failure has further complicated this Court's task in determining whether these petitioners have received the minimal due process required by *Woodard*.

or for denying it."); *Ex Parte Tucker*, 973 S.W.2d 950, 950 (Tex. Ct. Crim. App. 1998) ("Clemency proceedings do not create a liberty interest and thus federal due process rights are not implicated.") Although eight Justices in *Woodard* agreed clemency and pardons are not traditionally "the business of the courts," *see Woodard*, 118 S. Ct. at 1254 (O'Connor, J.), the five-Justice majority stated some *minimal* procedural requirements are mandated, indicating that a minimal level of judicial review of clemency procedures is appropriate.

The Ninth Circuit has interpreted *Woodard* to stand for the novel proposition that "*minimal* procedural safeguards" require notice of what information is being considered by the clemency board. *See Wilson v. United States Dist. Court for the N. Dist. of Cal.*, 1998 WL 806433 (9th Cir. Nov. 16, 1998). However, *Wilson* itself is actually weak support for that proposition. The district court issued a stay of execution to consider whether California's clemency procedure satisfied *Woodard's* minimal due process requirements. The Court of Appeals considered whether the stay was "clearly erroneous," which is the standard in a writ of mandamus proceeding. *Id.* at *2. The Ninth Circuit did not substantively determine what process was required, but merely found the district court's entry of a temporary restraining order was "not clearly erroneous as a matter of law." *Id.* at *3.

Under the Texas Constitution, "[t]he Legislature shall by law establish a Board of Pardons and Paroles and shall require it to keep record of its actions and the reasons for its actions." TEX. CONST. art. 4, § 11. Before the Governor can pardon a defendant or commute a conviction or sentence, he must receive a recommendation for clemency from a majority of the Board, *see* 37 TEX. ADMIN. CODE § 143.1 (pardons), 37 TEX. ADMIN. CODE § 143.51 (commutation), but the Governor may grant one reprieve of only thirty days or less without the approval of the Board, 37 TEX. ADMIN.

CODE § 143.41 (pardons). In other words, the Governor cannot grant a pardon, commutation, or lengthy reprieve without a recommendation to do so from the Board. *See* TEX. CONST. art. 4, § 11. Under Texas statutes, the Board is not required to meet as a body to determine clemency matters, TEX. GOV'T CODE ANN. § 508.047, but if the Board chooses to meet it *may* hold clemency hearings by telephone conference call. TEX. GOV'T CODE ANN. § 551.124 (emphasis added). Although individual board members testified they would not be opposed to having hearings nor in giving reasons for their votes, the Board's legal position is adamant—it is not required to meet in public (or meet at all) or to give any reasons for recommending a denial of clemency. The Board's position is that the process afforded to the plaintiff is the right to file a petition for clemency without limitation on its content.³

According to the evidence before the Court, a death row inmate is visited by a parole officer as soon as an execution date is set. That parole officer talks to the inmate and makes a report, which is submitted to the Board of Pardons and Paroles and placed in a file. Any subsequent clemency documents are then placed in that file. Once a death row inmate files a clemency petition, Brett Hornsby, an Administrative Technician IV for the Board, date-stamps the petition and begins generating copies. Hornsby then contacts interested parties such as the prosecutor and victims

³ Although the Board does not expressly limit the type of information that a petitioner may include with his application, the Board members freely admit they do not consider all the information sent in reference to a particular applicant's application if sent separate from the application. The Board received approximately four thousand letters in reference to Faulder's application. Some of these letters were from members of the general public, but some of the letters were from members of Faulder's family and at least one letter was from a psychiatrist writing to inform the Board that the psychiatrist who had testified about Faulder's potential future dangerousness had been expelled from the American Association of Psychiatrists for his unethical testimony in capital cases. None of these letters were forwarded to the individual Board members for consideration.

services, and gives them 24 hours in which to deliver or fax any input they wish to offer for the Board's review. The Board's General Counsel prepares a synopsis of the petitioner's case history. These materials are collated into a packet and issued to all Board members, whose offices are located throughout the state, and to the Governor by airborne courier. Any materials that come after the initial disbursement are either faxed or shipped overnight to the members. Under some circumstances, materials are sent to Board offices, which are located only in certain cities, not necessarily the cities where each Board member resides.

When the Board members are prepared to vote, they send their votes to Hornsby, who enters the results into a computer. The members vote when they are ready, not on any given date. The only guideline is that votes should be completed before 3:00 p.m. on the day preceding the scheduled execution.⁴ The votes are placed on a form which states that the member has reviewed the petition and gives spaces in which the member signs and dates to show that they do or do not recommend clemency. When materials are submitted to the Board after a member has voted, the materials are still forwarded to that member, either by mail or fax depending on the space and time constraints. None of the members or anyone in the office of the Board investigates or verifies any of the information provided to them for consideration. The Board does not provide the Governor with any reason for their failure to recommend clemency. The members individually testified they do not

⁴ The dates of the votes on Faulder's petition were from November 13, 1998 to December 9, 1998; and the dates of the votes on Barber's petition were from December 3 to December 9, 1998. In the Faulder case, the majority of the Board members had voted to reject the clemency petition by November 26, 1998. In the Barber case, the majority of the Board members had voted to reject the clemency petition by December 4, 1998 — a mere three days after the petition was filed. In both cases, Rodriguez entered the final vote, on December 9, 1998 and then notified the Governor of the action of the Board.

discuss with each other the basis for their votes and they state no reason for their votes on their voting sheets.

Rodriguez, obviously frustrated and angered by the petitioners' challenge to his process, testified adamantly that the Board has the power to call hearings, conduct investigations, interview petitioners, and request testimony. However, Rodriguez concedes that the Board has not conducted any such activities since he began his tenure as Chair in 1995. This is remarkable, especially considering the fact that the Board has reviewed fifty-seven clemency petitions during the tenure of Rodriguez as Chair of the Board.⁵

Only once has the Board recommended clemency to a death-row inmate. On June 26, 1998, Governor George W. Bush, in accordance with a recommendation by the Board of Pardons and Paroles, commuted the death sentence of Henry Lee Lucas to life imprisonment.⁶

As for the procedures applied to the petitioners in their individual clemency petitions, the Court makes the following findings, without repeating the findings stated in the factual background above. Faulder's clemency petition was filed November 4, 1998, over a month prior to his scheduled execution date of December 10, 1998. Faulder's clemency petition contained peculiar issues because Faulder was a Canadian citizen at the time he was arrested for committing the crime that led to his death sentence. Faulder's case raised issues of international law that, as a result, has attracted

⁵ Paul Prejean, who has been a member since 1993, testified no board member has ever requested a hearing or teleconference on any of the seventy-six clemency petitions considered during his tenure. He has never voted in favor of a recommendation of clemency.

⁶ There was, of course, no evidence as to why this recommendation was made by the Board, but it is beyond dispute this action was requested by the Attorney General, law enforcement officials, as well as those representing the judicial system.

international attention. Specifically, Faulder asserts that the Geneva Convention was violated because the Canadian consulate was not notified of his arrest, charges, conviction, or sentence.⁷

The evidence shows Faulder's petition and the information in support of and opposing the petition was distributed in the normal fashion. There was evidence a doctor wrote a letter attacking the competency and validity of the testimony of the state's psychiatric expert in the trial court, Dr. Grigson, and that letter was not passed on to Board members. Several documents from family members and friends of Faulder, submitted in Faulder's 1997 clemency proceedings, were inadvertently not passed on to Board members during Faulder's 1998 clemency request, thereby violating the Board's own procedure. Furthermore, letters from a United States congressman and a national organization representing thousands of churches in favor of Faulder's clemency were not passed on to the Board members.⁸ There was also evidence that United States Secretary of State Madeleine Albright submitted a letter to the Board on November 28, 1998, although all but four of the members had voted by that date. Only one of the voters, Rissie Owens, requested a new voting form in light of the Secretary of State's letter. None of the members changed their vote due to that letter.

The defendants offered the testimony of eleven Board members, as well as Rodriguez, and each member testified that in both Faulder's and Barber's cases, they undertook a review of the

⁷ That international law issue is not before the Court, and it is only mentioned as background information regarding Faulder's clemency process.

⁸ Hornsby testified that the letters the Board receives are first reviewed by a staff member. If the staff member believes the letter is noteworthy, he will bring it to Hornsby's attention. If Hornsby agrees, he will forward a copy to Rodriguez or the General Counsel. However, if the staff member does not bring Hornsby's attention to a particular letter, it will not be brought to any member's attention.

materials in their petitions before entering their votes. Each member testified he or she had never voted by the flip of a coin⁹ or based on a petitioner's race, national origin, or any other factor of that sort.¹⁰

Since the emergency hearing before this Court on December 9, 1998, the Board has produced evidence demonstrating its capital clemency process. Specifically, it has submitted copies of the voting ballots, on which each Board member attests he or she "has reviewed" the petition before coming to a conclusion on a vote. Therefore, the state has a process that:

- (1) allows petitioners to file petitions for clemency with supporting information;
- (2) provides much of the information submitted to the voting members; and
- (3) provides for the members to vote after reviewing the petitions.

The testimony makes it clear that all pertinent information is not given to all Board members before they vote, and some information is inadvertently never provided to the Board members. For example, in Faulder's case, fourteen Board members had voted before receiving Madeleine Albright's letter. In Barber's case, a majority had voted against the recommendation of clemency within three days of its filing.¹¹ Members are provided with an opportunity to recast their votes in light of subsequent filings, but they are not required to re-attest that they have reviewed the entire

⁹ It is clear to the Court that members do not flip a coin to determine whether to recommend clemency as their votes are almost always unanimous against the recommendation. The Board has voted to recommend clemency only once in the past 76 petitions. It is elemental a flip of the coin would be more merciful than these votes.

¹⁰ The members consistently testified they considered a petitioner's guilt or innocence, but no member could specify with any particularity what he or she would look for to determine a recommendation for clemency.

¹¹ One member, Juanita Gonzalez, received the petition sometime on the morning of December 4, 1998 and then voted at 10:45 a.m. that same morning.

petition. It is apparent none of the members read every word on every line of every piece of paper in the clemency application. Most of the members who testified admitted this, although each emphasized that they fully considered and reviewed the entire application. Only Rodriguez testified that he reads every bit of every file, and his credibility is suspect. Rodriguez hedged too much in his responses, stating the members and he "wade through," "review," and "consider" all materials submitted to them and testified it would not be proper to do otherwise.

Nevertheless, *minimal* procedural safeguards do not require that every Board member read every page of every document submitted. It is clear a clemency petitioner has a right to submit a petition, along with any supporting material he or she desires at the time of that submission. Thereafter, state officials attest they "review" that petition. Then, the eighteen Board members vote whether or not to recommend clemency. This process may not meet normal due process standards, but it does meet "*minimal* procedural safeguards." Justice O'Connor certainly chose to italicize "*minimal*" in *Woodard* for a reason. And she chose the examples of coin flipping and denial of all access to the process for a reason.

Therefore, the key is that the process implemented in these cases as to these petitioners satisfied the minimal requirements of the due process as suggested in *Woodard*. The petitioners have failed to prove that they were denied access to the clemency process or that the votes in their cases were arbitrary, capricious, whimsical, or based on improper factors. The Board members testified that they did not base their votes on arbitrary or impermissible reasons. The testimony of the Board members that the voting process was not arbitrary or capricious is essential to the Court's finding that Faulder and Barber indeed received "*minimal* procedural safeguards" in the review of their clemency petitions.

The Board could render frivolous any future cases attacking the its clemency procedures by implementing the following procedural safeguards:

- (1) allow the petition and exhibits to be filed with the appropriate authority;
- (2) disseminate the petition to those persons with authority to act;
- (3) hold a hearing before those with authority, or, in the event of not holding a hearing, requiring the reason(s) for each vote to be stated.

This procedure could be met by simply adapting the current procedures to require members to succinctly state their reasons for recommending or not recommending clemency. This could be a minor addition to the current fax form used for voting on clemency petitions. Ironically, the only reason Rodriguez objects to having members give the reasons for their votes is that he fears it would lead to further litigation. If that fear was not nonsensical in the past, it is certainly nonsensical after *Woodard*: requiring Board members to give reasons for their votes provides a "procedural safeguard" to ensure that members don't "flip a coin" to arrive at their votes or otherwise vote based on arbitrary or impermissible reasons. Without even a minimal institutionalized procedure to protect against arbitrary decision making, every clemency denial will be subject to judicial review to determine whether each petitioner received "minimal procedural safeguards."

It is abundantly clear the Texas clemency procedure is extremely poor and certainly minimal. Legislatively, there is a dearth of meaningful procedure. Administratively, the goal is more to protect the secrecy and autonomy of the system rather than carrying out an efficient, legally sound system. The Board would not have to sacrifice its conservative ideology to carry out its duties in a more fair and accurate fashion. Giving reasons for its decisions and/or holding hearings to allow petitioners and other interested parties to present evidence would not threaten the employment of the

Huntsville executioner. Instead, it would ensure the legality of the system and provide greater protection against arbitrary or improper outcomes.

But of course, the Court's duty is not to legislate and mandate wise policies—it is to apply the law as stated by the Constitution as interpreted by the Supreme Court. Regardless of whether the Texas clemency procedure that denied clemency to Faulder and Barber was desirable, the Court concludes the procedure did provide *these* petitioners with the "*minimal* procedural safeguards" suggested by the five Justices in *Woodard*. The issue of whether the procedures comply with Texas law is not a question for this Court and must be reserved for the Texas Supreme Court and/or the Texas Court of Criminal Appeals, whether those Courts have the desire to address those issues on the merits or not. The issue of improving the procedures of the Board and instituting a process that will not require judicial review of the clemency procedures on a case by case basis is the responsibility of the Board, the Governor, and the Texas Legislature.

In accordance with the foregoing, the Court enters the following orders:

IT IS ORDERED that the Faulder Defendants' Motion for Leave to File Amended Motion to Dismiss, Answer, and Motion for Summary Judgment [#20 in Cause No. A-98-CA-801] is GRANTED;

IT IS FURTHER ORDERED that the defendants' Motions to Dismiss in both causes are GRANTED IN PART, insofar as they relate to the defendants the Board of Pardons and Paroles and Gary Johnson;

IT IS FURTHER ORDERED that the defendants' Motions for Summary Judgment in both causes are GRANTED IN PART, insofar as they relate to the individual members of the Board of Pardons and Paroles;

IT IS FURTHER ORDERED that the petitioners' Motions for Temporary Restraining Order and Preliminary Injunction are DENIED;

IT IS FURTHER ORDERED that the stay of Danny Lee Barber's execution ordered in this Court is WITHDRAWN;

IT IS FURTHER ORDERED that the stay of Joseph Stanley Faulder's execution ordered in this Court is WITHDRAWN;

IT IS FINALLY ORDERED that all other pending motions are DISMISSED AS MOOT.

SIGNED on this the 28th day of December 1998.



SAM SPARKS
UNITED STATES DISTRICT JUDGE

EXHIBIT 2



Controversy dogs actions of the state's parole - Houston Chronicle (TX) - January 10, 1999 - page 1

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They preside over no state agency. They make no government policy. They work in near obscurity in widely scattered outposts, and their actions affect only a tiny percentage of the state's population. But this winter they found themselves the objects of international attention and the targets of a blizzard of lawsuits. A federal judge termed their methods "appalling," a state court judge labeled them lawbreakers, and a prominent American Bar Association official called their activities "a farce." One state legislator suggested disbanding them, and another introduced a bill that would reform their ways. Such are the consequences of dealing in life and death, the commodities that are placed before the Texas Board of Pardons and Paroles on a regular basis. In the past four years, 57 men and women facing death by lethal injection have pleaded for mercy, and it has been granted only once. In 1998, a year of several high-profile executions and near executions, lawyers for condemned prisoners grumbled that it was impossible to know how those life-and-death decisions are made. For the first time, they began to find judges sympathetic to their arguments. Even the U.S. Supreme Court weighed in with a ground-breaking decision that opened the door for executive clemency - something the judiciary had previously declined to tread upon - to be reviewed by the courts. Texas, which has the largest death row in America and carries out more executions than any other state, easily became a laboratory for new legal strategies and clemency debate. At the center of the storm, however, was little more than a process, not a consequence. Since it was established in its present form in 1989, the 18-member parole board appointed by the governor has conducted its business largely in private. With members working out of regional offices scattered throughout the state, the board is not required by law to meet as a body. Clemency petitions and related documents are compiled by the board staff, and copies are sent by air express to the members, who review the files and vote by printed ballot to recommend or not recommend clemency. No reasons for the votes are given, not even to the governor. Secrecy, not the actual decisions of the board, have formed the basis for a series of legal challenges and may eventually alter the way the board conducts its business. A 10-year veteran of the parole board, Bennie Elmore, who works in the Huntsville office, routinely abstains in clemency votes but has consistently declined to explain why. He never returned phone calls from the Houston Chronicle. Staff members routinely decline to answer reporter's questions and refer all inquiries to Board Chairman Victor Rodriguez. A faxed request by the Houston Chronicle to the board office requesting information on clemency votes went unanswered. In response to repeated requests, the board staff could not, or would not, identify the towns in which board members live. When two death row inmates filed a federal court lawsuit last month seeking information about the board's process, U.S. District Judge Sam Sparks stayed their executions with a temporary restraining order because the board, represented by the attorney general's office, produced no factual argument. At a hearing on the injunction, the board did not produce, until so ordered by the judge, several boxes of documents that had been subpoenaed by the inmates. Testimony from board members also was vague at that hearing. "How do you weigh new information you receive about inmates?" Sparks asked. "The best way we can," Rodriguez said. What kind of case would justify a board hearing? "I can't tell you," Rodriguez said. Sparks termed the system "appalling" but

later decided that it does provide the necessary minimal level of due process under the vague guidelines of the U.S. Supreme Court. Whether the board will be required to hold open meetings may have to be decided by the Legislature. ... Secrecy under assault In the past year, two state court judges have ruled that the board's long-standing procedures violate the state Open Meetings Act and the state constitution. Last week, a third, state District Judge Scott McCown of Austin, decided differently. The board is not required to meet, he ruled, and is not compelled by law to state its reasons for denying clemency. Any changes, he wrote, are outside the jurisdiction of the judiciary. "It belongs to the citizens to express their judgment through their assembled representatives . . . as to whether this system adequately assures that Texas is able to determine when mercy should be given," McCown wrote. State Rep. Elliott Naishtat, an Austin Democrat, has introduced a bill that would open up the process. But even if wholesale reform occurs, death row lawyers are not optimistic that the outcome of clemency votes will be altered. "Instead of voting in private to deny clemency, they would vote in public to deny clemency," said Sandra Babcock, who filed the federal court suit that temporarily halted the execution of Joseph Stanley Faulder, a 61-year-old Canadian who has been on death row for 21 years for murdering an elderly East Texas woman in 1975. ... Canadian's plea spurned Faulder's was the latest in a series of controversial death penalty cases that raised questions about the parole board procedures and the rarely used privilege of executive clemency. "Clemency in Texas is a farce," said Larry Fox, a Philadelphia attorney who heads the ABA's Death Penalty Project, speaking of the Faulder case. Faulder sought a commutation of his sentence to life in prison on the grounds that at the time of his arrest, he was not informed of his right to contact his government under the 1969 Vienna Convention on Consular Relations. He was on death row for 15 years before his family or his government knew his whereabouts. Along with the Canadian government, anti-death penalty groups such as Amnesty International have argued that if Faulder's rights had not been violated, he might have avoided the death penalty. "Had they been informed as required, Canadian consular officials could have influenced the state's willingness to plea bargain, as well as the quality of the defense asserted at trial," Babcock argued in a recent brief filed with the Supreme Court. "Clemency has a long and hoary tradition. It is supposed to be a safety valve, but 99.9 percent of the time it is not." Bush, who cannot grant clemency except on the parole board's recommendation, has said he considers only two questions in making that decision: Is there a question about the inmate's guilt and did the inmate have full access to the courts? Although the parole board is free to consider any and all circumstances and arguments, Chairman Rodriguez has indicated that those same two questions guide the decisions of the board. The board was unmoved by Faulder's plea of violated rights, just as it was unmoved a year ago when pickax murderer Karla Faye Tucker sought mercy on the grounds of a religious conversion. "The beginning point is guilt," Rodriguez says. "Karla Faye Tucker's supporters said she hasn't done anything in 15 years. Hell yes, she hasn't. She's been in prison. We can't give people the benefit of time to work in their favor and against the victims' families. We have to look at the punishment that was handed out under the circumstance at the time the crime was committed." ... Clemency given to Lucas The only recommendation for clemency that the board has made in recent years was for serial killer Henry Lee Lucas, who was approaching execution last summer for the 1979 murder of an unidentified woman whose body was found near Georgetown. In that case, the question of actual innocence was raised - first by Attorney General Jim Mattox and later by Attorney General Dan Morales. Both investigated and found convincing evidence to support Lucas' claim that he was working in Jacksonville, Fla., when the murder was committed. A day before he was scheduled to die, Bush commuted his sentence to life. Rodriguez bristles at the accusation made by defense lawyers and judges that the board cloaks its activities in anonymity. "It is not secret," he says. "It is done the way it was set up

by the Legislature." ... Ferguson's sold pardons. The current board construction dates back to 1989. That's when the Legislature created the Texas Department of Criminal Justice, which folded into the Texas Department of Corrections and other corrections-related agencies, such as the Adult Probation Commission and the Board of Pardons. A separate Board of Pardons and Paroles was established outside the new super department for the purpose of ruling on parole applications and revocations and for screening clemency requests. It is neither a part of TDCJ, nor completely separate from it. TDCJ supervises parolees and maintains their records; the parole board merely gives formal approval or denial to an inmate's early release. In the clemency system, the board essentially is an advisory panel to the governor, who has the sole authority to commute sentences. Since the 1930s, following the corrupt administrations of Gov. James "Pa" Ferguson and his wife, Gov. Miriam "Ma" Ferguson, Texas - unlike other death penalty states - has restricted the governor's clemency powers by requiring that he act only upon a recommendation from the parole board. "Pa" Ferguson, elected in 1915, was impeached and removed from office three years later for financial misconduct. In 1922, he orchestrated his wife's election and, under his influence, she signed more than 3,595 grants of executive clemency and accepted payment for her mercy from the relatives of forgiven inmates. To avoid a repeat of the scandal, the constitution was amended, creating the Board of Pardons and Paroles as a buffer between the inmates and the governor. Over the years, the parole board's membership expanded from three to six to nine and finally to 18 when TDCJ was created in 1989, a time when Texas was under federal court orders to ease prison overcrowding. "There needed to be more members who make those decisions," says a legislative council staff member. "The (prison) system was spreading out all over the state." Instead of the open board meetings that had been routine previously, the expanded board was assigned to regional offices in seven cities near prisons to work in panels of three reviewing the staggering number of parole requests that came with a rising inmate population. Last year, according to testimony in federal court in December, the board considered 59,000 parole applications, 29,000 revocations and 17 clemency petitions. "The sheer volume has prevented a more open process," says Chris Mealy, an attorney and former vice chairman of the board. "But the vote ought to be made public. It's kind of a cop-out for members to be able to hide behind secrecy as to how they voted." ... Clements opened the gates. Still, there were few challenges to the board's operations for the first seven years - except for inmate complaints that paroles were harder to come by as the prison system ballooned from 45,000 beds to nearly 150,000. "When (Bill) Clements was governor, they opened the gates," says Bill Habern, a former public defender to the corrections department. "If you could walk, crawl or ride on a gurney, they'd parole you." As more prisons were built, the rules changed, he says. "In 1989, they were approving 72 percent of the parole requests," Habern says. "In 1997, it was 17 percent." While paroles slowed to a trickle, the pace of executions quickened, as did the legal challenges to them. Clemency, as a "safety valve," came into sharper focus. ... Who deserves mercy? Karla Faye Tucker's cause was championed by the religious right as well as the anti-death penalty left, but the parole board and the governor declined to halt her execution. Many began to wonder: If Tucker didn't deserve consideration, who would? On the eve of Tucker's execution last February, State Sen. John Whitmire, a Houston Democrat who chairs the Senate Criminal Justice Committee, suggested disbanding a board that granted few paroles and, at that time, had never recommended clemency. Inmates could be required to serve their full sentences, he said, and clemency petitions could be reviewed by the governor's staff. "If you're not going to parole anybody, why are we paying 18 people . . . to go through the motions?" he asked then. His position today seems to have moderated, but change still may be in store for the parole board, as Whitmire and the state's other legislators convene for their biennial session in Austin on Tuesday. Last month, after the Austin federal judge's attack on

the board's closed system of clemency, Whitmire said, "It may be time to modernize that operation. The solution is fairly simple. If the judges want openness, let's kill them with openness. "It might serve our interests," he said, "to demonstrate to the world that we have a very just system." ... TEXAS BOARD OF PARDONS AND PAROLES Members are appointed by the governor for a term of six years. Chairman's annual salary is \$65,000; other members make \$62,500. Each member is assigned to a regional office. Chairman Victor Rodriguez,* appointed 1995. Was Brownsville police chief, with a total of 17 years with police department. Was chairman of Texas Automobile Theft Prevention Authority. Bachelor's degree in criminal justice from University of Texas. Works in Austin and San Antonio offices. Lynn F. Brown,* appointed in 1997. Was probation and parole officer for U.S. District Court; previously worked for U.S. Department of Justice Parole Commission in Dallas for nearly 20 years. Bachelor's degree from Pittsburg State University in Kansas and master's from Sam Houston State University. Based in Gatesville. Bennie Elmore, appointed in 1989. Has more than 20 years experience with Texas criminal justice system. Bachelor's degree in criminal justice from Sam Houston State. Based in Huntsville. John Escobedo, appointed in 1990. Has 20 years with Texas criminal justice system. Eastern New Mexico University graduate. Based in Huntsville. Gerald Garrett,* appointed in 1995. Was director of administrative services for Texas Department of Criminal Justice parole division with more than 18 years experience in criminal justice field; served as president of Texas State Parole Officers Association. Bachelor's degree from Stephen F. Austin University and master's from Texas Southern University. Based in Gatesville. Juanita Gonzalez,* appointed in 1997. Was director of information services for TDCJ parole division. Bachelor's and master's from Worden School of Social Services at Our Lady of the Lake University. Based in San Antonio. Daniel Lang,* appointed in 1995. Attorney with civil law practice; has tried felony, misdemeanor and custody cases. Graduate of Texas Christian University and University of Texas law school. Based in Angleton. Mary Leal, appointed in 1993. Was senior aide to Houston City Council member Gracie Saenz. Graduate degree from University of Houston. Based in Angleton. Thomas W. Moss,* appointed in 1995. Was consultant for U.S. Parole Commission and previously a hearing examiner for parole hearings in federal prisons; has extensive training in witness protection programs and victim impact training. Bachelor's degree from Texas Tech University and master's from Sam Houston State University. Based in Amarillo. Rissie Owens,* appointed in 1997. Was associate school psychologist for Huntsville school district. Bachelor's in criminal justice from Sam Houston State and master's from University of Houston. Based in Huntsville. Paul Prejean, appointed in 1993. Was parole supervisor for TDCJ. Graduate of Lamar University. Based in Angleton. Brendolyn Rogers-Johnson,* appointed in 1995. Was teacher for Dallas school district; more than 20 years professional teaching experience and master's in education from East Texas State University. Based in Palestine. Terri Schnorrenberg, appointed in 1993. Was director of patient relations and social services at Coryell Memorial Hospital in Gatesville; previously worked as prison liaison for state Department of Human Services. Graduate of Baylor University. Based in Gatesville. Alvin W. Shaw,* appointed in 1997. Was chief deputy of Travis County Sheriff's Office; previously spent 18 years with Austin Police Department. Attended Austin Community College and Huston-Tillotson College. Based in San Antonio. Charles A. Shipman,* appointed in 1997. Was a parole caseworker for TDCJ. Has over 20 years experience as criminal investigator and police officer for U.S. Air Force. Received bachelor's degree in criminal justice and business administration from Wayland Baptist University. Based in Abilene. Cynthia Taus,* appointed in 1995. Was community volunteer for Galveston County Juvenile Crime Task Force. More than 15 years experience in public relations, event coordination and business management. Bachelor's degree in jurisprudence from University of Houston. Based in Angleton. Sandie Walker,* appointed in 1997. Was Brazos County commissioner and former county

treasurer; also on community relations board for Bureau of Prisons in Bryan. Attended Abilene Christian University. Based in Palestine. W.G. "Billy" Walker, appointed in 1993. Was senior U.S. probation officer for U.S. District courts. Bachelor's and master's from University of North Texas. Based in Palestine. (The office did not have information on members' ages or other details that are missing.) * Denotes those appointed by Gov. George W. Bush."

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EXHIBIT 3



Parole board to overhaul clemency rules - After - Austin American-Statesman (TX) - February 4, 1999 - page A1

February 4, 1999 | Austin American-Statesman (TX) | By Mike Ward | Page A1

The Texas Board of Pardons and Paroles, harshly criticized for the way it secretly considers clemency for execution-bound criminals, announced plans Wednesday for an unprecedented overhaul of its rules that could eventually mandate face-to-face interviews with the condemned for the first time. "I would like for us to begin doing that on a routine basis in every clemency case," board Chairman Victor Rodriguez said. "That's something I'm going to be advocating, probably having one board member do the interview face to face." At a rare public meeting At a Friday in Huntsville, six members of the 18-person board's policy committee will initiate the first review of clemency procedures in at least 10 years -- starting with a proposal to change the deadline for filing petitions to 25 days before an execution. The current deadline is five days before an execution. "This would give the board more time to review these cases," Rodriguez said. "There have been suggestions that five days is too short a time. I think everybody (on the board) wants to do more." Parole board members have not previously been required to interview condemned prisoners. Interviews of the condemned by parole board members have not been required in the past. Only rarely have interviews been done, the most recent occurring about a year ago when Rodriguez interviewed Houston pickax killer Karla Faye Tucker. It made no difference. The board recommended against clemency, and Tucker died by lethal injection in a Huntsville prison a year ago Wednesday, to become the first woman executed for a crime in Texas since the Civil War. In coming months, Rodriguez said plans call for Texas' clemency procedures -- some of which have been unchanged for years -- to be "completely reviewed and modernized." "We're looking at the whole spectrum," Rodriguez said. "All options are open. We're going to take this as a slow and careful review that will take several months." But even if the board quickly agrees to change its rules, the effect on the 10 executions scheduled through April -- four of them this month during February -- could be minimal. Rodriguez said any change could take up to two months to take effect once it is approved by the board. In December and January, Texas' clemency system was buffeted by a string of court challenges and national criticism that branded it as unfair and merciless. The challenges focused on the secrecy of the process and the fact that clemency was almost never recommended. While the court challenges failed, the ensuing controversy spurred bills now being considered by the Legislature that would require the board to hold public meetings for the first time, establish criteria for recommending clemency and mandate more-thorough reviews of each case. Rodriguez and Gov. George W. Bush have repeatedly defended the current system as fair. "The courts have ruled the Texas clemency process as constitutional," said Linda Edwards, a spokeswoman for Bush. "If the Board of Pardons and Paroles decides there are internal changes that would make the system more efficient, Governor Bush supports their judgment." Rodriguez insisted Wednesday that the proposed changes have nothing to do with the controversy. "We were thinking about this long before any of the issues came up," he said. "But every time we've started to move on any changes, we got sued, so we weren't able to move. Now that the court action is resolved, we can." But Rita Radostitz and Maurie Levin, two Austin lawyers involved in the recent court challenges, questioned whether the proposed changes will much improve the process. Moving the filing deadline to 25 days before execution could mean

court appeals will still be pending, something they fear could diminish the already-slim chances for mercy from the board. ``Unless the board makes themselves more accountable to the public, this (review of rules) really doesn't change anything," Levin said. State Rep. Elliott Naishtat, D-Austin, sponsor of bills that would establish criteria for granting clemency and require the board to hold public meetings and give reasons for its decisions, applauded the review. ``I commend the board for taking any action that would improve the clemency process, and ultimately I would hope that they would take the position of supporting the passage of these bills," he said. You may contact Mike Ward at mward@statesman.com or 445-1712."

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EXHIBIT 4

Amendment No. 1 was adopted without objection.

SB 1696, as amended, was passed to third reading. (Merritt and Telford recorded voting no)

**CSSB 705 ON SECOND READING
(Truitt and Lewis - House Sponsors)**

CSSB 705, A bill to be entitled An Act relating to the donation by a county of salvage and surplus property to a civic or charitable organization.

CSSB 705 was passed to third reading.

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**CSSB 1678 ON SECOND READING
(Allen - House Sponsor)**

CSSB 1678, A bill to be entitled An Act relating to the organization and duties of the Board of Pardons and Paroles.

Amendment No. 1

Representative Talton offered the following amendment to **CSSB 1678**:

Amend **CSSB 1678** (house committee report) by adding an appropriately numbered SECTION to the bill to read as follows and renumbering the existing SECTIONS of the bill accordingly:

SECTION _____. Section 508.032, Government Code, is amended by adding Subsection (c) and (d) to read as follows:

(c) A former employee of the Texas Department of Criminal Justice may not serve on the board before the fifth anniversary of the date employment with the department terminated.

(d) Not more than three of the members may be former employees of the Texas Department of Criminal Justice.

**CSSB 1678 - STATEMENT OF LEGISLATIVE INTENT
Amendment No. 1**

REPRESENTATIVE ALLEN: Mr. Speaker, let me speak on the amendment and see if we can clarify some of the confusion. What Representative Talton's amendment does, is, it says that for board members of the Board of Pardons and Paroles, no more than three of the seven may be former employees of TDCJ. And it is my understanding, that that does not apply to their prior service on the board. Though their salary comes through there, they are employees of the Board of Pardons and Paroles, which is in fact a separate agency. But they would not be excluded by virtue of their current service.

REPRESENTATIVE KEEL: So what you're saying, Representative Allen, is that a current board member of— one of those 18 board members—would not be excluded by this amendment. In fact, more than three of them could serve if they're in the current status of a board member as it exists today. They would not fall under the language of this—

ALLEN: Only those from among the 18 who, within the past five years—

KEEL: Used to work for, like, the Institutional Division?

ALLEN: Correct.

KEEL: As opposed to exclusively working as a board member.

ALLEN: Correct. Further, members and Mr. Keel, those who are not reappointed to the seven member Board of Pardons and Paroles would nevertheless be eligible for hire as commissioners, despite the fact that they have in the past served on the board. So, what we in effect are doing with this amendment, is narrowing the scope of how many former TDCJ employees—like institutional division, state jail division, etc.—would be on the pardon and parole board. And I suppose that the policy interest is in maintaining a certain degree of

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independence between the pardon and parole board and Texas Department of Criminal Justice, which houses inmates and supervises inmates. This pardon and parole board has been a prerogative of the Office of the Governor, and I suspect that they're wanting to tweak how they do their appointments. In regard to the larger issue of the bill itself, the policy interest is this: we've had 18 members of the pardon and parole board now for about two decades. We used to hear maybe 15,000 cases in a year with 18 members, and this year we're going to hear probably 75,000 parole cases without regard to pardon cases. And no one would ever envision that we'd continue to increase the size of the board, you know, to 36 or 48 members. It would just be an unwieldy structure. So what we have in mind is to go to a board of seven, which is appointed, and then hire commissioners.

REMARKS ORDERED PRINTED

Representative Keel moved to print remarks between Representative Keel and Representative Allen.

The motion prevailed without objection.

Amendment No. 1 was adopted without objection.

A record vote was requested.

CSSB 1678, as amended, failed to pass to third reading by (Record 737): 62 Yeas, 71 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Christian; Cook, B.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Eissler; Elkins; Flynn; Gallego; Gattis; Griggs; Grusendorf; Hardcastle; Harper-Brown; Hegar; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Keffer, B.; Keffer, J.; King; Kuempel; Laubenberg; Lewis; Marchant; McCall; Mercer; Miller; Morrison; Nixon; Paxton; Phillips; Pitts; Reyna; Seaman; Smith, W.; Solomons; Stick; Talton; Taylor; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ellis; Escobar; Farabee; Farrar; Flores; Garza; Geren; Giddings; Goodman; Goolsby; Guillen; Gutierrez; Haggerty; Hamilton; Hochberg; Hodge; Homer; Hopson; Jones, E.; Jones, J.; Keel; Kolkhorst; Laney; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Solis; Telford; Thompson; Truitt; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hope.

Absent — Bonnen; Chisum; Crownover; Driver; Eiland; Hamric; Hartnett; Heflin; Hilderbran; Hill; Krusee; Madden; Mowery; Smithee; Swinford.

3994 78th LEGISLATURE — REGULAR SESSION

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH C. GARCIA, §
PETITIONER, §

v. §

CASE No 4:18-cv-4503

GREGORY ABBOTT, GOVERNOR §
TEXAS BOARD OF PARDONS AND PAROLES §

CAPITAL CASE

DAVID GUTIERREZ, CHAIR, §
TEXAS BOARD OF PARDONS AND PAROLES §

CARMELLA JONES, MEMBER §
TEXAS BOARD OF PARDONS AND PAROLES §

ED ROBERTSON, MEMBER §
TEXAS BOARD OF PARDONS AND PAROLES §

JAMES LAFAVERS, MEMBER §
TEXAS BOARD OF PARDONS AND PAROLES §

FRED RANGEL, MEMBER §
TEXAS BOARD OF PARDONS AND PAROLES §

BRIAN LONG, MEMBER §
TEXAS BOARD OF PARDONS AND PAROLES §

FRED SOLIS, MEMBER, §
TEXAS BOARD OF PARDONS AND PAROLES §
DEFENDANT. §

PLAINTIFF’S COMPLAINT FILED PURSUANT TO 42 U.S.C. § 1983

FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

Plaintiff Joseph Garcia filed an Application for Commutation of Death Sentence to Lesser Penalty and/or 60-Day Reprieve with the Texas Board of Pardons and Paroles (“Board”) on November 8, 2018. Garcia seeks to vindicate his right to a clemency process that comports with Texas’s process and statutes, achieves fundamental fairness, and satisfies the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

On February 13, 2003, Garcia was convicted of capital murder in connection with the shooting death of a police officer under Texas’s law of the parties, despite the fact that there was no evidence that Garcia fired a gun. As currently constituted, the Board is in violation of Texas Government Code section 508.032, which requires Board members to be “representative of the general public.” As a result, the Board’s composition is unlawful under the statute, and to allow the Board as currently unlawfully constituted to issue executive clemency decisions—and, in particular, to issue a clemency recommendation in Garcia’s case—is a violation of the minimal process due to a capital prisoner in clemency proceedings. While the clemency process is typically not the province of the courts, judicial review is warranted where—as here—the state has failed to follow its own rules in regards to clemency.

The Board runs afoul of both fundamental fairness and minimal due process in its membership where six out of seven Board members are former employees of

the Texas Department of Criminal Justice (“TDCJ”), former law-enforcement officers, or both. Moreover, the only Board member without a TDCJ or law-enforcement background has an extensive history working in both Texas State government and Governor Greg Abbott’s office. Through this majority law-enforcement composition of the Board, the Board is in violation of Texas Government Code section 508.032, which seeks to establish an impartial decision-maker by requiring that “Board members must be representative of the general public.” With approximately 85% of the Board sharing a TDCJ and/or law-enforcement background and 100% of the board coming from the State or an arm of the State, the Board is not representative of the general public and is not legally constituted under section 508.032. As such, the Board does not present an impartial decision-maker. Instead, the Board is firmly stacked and biased against Garcia, given that Garcia’s case involves a law-enforcement victim. Garcia, therefore, will not receive a fair clemency proceeding or a meaningful opportunity to be heard. Furthermore, carrying out Garcia’s execution when he was not provided with the due process required in clemency proceedings would violate the Eighth Amendment’s prohibition on cruel and unusual punishment.

Based on Garcia’s constitutionally protected life interest, he seeks enforcement of his due process rights to minimally adequate safeguards under the Fourteenth Amendment in clemency proceedings, including the right to a

meaningful opportunity to be heard. Since the Board is not legally constituted and is therefore in violation of Garcia's constitutional rights, Garcia requests that this Court enter a preliminary and permanent injunction enjoining the Board from voting on or denying his clemency request and Governor Greg Abbott from acting on any Board recommendation that the Board may give, as such recommendation would be invalid, unless and until the Governor appoints a Board that comports with Texas's statutes and with the minimal guarantees of due process. Garcia also requests declaratory relief that the Board is violating and will continue to violate Garcia's due process rights during his clemency proceeding and that Garcia's right to be free from cruel and unusual punishment will be violated if his execution is carried out.¹

I. JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983. This action arises under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Eighth Amendment to the United States Constitution.

2. As this case involves an actual controversy within this Court's jurisdiction, this Court, under 28 U.S.C. § 2201, has the power to declare the rights and legal relations of the parties herein, and, under 28 U.S.C. § 2202, has the power to grant declaratory relief by all necessary and proper means. This Court also has the

¹ Plaintiff will be filing a separate motion for preliminary injunction and a memorandum in support.

authority to grant injunctive relief under 42 U.S.C. § 1983, as this action involves the deprivation of Garcia’s constitutional rights under the Fourteenth and Eighth Amendments by Defendants acting under the color of State law.

3. This Court has jurisdiction because Garcia’s challenge to the clemency proceedings will not “spell speedier release. In fact, no release—from confinement or from the sentence of death—would result at all. At most, these proceedings can result only in a stay until [Garcia] is afforded a clemency proceeding commensurate with the Constitution.” *Young v. Gutierrez*, 895 F.3d 829, 831 (5th Cir. 2018). A stay would not “necessarily imply the invalidity of [the] conviction[] or sentence[],’ as clemency could . . . be denied.” *Young*, 895 F.3d at 831 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)).

II. VENUE

4. Venue is proper in the United States District Court for the Southern District of Texas, Houston Division, because the Board of Pardons and Paroles member Federico Rangel is assigned to the Huntsville, Texas Board office and resides in Huntsville, Texas. 28 U.S.C. § 1391(b)(1). All other defendants are residents of the state in which this district is located. 28 U.S.C. § 1391(b)(1).

III. PARTIES

5. Plaintiff Joseph Garcia is presently incarcerated and under a sentence of death at the Allan B. Polunsky Unit of the Texas Department of Criminal Justice

in Livingston, Texas. Garcia is scheduled to be executed at 6:00 p.m. CST on December 4, 2018. Garcia has filed an application for clemency, under title 37 of the Texas Administrative Code, sections 143.42 and 143.57, asking for commutation of his death sentence to a lesser penalty and/or a 60-day reprieve. (Ex. 1.)

6. Defendants David Gutierrez, Carmella Jones, James LaFavers, Brian Long, Federico Rangel, Ed Robertson, and Fred Solis are appointed members of the Texas Board of Pardons and Paroles.

7. Defendant Greg Abbott is the Governor of the Texas.

8. Because injunctive relief is sought, Defendants are “persons” for purposes of an action under 42 U.S.C. § 1983. *See Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 n.10 (1989). Defendants are being sued in their official capacities.

IV. STATEMENT OF FACTS

9. On May 18, 2018, the Dallas County District Attorney’s Office moved to schedule an execution date of August 30, 2018, which the 283rd Judicial District Court of Dallas County granted on May 24, 2018. On June 26, 2018, the Dallas County District Attorney’s Office moved to modify Garcia’s execution date to December 4, 2018, which the court granted on June 27, 2018. On November 8, 2018, Garcia submitted a clemency application to the Texas Board of Pardons and Paroles. (Ex. 1.)

10. Although the Governor retains the power to grant a one-time, 30-day reprieve in capital cases without Board recommendation, *see* Tex. Const. art. IV, § 11, the Governor requires the affirmative recommendation of a majority of the Board in order to commute a capital sentence, *see* Texas Code Crim. Proc. § 48.01. Thus, the executive clemency power in Texas is shared between the Board and the Governor. Also, the Governor retains the power under the Texas Constitution to appoint members to the Board, subject to the statutory requirements section 508.032. While clemency in Texas remains the province of the executive branch, certain aspects of the process are nonetheless subject to statutory compliance.

11. In 1997, the Texas Legislature enacted section 508.032 of the Texas Government Code and thereby established membership requirements for the Board. The original membership requirements were simply two: “Board members must be representative of the general public,” and a “member must have resided in [Texas] for the two years before appointment.” Tex. Gov’t Code § 508.032 (1997).

12. In a 1983 report to the Governor of Texas and the Texas Legislature, the Sunset Commission, created by the state legislature in 1977, reviewed thirty-two agencies. The Sunset Commission explained in its report that the “general public” provision in agency statutes was meant to ensure that not all agency members represented the same interests. Through such provisions, the Sunset Commission envisioned “giving the general public a direct voice . . . through representation on

the board.” (Ex. 2 at 4.)

13. With the enactment of section 508.032 in 1997, the Texas state legislature prevented the representation of the same interests by Board members and to give the broader general public “a direct voice” through representation on the Board. In so doing, the state legislature made clear that the Board could not be biased—that it had to serve as an impartial decision-maker.

V. CAUSES OF ACTION

Claim One

The current composition of the Board violates Texas Government Code section 508.032, as the Board has six members with law-enforcement backgrounds and is therefore not representative of the general public, in violation of Garcia’s right to due process.

14. Garcia re-alleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint.

15. Section 508.032 demands impartiality of the Board, first by requiring that Board members be “representative of the general public” and thus not have similar interests and backgrounds, and second by specifically limiting the number of Board members who have previously worked for TDCJ. *See* Tex. Gov’t Code § 508.032(a), (d).

16. Through the interaction of these two sections, Board membership demands representation from different backgrounds in order to achieve impartiality on the Board. *See id.*

17. The Due Process Clause provides constitutional safeguards in clemency proceedings, and minimal due process requires at least sufficient notice and an opportunity to be heard during the clemency process. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 288, 289 –90 (1998) (O’Connor, J., concurring). In order for an opportunity to be heard to be meaningful, an impartial decision-maker is necessary. *See Wolff v. McDonnell*, 418 U.S. 539, 559 (1974) (holding that in a parole revocation hearing, minimal due process imposed certain minimal procedural requirements that included a “neutral and detached hearing body” (internal quotations omitted)); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (holding that citizen enemy combatants are afforded some due process, which includes “a neutral decisionmaker.”).

18. The Board’s current membership violates section 508.032, which is meant to protect the impartiality of the Board, and it consequently abridges Garcia’s meaningful opportunity to be heard in violation of the due process required in clemency proceedings.

19. The Board membership currently consists of seven members, six of whom are either former TDCJ employees, former law-enforcement officers, or both. The seventh Board member is a former State government employee.

20. TDCJ manages offenders in state prisons and jails, as well as in private prisons and jail that contract with TDCJ. *Inside TDCJ*, Texas Department of

Criminal Justice, https://www.tdcj.state.tx.us/kss_inside.html (last visited Nov. 28, 2018). TDCJ also funds, trains, and oversees Community Supervision and Corrections Departments (“CSCD”), which handles adult probation services. *See id.* Finally, TDCJ supervises individuals released from prison on parole. *See id.*

21. At least two Board members—David Gutierrez and Brian Long—are full-fledged former TDCJ employees. Gutierrez was the former chair of the Texas Correctional Office on Offenders with Medical or Mental Impairments (“TCOOMMI”), which is a division within the TDCJ. *See* Texas Department of Criminal Justice, Biennial Report of the Texas Correctional Office on Offenders with Medical or Mental Impairments Fiscal Year 2015-2016 at 5, https://www.tdcj.state.tx.us/documents/rid/TCOOMMI_Biennial_Report_2017.pdf (last visited Nov. 28, 2018). Long was employed in TDCJ’s parole division.

22. One other member, Federico Rangel, also has close ties to the work that TDCJ does. Rangel was the former director of the Angelina CSCD, which is funded, trained, and monitored by TDCJ’s Community Justice Assistance Division. Community Justice Assistance Division, Texas Department of Criminal Justice, <https://www.tdcj.state.tx.us/divisions/cjad/index.html> (last visited Nov. 27, 2018). Rangel also served as a probation officer in Montgomery County, a parole commissioner in the Angleton Board office, and as the Director of Adult Probation in Angelina County—all jobs that are similar to the work done by TDCJ.

23. Six out of the seven Board members share a law-enforcement background. James LaFavers and Fred Solis were police officers in Amarillo and San Antonio, respectively. Solis was also a police chief in the city of Olmos Park and an investigator for the Bexar County District Attorney’s Office. Carmella Jones and David Gutierrez were both sheriffs of different counties, Armstrong County and Lubbock County, and Brian Long worked for the Cherokee County Sheriff’s Department.

24. Eighty-five percent of the Board members, then, are either former employees of TDCJ, or law-enforcement officers, or both.

25. The Board is not “representative of the general public.” Approximately 0.4% of the Texas population are law-enforcement officers and 0.15% are TDCJ employees.²

26. Through this majority law-enforcement composition of the Board, the Board is in violation of section 508.032, because the Board members are not “representative of the general public.” Instead, the Board has nearly exclusively members whose background places them firmly on the side of the State and law enforcement.

² The United States Department of Justice conducted a census of state and local law-enforcement agencies in 2008. The published findings state that Texas has 1,913 state and local law-enforcement agencies with 96,116 total personnel. (Ex. 3 at 15.) TDCJ counts approximately 38,000 employees in its 2017 annual review. (Ex. 4 at 51.) The 2010 United States Census lists the population of Texas at 25,145,561. Quick Facts: Texas, U.S. Census Bureau (July 21, 2017), Texas, <https://www.census.gov/quickfacts/tx>. These figures were used for the above calculations.

27. The Board will not give Garcia a meaningful opportunity to be heard due to its lack of the impartiality required by section 508.032.

28. The need for an impartial decision-maker is especially acute in Garcia's case, where the victim was a law-enforcement officer.

29. As a result, Garcia will not receive a meaningful opportunity to be heard, in violation of the minimal due process that is required in clemency proceedings. *See Woodard*, 523 U.S. at 290 (O'Connor, J., concurring).

Claim Two

The current composition of the Board violates Texas Government Code section 508.032, as the Board has only one woman and six men and is therefore not representative of the general public, in violation of Garcia's right to due process.

30. Garcia re-alleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint.

31. The sex-based disparity of the Board violates section 508.032. The sex composition of the Board is one way to assure that the Board be representative of the general public, which in turn assures the Board's impartiality.

32. Currently, there are six men and one woman on the Board, making the Board approximately 85% male.

33. Texas is at least 50% female according to a 2017 estimate by the U.S. Census Bureau, from which the current membership of the Board deviates significantly.

34. Because of its current gender composition, the Board fails to be “representative of the general public,” in violation of section 508.032 and in violation of Garcia’s due process rights. *See Woodard*, 523 U.S. at 290 (O’Connor, J., concurring).

Claim Three

Texas Government Code section 508.032 creates a procedural safeguard intended to protect death-sentenced prisoners in clemency, and Texas’s arbitrary violation of the statute violates due process.

35. Garcia re-alleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint.

36. Through the enactment of and additions to Texas Government Code section 508.032, Texas has provided a procedural safeguard for the meaningful consideration of clemency. As a result, Garcia has a reasonable expectation of and cognizable interest in the application of this statute to his clemency proceeding and a right not to be deprived of a Board that is representative of the general public.

37. Even when it is the case that no independent constitutional right exists, a state’s decision to provide certain protections to a class of individuals gives rise to an obligation on the part of the state, under the Due Process Clause, to honor those protections. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) (“The prisoner’s interest has real substance and is sufficiently embraced within Fourteenth Amendment ‘liberty’ to entitle him to those minimum procedures appropriate under

the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.”). This is especially true here, where the statute at issue has been established specifically to protect death-sentenced prisoners in clemency.

38. Since Texas has affirmatively created a statute governing the composition of the Board—requiring that it be representative of the general public—Texas is not free to arbitrarily deviate from its own statute without violating minimal due process. *See Woodard*, 523 U.S. at 290 (O’Connor, J., concurring) (“The process respondent received . . . comports with Ohio’s regulations and observes whatever limitations the Due Process Clause may impose on clemency proceedings.”); *see also United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.”).

39. As discussed in ¶¶ 20–24 of Claim One and ¶¶ 31–32 of Claim Two, the current Board has six members who are former TDCJ employees, former law-enforcement officers, or both. The current Board also has only one female member.

40. By having a Board that is not representative of the general public, Defendants have acted arbitrarily in failing to follow their own statute and have thereby violated Garcia’s due process protections under the Fourteenth Amendment.

See Woodard, 523 U.S. at 290 (O'Connor, J., concurring); *see also Heffner*, 420 F.2d at 811

Claim Four

Because the Board has denied Garcia's due process rights, it would be a violation of the Eighth Amendment's protection against cruel and unusual punishment to allow the State to execute Garcia.

41. Garcia re-alleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint.

42. Because of the State's conduct, Garcia has been and will continue to be denied due process.

43. Carrying out a death sentence on a prisoner who was not provided with the minimal due process required in clemency proceedings would violate the Eighth Amendment's prohibition on cruel and unusual punishment.

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VI. Prayer for Relief

WHEREFORE, Plaintiff Joseph Garcia prays that this Court provide relief as follows:

1. On each claim for relief, a declaratory judgment that, by violating its own statute, Texas Government Code section 508.032, the Board and defendant members of the Board have violated Plaintiff Garcia's right to due process and to be free from cruel and unusual punishment in violation of the Fourteenth and Eighth Amendments of the United States Constitution.
2. On each claim for relief, a preliminary and permanent injunction preventing the Board members and all persons acting under their authority, direction, or control, from voting on Plaintiff Garcia's clemency application, and preventing Governor Greg Abbott from acting on any recommendation that the Board members may give until after the Governor appoints a Board that is in compliance with Texas's statutes, namely Texas Government Code section 508.032, and thereby ensures a fair and meaningful opportunity to be heard during the clemency process by providing impartial decision-makers.
3. Because the Board is not in compliance with Texas Government Code section 508.032, stay Garcia's execution that is currently scheduled for

December 4, 2018 until the Board is legally constituted.

4. Other such relief as the Court deems appropriate.

Respectfully submitted this 29th day of November, 2018.

Jon M. Sands
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District of Arizona

Dale A. Baich
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EXHIBIT 1

**BEFORE THE GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLE**

In re:

Joseph Christopher Garcia

Petitioner.

**APPLICATION FOR COMMUTATION OF DEATH SENTENCE TO LESSER
PENALTY
AND/OR 60-DAY REPRIEVE**

AND

REQUEST FOR INTERVIEW AND HEARING
Pursuant to 37 Tex. Admin. Code §§ 143.42, 143.57(g)(3)

Mr. Garcia is Scheduled for Execution on December 4, 2018

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Counsel for Joseph Christopher Garcia

**TO THE HONORABLE MEMBERS OF THE TEXAS BOARD OF
PARDONS AND PAROLES:**

This request for a recommendation by the members of this Board to Governor Abbott for a commutation of Joseph Christopher Garcia's death sentence to a lesser penalty is submitted pursuant to Texas Administrative Code title 37, part 5, chapter 142, subchapter E, Rule 143.57 by undersigned counsel. This request is filed more than 21 days before the date of the scheduled execution. Joseph's execution is scheduled for December 4, 2018.

Joseph requests an interview with all members of the Board who are willing to speak with him. His counsel further requests a live hearing from the Board on the request for commutation. Such a hearing will ensure that counsel addresses all of the Board's questions and all issues of significance to individual Board members. Counsel for Joseph Garcia waives any and all objections to any communication this Board and/or its agents may wish to initiate with Joseph at any time or date regarding this request. Counsel has attached supporting documentation to this Application and will provide any supplementary materials requested by the Board.

Joseph Garcia also requests a 60-day reprieve pursuant to 37 Tex. Admin. Code § 143.42. In 1996, Joseph was tried in Bexar County for first-degree murder. His conviction was affirmed on appeal, but until undersigned counsel was appointed, none of Joseph's prior attorneys investigated his Bexar County conviction even though Joseph has always maintained that he acted in self-defense. On October 2, 2018, Joseph filed an Initial Application for a Writ of Habeas Corpus, which is currently pending in the 226th Judicial District Court in Bexar County.¹ On October 31, the Bexar County Court entered an order designating issues which the Court found required resolution, and on that same day, the Court issued an order directing

¹ Ex. 1.

Vincent Callahan, Joseph's Bexar County appellate attorney, to answer the allegations in the Initial Application by January 4, 2019.² Joseph has also requested that the Bexar County Court order an evidentiary hearing at which he can present evidence in support of his claims that his trial and appellate counsel failed to provide him the competent representation that the Sixth Amendment demands.³ Specifically, Joseph alleges that because his trial counsel failed to adequately represent him, Joseph was wrongfully convicted of murder. The pending litigation in Bexar County directly affects Joseph's capital proceedings, because at Joseph's Dallas County capital sentencing, the prosecutors focused heavily on the Bexar County case. The prosecutors called nine witnesses from the Bexar County trial to testify about that conviction, and they introduced evidence from the Bexar County trial. The Dallas County prosecutors even had the lead Bexar County prosecutor testify that Joseph had received a fair trial in Bexar County. The Dallas County prosecutors spent much of their penalty-phase presentation arguing to the jury that Joseph's Bexar County conviction was fairly and justly procured. This was highly misleading. As detailed below, in Section I(D), Joseph's Bexar County attorney, who had a terrible reputation in the San Antonio legal community, failed to provide even minimally competent representation. And Joseph's appellate attorney was no better—he flatly failed to raise any claims about trial counsel's many failures. If the Bexar County Court recommends relief from the prior conviction, Joseph's capital sentencing proceedings will be unreliable because of the degree to which the State relied on the Bexar County conviction in arguing for the death penalty for Joseph. Because the pending litigation in Bexar County directly affects Joseph's capital case, a 60-day reprieve is necessary to allow the ongoing litigation in the 226th Judicial District Court in San Antonio to be resolved.

² Ex. 42 and 43.

³ Ex. 2.

Introduction

On February 13, 2003, Joseph Garcia was sentenced to death in Dallas County for the capital murder of Officer Aubrey Hawkins. Although evidence indicates he was not the shooter, Joseph was one of six defendants sentenced to death for this murder under Texas's "law of parties." The law of parties allows a defendant to be convicted of a felony committed by his co-conspirators, even if he neither committed nor intended to commit the felony.⁴

Procedural history & legal issues

After the trial court sentenced Joseph to death, he appealed to the Court of Criminal Appeals, which affirmed the judgment and death sentence. Joseph filed an application for writ of habeas corpus while the appeal was pending. The Court of Criminal Appeals denied habeas relief on November 15, 2006, without setting an evidentiary hearing. During the course of his federal habeas proceedings, Joseph filed a second writ for habeas relief in state court, which was summarily denied on March 4, 2008. On May 28, 2015, United States District Court Judge Barbara Lynn denied federal habeas corpus relief and declined to issue a certificate of appealability (COA) with respect to any of the claims raised in the federal habeas petition. On July 21, 2017, the Fifth Circuit Court of Appeals denied Joseph's application for a COA, and subsequently the court denied his petition for rehearing. The United States Supreme Court denied Joseph's petition for a writ of certiorari on February 20, 2018. Following the Supreme Court's denial, the Dallas County Attorney's Office moved to schedule an execution date of August 30, 2018, which the Court granted on May 24, 2018. On June 26, 2018, the Dallas County Attorney's Office requested that the Court modify the execution date to December 4, 2018, which the Court granted.

⁴ Tex. Penal Code. Ann. § 7.02 (West 1993).

In addition to the aforementioned application for state habeas relief currently pending in Bexar County, Joseph intends to file a successive writ application and an application to stay his execution in Dallas County. He will allege that his death sentence was procured in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and in violation of Texas law.

Joseph's capital trial proceedings

At Joseph's capital trial, lead prosecutor Toby Shook told the jurors: "The less a jury knows about Joseph Garcia, the better."⁵ To the contrary, if the jurors had heard Joseph's complete story, they would have understood how Joseph became so desperate that he joined six other men in an escape from prison. They also would have understood that he never intended for anyone to die as a result of the escape, and that although he made the terrible choice to participate in the robbery of the Oshman's store, there is no evidence that Joseph actually killed or intended to kill Officer Hawkins.

The absence of such evidence did not stop the State from seeking the death penalty against Joseph. Despite the State's admission that it could not prove that Joseph shot at Officer Hawkins, or that Joseph was even in the vicinity when Officer Hawkins was killed⁶, the jury convicted Joseph of capital murder. The United States Constitution requires that before a jury can sentence someone to death, it must consider the person as an individual. In other words, a jury can only sentence someone to death based on the circumstances of the *individual*, it may not take into account the actions or intents of the other people involved.⁷ Nonetheless, lead

⁵ Ex. 29 at 131.

⁶ Ex. 26 at 6–7.

⁷ *Lockett v. Ohio*, 438 U.S. 586, 605 (1972) (plurality opinion) (holding that Ohio's death-penalty statute violated the Eighth Amendment because it failed to permit full and individualized consideration of mitigating circumstances); *Eddings v. Oklahoma*, 455 U.S. 104, 105 (1982) (reversing a death sentence imposed without the type of individualized consideration required by the Eighth and Fourteenth Amendments).

prosecutor Toby Shook again focused the jury on the law of parties during Joseph's capital sentencing proceedings. Meanwhile, Joseph's defense counsel did nothing to stop Mr. Shook's improper law-of-parties references or to inform the jurors that Mr. Shook was wrong—that at the punishment phase of the trial, they were to consider only *Joseph's* actions and intents.⁸

Further, due to counsel's poor representation, Joseph's jurors heard only snippets of his life story. Meanwhile, Mr. Shook constantly referred to Joseph as one interchangeable member of the "Texas Seven." Despite his right to *individualized* sentencing and consideration, Joseph's death sentence had little, if anything, to do with who he was as an individual or what he had individually done. Rather, his death sentence was imposed as a result of counsel's failure to tell Joseph's entire story and a misleading presentation about his prior conviction. Although Joseph participated in the Oshman's robbery, the fact remains that he never intended for anyone to die as a result, and no evidence shows that he was even close to Officer Hawkins when he was killed. Our system demands mercy in such cases, where three of the men responsible for the murder of Officer Hawkins have already been executed, and the remaining perpetrators will never step foot outside of prison for the rest of their lives. But they do not each have to die to ensure that justice is done. Joseph does not have to be killed. Justice for Officer Hawkins can be served, yet mercy can still prevail. "Unto the upright there ariseth light in the darkness: He is gracious, and full of compassion, and righteous." *Psalm* 112:4 (KJV).

This Board now has the first chance to consider Joseph as an individual, and this Board has the power to show mercy to Joseph by recommending that his life be spared.

⁸ *Lockett v. Ohio*, 438 U.S. 586, 605 (1972) (plurality opinion); *Eddings v. Oklahoma*, 455 U.S. 104, 105 (1982).

Reasons for Granting Clemency

- I. Joseph Garcia’s life should be spared because his jury never had the opportunity to fully consider him as an individual or evaluate the circumstances that ultimately led him down this path. This Board can correct this injustice.**

Until now, Joseph’s story has never been told. Not only did Joseph’s jurors not hear his full story, but they were told by the prosecutors that they should judge Joseph based on the collective culpability of the “Texas Seven” rather than on his own character, actions, and intent.

The media coverage that began well before Joseph’s trial, and which continued during the proceedings, echoed the prosecution’s depiction of Joseph as just another member of the “Texas Seven.” It disregarded all of the events in Joseph’s life leading up to this terrible event. Had the public and eventually the jury that sentenced him to death been presented with Joseph’s full story before they determined whether Joseph should be sentenced to die, they would have heard that despite his harsh childhood, Joseph managed to do fairly well for himself until one fight changed the rest of his life. Before that night, Joseph had finished high school, had fallen in love and gotten married, had had a daughter, and had even joined the Coast Guard. But that night changed everything for Joseph. Joseph’s court-appointed attorney put absolutely no effort into representing Joseph at trial, despite the fact that Joseph had a strong case of self-defense. As a result of his attorney’s botched representation, Joseph ended up in prison. That set in motion a series of events that led to his ill-judged decision to participate in a prison break.

A. Joseph’s rocky upbringing

Joseph was the fourth child born to a nineteen-year-old mother, Juanita Frances “Sophie” Trevino, who became pregnant with her first child when she was

just fourteen. Sophie’s upbringing was rough.⁹ For thirty years, her father Frank split his time between two families—his “legitimate” family with his real wife and their children, and the other family he had with Sophie’s mother Frances and the children he and Frances had together.¹⁰ Though Frank spent time with Frances, he was never a father to Sophie or her siblings. Frank did not hide his disdain for the children in his “other” family. He referred to Sophie and her siblings as “bastards” and “whores” and was embarrassed to be seen with them in public. Frances and Frank were also physically abusive to their children.¹¹ As Sophie’s brother Frank, Jr. put it, “Things were generally okay, except when my father and mother were punching us.”¹²

Sophie’s inability to properly care for Joseph was shaped by her own harsh upbringing. Sophie was just a teenager when Joseph was born, and she never had a positive role model for parenting. Sophie abused drugs and alcohol during adolescence, and she struggled with addiction from the time she was nineteen, ultimately developing a lifelong addiction to heroin.¹³ Although she married Danny Garcia, the father of her first three children, she abandoned Danny and those children when she was pregnant with Joseph.¹⁴ Joseph has never been sure who his real father is.

Sophie frequently left Joseph with anyone who would watch him so that she could go party; if no one happened to be around, she left Joseph by himself, sometimes for days at a time.¹⁵ Sophie also struggled to provide for Joseph, and her heroin addiction worsened her money problems—she often spent whatever money she was able to get on drugs. When she found herself without a place to live, Sophie

⁹ Ex. 4 at 1.

¹⁰ Ex. 13 ¶ 3; Ex. 4 at 9; Ex. 10 ¶ 3.

¹¹ Ex. 4 at 9.

¹² Ex. 10 ¶ 6.

¹³ Ex. 10 ¶ 10.

¹⁴ Ex. 4 at 18.

¹⁵ Ex. 4 at 20–21.

exchanged sexual favors for money or a place for her and Joseph to sleep. As a result, Joseph was shuffled in and out of homes that were filthy and rundown. As a boy, Joseph often wore soiled clothes because Sophie had not changed his clothes in a week or more.¹⁶ Louie Negron's sister Margarita Laboy said, "George and Arlene wore dirty or worn out clothing, and I saw dirt under their fingernails. Arlene's diaper was always wet or dirty. It didn't seem like the children were bathed very often. Their appearance concerned me—I didn't think they were being taken care of the ways kids should be cared for."¹⁷

The men Sophie let into her and Joseph's lives were usually drug addicts or dealers—people who enabled and exacerbated her own addiction. When Joseph was a toddler, Sophie started a relationship with a man named Louie Negron. Louie had returned from military service in Vietnam addicted to heroin, just as Sophie was.¹⁸ Sophie and Joseph moved to New York to live with Louie; they stayed there until Joseph was around 9 years old, when they returned, with Louie, to San Antonio.

Sophie and Louie had a daughter together named Arlene. Although Louie was loving toward Arlene, he and Sophie had a tumultuous relationship. And although Joseph looked to Louie as a father, Louie never treated Joseph the way he treated Arlene. Sophie and Louie partied together, and Joseph often saw his mom and Louie high on heroin—their eyelids drooping and their speech slurred. One time Joseph saw Louie putting a needle into Sophie's arm.¹⁹ Sophie and Louie fought viciously,

¹⁶ Ex. 19 ¶ 7; Ex. 4 at 23.

¹⁷ Ex. 19 ¶ 7.

¹⁸ Ex. 4 at 16; Ex. 19 ¶ 9; Ex. 10 ¶ 12.

¹⁹ Ex. 4 at 11.



punching and scratching at each other in front of Joseph and Arlene.²⁰ Louie frequently left during their fights and stayed with his mother or another family member until things with Sophie calmed down.

In the midst of all of the chaos that surrounded Sophie and Louie's relationship, Joseph found tremendous comfort in his little sister, Arlene. Joseph and Arlene, who was just two years younger than Joseph, were inseparable, and Joseph considered himself her protector.²¹ He cared deeply for Arlene.



Arlene was an extremely ill child—at a young age, she was diagnosed with cancer.²² Sophie's heroin abuse escalated shortly after Arlene's diagnosis. Sophie was not equipped to raise any child, let alone one as ill as Arlene. Sometimes when Sophie did not come home for days at a time, Joseph, still a child himself, was left to feed Arlene and change her diaper.²³ As Sophie's addiction worsened, Joseph's caretaking duties

increased. In many ways, Joseph was more of a parent to Arlene than Sophie was.

Joseph tried his best to take care of Arlene. He had to scavenge to feed himself



²⁰ Ex. 4 at 11; Ex. 19 ¶ 6.

²¹ Ex. 4 at 15.

²² Ex. 4 at 31. The bottom-left photograph shows Arlene with her grandmother.

²³ Ex. 4 at 31-32.

and his sister because Sophie rarely bothered to make sure there was food in the house before disappearing. Arlene and Joseph clung to each other for survival, Arlene relying on him for care and Joseph relying on her for mutual and unconditional love.

Things were not better for Joseph when Sophie was at home. During those times, she often used Joseph as a punching bag.²⁴ Sophie did not know how to handle Joseph behaving like a child, not obeying or accidentally breaking something in the house—her reaction was to beat Joseph all over his body, sometimes with her hand and other times with the buckle-end of a belt.²⁵ One time when Joseph tried to catch the belt she was using to beat him, Sophie became enraged and held Joseph’s hands over a hot stove burner. She threatened, “don’t you ever raise your hand to me again or I’ll kill you. I’ll take you out of this world.”²⁶ In another one of Sophie’s rages, she beat Joseph on the head with a broomstick so badly that he temporarily lost his hearing in one ear.²⁷ Even at a young age, Joseph felt like he had to bear Sophie’s beatings; he feared that if he did not, Sophie would take her anger out on Arlene.²⁸

Child Protective Services intervened on Arlene’s behalf, but only after Sophie abandoned her then-seven-year-old daughter. Sophie had taken Arlene to the hospital but, two weeks after Arlene was discharged, Sophie still had not come to pick her up.²⁹ Still, CPS did not initially remove Arlene and Joseph from Sophie’s care. Both children were returned to Sophie’s home until Joseph was 12, when Sophie dropped off Joseph and Arlene at a friend’s house but never came back for them. Sophie’s friend finally took the children to a shelter. From that point on,

²⁴ Ex. 4 at 12–16.

²⁵ Ex. 4 at 13.

²⁶ Ex. 4 at 13–14.

²⁷ Ex. 4 at 14.

²⁸ Ex. 4 at 14.

²⁹ Ex. 4 at 17–18.

Joseph bounced in and out of group homes and shelters. At that time, the foster care system did not prioritize keeping children and families together, and Joseph and Arlene were separated. Fortunately for Arlene, she was placed with a family. Arlene's foster family allowed Joseph to visit her once, so although he was alone and scared in his own placement, he was at least comforted to know that Arlene was safe and being cared for. Still, being apart from Arlene was crushing to Joseph—Arlene was his best friend and the only person in his family who did not treat him badly or resent him for being an irritation. Arlene was the only person in his world who showed Joseph love.

For much of Joseph's adolescence, he bounced back and forth between group homes, Sophie's care, and sometimes, his Grandma Frances's apartment. Sophie was in and out of prison for drug and prostitution charges, and Joseph was left floundering, with no stable home environment.³⁰ All but one of Sophie's siblings likewise struggled with drug addiction. They were neither equipped to nor interested in rescuing Joseph from CPS custody.³¹ Once, after Joseph had fled CPS to return to his family, Sophie's sister Sylvia called CPS to come and haul Joseph back. His Grandma Frances rarely stepped in—although she allowed Joseph to stay with her off and on, she viewed Joseph as another mouth she could not afford to feed, and eventually she told CPS to stop calling her.³²

When Joseph was 13 years old, Louie moved from Texas to New York and took Arlene with him. They did not take Joseph. Louie was the only father Joseph had ever known, and Joseph never understood why Louie did not want him.³³

³⁰ Ex. 4 at 18, 20.

³¹ Ex. 4 at 1, 10–11, 51; Ex. 12 ¶ 14.

³² Ex. 4 at 18.

³³ Ex. 4 at 17–18.

Despite all of this instability, Joseph clung to his love for his sister Arlene and his hope that one day they would live together again. However, none of the adults in Joseph's life had ever explained to Joseph that Arlene had terminal cancer. Joseph was shocked when he learned that Arlene passed away, in New York, when she was just 11 years old, nearly a year after Joseph had last seen her. The one loving person Joseph had in his life was gone and, because Sophie missed Arlene's funeral, Joseph had no chance to say goodbye.³⁴ Arlene had been the only thing tethering Joseph to the ground. After her death, Joseph began a lifelong struggle with loss and grief from which he has never recovered. With Arlene's death, it felt to Joseph that the one person on earth who loved him unconditionally forever abandoned him. Joseph was just thirteen.

B. While the adults in Joseph's life were not paying attention, Joseph was repeatedly sexually assaulted.

After surviving Sophie's abuse and neglect, CPS was probably Joseph's best chance for a safe haven—an organization that was supposed to provide a place for him to live and to be fed, clothed, and cared for. But CPS let Joseph slip through the cracks. CPS failed to identify Joseph's history of sexual abuse.³⁵ There were many red flags that should have prompted CPS to investigate whether Joseph had been sexually abused. For example, by the time Joseph was 14, he had suffered from depression and other mental-health issues.³⁶ For some time at school, Joseph was placed in special education classes for children with emotional issues.³⁷ CPS records also indicate that Joseph was hypersexualized from a young age. Significantly, Joseph spent a great deal of time alone. Joseph was starved for attention from Sophie

³⁴ Ex. 19 ¶ 16.

³⁵ Ex. 4 at 43.

³⁶ Ex. 40 at pdf 4.

³⁷ Ex. 40 at pdf 5–7.

and all of the other adults in his life, and his desperation for love and acceptance made him a target for predators. By the time Joseph was in his early teens, he had been sexually assaulted by at least three men.

When Joseph was 11 and staying with his grandma Frances, a man who lived across the street from the park near Frances's apartment enticed Joseph into the man's apartment with the promise of popsicles and ice cream.³⁸ Joseph eagerly accepted and was thrilled when the man showed him a freezer full of ice cream and said that Joseph could choose anything he wanted.³⁹ While Joseph stared at all of the ice cream, the man came up behind Joseph and held his erect penis against Joseph's back and kissed Joseph's neck.⁴⁰ At first, Joseph froze, unsure of what to do.⁴¹ Ultimately, he was able to slip away and run for the door before anything worse could happen.⁴² For the rest of the time Joseph stayed with his grandma, he lived in fear that the man would find him.

Not long after the incident with the popsicle man, Joseph was assaulted by his best friend's adult brother.⁴³ One time when Joseph was spending the night with his friend, Joseph woke up on his friend's couch to find his friend's brother playing with Joseph's penis while masturbating.⁴⁴ This felt wrong to Joseph, but he could not explain why.⁴⁵ Joseph convinced himself that maybe it happened because his friend's brother liked him and was attempting to show affection.⁴⁶ Joseph was so desperate for affection that he was afraid to tell the man to stop; instead, Joseph said

³⁸ Ex. 4 at 27–28.

³⁹ Ex. 4 at 27–28.

⁴⁰ Ex. 4 at 27–28.

⁴¹ Ex. 4 at 27–28.

⁴² Ex. 4 at 27.

⁴³ Ex. 4 at 28–29.

⁴⁴ Ex. 4 at 28–29.

⁴⁵ Ex. 4 at 28–29.

⁴⁶ Ex. 4 at 28–29.

that he heard someone coming into the room.⁴⁷ The man stopped and went back to bed. Joseph believed this was the end of it, but on another occasion, Joseph woke up to the same thing happening.⁴⁸ This time, Joseph asked the man to stop, and he did.⁴⁹

After Arlene died, Sophie and Joseph traveled from Texas to New York and stayed with Sophie's new boyfriend, a drug dealer named Papo Calo. Calo's 19-year-old brother and Joseph shared a room with bunk beds. Two weeks after Joseph moved to Calo's apartment, Calo's brother raped him.⁵⁰ Joseph, who was only thirteen years old, had learned to deal with Sophie's physical assaults by remaining still and pretending that they were not happening—he tried to deal with the rape the same way.⁵¹ Joseph thought if he could lie there quietly and pretend it was not happening, that it would stop and never happen again. However, Calo's brother tried to rape Joseph again about a week later. This time it happened in the living room, and Joseph managed to flee the apartment.⁵²

These traumatic events all happened while Joseph was in and out of CPS custody in San Antonio. However, CPS never learned about these assaults because they never asked, and Joseph was too ashamed to tell anyone what had happened on his own. As a result, no one ever helped Joseph learn to process or to cope with the recurring traumatization.

His little sister Arlene's death, his family's neglect, and the repeated sexual assaults were more than any child should have to endure. Certainly, they were more than any child should be expected to recover from without a loving adult to support the child or teach him how to cope with the trauma.⁵³ Given the violence and drug

⁴⁷ Ex. 4 at 28–29.

⁴⁸ Ex. 4 at 28–29.

⁴⁹ Ex. 4 at 28–29.

⁵⁰ Ex. 4 at 29–30.

⁵¹ Ex. 4 at 29–30.

⁵² Ex. 4 at 29–30.

⁵³ Ex. 4 at 38–57.

addiction that Joseph witnessed during his childhood and adolescence, it would not have been surprising if as an adult, he too had turned to drugs or alcohol to help blunt his pain. But through sheer will, Joseph managed to avoid the alcohol and drug addiction to which most of his family had succumbed. Instead, he tried to create a life for himself that was the complete opposite of what he had experienced growing up. Joseph craved the stable, loving family that he had never had.

C. Joseph's life seemed to be headed in the right direction.

In 1990, while living in San Antonio, Joseph met Debra Pavlicek,⁵⁴ and they fell in love. To Joseph, Debra was the picture of normalcy and stability, the opposite of his own family. Joseph cared for Debra and he tried his best to create the family he never had.

Debra inspired Joseph to improve himself. Unsurprisingly, given the instability of his home life, Joseph had not done well in school; he had dropped out before graduating. Debra encouraged Joseph to return to high school, and so at age 18, he went back.⁵⁵ Remarkably, with Debra's support, he earned his high school diploma when he was 20.



After graduation, Joseph joined the Coast Guard. Joseph was proud to serve in the Coast Guard. However, the structure and hierarchy of the Coast Guard were a shock to Joseph, who had been left to his own devices since he was a boy. Joseph had no experience functioning in that dynamic, and he struggled to acclimate while

⁵⁴ Now, Debra Garza.

⁵⁵ Ex. 28 at 142.

in the service.⁵⁶ On top of that, Joseph suffered from sea sickness and was honorably discharged before he could fully attempt to adjust to the Coast Guard environment.

Joseph desperately wanted to succeed in the Coast Guard, so his exit from the service was a massive blow to him. He had been sure that the Coast Guard would allow him to provide a stable and happy life for Debra and their infant daughter



Arlene, named after Joseph's baby sister. As Joseph's friend Michael Yancey put it, "To me Joseph's life started when he joined the Coast Guard. He was proud of the time he served in the Coast Guard, and he thought that his service would turn things around for him."⁵⁷ After leaving the Coast Guard, Joseph found a job at the San Antonio airport cleaning planes, but he struggled to overcome what he perceived as a huge failure. He started spending more and more time hanging out with his friends. Debra disapproved of how Joseph was spending his time, straining their marriage. Beginning when Arlene was around nine months old, Debra and Joseph argued constantly and, eventually, they separated.

When Joseph was 23, his mother Sophie, age 41, died of AIDS.⁵⁸ Although Sophie had not shown Joseph the love and support that he had needed, her death was difficult for Joseph. He had always hoped that she would be able to get clean and be a grandmother to his daughter. Instead, Sophie abandoned Joseph—and this time also his daughter—once again.

⁵⁶ Ex. 4 at 54.

⁵⁷ Ex. 18 ¶ 6.

⁵⁸ Ex. 4 at 36–37.

D. Joseph's wrongful conviction in Bexar County

A night out with his best friend Bobby Lugo changed the course of Joseph's life forever. Joseph had never before faced any legal trouble, but this night landed him in prison. Late on February 2, 1996, Joseph met up with Bobby. Bobby introduced Joseph to Miguel Luna, Bobby's co-worker at the San Antonio State Hospital. Around midnight, the three went to a bar for drinks, where they stayed until around 2:00 a.m. As they were leaving the bar, Miguel suggested they go visit Jocellyn Gutierrez, a woman he knew. Miguel wanted to go to Jocellyn's apartment so that he could "get lucky." The three men stayed at Jocellyn's apartment, drinking and hanging out, until nearly 4:30 a.m. However, Miguel had wanted to stay the night with Jocellyn and belligerently insisted that he stay with her, ignoring her requests that everyone leave. Eventually, though, Miguel agreed to go with Joseph and Bobby.

When the three left Jocellyn's apartment, Miguel was going to ride home with Bobby, but Bobby got into an accident in the parking lot. Miguel took that opportunity to run back up to Jocellyn's door. Joseph, however, was able to coax Miguel from her doorway and, because Bobby had driven off, Joseph offered Miguel a ride home.

Shortly after Joseph and Miguel drove away from Jocellyn's apartment, while Joseph was driving, a drunk and belligerent Miguel started beating Joseph with his fists and choking Joseph, nearly rendering him unconscious. Miguel also threatened to "fucking kill [Joseph]." ⁵⁹ When Joseph stopped the car, Miguel grabbed the car keys and got out of the car. Joseph also got out of the car to get his keys back, but Miguel charged at him. Joseph and Miguel struggled for a few moments outside of the car. At some point during the fight, Joseph had pulled out the knife he carried

⁵⁹ Ex. 32 at 115.

for protection. During the altercation, Joseph stabbed Miguel repeatedly, and Miguel died at the scene. Shortly after the altercation, Joseph and Debra consulted with an attorney to determine whether he needed to explain to the police what had happened. The attorney advised Joseph to wait for the police to approach him. So he did.

Joseph, who had no history of criminal behavior, was arrested on February 8, 1996, while he was at work. He was charged with first-degree murder for Miguel's death. Although Joseph felt grief and remorse about Miguel's death, he believed that Miguel had been trying to kill him, and that if he had not protected himself, Miguel would have in fact killed him.

Joseph told all of this to his court-appointed attorney, Robert Novell Graham, Jr. But Graham put no effort into Joseph's case. His statement to the jurors during his 3.5 minute closing argument summed up his thoughts on Joseph's case:⁶⁰

I, of course, will be through with this case after today. Perhaps I shouldn't have undertaken it, anyway. I was appointed. The

Graham failed to adequately represent Joseph in nearly every way possible.⁶¹ He visited with Joseph at the Bexar County jail on just two occasions, each time for less than five minutes. Joseph repeatedly tried to tell Graham that he had killed Miguel in self-defense, but Graham would not listen; he even—in the course of a five-minute visit—told Joseph to stop being so long-winded. Graham never once took the time to understand what happened on the night of Miguel's death or to present this information to the jury. He made no effort whatsoever to investigate the case, even though his client was facing serious charges and a steep prison sentence. Graham did not speak to any witnesses who saw the wounds on Joseph's face and

⁶⁰ Ex. 33 at 43–45.

⁶¹ See generally Ex. 5.

neck shortly after the fight with Miguel and who could have corroborated Joseph's statement that Miguel had punched and choked him.⁶² Graham did not even bother speaking to witnesses who had provided statements to the San Antonio Police Department. Graham's entire defense presentation consisted of two witnesses: Joseph and Debra. And Graham only spoke to Debra about testifying on the second day of trial—the very day she testified. Graham let her testify blind.⁶³

Graham's most egregious error, however, was failing to investigate Miguel, even though Joseph told Graham that Miguel had attacked him. Miguel had an extensive history of violent behavior, including a documented pattern of stalking, harassing, and abusing his ex-girlfriend. On at least two occasions, Miguel had snatched his ex-girlfriend's car keys so she could not leave, just as he had done to Joseph.⁶⁴ Miguel even assaulted his ex-wife's new husband in front of Miguel's own children.⁶⁵ All of this evidence would've supported Joseph's sworn testimony that Miguel had attacked him first. But Graham never investigated any of this, so Joseph's jury never learned of it.

Graham would not have had to do much digging to learn about Miguel's violent history. Some of the records documenting Miguel's violent treatment of his ex-girlfriend were right there in the Bexar County District Attorney's file. The information contained within the State's file should have prompted Graham to further investigate Miguel's criminal history and speak to the victims of his assaults. But Graham could not be bothered to do even that.⁶⁶

Moreover, Graham did not call any character witnesses on Joseph's behalf, other than Debra, even though many of Joseph's friends and family members would

⁶² Ex. 5 at 3–12; Ex. 17.

⁶³ Ex. 20 ¶ 2.

⁶⁴ Ex. 24.

⁶⁵ Ex. 5 at 13–16; Ex. 59.

⁶⁶ Ex. 5; Ex. 24.

have testified that Joseph was not one to start fights or engage in them.⁶⁷ That is exactly the kind of testimony that would have mattered to Joseph's jury, which, under Texas law, had the option to acquit Joseph altogether or to impose a lesser sentence.

Graham also failed to offer the jurors any explanation for why Joseph stabbed Miguel numerous times.⁶⁸ Graham should have anticipated that at least some of the jurors would have questions about the number of stab wounds. Graham should have hired an expert witness to explain to the jurors that Joseph dissociated at some point after he had realized that he needed to use his knife to prevent Miguel from killing him. Joseph had started dissociating during traumatic events when he was a child—it was how he coped with his mother's beatings, the sexual assaults he endured, and his little sister's death. As an adult, Joseph continued to dissociate in response to overwhelming fear and stress.⁶⁹ The night that he fought with and ultimately killed Miguel, he had been stricken by the overwhelming fear that Miguel was trying to kill him. When Joseph realized that he needed to use his knife to protect himself—a traumatic realization—he stabbed Miguel, but was not conscious of how many times he stabbed him.⁷⁰ Graham should have explained how Joseph's traumatic past influenced his actions that night, but he failed to even ask Joseph about his past, much less investigate it.

After Graham's abominable representation, it is no surprise that the jurors convicted Joseph of first-degree murder—they were deprived of critical evidence that showed that he had acted in self-defense. Joseph was devastated when the jury

⁶⁷ Ex. 6; Ex. 7; Ex. 8; Ex. 9.

⁶⁸ Ex. 5 at 21.

⁶⁹ Ex. 4 at 54.

⁷⁰ Ex. 4 at 54.

returned its verdict and recommended that he be sentenced to fifty years' imprisonment.

Graham's courtroom conduct was a red flag to one prospective juror, who spoke to the court about his concerns before the trial started. Prospective juror A. A. expressed concern to the court, stating that he did not "feel comfortable with the situation the way it is going," and elaborating: "I don't mean to be disrespectful, but I have to be honest, the Defendant's lawyer is coming across unclear and irritating me."⁷¹ A. A. ultimately told the court that he believed that Graham was "not competent enough to do it and I don't want to be in the middle of the situation."⁷² Graham's incompetence was obvious even to someone who had no legal background. And at least one seated juror noticed Graham's incompetence, though she did not speak out at the time of Joseph's trial. However, seated juror L. A. spoke up about Graham's poor performance when she was interviewed, for the first time by *any* member of Joseph's legal team, by undersigned counsel. When interviewed, seated juror L. A. echoed these concerns and told undersigned counsel that "Joseph's poor representation really bothered me. His lawyer was no good—I wasn't happy at all with the job his lawyer did. The lawyer explained nothing."⁷³

After being ignored by Graham, who failed to listen to Joseph and present his self-defense claim, and by the court, which ignored Joseph's attempts to explain that Graham was not properly representing him, Joseph was left with no hope:

I WOULD LIKE TO BEGIN BY SAYING THANK YOU FOR TAKING THIS TIME TO REAL MY MOTION FOR DISMISSAL OF AN ATTORNEY. NOW, YOUR HONOR IF I MAY PUT YOU IN A SITUATION WHERE YOUR LIFE MAY FACE UP TO TEN TO NINETY NINE YEARS IN PRISON FOR A MURDER CHARGE RATHER THAN A SELF-DEFENSE CHARGE AND YOU FELT THAT YOUR COURT APPOINTED ATTORNEY WAS NOT DOING THE BEST THAT HE COULD IN DEFENDING YOU NOR GIVING YOU THE INFORMATION THAT YOU NEEDED TO GO TO TRIAL, WOULD YOU FEEL LIKE THERE IS NO HOPE WITH THIS ATTORNEY? WELL THIS IS HOW I FEEL YOUR HONOR, NO HOPE...

⁷¹ Ex. 1 at 45; Ex. 31 at 110–11.

⁷² Ex. 1 at 45; Ex. 31 at 111.

⁷³ Ex. 11 ¶ 10.

Joseph was right to feel this way. Graham's terrible reputation in the legal community, first as a prosecutor and then as a defense attorney, was no secret.⁷⁴ As depicted here, Graham's antics had years earlier caught the attention of the San Antonio Express newspaper in which it was reported that "Norvell Graham, Jr. bumbled so badly that Judge Brown banished him from his court, apologized to the jury, [and] called the prosecutor's procedure 'highly unethical.'"⁷⁵ Graham similarly bumbled his way through Joseph's trial despite the severity of the punishment Joseph faced if convicted.



E. Joseph floundered in harsh Texas prisons.

Joseph never got over the shock of his conviction and sentence for Miguel's death. His appellate attorney, Vincent Callahan, represented Joseph nearly as poorly as Graham had. Joseph was not entitled to state habeas counsel for his non-capital case, and he could not afford to hire an attorney to assist him. Joseph filed a pro se Petition for Discretionary Review in the Texas Criminal Court of Criminal Appeals, but the court summarily rejected the filing. Once the last course of legal action was closed, Joseph feared that his wrongful conviction never would be corrected. By this

⁷⁴ Ex. 38.

⁷⁵ Ex. 38 at 4.

time, his marriage to Debra had fallen apart, and the two had divorced. Debra occasionally brought their daughter Arlene to visit Joseph in prison, and during one visit, Joseph learned that Debra was engaged to another man. Joseph was broken-hearted that Debra had not stood by him as he fought his unjust conviction.

After his conviction, Joseph was sent to Garza East, a transfer unit in Beeville, Texas. Joseph, who had never been in prison before, struggled to survive. Garza East was a particularly dangerous facility. The unit was plagued by gang violence and frequently locked down because of gang-related fights in the cellblocks and on the yard.⁷⁶ The prison guards used pepper spray and tear gas to stop the fights. Once, Joseph, a bystander, was gassed inadvertently when the guards attempted to break up a fight.⁷⁷ Another time, after a lockdown, Joseph and a friend got caught up in a fight between two groups of inmates. Even though Joseph and his friend were not involved in the fight—they were just trying to go to recreation time—guards tied them up, stripped them down to their underwear, and left them for the night.⁷⁸ At Garza East, it was not uncommon to see guards mopping up the blood from beatings and stabbings,⁷⁹ and sexual assaults were rampant. The constant fear of rape was particularly overwhelming to Joseph because of the sexual assaults and rape he had suffered as a child.

Although life at Garza East was horrific, Joseph befriended a group of prisoners who helped him cope. Joseph stuck with Jason Carmona, Mark Vella, and Michael Yancey—all of whom were also new to prison and struggling—for survival. The four became close friends. They went practically everywhere together, sticking together to avoid being targeted by gang members and sexual predators. Although

⁷⁶ Ex. 16 ¶¶ 4-9, Ex. 15 ¶ 8.

⁷⁷ Ex. 16 ¶¶ 7-8.

⁷⁸ Ex. 16 ¶ 9.

⁷⁹ Ex. 15 ¶¶ 10, 13, 14.

Joseph had found a support system on the inside, other than the rare visit with Debra and Arlene, Joseph had no support on the outside. With his group of friends to support him, Joseph was able to survive the horrors of Garza East. After eleven months though, Joseph was transferred to Connally Unit and separated from his friends—the first people in a long while who had shown him love and support and who had protected him.

At Connally, Joseph found himself alone once again. Connally had an even worse reputation for violence than Garza East. Joseph was constantly pressured to join a gang at Connally and although he resisted, his refusals put a target on his back. While at Connally, Joseph wrote to his friend Jason Carmona that he feared for his safety because of the gangs and “wished to die.”⁸⁰ And there was no end to the threat of sexual assault. Once, as Joseph and his cellmate were preparing for a cell check at Connally, his cellmate waited until Joseph was not paying attention and then attacked Joseph from behind, pushing his penis against him and pumping.⁸¹ Although Joseph was able to fend off his cellmate, the assault unsurprisingly triggered painful memories of the sexual assaults and rape he had endured as a child.⁸² And afterward, Joseph entered into a downward spiral of desperation and hopelessness.⁸³ The difficulty of his situation constantly plagued him: if he had been ably represented at his trial, he would not have been in prison at all. He was lost without the protection and support from the friends that he had at Garza East. Joseph could not fathom spending the rest of his life away from his daughter, fighting off rapists and gang members, while locked up for an act of self-defense.

⁸⁰ Ex. 16 ¶ 16.

⁸¹ Ex. 4 at 30.

⁸² Ex. 4 at 30.

⁸³ Ex. 4 at 30–31.

Because of that, when George Rivas approached Joseph and asked him to join a plan to escape from Connally Unit, Joseph saw what seemed to be his only opportunity for a second chance. In interviews, Rivas has explained that he approached Joseph to join his group because his plan for the escape involved having people with him who would not take their personal issues out on the officers involved and whom he could trust outside of prison to not do anything that would hurt another person. Joseph agreed to join Rivas out of desperation—desperation to belong to a group again, to avoid the gang threats and sexual assaults, and to overcome the consequences of his unfair trial. Although Joseph regrets his decision to join in the escape, at the time, he felt hopeless and out of options. He never imagined that anyone would get killed.

This is Joseph’s story—the story that led to his involvement in the “Texas Seven”—and this is what his capital trial counsel should have told his jurors. But capital trial counsel, too, failed Joseph. Due to trial counsel’s missteps, the Dallas County jurors did not hear about the events in Joseph’s life that led to his decision to participate in the escape.

Compounding those missteps was that Joseph’s capital trial jurors were misled by the prosecutors, who spent much of the penalty phase assuring the jurors that Joseph had received a fair trial in Bexar County. During Joseph’s capital sentencing, the prosecutors essentially retried that Bexar County case—they called the same witnesses, introduced evidence from the prior trial, and even called the Bexar County prosecutor, Jose “Joey” Contreras, to the stand to opine that Joseph’s lawyer had “absolutely” represented Joseph well.⁸⁴

Meanwhile, Joseph’s capital trial counsel failed to present to the jurors all of the evidence that Joseph’s Bexar County conviction was obtained wrongfully. They

⁸⁴ Ex. 27 at 161, 164.

did not investigate the Bexar County case beyond speaking with Graham. Nor did trial counsel tell the jurors that Joseph, wrongfully convicted and struggling to survive the violence of Garza East, was so desperate after the years of being failed by attorneys and losing in the courts that when Rivas invited him to join in on his escape plan, Joseph saw it was his only way out.

Until today, no court or decision-maker with the power over Joseph's life or death has ever considered Joseph's full story. This Board has the chance to consider Joseph as an individual. This Board can consider all of the events in Joseph's life that explain that he is not the evil person portrayed by the prosecutors, but instead an individual who was traumatized as a child, got a rotten deal in his first brush with the law, and made some terrible choices but has already been punished adequately for what he himself did. "But where sin abounded, grace did much more abound," *Romans* 5:20 (KJV)—Joseph is a person worthy of grace and mercy.

II. Joseph Garcia should not be executed because there is absolutely no evidence that he killed or intended to kill Officer Hawkins.

Joseph's execution would be greatly disproportionate to his culpability. Joseph did not kill, attempt to kill, or intend that a killing take place when he and six other men committed the Oshman's robbery. The State knew that it could not prove otherwise: It could not prove that Joseph fired a weapon, or even that he was in the vicinity when Officer Hawkins was shot. And the State acknowledged in its argument that it could not prove that Joseph had fired a weapon.⁸⁵ Moreover, the State's experts testified that five guns were fired during the incident, and the evidence implicates five *other* members of the Texas Seven as the ones whose weapons were fired.⁸⁶ The State's firearms and toolmarks experts testified at Joseph's trial that "a total of five guns [] had bullets and/or cartridge cases that were

⁸⁵ Ex. 26 at 9.

⁸⁶ Ex. 25 at 147–48, 155.

fired from them” in the loading dock area where Officer Hawkins was killed.⁸⁷ The State presented similar testimony at the trials of Joseph’s co-defendants.⁸⁸ Evidence presented by the State at various trials pointed to the following five members of the Texas Seven as those whose weapons were discharged:

1. *George Rivas* - While testifying at his own trial, Rivas admitted that he initiated the gunfire and that he shot Officer Hawkins multiple times.⁸⁹
2. *Donald Newbury* - Newbury’s statement to police was entered into evidence at his trial; in it, he stated, “I thought it was the officer, so I fired three rounds at him I shot through the window of the Explorer on the front seat of the passenger side.”⁹⁰ That Newbury fired a weapon was confirmed by Detective Spivey, who, when asked at a different trial whether “Newbury fires a weapon?” responded “Yes, he does.”⁹¹
3. *Randy Halprin* – At Halprin’s trial, Detective Spivey testified, “I believe Randy Halprin shot George Rivas.”⁹² Detective Spivey formed that opinion based on the co-defendants’ statements, which “indicate that they [the co-defendants] believed that Randy Halprin is the one that shot George Rivas and himself in the foot.”⁹³
4. *Larry Harper* – According to Randy Halprin, “Harper was shooting at the car, too.”
5. *Michael Rodriguez* – In a statement given to police and entered into evidence, Rodriguez identified his handgun as the one marked with “yellow[] electrical

⁸⁷ Ex. 25 at 147–48, 155.

⁸⁸ *See, e.g.*, Ex. 34 at 20, 85 (State’s lead detective, Detective Spivey, testifying that “[t]here were five handguns identified as being fired . . . that night behind the Oshman’s”).

⁸⁹ Ex. 35 at 69–71.

⁹⁰ Ex. 36 at 136.

⁹¹ Ex. 34 at 85.

⁹² Ex. 34 at 84.

⁹³ Ex. 34 at 85.

tape.”⁹⁴ He dropped his gun in the loading dock area; he later remarked to the police, “my gun was gone. I think I dropped it when I grabbed the officer.”⁹⁵ Both the State’s firearms expert and Detective Spivey confirmed that the sole gun recovered from the loading dock area—Rodriguez’s gun—had been fired.⁹⁶ And, in a letter Rodriguez later wrote from jail, he stated, “I fired once, but don’t know if my shot was any good.”⁹⁷

The evidence indicated that these five individuals—and not Joseph—discharged their weapons. As there is no evidence that Joseph fired his weapon, and as there was no plan to harm anyone at Oshman’s,⁹⁸ the State had no evidence that Joseph killed or intended to kill Officer Hawkins. Given the lack of evidence that Joseph was guilty of capital murder as either principal or conspirator—the lack of evidence that Joseph actually shot Officer Hawkins or that he solicited, encouraged, or aided in the shooting—the prosecutors had to rely on the law of parties to secure Joseph’s conviction. The law of parties allowed Joseph to be convicted of capital murder without evidence of any intent to kill.

But securing a conviction of Joseph under the law of parties was not enough for the State. During the sentencing proceedings, the jury was supposed to assess Joseph’s culpability as an individual—that is, the jurors were only supposed to consider his *personal* actions and intents. Even so, the State argued that he should die at the hands of the State for neglecting to anticipate the actions of his co-defendants.

Specifically, and unconstitutionally, the State implored the jurors to consider the law of parties when they made their sentencing determination: “We also talked

⁹⁴ Ex. 37 at 210.

⁹⁵ Ex. 37 at 212.

⁹⁶ Ex. 25 at 151, 162–64, 175.

⁹⁷ Ex. 37 at 58.

⁹⁸ Ex. 35 at 21, 115.

to you at great length about the law of parties. Each and every one of you told us after we explained it to you that, yes, you agreed with the law of parties. . . .”⁹⁹ The State argued that the jury should consider whether the “Texas Seven” deserved death, not whether Joseph *as an individual* should face such a punishment: “[T]hey were ready, *they* were armed, and *they* made choices, and *they* made decisions, and now *they* are going to be held accountable.”¹⁰⁰

The prosecution’s injection of the law of parties into Joseph’s capital sentencing proceedings violated the Constitution’s guarantee of an individualized culpability determination.¹⁰¹ Because Joseph’s death sentence was procured in violation of the Constitution, he should not be executed.

This is another crucial issue that has never been considered by any Texas court because Joseph has, throughout his proceedings, been represented by ineffective counsel. His capital direct appeal attorney Matt Fry failed to raise this claim in Joseph’s appellate proceedings, and then his state writ attorney Richard Langlois failed to raise any related claim. Thus, Joseph’s string of ineffective attorneys is the reason that the judiciary has not had occasion to consider this issue.

Finally, the punishment options available to the jury at the time of Joseph’s trial also likely figured into the jury’s decision to impose a death sentence.¹⁰² At that time, Texas law did not provide for a sentence of life without the possibility of parole. Consequently, the jury’s options were to sentence Joseph to death or to life *with* the possibility of parole.¹⁰³ Shortly after Joseph’s trial, Texas law changed and

⁹⁹ Ex. 29 at 123–24.

¹⁰⁰ Ex. 29 at 87–88 (emphasis added).

¹⁰¹ *See Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (plurality opinion); *see also Eddings v. Oklahoma*, 455 U.S. 104, 105 (1982).

¹⁰² Ex. 23 at 17.

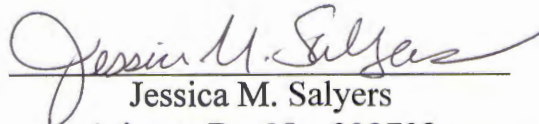
¹⁰³ Ex. 39 Even with the State’s misleading presentation, the jury was at least contemplating a life sentence. During penalty-phase deliberations, the jury submitted to the court multiple questions, including one asking how long Joseph would spend in prison if given a life sentence.

life without the possibility of parole became a punishment option. Thus, this Board now has the chance to consider what Joseph's jurors did not—whether a sentence of life imprisonment without the possibility of parole is sufficient to serve the interests of justice here where the State could not prove that Joseph actually took, attempted to take, or intended to take Officer Hawkins's life.

CONCLUSION

While Joseph Garcia deserves to be punished for his participation in the escape and the robbery, justice in this case is not served by executing him. Joseph never had any trouble with the law until he was wrongfully imprisoned after an act he committed in self-defense. Joseph's Dallas County attorneys did not sufficiently explain to the jurors the events that left Joseph so hopeless that he believed his only opportunity for a second chance was to escape. Joseph did not kill or intend to kill anyone, and he certainly did not contemplate that anyone would be killed. We respectfully request that the Board show mercy to Joseph and recommend that his sentence be commuted to a lesser penalty. In addition or in the alternative, we respectfully request that this Board grant a 60-day reprieve so that the ongoing litigation in Bexar County can be resolved.

Respectfully submitted this, 8th of November, 2018



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**STATE OF TEXAS
BOARD OF PARDONS AND PAROLES**

November 8, 2018

Ms. Jessica Munday Salyers
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**Re: Application to Board of Pardons and Paroles for Clemency
Garcia, Joseph Christopher #999441**

Dear Ms. Salyers:

This letter acknowledges receipt of an application dated November 8, 2018, received via hand delivery on November 8, 2018, requesting a Commutation of Death Sentence to Lesser Penalty, and/or a 60-day Reprieve of Execution and Request for Interview and Hearing. Pursuant to Board Rules §143.57 and §143.43, the Board will consider recommending to the Governor Commutation of Death Sentence to Lesser Penalty and a 60-day Reprieve of Execution.

As a reminder, supplemental information is required to be submitted by the fifteenth day prior to the execution date. If the fifteenth day is on a weekend or holiday, you must submit the information on the next business day. [37 TAC §§143.43 (b) and 143.57 (2)(c)]

If you are unable to submit the supplemental information by the deadline, please contact our General Counsel, Bettie Wells, at (512) 463-1702, main number, or (512) 463-1883, direct number.

Sincerely,

Texas Board of Pardons and Paroles

CC 15 (staff reports)

CLEMENCY SECTION
8610 Shoal Creek Blvd., Austin, Texas, 78757 Phone: (512) 406-5852 Fax: (512) 467-0945
Internet: bpp_clemency@tdcj.texas.gov

EXHIBIT 2

SUNSET ADVISORY COMMISSION

**Summary of the Final Report
to the
Governor of Texas
and
Members of the Sixty-eighth Texas Legislature**

January 1983

STATE OF TEXAS
SUNSET ADVISORY COMMISSION



Senator Ed Howard, Chairman

Sen. Ike Harris
Sen. Kent Caperton
Sen. Bill Sarpalius
Mr. Vernon A. McGee, Public Member

January 1983

Representative Charles Evans, Vice Chairman

Rep. Elton Bomer
Rep. Ernestine Glossbrenner
Rep. Gary Thompson
Ms. Carol Barger, Public Member

The Honorable Mark White
Governor of Texas

Honorable Members of the Sixty-eighth Legislature
Assembled in Regular Session

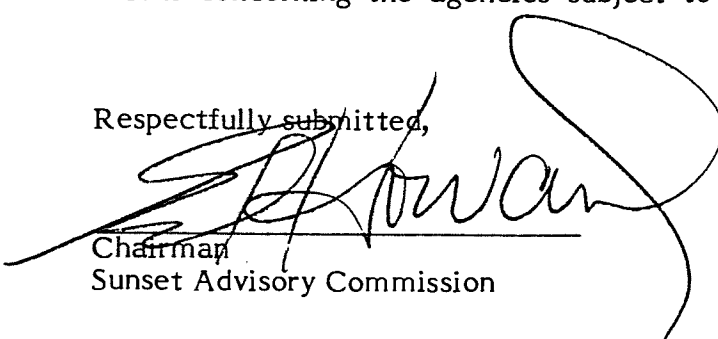
Ladies and Gentlemen:

The Sunset Advisory Commission, established in 1975 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 1981 and December of 1982, the members of the Commission have worked to develop recommendations for the 32 agencies currently scheduled to terminate, unless continued by this Sixty-eighth Legislature. During this period of some 17 months, the Commission scheduled 13 public hearings for the purposes 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 a 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 Ed Howard
Chairman
Texarkana

Representatives Charles Evans
Vice-chairman
Hurst

Senator O. H. (Ike) Harris
Dallas

Representative Elton Bomer
Athens

Senator Kent Caperton
College Station

Representative Ernestine Glossbrenner
Alice

Senator Bill Sarpalius
Amarillo

Representative Gary Thompson
Abilene

Mr. Vernon A. McGee - Public Member
Austin

Ms. Carol Barger - Public Member
Austin

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INTRODUCTION

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 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 Act, 177 state agencies and advisory committees were originally scheduled for review or automatic termination at biennial intervals from 1979 to 1989. 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.

To date the Commission has reviewed 86 agencies. Actions taken by the Sixty-sixth and Sixty-seventh Legislatures, under the sunset process, have been positive in terms of incorporating the concept into the existing legislative process.

This report to the Sixty-eighth Legislature contains the Sunset Advisory Commission's recommendations concerning the 32 agencies under review for 1983. 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 held 13 public hearings from August 1981 through December 1982.

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:

ACROSS-THE-BOARD RECOMMENDATIONS BY CATEGORY

Recommendation/Justification

I. ADMINISTRATION

1. Require public membership on boards and commissions.

Several of the licensing agencies do not have public members on their boards. The primary purpose of a licensing agency is to protect the health, welfare and safety of the public. However, boards made up solely from members of the regulated profession may not respond adequately to broad public interests because of the conflicting business interests of board members. This potential conflict can be addressed by giving the general public a direct voice in the regulatory process through representation on the board.

2. Require specific provisions relating to conflicts of interest.

Because of the nature of occupational regulation, licensing agencies often develop close ties with professional trade organizations which may not be in the general interest of the public. To help insure that the public benefit is addressed by these agencies, conflict-of-interest provisions are necessary to keep the regulated profession and the regulating agency at arm's length.

3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.

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. 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. (a) Per diem to be set by legislative appropriation.

The per diem rate to be paid to the board members of many licensing agencies is set in the individual statutes for the agencies. With the passage of time, these fixed rates can become obsolete or unrealistic with respect to the changing cost of living, the responsibilities of the board members, or the per diem rates paid to board members of other agencies. This approach provides a ready means for consistently considering board member per diem rates and making necessary adjustments.

6. Specification of 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.

7. The agency shall comply with the Open Meetings Act and the Administrative Procedure and Texas Register Act.

By bringing appropriate agencies under the purview of the Open Meetings Act and the Administrative Procedure and Texas Register Act, the public is afforded increased information and access to state agencies and insured of uniform, impartial treatment.

8. The board shall make annual written reports to the governor 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.

9. Require the board to establish skill-oriented career ladders.

This recommendation would help enhance career mobility within the agency.

10. Require a system of merit pay based on documented employee performance.

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

11. The state auditor shall audit the financial transactions of the board during each fiscal year.

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.

12. 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.

13. Require the legislative review of agency expenditures 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.

II. LICENSING

1. 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.

2. A person taking an examination shall be notified 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.

3. 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.

4. (a) Authorize agencies to set fees.

In the case of many licensing agencies, various licensing fees are fixed in the agency's statute. With the passage of time, these fixed fees often do not continue to generate sufficient revenues to make the agency "self-supporting" or to provide a realistic contribution to the overall financing of agency operations. This provision would permit agencies to set reasonable fees, thereby providing agencies with the flexibility to keep revenues in line with the changing cost of operations.

- (b) Authorize agencies to set fees up to a certain limit.

This recommendation would allow the agency the flexibility to adjust fees when necessary within their statutory limit without having to come back to the legislature. Setting the fees in the statute insures against the agency charging an exorbitant rate.

5. 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.

6. (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.

7. 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.

III. ENFORCEMENT

1. 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 insure that appropriate sanctions for offenses are available to an agency.

2. 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.

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

This provision insures 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.

4. Specification of 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.

IV. PRACTICE

1. 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.

2. The board shall 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.

AGENCY SUMMARIES

BUSINESS AND PROFESSIONAL AGENCIES

Council for Social Work Certification

*Texas Committee on the Purchases of Products and Services
of the Blind and Severely Disabled Persons*

*Texas Commission on Law Enforcement Officer
Standards and Education*

Texas Department of Community Affairs

Texas Industrial Commission

Industrial Accident Board

Texas Employment Commission

COUNCIL FOR SOCIAL WORK CERTIFICATION

SUMMARY

The Council for Social Work Certification was created by the 67th Legislature and has been in operation since September 1, 1981. The council is responsible for advising the Department of Human Resources (DHR) on the certification and regulation of social workers in the state. The results of the review indicated that the operations associated with the regulation of social workers have generally been conducted in an efficient and effective manner. The review also examined the need for the council's function and determined that there is a need to continue the regulation of social workers.

The review included an analysis of the need to continue this function in its current organizational setting. The results of the analysis indicated that there were no substantial benefits to be gained from a transfer or merger with another state agency. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of agency operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

◦ Agency Operations

Overall Administration

1. Amend the statute to clarify that members of the advisory council shall be reimbursed for travel expenses at the same rate as state employees. (statutory)

Evaluation of Programs

2. Amend the statute to allow for work experience to be substituted for current social work degree requirements for persons seeking to be licensed as a "certified social worker" or "social worker." After 1985 this substitution would be eliminated. (statutory)
3. Amend the statute so that the current level of social work associate is not discontinued. (statutory)
4. Amend the statute so that the agency will be subject to sunset review in 1987. (statutory)

• **Other Sunset Criteria**

Open Meeting/Open Records

5. The statutory language which states that all records related to social work certification are privileged should be eliminated so that these records are treated in a fashion similar to those of other licensing agencies. (statutory)

Conflicts of Interest

6. The council should contact the Office of the Secretary of State to determine whether its members are among those state officials required to file financial disclosure statements in certain circumstances. (management improvement - non-statutory)

COUNCIL FOR SOCIAL WORK CERTIFICATION

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
	X	*	1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
		*	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Council for Social Work Certification
(continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		*	3. Provide an analysis, on request, to individuals failing the examination.
		*	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X			6. (a) Provide for licensing by endorsement rather than reciprocity.
			(b) Provide for licensing by reciprocity rather than endorsement.
		*	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
		*	2. Require files to be maintained on complaints.
		*	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		*	4. Specification of board hearing requirements.
			D. PRACTICE
X			1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.

*Already in statute or required.

**TEXAS COMMITTEE ON THE PURCHASES OF PRODUCTS AND SERVICES
OF THE BLIND AND SEVERELY DISABLED PERSONS**

SUMMARY

The Texas Committee on the Purchases of Products and Services of the Blind and Severely Disabled was established in 1975. Currently, the committee has three basic functions: 1) determining the fair market value of all products and services manufactured or provided by blind or other severely disabled persons and offered for sale to the various state agencies; 2) establishing rules regarding designation of a central non-profit agency to facilitate distribution of orders among agencies serving blind or severely disabled persons; and 3) establishing rules regarding all other matters related to the state's uses of the products and services of blind and severely disabled persons.

The results of the review indicated that the operations of the agency have generally been conducted in an efficient and effective manner. The review also indicated that there is a continuing need for the committee to encourage the development of productive employment opportunities for the blind and disabled as in the "set aside" functions of the committee. However, if the committee is continued, several modifications should be made which would improve the efficiency and effectiveness of the agency's operation.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Policy-making Structure

1. The statute should be amended to eliminate the unnecessary categories of membership, thus reducing the membership of the committee from 12 to 9. These categories are: 1) a representative of a volunteer organization serving non-visually handicapped persons; 2) a representative of a Texas institution of higher education offering an advanced degree in vocational rehabilitation counseling; and 3) a representative of a state agency or department purchasing goods or services from the program. (statutory)

Evaluation of Programs

2. The Commission for the Blind should be designated as the paying agent for member compensation, with the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental

Retardation, and the Commission for the Blind sharing these costs equally. (statutory)

3. The statute should be amended to require the committee to prepare and file an annual report which documents the activities of the committee. (statutory)
4. The statute should be amended to establish a standard procedure to determine the necessary finances and objectives of the non-profit agency based on a budget request prepared by the non-profit agency in conjunction with the management of the workshops and submitted to the committee for approval. (statutory)
5. The statute should be amended to designate the Commission for the Blind as the depository for all records concerning the operations of the committee. (statutory)
6. The statute should be amended to establish, on a permanent basis, a subcommittee to review the data used for fair market price determination and to make recommendations to the committee concerning the fair market price. (statutory)
7. To comply with the statute, committee members should be compensated for their actual and necessary expenses when engaged in committee business. (management improvement - non-statutory)

• **Other Sunset Criteria**

Open Meetings/Open Records

8. The committee should contact the Office of the Secretary of State to arrange for the posting of all meetings under the committee's name in order to comply with the Open Meetings Act. (management improvement - non-statutory)
9. The committee should contact the Office of the Secretary of State to take necessary steps to ensure that the committee is included in the Texas Register Annual Index. (management improvement - non-statutory)

Conflicts of Interest

10. The committee should contact the Office of the Secretary of State to determine if members need to file a financial disclosure statement and take appropriate action. (management improvement - non-statutory)

**TEXAS COMMITTEE ON PURCHASES AND SERVICES
OF BLIND AND SEVERELY DISABLED PERSONS**

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

**Texas Committee on Purchases and Services for Blind
and Severely Disabled Persons**
(continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

**TEXAS COMMISSION ON LAW ENFORCEMENT
OFFICER STANDARDS AND EDUCATION**

SUMMARY

The Texas Commission on Law Enforcement Officer Standards and Education was established in 1965. The primary functions of the agency are the licensing of peace officers, reserve officers, and jailers; the regulation of schools to train law enforcement officers; and the provision of technical assistance to law enforcement agencies, officers, and training facilities.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. Because of the extraordinary enforcement powers that are allowed commissioned peace officers, and the potential danger to the public if these powers are improperly used, the review identified a continuing need to ensure that peace officers meet certain minimum qualifications.

The review included an analysis of the need to have a separate agency for this purpose and the results of the analysis indicated that there were no substantial benefits to be gained from consolidation or transfer of functions. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the agency's operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

⦿ **Agency Operations**

Policy-making Structure

1. The statute should be amended to change the composition of the membership of the commission to three public members, one licensed jailer, and five licensed law enforcement officers. Licensed members should be currently appointed and have at least five years' continuous experience in law enforcement. The director of the Criminal Justice Division in the Office of the Governor should be added to the existing ex officio membership. (statutory)
2. The statute should be amended to eliminate the requirement that ex officio members vote or be counted in the computation of a quorum. (statutory)

Overall Administration

3. The program structure of the agency should be modified to separate the licensing division from the administration division. (management improvement - non-statutory)
4. The agency should develop written procedures for accounting, purchasing and data processing operations and documentation for computer programs. (management improvement -non-statutory)
5. The agency should cross-train employees to enable replacement of accounting and purchasing personnel during absences. (management improvement - non-statutory)
6. The agency should provide for the security of master file computer back-up tapes by storing them in another building. (management improvement - non-statutory)

Evaluation of Programs

7. The agency should eliminate the licensure qualification requiring a personal interview of the applicant by local law enforcement agencies. (management improvement - non-statutory)
8. The statute should be amended to eliminate licensure under grandfather provisions after August 31, 1984. (statutory)
9. The statute should be amended to prohibit a probationary peace officer or a probationary jailer who failed to complete the required training within the 12-month probationary period from being reappointed for a probationary period. (statutory)
10. The statute should be amended to require that a person pass a statewide examination before receiving the basic proficiency certificate as a peace officer, reserve officer, or jailer. (statutory change)
11. The agency should eliminate the routine on-site audits of academies and should focus future efforts on investigation of complaints or of irregularities in examination results. (management improvement - non-statutory)
12. The statute should be amended to allow the agency to suspend licenses and certificates, to probate the suspensions, and to issue formal reprimands. (statutory)

13. The statute should be amended to provide for exclusive venue in Travis County on appeals of commission administrative orders. (statutory)

• **Other Sunset Criteria**

Open Meetings/Open Records

14. The agency should discontinue its practice of holding educational transcripts contained in licensee files confidential. (management improvement - non-statutory)

Public Participation

15. The statute should be amended to require advisory boards for all training programs certified by the agency, and to require citizen members on such advisory bodies. (statutory)
16. The statute should be amended to require that the agency hold biennial public hearings. (statutory)
17. The statute should be amended to require that the agency report to the governor and the legislature any findings or recommendations developed pursuant to the public hearings. (statutory)

**COMMISSION ON LAW ENFORCEMENT OFFICER
STANDARDS AND EDUCATION**

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X			1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
	X		12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

**Commission on Law Enforcement Officer
Standards and Education
(Continued)**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		*	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.

*Already in statute or required.

TEXAS DEPARTMENT OF COMMUNITY AFFAIRS

SUMMARY

The Texas Department of Community Affairs was created in 1971. The primary functions of the agency are: 1) delivery of technical assistance services to local governments and other community organizations; and 2) administration of federal and state funds for service delivery at the local level.

The results of the review indicated that the agency generally is operated in an efficient and effective manner. The review also examined the need for each of the agency's functions and determined that there is a continuing need for state involvement in these areas.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

● **Agency Operations**

Policy-making Structure

1. The statute should be amended to provide that the membership of the Advisory Council on Community Affairs would consist of: three representatives of cities, three representatives of counties, three representatives of other political subdivisions, and three public members; that the members would elect a chairman rather than being chaired by TDCA's executive director; and that members would be appointed from various geographic areas of the state. (statutory)

Evaluation of Programs

2. When the final regulations governing the Job Training Partnership Act are published early in 1983, the 68th Legislature and the governor should examine them and determine whether the program would be most appropriately placed at TDCA or at the Texas Employment Commission. (management improvement - non-statutory)

● **Other Sunset Criteria**

Public Participation

3. TDCA should establish general procedural guidelines governing its planning and decision making procedures for the use and allocation of block grant funds. (management improvement - non-statutory)

4. The agency should take steps to ensure that the Prime Sponsor Planning Council of the CETA program contains the federally required members and chairman, and that the council meets at least five times per year as required by CETA regulations. (management improvement - non-statutory)
5. The agency should request that the governor appoint a representative of the CETA-eligible population as a member of the Private Industry Council of the CETA program. (management improvement - non-statutory)

TEXAS DEPARTMENT OF COMMUNITY AFFAIRS

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
	X		1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
	X		3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
	X		4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
	X		6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		*	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
	X		12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Department of Community Affairs
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

TEXAS INDUSTRIAL COMMISSION

SUMMARY

The Texas Industrial Commission was created in 1920. The primary functions of the agency can be grouped into five basic areas: 1) providing information to target groups served by the agency; 2) promotional activities designed to attract/-expand/maintain business entities from throughout the state/nation/world; 3) training opportunities provided by and through the commission; 4) loan/bond processing functions; and 5) technical assistance to businesses, individuals and communities throughout the state.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. The review also examined the need for each of the commission's functions and determined that there is a continuing need for state involvement in these areas.

The review included an analysis of the need to continue these functions in their current organizational setting. While the results of the analysis indicated that there were no substantial benefits to be gained from merging the agency with other agencies involved in the economic development processes of the state, such a merger has been considered. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of agency operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Evaluation of Programs

1. The statute should be amended to authorize the commission to set a reasonable and necessary filing fee with a maximum fee of \$1,500 per issue. (statutory)
2. The agency should develop guidelines which cities could consider when designating economically blighted or depressed areas. (statutory)

• Other Sunset Criteria

Public Participation

3. The statute should be amended to require the commission to meet quarterly to assure access by the public. (statutory)

4. The statute should be amended to provide that the chairperson of the Advisory Council on Small Business Assistance be appointed by the governor from the membership of the council. (statutory)
5. The statute should be amended to require the composition of the Advisory Council on Small Business Assistance to be five members who are owners or employees of small businesses, one representative of the financial community, one representative from the insurance field and two public members. (statutory)

Conflict of Interest

6. The statute should be amended to ensure that the type of process currently used by the agency to inform commission members and agency personnel of their responsibilities under conflict-of-interest statutes will be continued in the future. (statutory)

TEXAS INDUSTRIAL COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
	X	*	1. Require public membership on boards and commissions. 2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Industrial Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

INDUSTRIAL ACCIDENT BOARD

SUMMARY

The Industrial Accident Board, created in 1917, is currently active. In administering the Texas Workers' Compensation Law, major functions performed by the agency include: 1) initial processing of all workers' compensation claim files; 2) monitoring all actions relative to reported employee injuries; and 3) effecting settlements of controverted claims. In addition, in 1979 the agency was given responsibility for administration of the newly enacted Crime Victims Compensation Act.

The results of the review showed that the board is generally operated in an efficient and effective manner. It was determined that there is a continuing need to perform the functions of the agency, and that the current organizational setting is appropriate. The review also indicated that if the board is continued, several modifications should be made which would improve the efficiency and effectiveness of its operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

- **Agency Operations**

- Overall Administration**

- 1. The statute should be amended to provide for the coordination, collection and management by the agency of the results of statistical information on worker injuries and costs. (statutory)

- Evaluation of Programs**

- Initial Processing

- 2. The statute should be amended to place responsibility for filing notice of worker's compensation coverage with the insurance company, and to provide that the penalty for failure to submit the report when due may be assessed without the necessity of showing "wilful failure or refusal", but with a showing of a pattern of late filings. The maximum penalty should be reduced from \$1,000 to \$500. (statutory)
 3. The statute should be amended to require that employers on record with the agency as being covered by worker's compensation insurance notify the board of any name or address changes. (statutory)

Monitoring

4. The statute should be amended to remove the requirement that "wilful failure or refusal" be proved and to require instead that a pattern of late filings be proved, before an employer can be penalized for failure to report employee injuries to the board within the specified time period; and the maximum penalty should be reduced from \$1,000 to \$500. (statutory)
5. The statute should be amended to require the employer to file the first report of injury with the insurance carrier as well as the board. (statutory)

Crime Victims Compensation

6. The statute should be amended to modify the funding structure of the agency to include a \$12.50 court cost on convictions of Class A or B misdemeanor convictions and Class C non-traffic and DWI misdemeanor convictions. (statutory)

• **Other Sunset Criteria**

Conflicts of Interest

7. The statute should be amended to require the agency to provide new employees a copy of conflict-of-interest provisions. (statutory)

INDUSTRIAL ACCIDENT BOARD

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
	X		7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the Governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Industrial Accident Board
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

TEXAS EMPLOYMENT COMMISSION

SUMMARY

The Texas Employment Commission was established in 1936. The primary functions of the agency are to provide unemployment compensation benefits to eligible recipients and to provide assistance in finding jobs to unemployment insurance recipients and others out of work.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. Because of the continuing potential in our economy for periods of temporary unemployment and the need for providing assistance to the temporarily unemployed, the review identified a continuing need to supply unemployment compensation and job finding services.

The review included an analysis of the need to have a separate agency for this purpose and the results of the analysis indicated that there were no substantial benefits to be gained through a transfer of functions. If the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the agency's operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Policy-making Structure

1. The statute should be amended to remove the title of executive director from the designated duties of the chairman of the commission. (statutory)
2. The commission should prioritize its time to provide for the accomplishment of higher level appeals decision-making in a more timely fashion. (management improvement - non-statutory)

Overall Administration

3. The statute should be modified to set out the duties and functions of the agency's executive administrator. (statutory)

Evaluation of Programs - Benefit Payments

4. The statute and agency appropriation pattern should be modified to provide for the establishment of a revolving fund to pay unemployment compensation benefits to former state employees. (statutory)

• **Other Sunset Criteria**

Open Meetings/Open Records

5. The agency's legal department should review, revise, and distribute memoranda which set out the types of records held by the agency which are open and those which are closed as indicated in relevant court decisions, Attorney General Opinions and Open Records Decisions. (management improvement - non-statutory)

Conflicts of Interest

6. The statute should be amended to ensure that the type of process currently used by the agency to inform commission members and agency personnel of their responsibilities under conflict-of-interest statutes will be continued in the future. (statutory)

Public Participation

7. The statute regarding the agency's advisory council should be modified to:
 - a) provide for only one advisory council;
 - b) require the advisory council to develop a report of its work and its recommendations to be included in the TEC's annual report to the governor, and legislature;
 - c) reduce the size of the council from 27 to 15 members with each commissioner appointing five members to represent their constituency. (statutory)

TEXAS EMPLOYMENT COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
	X	*	1. Require public membership on boards and commissions. 2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X		X	5. Per diem to be set by legislative appropriation.
X		X	6. Specification of grounds for removal of a board member.
X		X	7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X		*	9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X	X		12. Provide for notification and information to the public concerning board activities.
			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Employment Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

CULTURAL AND ADVISORY AGENCIES

Texas Commission on Interstate Cooperation

Texas Commission on Uniform State Laws

Texas Advisory Commission on Intergovernmental Relations

Office of State-Federal Relations

Advisory Council for Technical-Vocational Education

Historical Resources Development Council

Texas Antiquities Committee

Texas Historical Commission

Texas State Library and Archives Commission

Texas Commission on the Arts

TEXAS COMMISSION ON INTERSTATE COOPERATION

SUMMARY

The Texas Commission on Interstate Cooperation was established in 1941 and is currently inactive. The 19-member commission is composed of the governor, lieutenant governor, the speaker of the house, five members of the senate, five members of the house, the secretary of state, the attorney general, two citizens and two state administrative officials.

The commission was created to foster informal cooperation among states and to ensure the state's membership in the Council of State Governments. The review indicates that this latter purpose has been accomplished; the agency never functioned in a manner which would accomplish its statutory goals, and that it has been inactive since the mid-1950s.

The review indicated that while there is a need to continue cooperative efforts between Texas and other states, this responsibility has been assigned to other agencies and there is no need to continue the Commission on Interstate Cooperation for this purpose.

Sunset Commission Recommendation

ABOLISH THE AGENCY

The primary goal of establishing the state's membership in the Council of State Governments has been accomplished through the payment of membership dues through appropriations to the Office of the Governor. Other agencies have been developed which accomplish the informal goals of the commission in a direct fashion. For example, the Advisory Commission on Intergovernmental Relations acts as an active research body to improve coordination and cooperation between all levels of government.

TEXAS COMMISSION ON UNIFORM STATE LAWS

SUMMARY

The Texas Commission on Uniform State Laws was established in 1941 and is currently active. The commission is composed of six members who are appointed by the governor to serve staggered six-year terms and any (one currently) resident life member of the National Conference of Commissioners on Uniform State Laws. Appointed commissioners must be recognized members of the State Bar of Texas. The life members of the national conference are elected by that body in recognition of long service in the cause of the uniformity of state legislation.

The commission's areas of responsibility include the following: 1) promotion of uniformity in state laws; 2) recommendations to the legislature regarding the uniform acts adopted by the national conference; and 3) promotion of uniform judicial interpretation of all uniform laws. For fiscal year 1982, the agency has no staff and a total appropriation of \$27,400 from the General Revenue Fund.

The review indicated that the function of developing uniformity in state laws is still necessary and that Texas should remain active in this area to preserve the benefits gained from past efforts and to be in a position to affect future proposals on uniform state laws. If the agency should be continued in its current form, several modifications should be made to improve the effectiveness and efficiency of the agency.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

⊙ **Agency Operations**

Policy-making Structure

1. Amend the statute to modify the commission composition by requiring that, of the six attorneys who serve on the commission, one should be a state judge, and one should be a legal educator. (statutory)
2. Amend the statute to provide for the removal of a commissioner who becomes ineligible to participate in national conference activities. (statutory)

Overall Administration

3. Amend the statute to designate the Texas Legislative Council as the agency to provide administrative support to the commission. (statutory)

4. The statute should be amended to require the commission to develop and send to the legislature the biennial report required by statute by November 15th of the year preceding a regular session. (statutory).
5. The commission should increase its efforts to cooperate with state agencies that can assist in informing legislators and judges of commission activities. (management improvement - non-statutory)

• **Other Sunset Criteria**

Open Records/Open Meetings

6. The commission should contact the Office of the Secretary of State and begin necessary procedures to comply with the Open Meetings Act. (management improvement - non-statutory)

Conflicts of Interest

7. The commission should contact the Office of the Secretary of State to determine whether members are required to file financial disclosures and then take appropriate action. (management improvement - non-statutory)

COMMISSION ON UNIFORM STATE LAWS

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X*	13. Require the legislative review of agency expenditures through the appropriation process.

Commission on Uniform State Laws
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

**TEXAS ADVISORY COMMISSION ON
INTERGOVERNMENTAL RELATIONS**

SUMMARY

The Texas Advisory Commission on Intergovernmental Relations was established in 1971. The agency's primary function is to perform the following two types of policy research for use by public officials: 1) analysis of policies related to intergovernmental relationships and development of recommendations for improvement; and 2) provision of factual information on which policy decisions can be based.

The results of the review indicated that the agency generally is operated in an efficient and effective manner. The review also examined the need for each of the commission's functions and determined that there is a continuing need for state involvement in these areas.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Overall Administration

1. Amend the statute to remove the per diem provision, allowing commission members to be compensated for their actual and necessary expenses when engaged in commission business. (statutory change)
2. The commission should devise and follow: 1) a system for documenting costs associated with printing its publications; and 2) a written formula for calculating appropriate publications prices. (management improvement - non-statutory)

Evaluation of Programs

3. The commission should develop and follow a written procedure for selecting research projects which are of immediate interest to policy-makers and which do not duplicate previous work. (management improvement - non-statutory)
4. The commission should resume its efforts to independently analyze public policy and make recommendations for improvements in intergovernmental relations. (management improvement - non-statutory)

**TEXAS ADVISORY COMMISSION ON
INTERGOVERNMENTAL RELATIONS**

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Advisory Commission on Intergovernmental Relations
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

OFFICE OF STATE-FEDERAL RELATIONS

SUMMARY

The Office of State-Federal Relations (OSFR) was established in 1965 and is currently active. The office operates under a director who is appointed by the governor, confirmed by the senate, and serves at the pleasure of the governor. Operations of the office are conducted by a staff of 19 persons and are financed by legislative appropriations of \$814,610 for fiscal year 1982 and \$862,082 for fiscal year 1983 from the General Revenue Fund.

The review indicated that the office's function of monitoring the federal process and transmitting timely, accurate information between state and federal officials is still necessary to ensure that the information needed for Texas to be effectively represented in federal activities is available.

The review included an analysis of the need to have a separate agency for this function and the results of the analysis indicated that no benefits would accrue to the Office of State-Federal Relations through a transfer of its functions to another agency. If the agency is continued in its current form, modifications should be made which will improve the effectiveness and efficiency of its operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Overall Administration

1. The office should develop a manual to document its internal policies and procedures. (management improvement - non-statutory)

Evaluation of Programs

2. The office should discontinue the publication of its weekly newsletter and implement the distribution of the Legislative Clipping Service to the Washington offices of the Texas congressional delegation. (management improvement - non-statutory)

OFFICE OF STATE FEDERAL RELATIONS

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
	X		3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Office of State-Federal Relations
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

ADVISORY COUNCIL FOR TECHNICAL-VOCATIONAL EDUCATION

SUMMARY

The creation of the Advisory Council for Technical-Vocational Education (ACTVE) was created by the federal Vocational Education Amendments of 1968 and constituted by state statute September 1, 1969. The council's primary functions are: 1) collecting and evaluating information gathered within the state concerning educational needs; and 2) formulating recommendations to the State Board of Education concerning activities necessary to address these needs.

The review and evaluation of the agency indicates that the council has fulfilled its role as an advisory body in an adequate manner. The review also examined the need for the council's functions and determined that there is a continuing need for the council's involvement in these areas. The review included an analysis of the need to continue these functions in their current organizational setting. The review indicated that while the council's functions could be performed in a different organizational setting, federal funding requirements preclude this. The review also indicated that should the agency be continued, several modifications should be made to improve the efficiency and effectiveness of council operation.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

◉ Agency Operations

Policy-making Structure

1. Amend the statute to reduce the council membership from 25 to 21 by changing the membership categories to agree with the 20 categories set out in the federal statute. The representation from proprietary schools, adult education, and a major parent organization should be combined into existing federal categories. One public member should be added to bring total membership to 21. (statutory)
2. The agency should confer with appropriate officials of the federal government regarding the required three-year terms for council members and seek resolution of the conflict between federal and state law and the state constitution. (management improvement - non-statutory)

Overall Administration

3. Amend the statute to remove the provisions that TEA provide office space for the council thereby making an appropriation directly to the council for such expenses. (statutory)
4. Amend the statute to allow the council to independently expend funds for such services as rent, utilities, telephone, postage, printing, and office supplies. (statutory)
5. Amend the statute to remove the section (Tex. Ed. Code, Sec. 31.18) which requires the council to adopt procedural rules and hold hearings for educational institutions. (statutory)
6. The agency should consult with the Office of the Attorney General to determine if the procedures to be followed in commenting on the State Board of Education's five-year state plan, annual program plan, and accountability report should be developed and published as formal procedural rules. (management improvement - non-statutory)
7. Amend the statute to require only a joint biennial report to the Governor and the legislature on the activities and recommendations of the council. (statutory)
8. Amend the statute to modify the 17 duties in the state statute to more closely adhere to original federal legislation and intent. (statutory)

Evaluation of Programs

9. Amend the statute to require the State Board of Education to annually formulate a list of areas in vocational education where the council's assistance in research and evaluation would be useful. (statutory)
10. Task force meetings between the state board and the council should be used to discuss progress made by the council concerning the areas of evaluation suggested by the state board. (management improvement -non-statutory)

• **Other Sunset Criteria**

Public Participation

11. The council should make greater efforts to solicit active participation from parents and students at the annual public forum held by the council, through improvements in meeting notification. (management improvement - non-statutory)

ADVISORY COUNCIL ON TECHNICAL-VOCATIONAL EDUCATION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
X		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Advisory Council on Technical-Vocational Education
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

HISTORICAL RESOURCES DEVELOPMENT COUNCIL

SUMMARY

The Historical Resources Development Council was created in 1971 to coordinate the activities of the major agencies which deal with state historical activities. These agencies are the Texas Historical Commission, the Library and Archives Commission, the Tourist Development Agency, the Department of Highways and Public Transportation, the Parks and Wildlife Department, and the Antiquities Committee.

The review indicated that the council has never been a functioning agency. Information available indicates that the agency met once in 1977 to recommend its abolishment. While coordination of agency efforts to promote the state's historical resources is necessary, this purpose has been adequately accomplished through other means. The results of the review indicated that the council should be abolished.

Sunset Commission Recommendation

ABOLISH THE AGENCY

The Historical Resources Development Council should be abolished. A non-statutory coordinating committee has been active since 1969 and serves substantially the same purposes which the council was established to accomplish. Information developed during the review indicates that the council has met only once in its 11-year history and then only to recommend its own abolishment in 1977. Interviews with member state agencies represented on the council showed that the council is still considered unnecessary.

TEXAS HISTORICAL RESOURCES DEVELOPMENT COUNCIL

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
		X	7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

Texas Historical Resources Development Council
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

TEXAS ANTIQUITIES COMMITTEE

SUMMARY

The Texas Antiquities Committee was created in 1969. The agency is independent in an organizational sense. The staff necessary to carry out the responsibilities of the agency are hired by the executive secretary of the committee who is also the director of the Texas Historical Commission. The primary functions of the agency are to identify state archeological landmarks and once identified to protect the landmarks from destruction or damage, unless these actions are authorized through a permit issued by the committee.

The results of the review indicated that the agency was useful in identifying and protecting significant archeological landmarks, and that this was a function that the state should continue. The possibility of consolidating the committee with the Historical Commission was considered, but the review concluded that consolidation would not offer any significant improvements. If the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the agency.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

● Agency Operations

Policy-making Structure

1. The statute should be modified to provide for the addition of the director of the Department of Highways and Public Transportation and the executive director of the Department of Water Resources to the Antiquities Committee. (statutory change)
2. The statute should be modified to remove the executive director of the Texas Historical Commission from membership on the Antiquities Committee and to include the chairman of the Texas Historical Commission, or a member of that commission designated by the chairman, on the committee. (statutory change)
3. The statute should be modified to expand the definition of the museum director on the committee to include any director of a major state funded museum with significant research facilities. (statutory change)

TEXAS ANTIQUITIES COMMITTEE

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the Governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Antiquities Committee
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

TEXAS HISTORICAL COMMISSION

SUMMARY

The Texas Historical Commission was created in 1953. The primary functions of the commission are identifying and marking sites and structures of historical interest to the state; reviewing and recommending properties eligible for the National Register of Historic Places; and providing consultation services to individuals, groups or museums engaged in historical preservation in the state. Other activities include the operation of the Sam Rayburn House at Bonham, Texas and the operation of the Main Street Program.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. The need for the state to be involved in historical preservation efforts is well established and has been pursued, in one form or another, since the creation of the State of Texas.

The review included an analysis of the need to have a separate agency for this purpose and the results of the analysis indicated there were no substantial benefits to be gained from consolidation or transfer of functions. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the agency.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Policy-making Structure

1. The statute should be modified to require that the governor appoint one commission member from each of the cultural basins of the state. (statutory change)

Overall Administration

2. The agency should develop clear procedures for each stage of its publications activities. These procedures should ensure that the publications effort is planned and coordinated on an agency-wide basis, that prices of publications are set through a uniform procedure appropriately designed to recover cost, and that the number of copies printed does not exceed demand. (management improvement - non-statutory)

Evaluation of Programs

3. Consultation services
 - A. Museum and field services
 1. The agency should develop a system for quarterly allocation of travel funds to ensure the availability of these funds throughout the fiscal year. (management improvement - non-statutory)
 - B. Main street program
 1. The agency should improve the accountability of the main street program by adopting rules for the program, establishing written guidelines for the selection of cities, and preparing minutes of meetings. (management improvement - non-statutory)
 2. The current means of selecting cities to participate in the main street program should be changed so that the Texas Historical Commission formally recommends a list of selected cities to the governor for his final approval. (management improvement - non-statutory)
4. Protection of historical and archeological resources
 - A. National register program
 1. The statute should be amended to authorize the agency to charge a fee to recover costs for certifications of rehabilitation work performed on income-producing national register properties. (statutory change)
 - B. Historical marker program
 1. The statute should be amended to authorize the agency to charge a fee to recover costs associated with obtaining an historical marker. (statutory change)

TEXAS HISTORICAL COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.
		*	

*Already in statute or required.

Texas Historical Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

SUMMARY

The Texas State Library and Archives Commission was created in 1909. The primary functions of the commission can be grouped into three basic areas: 1) direct library services provided by the agency; 2) development of library services across the state; and 3) management of state and local records.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. The review also examined the need for each of the commission's functions and determined that there is a continuing need for state involvement in these areas.

The review included an analysis of the need to continue these functions in their current organizational setting and it was determined that there were no substantial benefits to be gained from separation of library and archival functions. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of agency operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Policy-making Structure

1. The statute should be amended to provide for the election of the chair and vice-chair by the members of the commission. (statutory)

Evaluation of Programs

2. The statute should be amended to give both the commission and the major resource centers full contracting authority and to clearly designate the state library as the state agency responsible for developing multitype library cooperation in Texas. (statutory)
3. The statute should be amended to allow the member libraries comprising a major resource system to select on a majority vote an approach to regional governance, with the Library and Archives Commission exercising approval authority over financial matters to ensure the appropriate expenditure of grant funds. (statutory)
4. The commission's rules should be modified to require that a formal means be developed in each system for its regional advisory council to provide advice and assistance to the major resource center

director in the employment or termination of the system coordinator. (management improvement - non-statutory)

5. The statute should be amended to permit incentive, establishment, and equalization grants to be awarded from state funds separate from the systems operating grant formula. (statutory)
6. The statute should be amended to eliminate the Records Preservation Advisory Committee and to provide authorization for the creation of the Records Management and Preservation Advisory Committee. The purpose of the new committee would be to make recommendations to improve the state's records management system and to indicate the possible savings that would result if the recommendations were implemented. These findings would be submitted in a report to the Library and Archives Commission, the Legislative Budget Office, the Governor's Budget and Planning Office, and the presiding officer of each house of the legislature on or before March 1 of each even numbered year. (statutory)

• **Other Sunset Criteria**

Open Meetings/Open Records

7. The agency should ensure that the notice posted for commission meetings provides a complete list of all items to be discussed. (management improvement - non-statutory)

Public Participation

8. The statute should be amended to specify the right of the public to attend and speak at any commission meeting. (statutory)

Conflicts of Interest

9. The statute should be amended to ensure that the type of process currently used by the agency to inform commission members and agency personnel of their responsibilities under conflict of interest statutes will be continued in the future. (statutory)

TEXAS LIBRARY AND ARCHIVES COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		X	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		*	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Library and Archives Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		*	2. The board shall adopt a system of voluntary continuing education.

*Already in statute or required.

TEXAS COMMISSION ON THE ARTS

SUMMARY

The Texas Commission on the Arts was established in 1965. The agency has two primary functions: 1) providing state support for the development of the arts and 2) making plans making plans and recommendations to the State Purchasing Commission concerning the renovation, beautification, and interior decoration of the Governor's Mansion.

Review of the commission's operations indicates that the agency has generally been effective in providing support for the arts in Texas. The review also examined the need for each of the commission's functions and determined that there is a continuing need for state involvement in these areas.

The results of the analysis to continue these functions in their current organizational setting indicated that there were no substantial benefits to be gained from transferring them to another agency. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of agency operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

◉ Agency Operations

Policy-making Structure

1. The statute should be amended to require that consideration be given to geographic and minority representation in the appointment of consultants to the agency's panels. (statutory)

Overall Administration

2. The agency's staff should discontinue any involvement in the collection or accounting of money for the commissioner's activity fund. (management improvement - non-statutory)
3. The agency should develop written policies and procedures for its accounting processes. (management improvement - non-statutory)

Evaluation of Programs

4. The agency should revise the grant application procedures to require that a site be performed or that audio or visual materials be supplied to document the ability to perform prior to full consideration of the grant application. (management improvement - non-statutory)

5. The agency should require applicants to indicate a minimum and maximum funding level as a part of the grant request. (management improvement - non-statutory)
6. The review panel should make specific documented recommendations concerning the reasonableness of the funding levels requested by the applicants. (management improvement -non-statutory)
7. The rider language in the appropriations act which requires the agency to verify the proper match of state funds through use of an affidavit should be eliminated. New rider language should be added that directs the comptroller, the state auditor, and the agency to jointly work out procedures that will satisfactorily monitor the expenditure of grant funds. This rider should also require that the resulting procedures be in place before appropriated funds can be expended. (management improvement - non-statutory)
8. The agency's responsibilities in regard to the Governor's Mansion should be clarified. A single statute should be developed which clearly defines the role not only of TCA, but of the other agencies which currently have responsibilities for the mansion. (statutory).

• **Other Sunset Criteria**

Open Meetings/Open Records

9. The statute should be amended to require that meetings of any subcommittees or review panels of the agency be open to the public and posted in the same manner that is required of the commission itself. (statutory)

Public Participation

10. The statute should be amended to specify the right of the public to attend and speak at any commission meeting. (statutory)

Conflicts of Interest

11. The statute should be amended to require the agency to develop a process which would ensure that commission members and agency personnel are informed of their responsibilities under conflict-of-interest statutes. (statutory)

TEXAS COMMISSION ON THE ARTS

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		*	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Commission on the Arts
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

ENERGY AND INSURANCE REGULATORY AGENCIES

Office of Interstate Oil Compact Commissioner
Office of Interstate Mining Compact Commissioner for Texas
Office of Southern Interstate Nuclear Compact Board Member for Texas
Texas Energy and Natural Resources Advisory Council
Public Utility Commission
Railroad Commission
State Board of Insurance

OFFICE OF THE INTERSTATE OIL COMPACT COMMISSIONER

SUMMARY

The Interstate Compact to Conserve Oil and Gas was established in 1935 for the general purpose of promoting oil and gas conservation. Texas, along with Colorado, Oklahoma, New Mexico, Illinois, and Kansas, were the original states to enter into this compact. Since its creation, another 24 states have entered the compact. Texas is currently an active participant. The compact provides for the creation of an Interstate Oil Compact Commission composed of one representative from each member state. Texas legislation names the governor as the compact representative for Texas and provides the governor with the authority to appoint an assistant representative to act in his place. Administrative direction and support are provided primarily through the Office of the Governor, though the state allocates no full-time staff in support of Texas' participation in the compact.

The review of the activities of the oil compact commissioner indicated that Texas has been well represented on the commission and there were no changes necessary to improve the policy-making structure as it currently exists. Improvements in the operations could be made by requiring an annual report on the activities of the compact commissioner. This report would increase the general awareness of the activities of the compact commissioner.

The review indicated that there is a continuing need for Texas to exchange information and influence federal decisions related to oil and gas.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

- **Agency Operations**

The statute should be modified to require an annual report detailing the activities and expenditures relating to Texas' participation in the compact. This report should be included in the annual financial report of the Office of the Governor. (statutory)

**OFFICE OF THE INTERSTATE OIL COMPACT
COMMISSIONER FOR TEXAS**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
		X	7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

**Office of the Interstate Oil Compact
Commissioner for Texas
(Continued)**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

**OFFICE OF INTERSTATE MINING COMPACT
COMMISSIONER FOR TEXAS**

SUMMARY

The Interstate Mining Compact was established in 1971 for the purpose of addressing the problems of surface mining through interstate action. Texas entered the compact in 1975 and is an active participant. The compact provides for the creation of an Interstate Mining Compact Commission composed of one representative from each member state. Texas' legislation names the governor as the compact commissioner for Texas, provides for an advisory body to assist the governor in considering problems related to mining, and provides the governor with the authority to appoint a representative to act in his place. Administrative support for compact activities and those of the Mining Council are provided by the Railroad Commission staff. Texas' membership contribution is made from general revenue appropriations through the governor's office.

The review of the activities of the mining compact commission member indicated that Texas has been well represented on the compact and has benefited from the activities of the Mining Council. However, certain modifications can be made to improve the activities related to compact membership. The review indicated that there is a continuing need for Texas to exchange information and influence federal decisions related to mining.

Sunset Commission Recommendations

MAINTAIN COMPACT MEMBERSHIP WITH MODIFICATIONS

● Agency Operations

Policy-making Structure

1. The statute should be modified to require that the governor's alternate to the compact serve as the chairman of the Texas Mining Council. (statutory)
2. The statute should be modified to ensure that the public members currently required to be appointed to the Texas Mining Council meet the Sunset Commission definition of a public member. (statutory)
3. Appointments to the Texas Mining Council should be made in a timely manner and should conform to the statutory requirements for appointment. (management improvement - non-statutory)

Evaluation of Programs

1. The statute should be modified to require an annual report detailing the activities and expenditures associated with Texas' participation in the compact. This report should be included in the annual financial report of the Office of the Governor. (statutory)

**OFFICE OF THE INTERSTATE MINING COMPACT
COMMISSIONER FOR TEXAS**

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X			1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
		X	7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

**Office of the Interstate Mining Compact
Commissioner for Texas
(continued)**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

**OFFICE OF SOUTHERN INTERSTATE NUCLEAR
COMPACT BOARD MEMBER FOR TEXAS**

SUMMARY

The Southern Interstate Nuclear Board, the forerunner of the Southern States Energy Board, was established in 1961 for the general purpose of encouraging and developing nuclear energy in the south. In order to reflect an increased interest in a broader range of energy and environmental issues affecting southern states, the board was renamed the Southern States Energy Board in 1978. At that time, the board proposed new compact language which would increase each state's representation from one to three members. The governor of each member state would continue to appoint one representative, and presiding officers of each house of the legislature would appoint a member.

The board is composed of one representative from each member state. Texas legislation provides the governor with the authority to appoint a representative to the board. Edward O. Vetter currently serves as Governor Clements' appointee to the board and Texas is an active participant in the board's activities.

The review of the activities of the energy compact board member indicated that Texas has been well represented on the board and has benefited from membership in the compact. However, certain modifications are needed in order for Texas to continue participation in the same manner as other members and to provide information on the activities of Texas in the compact.

The review indicated that there is a continuing need for Texas' participation in interstate organizations representing the interests of southern states on energy and other matters.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

● Agency Operations

Policy-making Structure

1. The statute should be modified to adopt the new compact language proposed by the board which changes the focus of the board to include all energy matters affecting the south and increases Texas' membership on the board from one to three members. (statutory)
2. The statute should be modified to require that appointments to the board be from the membership of Texas Energy and Natural Resources Advisory Council (TENRAC). (statutory)

3. The statute should be modified to require a report detailing the activities and expenditures of the Texas members of the Southern States Energy Board, to be included in the annual report of the TENRAC. (statutory)
4. The statute should be modified to designate TENRAC as the agency to perform necessary administrative functions related to Texas' activities on the board. (statutory)

**OFFICE OF SOUTHERN INTERSTATE NUCLEAR
COMPACT BOARD MEMBER FOR TEXAS**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
		X	7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

**Office of Southern Interstate Nuclear
Compact Board Member for Texas
(continued)**

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL

SUMMARY

The Texas Energy and Natural Resources Advisory Council was created in 1979. The primary functions of the council can be grouped into three basic areas: 1) policy development; 2) contract management; and 3) dissemination of information.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. The review also examined the need for each of the commission's functions and determined that there is a continuing need for state involvement in these areas.

The review included an analysis of the need to continue these functions in their current organizational setting and the analysis indicated that there were no substantial benefits to be gained from consolidation or transfer of functions. The review also indicated that if the agency is continued, modifications should be made to improve the effectiveness of the agency's operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• **Other Sunset Criteria**

Public Participation

1. The statute should be amended and rules should be modified to provide a combination of public officials and private citizens on all advisory committees and subcommittees. (statutory)
2. The council should attempt to ensure that membership on the advisory committees and subcommittees reflect appropriate representation of the general public. (management improvement -non-statutory)
3. The statute should be amended to require that the advisory committees and subcommittees allow public testimony at any meeting. (statutory)

Conflicts of Interest

4. The statute should be amended to ensure that the type of process currently used by the agency to inform commission members and agency personnel of their responsibilities under conflict-of-interest statutes will be continued in the future. (statutory)

TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
			1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
	X		3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		*	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		*	8. The board shall make annual written reports to the Governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Texas Energy and Natural Resources Advisory Council
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

PUBLIC UTILITY COMMISSION

SUMMARY

The Public Utility Commission (PUC) was established in 1975 and is currently active. The function of the agency is to regulate the telephone, electric, water and sewer utilities under its jurisdiction. To accomplish this regulation, the agency is involved in the following basic activities: setting rates, issuing certificates of convenience and necessity, monitoring utility activities, and responding to consumer complaints.

The results of the review indicated that the agency is generally operated in an efficient manner. However, the Sunset Commission concluded that the PUC should be abolished rather than continuing state regulation in its current form.

Sunset Commission Recommendations

ABOLISH THE AGENCY

RAILROAD COMMISSION

SUMMARY

The Railroad Commission was created in 1891. Although the commission was originally established to regulate railroads, its areas of responsibility have increased significantly since that time. Currently, the commission's regulatory activities can be grouped into five major areas: 1) oil and gas; 2) transportation; 3) natural gas utilities; 4) liquefied petroleum gas; and 5) surface mining and reclamation. These areas are regulated through commission operations which perform licensing, compliance, enforcement, rate setting, and general assistance functions.

The results of the review showed that the commission is generally operated in an efficient and effective manner. The review also examined the need for each of the commission's responsibilities and determined that there is a continuing need for state involvement in these areas.

The review included an analysis of the need to continue these functions in their current organizational setting. The review determined that the need to perform the functions of the commission still exists. The review of organizational alternatives for the responsibilities currently being carried out by the commission indicated that there were no benefits to be gained from transferring functions to other agencies. The review also indicated that if the commission is continued, several modifications should be made which would improve the efficiency and effectiveness of commission operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Overall Administration

1. The commission should establish an appropriate system of indexing future commission orders by subject category. (management improvement - non-statutory)
2. The statute should be amended to reimburse employee travel expenses as provided in the General Appropriations Act. (statutory)

Evaluation of Programs

Licensing

3. The commission should develop a system to identify oil and gas operators that have a history of well plugging violations and should require those operators to post a well plugging bond before being issued a drilling permit. (management improvement - non-statutory)
4. The commission should be authorized to select the fluids to be used in injection wells which are designed to enhance oil recovery. If fresh water is selected, the commission shall consult with the Texas Department of Water Resources concerning such use. (statutory)
5. The statute should be amended to authorize the LP-gas division and the transportation division to stagger license and registration renewals. (statutory)
6. The statute should be amended to shift the burden of proof in the showing of public convenience and necessity for a motor carrier certificate from the applicant to the protesting carrier or carriers. (statutory)

Compliance

7. The commission should require tests of fluids injected into disposal wells to determine the nature of the fluids and should implement a system to ensure compliance. (statutory)
8. The oil and gas division and the LP-gas division should develop a system which documents dates of completed field inspections and uses the compiled information to schedule future inspections. (management improvement - non-statutory)

Enforcement

9. The oil and gas division and the transportation division should improve the documentation and accountability of complaint procedures. (management improvement - non-statutory)
10. The commission should be authorized to respond to complaints relating to royalty payments arising between operators and mineral estate owners. (statutory)
11. The statute should be amended to provide the LP-gas and transportation divisions authority to probate license or certificate suspensions. (statutory)

12. The statute should be amended to authorize the commission to order administrative fines not to exceed \$5,000 per violation for pollution and safety violations. (statutory)
13. The statute should be amended to make the possession of unidentified oil a felony. (statutory)
14. The commission should designate a staff attorney as a hearings examiner-at-large to conduct show cause hearings when necessary to comply with APA ex-parte prohibitions. (management improvement - non-statutory)

Rate Setting

15. Simplify the methods used in setting production allowables for oil wells. (management improvement - non-statutory)

● **Other Sunset Criteria**

Open Records/Open Meetings

16. Written policies for locating and copying documents held by the divisions should be developed and made available upon request. (management improvement - non-statutory)
17. The agency should discontinue the practice of permitting the removal of original records from the agency's custody. (management improvement - non-statutory)

Conflicts of Interest

18. The statute should be amended to require the agency to provide new employees a copy of conflict-of-interest constraints. (statutory)
19. The statute should be amended to apply a two-year post-employment restriction with a company under the commission's regulation, or business entity which does a significant portion of business with a regulated company to commissioners and employees. The restriction would not apply to commission employees who function in a purely clerical or secretarial capacity, or who accept employment by a company that is not under the commission's jurisdiction. (statutory)

RAILROAD COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
	X	*	1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		*	8. The board shall make annual written reports to the Governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Railroad Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
			4. (a) Authorize agencies to set fees.
X			(b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X			6. (a) Provide for licensing by endorsement rather than reciprocity.
			(b) Provide for licensing by reciprocity rather than endorsement.
X			7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
X			1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.

STATE BOARD OF INSURANCE

SUMMARY

The State Board of Insurance was created in 1957 and is currently active. The stated objective of the State Board of Insurance is to enforce the state laws governing the insurance industry and certain fire protection industries in order to protect the interest of the general public. The agency's major functions include: 1) the licensing of insurance companies and agents; 2) examination of the financial conditions and claims practices of licensees; 3) implementing statutory standards in areas such as rate-making and policies issued; 4) investigating complaints against agents and companies; 5) regulating residual market mechanisms designed to provide insurance for risks rejected by the voluntary market; 6) applying for a court order of liquidation, rehabilitation or conservation of companies because of insolvency or other reasons.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. It was determined that sufficient reason exists for the state to continue to regulate the insurance industry in Texas and that continuation of the State Board of Insurance as the agency responsible for the regulation of the insurance industry is also a reasonable approach. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the agency.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Policy-making Structure

1. Amend the code to direct the board to make a biennial report to the appropriate committees of the legislature pertaining to needed changes in the statutes governing insurance. (statutory)

Overall Administration

2. Amend the Code to permit all revenues dedicated to the support of the agency to be deposited to the agency's general operating fund, thus eliminating the need for 21 special funds. (statutory)
3. In instances where the board has the flexibility to adjust fees or tax rates, the agency should take steps to reduce fund balances to meet

the 60 percent rider limitation in the Appropriations Act. (management improvement - non-statutory)

4. Amend the Code to provide for consistent treatment of similar revenues by: 1) providing that the deposit of application and filing fees in connection with the regulation health maintenance organizations and prepaid legal services into an appropriate special fund; 2) providing that ending balances in the Fireworks Licensing Fund and the Agents Licensing Fund to be retained at the end of each fiscal year. (statutory)

Evaluation of Programs

5. Amend the Code to modify the chartering procedures by eliminating the need to: 1) require the Attorney General to review and approve the documents connected with charter applications; and 2) eliminate the need for a second hearing in the case of life companies. (statutory)
6. Amend Article 4.11 of the Code and Articles 4769 and 4769a, V.A.C.S. to provide a four year statute of limitation for recovery of taxes not paid in protest for life, accident and health premiums. (statutory)

Ⓢ Other Sunset Criteria

EEOC/Privacy

7. The provisional grievance procedure adopted by the board should be adequately publicized within the agency and made a part of the personnel manual. (management improvement - non-statutory)

STATE BOARD OF INSURANCE

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
	X		7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		*	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
	X		12. Provide for notification and information to the public concerning board activities.
		*	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

State Board of Insurance
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X			6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		*	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		*	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
		*	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.

*Already in statute or required.

FINANCIAL REGULATORY AGENCIES

State Depository Board

State Banking Board

Finance Commission

Banking Department

Savings and Loan Department

Office of Consumer Credit Commissioner

Credit Union Commission

State Securities Board

STATE DEPOSITORY BOARD

SUMMARY

The State Depository Board, created in 1919, is currently active. The board's responsibilities include: 1) selecting banks which serve as depositories for state funds; 2) establishing the allocation of state funds between demand deposits and time deposits; 3) establishing the rate of interest to be paid the state on time deposits; and 4) investing the permanent funds for the Texas School for the Blind, Texas School for the Deaf, the Austin State Hospital and the State Orphans' Home.

The results of the review indicated that the board has been generally effective in carrying out its responsibilities regarding state funds. Based on an analysis of need, it was determined that the need to perform many of the functions of the Depository Board still exist. The review also indicated that if the board was continued, several modifications should be made which would improve the efficiency and effectiveness of the board's operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Evaluation of Programs

1. Demand accounts should be limited to banks designated as centrally located depositories and any other depository where the board determines that state warrant activity justifies the need. (statutory)
2. The board should adopt a formula for establishing the interest rate on state funds deposited in time-open accounts. (management improvement/non-statutory)
3. The authorized investment alternatives for state funds should be expanded to include U. S. Treasury bills. (statutory)
4. The treasurer should take immediate steps to ensure that all state funds are properly collateralized and that, in the future, funds are not deposited to banks without sufficient approved collateral. (management improvement/non-statutory)
5. The agency should identify all depositories whose account balances exceed the maximum approved amount and request that these banks submit an amended application for approval by the State Depository Board. (management improvement/non-statutory)

STATE DEPOSITORY BOARD

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
		*	1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
	X		3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
	X		4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
	X		6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

State Depository Board
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

STATE BANKING BOARD

SUMMARY

The State Banking Board was created in 1909 and is currently active. The board's areas of responsibility include: 1) consideration of all charter applications for state banks; 2) approval of all applications for changes in domicile by a state bank; 3) consideration of applications for conversion from a national bank to a state bank; 4) ordering the closing and liquidation of state banks which the banking commissioner certifies have failed to correct conditions of impaired capital or unsafe and unlawful operations; and 5) adjudicating complaints between banking institutions concerning the utilization of unmanned teller machines.

The results of the review indicated that the board generally functions in an efficient and effective manner. It was determined that the need to perform the functions assigned to the Banking Board still exist. The review also indicated that if the board is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the board.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Evaluation of Programs

1. The board should promulgate rules and regulations defining the statutory criteria for chartering a new bank. (management improvement/non-statutory)
2. The code should be amended to expand the role of the hearings officer in public hearings on new bank charters to include making findings of fact based on the evidence received at the hearing. (statutory)

• Other Sunset Criteria

Open Meetings/Open Records

3. The statute should be amended to provide that financial statements of proposed bank directors or officers are closed to the public. (statutory)

Public Participation

4. The Banking Code should be amended to provide for public notice of hearings on bank charter applications. (statutory)

STATE BANKING BOARD

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
X		*	1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
	X		3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
	X		4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
	X		6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		X	8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

State Banking Board
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
	X		2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

FINANCE COMMISSION

SUMMARY

Organization and Objectives

The Finance Commission was created in 1943 and is currently active. The commission's areas of responsibility include: 1) appointing the executive heads of the Banking Department, the Savings and Loan Department, and the Office of the Consumer Credit Commissioner; 2) periodically examining these agencies' financial records and transmitting an annual report to the governor; 3) approving departmental budgets; 4) reporting to house and senate committees considering relevant legislation; and 5) approving rules and regulations necessary to enforce the Consumer Credit Code.

The results of the review indicated that the agency generally functions in an efficient and effective manner. It was determined that the need to perform the functions of the commission still exist. The review also indicated that if the commission is continued, several modifications should be made to improve its operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Policy-making Structure

1. Modify the composition of the commission to include two members representing financial institutions licensed by the Consumer Credit Commissioner, other than banks and savings and loan associations, and one additional public member. (statutory)
2. Amend the statute to create a consumer credit section of the commission with responsibilities comparable to the banking and savings and loan sections. (statutory)
3. Provide a right of appeal of cease and desist orders issued by the Savings and Loan Commissioner and the Consumer Credit Commissioner to the appropriate sections of the commission. (statutory)
4. The banking and savings and loan sections of the commission should formally adopt, as rules and regulations, all informal policies and guidelines currently in use. (management improvement - non-statutory)

FINANCE COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		X	9. Require the board to establish skill oriented career ladders.
		X	10. Require a system of merit pay based on documented employee performance.
		X	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		X	12. Provide for notification and information to the public concerning board activities.
		X	13. Require the legislative review of agency expenditures through the appropriation process.

Finance Commission
(continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		X	2. Require files to be maintained on complaints.
		X	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

BANKING DEPARTMENT

SUMMARY

The Banking Department was created in 1923 and is currently active. The agency's major functions include: 1) the annual examination of all state chartered banks and the monitoring of banks with deficiencies; and 2) enforcement efforts directed toward violations of the Act or unsafe or unsound practices. In addition to the supervision of state chartered banks, the Department of Banking also has responsibility for regulating: 1) sellers of prepaid funeral contracts; 2) perpetual care cemeteries; 3) sellers of money orders; and 4) certain mortgage banking institutions.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. It was determined that the need to perform the functions of the agency still exists. The review also indicated that if the department is continued, several modifications should be made to improve its operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

● Agency Operations

Overall Administration

1. The department's policy concerning payment for unused sick leave should be modified so that it is consistent with the policies of most state agencies. (management improvement - non-statutory)
2. The department should take steps to minimize agency funds held in demand accounts. (management improvement - non-statutory)
3. Access to the department's postage meter should be limited to one or two employees assigned responsibility for ensuring that it is used only for official state mail. (management improvement - non-statutory)
4. The agency should establish procedures for listing remittances in numerical sequence when the mail is opened to ensure that all checks received are properly accounted for. (management improvement - non-statutory)
5. The department should determine whether proper reasons exist for establishing and maintaining a petty cash fund, specifically

authorize such a fund, and institute appropriate controls over its use. (management improvement - non-statutory)

6. The agency should develop a written personnel manual which includes job descriptions and policies regarding vacation and sick leave, overtime, disciplinary and grievance procedures, travel and holidays. (management improvement - non-statutory)
7. The department's organizational structure should be modified to limit the scope of duties assigned to the departmental examiner. (management improvement - non-statutory)

Evaluation of Programs

8. The agency should initiate the formal adoption, as rules, of all bank examination fees. (management improvement - non-statutory)
9. Amend the statute to provide the banking commissioner with a full range of sanctions, including cease and desist and removal authority, and supervision and conservatorship provisions in connection with the regulation of trust companies. (statutory)
10. Amend the statute to transfer the regulation of prepaid funeral funds from the Banking Department to the State Board of Insurance. (statutory)

• Other Sunset Criteria

Open Meetings/Open Records

11. Amend the statute to exempt call reports and profit and loss statements from confidentiality requirements. (statutory)
12. Agency policies should be changed to make bylaws and bank correspondence not related to the financial condition of a bank open to the public. (management improvement - non-statutory)

Conflicts of Interest

13. The Banking Code should be amended to require all employees to sign a notarized affidavit that they have read the general conflict of interest statutes. (statutory)
14. All other informal departmental policies concerning conflicts of interest should be reduced to writing and included in a formal personnel manual. (management improvement - non-statutory)

BANKING DEPARTMENT

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
	X	X	1. Require public membership on boards and commissions.
			2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
		*	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Banking Department
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

SAVINGS AND LOAN DEPARTMENT

SUMMARY

The Savings and Loan Department was created in 1961 and is currently active. The agency's major functions include: 1) the approval of applications for state chartered savings and loan associations; 2) the examination of all state chartered savings and loan associations and the monitoring of savings and loans with deficiencies; and 3) enforcement efforts directed toward violations of the Act or fraudulent practices.

The results of the review indicated that the department is generally operated in an efficient and effective manner. It was determined that sufficient reason exists for the state to continue to regulate the savings and loan industry in Texas. The review also indicated that if the department is continued, several modifications should be made to improve the efficiency and effectiveness of the agency's operations.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• Agency Operations

Overall Administration

1. All agreements for the leasing of space by the department should be obtained through the State Purchasing and General Services Commission. (management improvement - non-statutory)

Evaluation of Programs

2. The statute should be amended to expand the role of the hearings officer in public hearings on new savings and loan charters to include making findings of fact based on the evidence received at the hearing (statutory).
3. The statute should be amended to grant the Savings and Loan Commissioner the authority to approve the acquisition of 25 percent or more of the voting stock of a state-chartered savings and loan association. (statutory)
4. Rules and regulations defining the statutory criteria for chartering a new savings and loan association should be promulgated. (management improvement - non-statutory)
5. The department should adopt a policy of maintaining workpapers for at least five years and should request the destruction of all records

- in accordance with the provisions of Article 5441a, V.A.C.S. (management - improvement/non-statutory)
6. The department should initiate an electronic data processing examination program for state chartered savings and loan associations. (management improvement - non-statutory)
 7. The statute should be amended to permit savings and loan institutions to issue preferred stock as a means of raising capital. (statutory)
 8. The agency should permit field examiners to submit handwritten copies of examination reports to the Austin office for final processing. (management improvement - non-statutory)
 9. Copies of complaints and the association's responses should be forwarded to the field examiner responsible for the examination of that savings and loan. (management improvement - non-statutory)
 10. The department should develop additional written policies concerning conflicts-of-interest for the agency's examiners. (management improvement - non-statutory)

SAVINGS AND LOAN DEPARTMENT

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
	X	X	1. Require public membership on boards and commissions. 2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
X		X	6. Specification of grounds for removal of a board member.
			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
	X		9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
		*	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Savings and Loan Department
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

OFFICE OF CONSUMER CREDIT COMMISSIONER

SUMMARY

The Office of the Consumer Credit Commissioner was created in 1963 and is currently active. The agency's major functions include: 1) the licensing of finance companies, pawnshops, and pawnshop employees; 2) the annual examination of licensees; and 3) enforcement efforts directed toward violations of the Consumer Credit Code.

The results of the review indicated that the agency is generally operated in an efficient and effective manner, and that sufficient reason exists for the state to continue to regulate the consumer credit industry in Texas. If the agency is continued, the review indicated several areas where modifications would improve the operations of the agency.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

◦ **Agency Operations**

Overall Administration

1. Initiate a procedure to index and publish interpretation letters prepared by the commissioner regarding the agency's interpretation of statutory provisions. (management improvement/non-statutory)

Evaluation of Programs

2. Amend the statute to allow the commissioner flexibility in determining qualifications for licensure as a pawnshop owner or employee consistent with that provided other state agencies. (statutory)
3. Amend the statute to eliminate the need to issue a license to banks, savings and loan associations and credit unions making Chapter 3 loans. (statutory)
4. Amend the statute to specifically exempt certain employee benefit plans established under the Employee Retirement Income Security Act of 1974 (ERISA) from Chapter 3 licensing requirements. (statutory)

◦ **Other Sunset Criteria**

EEOC/Privacy

5. The agency should update its affirmative action statement and actively seek minority employees when a job vacancy occurs. (management improvement/non-statutory)

Public Participation

6. The agency should make efforts to meet its statutory obligation to assist and encourage the development of consumer education programs as well as taking steps to increase public awareness of its activities, particularly its responsibilities for receiving and investigating complaints. (management improvement/non-statutory)

Conflicts of Interest

7. The statute should be amended to require the agency to develop a process which would ensure that agency personnel are informed of their responsibilities under conflict-of-interest statutes. (statutory)

OFFICE OF CONSUMER CREDIT COMMISSIONER

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
	X	X	1. Require public membership on boards and commissions.
		X	2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
	X		8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
		*	11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		*	12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Office of Consumer Credit Commissioner
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
X			7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

CREDIT UNION COMMISSION

SUMMARY

The Credit Union Commission was created in 1969 and is currently active. The agency's major functions include: 1) the chartering of credit unions in Texas; 2) the annual examination of all state-chartered credit unions, and the monitoring of credit unions with deficiencies; and 3) enforcement efforts directed toward violations of the act, or unsafe or fraudulent practices.

The results of the review indicated that the agency is generally operated in an efficient and effective manner. It was determined that sufficient reason exists for the state to continue to regulate the credit union industry in Texas. The review also indicated that if the agency is continued, several modifications should be made which would improve the efficiency and effectiveness of the operations of the agency.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

• **Agency Operations**

Overall Administration

1. Improve internal controls by providing for segregation of duties with respect to both the receipt of funds and the purchase of goods. (management improvement - non-statutory)

Evaluation of Programs

2. Amend the statute to contain adequate chartering criteria, including criteria relating to: the economic viability of the proposed credit union; the character and general fitness of incorporators and proposed directors; and the good faith of applicants. (statutory)
3. Amend the statute to include provision for public notice and opportunity for prior hearing on request of any protesting party or the incorporators. (statutory)
4. The board should formally adopt, as rules and regulations, all informal policies and guidelines currently in use. (management improvement -non-statutory)
5. Amend the statute to include as grounds for administrative sanctions under Section 5.09 of the Act the following: related criminal acts; denial to the department of access to credit union books and records, or concealment or destruction of books and

- records; and refusal to comply with a final order of the commissioner. (statutory)
6. The board should define in its rules and regulations the following statutory grounds for cease and desist or removal orders: questionable practice in the conduct of a credit union's business, conducting business in an unsafe or unauthorized manner, and breach of trust or fiduciary duty. (management improvement - non-statutory)
 7. Amend the statute to provide the commissioner with the authority to immediately remove a credit union official or employee whose conduct threatens to cause insolvency of the credit union. (statutory)
 8. Amend the statute to provide a right of appeal to the board of a cease and desist or removal order. (statutory)
 9. Amend the statute to provide that for violations of final cease and desist or removal orders, the commissioner is authorized to impose a fine against offending individuals as well as the credit union, and to seek an injunction to enforce such orders. (statutory)
 10. Amend the statute to provide the commissioner with authority to appoint a conservator, where necessary, to rehabilitate a credit union placed in suspension. (statutory)
 11. Amend the statute to provide criminal penalties for false entries and answers to questions of an examiner, and destruction and concealment of books and records by credit union officials or employees. (statutory)

CREDIT UNION COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. ADMINISTRATION
X			1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		*	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
		*	7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
		*	12. Provide for notification and information to the public concerning board activities.
X			13. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Credit Union Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		*	4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
	X		6. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
		X	1. Authorize agencies to use a full range of penalties.
		*	2. Require files to be maintained on complaints.
		*	3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.

*Already in statute or required.

STATE SECURITIES BOARD

SUMMARY

The State Securities Board was created in 1957 and is currently active. Securities regulation in Texas takes the general form used by most other states. The structure of the regulation provides for prior approval by the state of the sale of securities in Texas; the imposition through licensing of minimum standards for individuals and firms engaged in selling securities or offering investment advice; and enforcement efforts directed toward violations of the state act.

The review and evaluation of the agency indicated that its regulatory activities generally serve to ensure an adequate level of public protection and that there is a continuing need to regulate the securities industry in Texas. However, the review did show that modifications in the board's operations would increase the efficiency and effectiveness of the agency's regulatory activities.

Sunset Commission Recommendations

MAINTAIN THE AGENCY WITH MODIFICATIONS

◦ **Agency Operations**

Overall Administration

1. Reduce the error rate in vouchers for issuance of warrants by taking advantage of technical assistance offered by the comptroller's office for agencies experiencing difficulties with voucher processing, and following the procedures promulgated by the comptroller's office and the State Purchasing and General Services Commission. (management improvement - non-statutory)
2. Comply with statutory provisions by depositing all fees to the treasury on a daily basis. (management improvement - non-statutory)
3. Amend the statute to grant the board the authority to refund permit or license fees as necessary from the General Revenue Fund. (statutory)
4. Initiate a procedure to index and publish written opinions prepared by the staff counsel regarding the availability of exemptions from registration. (management improvement - non-statutory)

Evaluation of Programs

5. Amend the statute to increase the fees for initial applications from \$35 to \$70 for dealers and from \$15 to \$30 for salesmen. (statutory)

6. Amend the statute to eliminate the requirement that a registration certificate be issued for each salesman or agent. (statutory)
7. Amend the board's rules and regulations to define what constitutes inequitable practice in the sale of securities. (management improvement - non-statutory)
8. Amend the board's rules and regulations to formally adopt all informal guidelines currently in use wherever practical. (management improvement - non-statutory)
9. Initiate a process to document waivers granted from published guidelines in the registration of securities. (management improvement - non-statutory)
10. Amend the statute to remove the filing requirement under Section 5.I(c) of the Act exempting from registration securities sold by the issuer to not more than 15 persons within a 12-month period. (statutory)
11. Amend the statute to delete the references to specific securities manuals in Section 5.0 of the Act and allow the board to approve all manuals used. (statutory)
12. Amend the statute to permit restitution for persons defrauded in connection with the sale of securities. (statutory)
13. Amend the statute to establish a five-year statute of limitations for prosecution of fraud in connection with the sale of securities. (statutory)
14. Amend the statute to provide a stiffer penalty for cases involving securities fraud where the amount of the transaction is \$10,000 or more. (statutory)
15. Amend the statute to provide all parties a right to a hearing, when requested, before the board or its designated hearings officer, in cases where a securities registration is denied. (statutory)
16. Amend the statute to provide that all appeals prosecuted under the Act be subject to the substantial evidence rule. (statutory)

● **Other Sunset Criteria**

Open Meetings/Open Records

17. The statutory language which states that all records of dealers and salesmen licensed by the board is confidential should be eliminated so that these records are treated in a fashion similar to those of other licensing agencies. (statutory)

STATE SECURITIES BOARD

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X			1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Per diem to be set by legislative appropriation.
X			6. Specification of grounds for removal of a board member.
X			7. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
X			8. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			9. Require the board to establish skill oriented career ladders.
X			10. Require a system of merit pay based on documented employee performance.
X			11. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			12. Provide for notification and information to the public concerning board activities.
	X		13. Require the legislative review of agency expenditures through the appropriation process.

State Securities Board
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
	X		B. LICENSING
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
		X	4. (a) Authorize agencies to set fees.
		X	(b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X			6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
X			7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
	X		3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
	X		1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.

APPENDIX

MEETING DATES

**MEETING DATES
OF THE
SUNSET ADVISORY COMMISSION**

The Sunset Advisory Commission met 18 times between August 1981 and January 1983 to hear staff reports, take public testimony, and develop recommendations on the 32 agencies scheduled for sunset termination in September 1983. Meeting dates of the commission were as follows:

August 31, 1981	October 8, 1982
January 29, 1982	November 10, 1982
June 23, 1982	November 11, 1982
June 24, 1982	November 12, 1982
June 25, 1982	December 1, 1982
July 20, 1982	December 2, 1982
August 17, 1982	December 16, 1982
October 6, 1982	December 17, 1982
October 7, 1982	January 4, 1983

TABULAR SUMMARY OF SUNSET ACTION

TABULAR SUMMARY OF SUNSET ACTION

<u>Agency</u>	<u>Date Created</u>	<u>Commission Recommendation</u>
<u>Business and Professional Agencies</u>		
Council for Social Work Certification	1981	Continue with changes
Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons	1975	Continue with changes
Texas Commission on Law Enforcement Officer Standards and Education	1965	Continue with changes
Texas Department of Community Affairs	1971	Continue with changes
Texas Industrial Commission	1920	Continue with changes
Industrial Accident Board	1917	Continue with changes
Texas Employment Commission	1936	Continue with changes
<u>Cultural and Advisory Agencies</u>		
Texas Commission on Interstate Cooperation	1941	Abolish
The Commission on Uniform State Laws	1941	Continue with changes
Advisory Council on Intergovernmental Relations	1971	Continue with changes
Office of State-Federal Relations	1965	Continue with changes
Advisory Council for Technical-Vocational Education	1969	Continue with changes
Texas Historical Resources Development Council	1971	Abolish
Antiquities Committee	1969	Continue with changes
Texas Historical Commission	1953	Continue with changes
Texas State Library and Archives Commission	1909	Continue with changes
Texas Commission on the Arts	1965	Continue with changes

TABULAR SUMMARY OF SUNSET ACTION
(Continued)

<u>Agency</u>	<u>Date Created</u>	<u>Commission Recommendation</u>
<u>Energy and Insurance Regulatory Agencies</u>		
Office of Interstate Oil Compact Commissioner	1935	Continue with changes
Office of Interstate Mining Compact Commissioner for Texas	1975	Continue with changes
Office of Southern Interstate Nuclear Compact Board Member for Texas	1961	Continue with changes
Texas Energy and Natural Resources Advisory Council	1979	Continue with changes
Public Utility Commission	1975	Abolish
Railroad Commission	1891	Continue with changes
State Board of Insurance	1957	Continue with changes
<u>Financial Regulatory Agencies</u>		
State Depository Board	1919	Continue with changes
State Banking Board	1909	Continue with changes
Finance Commission	1943	Continue with changes
State Banking Commission	1923	Continue with changes
Office of Savings and Loan Commissioner	1961	Continue with changes
Office of Consumer Credit Commissioner	1963	Continue with changes
Credit Union Commission	1969	Continue with changes
State Securities Board	1957	Continue with changes

AGENCY AND STAFF ASSIGNMENTS

**AGENCY AND STAFF ASSIGNMENTS
OF THE
SUNSET ADVISORY COMMISSION**

Business and Professional Agencies

Council for Social Work Certification	Jeri Kramer/Bruce Crawford
Texas Committee on Purchases of Products and Services of the Blind and Severely Disabled Persons	Karl Spock/Rhonda Belt
Commission on Law Enforcement Officer Standards and Education	Tim Graves/Allen Beinke
Texas Department of Community Affairs	Karen Phillips/John Frasch
Texas Industrial Commission	Dorothy Featherling/Kathy Hutto
Industrial Accident Board	Tempe Minch/James Clifton
Texas Employment Commission	Tim Graves/Ken Levine

Cultural and Advisory Agencies

Texas Commission on Interstate Cooperation	Tim Graves/Dorothy Featherling
Texas Commission on Uniform State Laws	Allen Beinke/Karen Phillips
Texas Advisory Commission on Intergovernmental Relations	Tim Graves/Karen Phillips
Office of State-Federal Relations	Tim Graves/Allen Beinke
Advisory Council on Technical- Vocational Education	Tim Graves/Dorothy Featherling
Historical Resources Development Council	Karl Spock/Fred Buckles
Texas Antiquities Committee	Karl Spock/Ken Levine
Texas Historical Commission	Karl Spock/Joey Longley
Texas State Library and Archives Commission	Karl Spock/Jeri Kramer
Texas Commission on the Arts	Karl Spock/Jeri Kramer

Agency and Staff Assignments
(Cont.)

Energy and Insurance Regulatory
Agencies

Office of Interstate Oil Compact Commissioner	Karl Spock/Fred Buckles
Office of Interstate Mining Compact Commissioner for Texas	Karl Spock/Ken Levine
Office of Southern Interstate Nuclear Compact Board Member for Texas	Karl Spock/Joey Longley
Texas Energy and Natural Resources Advisory Council	Karl Spock/Rhonda Belt
Public Utility Commission	Karl Spock/Kathy Hutto
Railroad Commission	Allen Beinke/Joey Longley
State Board of Insurance	Susan Grotevant/Ken Huff

Financial Regulatory Agencies

State Depository Board	Susan Grotevant/John Frasch
State Banking Board	Susan Grotevant/Tempe Minch
Finance Commission	Susan Grotevant/Ken Levine
Banking Department	Susan Grotevant/Tempe Minch
Savings and Loan Department	Susan Grotevant/Vada Hill
Office of Consumer Credit Commissioner	Susan Grotevant/Ken Levine
Credit Union Commission	Susan Grotevant/Tempe Minch
State Securities Board	Susan Grotevant/Tempe Minch

DISSENTING STATEMENT

STATE OF TEXAS
SUNSET ADVISORY COMMISSION



Senator Ed Howard, Chairman

Representative Charles Evans, Vice Chairman

Sen. Ike Harris
Sen. Kent Caperton
Sen. Bill Sarpalius
Mr. Vernon A. McGee, Public Member

Rep. Elton Bomer
Rep. Ernestine Glossbrenner
Rep. Gary Thompson
Ms. Carol Barger, Public Member

MEMORANDUM

TO: SUNSET COMMISSION MEMBERS
FROM: Carol Barger
DATE: January 5, 1983
SUBJECT: DISSENTING STATEMENT ON STATE BOARD OF INSURANCE

During the Sunset review process it became apparent that there is a lack of effective public participation in proceedings before the State Board of Insurance. The state objective of the State Board of Insurance is to enforce the laws of the state governing the insurance industry in such a manner as to best protect the public. To accomplish this goal the board must balance not only the needs of the buyers of insurance but also the sellers. Consideration of the interests of the industry is especially necessary in the regulation of insurance since ensuring the solvency of the companies has long been considered one of the primary goals of insurance regulation. The ability to equitably balance the competing and often conflicting needs of these interests is even more difficult due to the inequity in resources available to these two groups.

Occasionally consumer groups and other members of the public are present at public hearings. But such participation is fragmented at best. And it is no match for the resources which the industry can summon to support its viewpoint. For example, in proceedings held by the board to set rates on personal lines of insurance such as auto or homeowners often the only intervenors are industry service offices representing insurers who can afford to obtain the actuarial and legal expertise necessary to analyze the recommendations proposed by the staff and to propose alternative rate recommendations. Intervenors on behalf of consumers are fewer and not as well funded and as a result seldom participate in

the ratemaking process. It is with the idea that more representation occur on the part of the buyers of insurance that the following comments are submitted.

While there are not easy answers to how to permit consumers to more effectively participate in the board's regulatory activities given the complexity of the regulation of insurance, institutionalizing a framework for representation of the buyer of insurance would promote the perception that the state has made a strong commitment to the general public.

There are many ways to go about enhancing public participation in the regulatory activities of the Board of Insurance. One option is to authorize funding for intervenors on behalf of policyholders who intervene in proceedings. Intervenor funding could come from general appropriations. It could also be raised by assessing a formula against the revenues of firms seeking rate increases.

Another means of making public participation in the regulatory activities of the Board more meaningful is establishing and funding an office of public insurance counsel either independently or under the umbrella of some broader office of public counsel. For instance, in New Jersey, there is within a Department of the Public Advocate, a Division of Rate Counsel which represents consumers before both the insurance commission and the utility commission. Similarly, South Carolina has a Division of Consumer Advocacy which is authorized to intervene in the public interest before the utility commission, the insurance commission and the dairy commission. Massachusetts and Georgia has established a legal counsel which represents the public interest in ratemaking activities. Variations on the above two models exist in other states also.¹

Article 1.09-1(b) of the Texas Insurance Code allows the Attorney General to intervene in the public interest in all rate hearings and policy form proceedings. Our research has shown no cases interpreting what "public interest" was intended to mean. Presumably, a definition of "public interest" would not be limited merely to the class of people who buy insurance. "To intervene in the public interest" could be construed to include an intervention on behalf of an insurance company. The statute does not direct the attorney general specifically to intervene on behalf of policyholders. Possibly this is why this power is seldom, if ever, used.

To the extent that Article 1.09-1(b) might be used as a tool for intervention on behalf of policyholders, it would require the attorney general to act in a dual role with regard to the Board. Section (a) of Article 1.09-1 requires that the Attorney General shall represent and advise the Board in all legal matters before it. Any intervention on behalf of policyholders would require the Attorney General to both advise the Board and be an intervenor in proceedings before the Board. Preliminary research indicates that there are no cases discussing the likelihood that this would be an impermissible conflict of interest. However, any appeal of a Board decision to the District Court by the attorney general representing the policyholder would present a problem. There are Texas cases holding that the Attorney General's exclusive right and power to represent state agencies preclude the Attorney General from bringing suit against any state agency.² The lack of power on the part of the Attorney General to represent the policyholders in court on appeal from a Board decision effectively nullifies any public representation provided for in Article 1.09-1(b). The inability of the Attorney General to sue the Board in District Court would leave the policyholder no recourse from arbitrary Board actions. An with no power to appeal, representation of policyholders before the Board has limited affect.

While the insurance industry has the resources to obtain representation, consumers do not. Individuals and smaller groups cannot afford private attorneys and consumer advocate groups are already overworked and underfunded. The use of a public counsel in Texas would also be especially helpful in providing legal assistance and other information concerning the regulation of insurance and the board's activities to the general public since the agency's current legal staff confines its activities primarily to providing legal assistance to the board's staff. Additionally, the presence of a legal counsel would provide the public with an easily identifiable individual whose role would be to serve as an active advocate for the interest of the general public in regulatory proceedings before the Board.

Texas should adopt some institutional framework for assuring adequate and effective representation of the viewpoint of those who buy insurance.

FOOTNOTES

- 1 Annotated Laws of Massachusetts, 12:11f.
- 2 Hill v LCRA 568 SW2d 473 (Texas Civ. App., Austin, 1978)
Hill v Texas Water Quality Board 568 SW2d 738 (Texas Civ. App., Austin, 1978)

ACKNOWLEDGEMENT

This material was prepared with the assistance of
David Crain in his capacity as legal assistant.

**DISCLOSURE INFORMATION FROM MEMBERS
OF THE
SUNSET ADVISORY COMMISSION**



ED HOWARD
STATE SENATOR

P. O. BOX 12068
AUSTIN, TEXAS 78711

P. O. BOX 5695
TEXARKANA, TEXAS 75501

November 15, 1982

COMMITTEES:
CHAIRMAN:
SUNSET ADVISORY COMMISSION
VICE CHAIRMAN:
FINANCE
VICE CHAIRMAN:
ADMINISTRATION
MEMBER:
STATE AFFAIRS
SUB-COMMITTEE ON NOMINATIONS
SUB-COMMITTEE ON RULES

Mr. Bill Wells
Staff Director
Sunset Advisory Commission
Reagan Building
Austin, Texas

SUBJECT: Sunset Commission Rules: Public Statement
of connections to Agencies.

Dear Mr. Wells:

This statement is made in accordance with the rules of the Sunset Advisory Commission. Within the provisions of that rule, I have had no contact with any agency investigated other than that contact called for by my capacity as a State Senator.

Sincerely,

A handwritten signature in black ink, appearing to be "Ed Howard", written over the word "Sincerely,".

Ed Howard

EH:nc

STATE of TEXAS
HOUSE of REPRESENTATIVES

P. O. BOX 2910
AUSTIN, TEXAS 78769
512-475-5779

P. O. BOX 8
HURST, TEXAS 76053
817-268-1577

Charles Evans

December 21, 1982

Mr. Bill Wells
Executive Director
Sunset Advisory Commission
P.O. Box 13066
Capitol Station
Austin, Texas 78711

Dear Bill:

In accordance with Rule #10 of the Sunset Advisory Commission Rules, my contacts with the agencies currently under Sunset Review have been in line with my responsibilities as a state representative. I have not been a representative, officer or employee of any of the agencies currently under review.

Sincerely,



Charles Evans

CE/pd



The Senate of
The State of Texas

January 10, 1983

DISTRICT 8
DALLAS

O. H. "IKE" HARRIS

TO: Bill Wells
FROM: Senator O. H. "Ike" Harris
RE: Sunset Commission Rule 10

Regarding Sunset Commission Rule 10, I have had no personal contact, other than legislative, with any of the agencies reviewed by the Sunset Commission, other than the Insurance Commission.

A handwritten signature in black ink, appearing to read "O.H. Harris".



KENT A. CAPERTON

State Senator
District 5
P. O. Box 12068
Austin, Texas 78711

The Senate of
The State of Texas
Austin 1871

Committees:
HUMAN RESOURCES
JURISPRUDENCE
STATE AFFAIRS

Subcommittees:
CIVIL MATTERS, Vice
Chairman
CONSUMER AFFAIRS
ELECTIONS

September 20, 1982

Mr. Bill Wells
Executive Director
Sunset Advisory Commission
P. O. Box 13036
Austin, Texas 78711

Dear Bill:

In accordance with Rule 10 of the Texas Sunset Commission,
please advise if the following will be sufficient:

Pursuant to Rule 10 of the Texas Sunset Commission, I, Senator Kent A. Caperton, having been appointed to the Commission by Lieutenant Governor William P. Hobby in June, 1981, do hereby declare that from the period three years prior to that appointment, June of 1978 through June of 1981, have represented clients in my profession as a practicing attorney before the Industrial Accident Board with regard to worker's compensation cases.

Sincerely,

A handwritten signature in cursive script that reads "Kent Caperton".

Kent A. Caperton

KAC/SO:ml



BILL SARPALIUS
District 31

The Senate of
The State of Texas
Austin 1871

Committees:
NATURAL RESOURCES
Chairman, SUBCOMMITTEE
ON AGRICULTURE
ECONOMIC DEVELOPMENT
HUMAN RESOURCES
SUBCOMMITTEE ON
PUBLIC HEALTH

Counties:

Armstrong

Bailey

Carson

Castro

Collingsworth

Dallam

Deaf Smith

Donley

Gray

Hansford

Hartley

Hemphill

Hockley

Hutchinson

Lamb

Lipscomb

Moore

Ochiltree

Oldham

Parmer

Potter

Randall

Roberts

Sherman

Swisher

Wheeler

December 17, 1982

Mr. Bill Wells
Director
Sunset Advisory Commission
Room 304
Reagan Building

SUBJECT: Sunset Commission Rules: Public Statement of connection to
Agencies.

Dear Mr. Wells:

This statement is made in accordance with the rules of the Sunset Advisory
Commission. Within the provisions of the rules, I have had no contact with
any agency investigated other than contact called for by my capacity as a
State Senator.

Sincerely,

Bill Sarpalius

BS/i

THE TEXAS HOUSE OF REPRESENTATIVES



Elton Bomer

P.O. BOX 2910
AUSTIN, TEXAS 78769
512/475-2954

711 W. CORSICANA STREET
ATHENS, TEXAS 75751
214/675-1671

December 10, 1982

Mr. Bill Wells
Director
Sunset Advisory Commission
Room 304
Reagan Building

SUBJECT: Sunset Commission Rules: Public Statement of
connection to Agencies.

Dear Mr. Wells:

This statement is made in accordance with the rules of the
Sunset Advisory Commission. Within the provisions of the
rules, I have had no contact with any agency investigated
other than contact called for by my capacity as a State
Representative.

Sincerely,

A handwritten signature in black ink, appearing to read "Elton Bomer", with a long horizontal flourish extending to the right.

Elton Bomer
State Representative

EB:kk



house of representatives

Ernestine Glossbrenner

P. O. Box 2910

Austin, Texas 78769

December 20, 1982

Mr. Bill Wells, Director
Sunset Advisory Commission
Room 305, John H. Reagan Building
Austin, Texas 78711

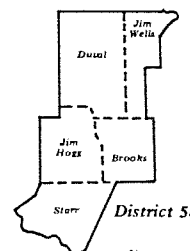
Dear Mr. Wells:

In accordance with Rule 10 of the Sunset Advisory Commission rules, my contacts with the agencies currently under Sunset review have been in line with my responsibilities as State Representative. I have not served as a representative, consultant, officer or employee of any of the agencies currently under Sunset review.

Sincerely,

Ernestine V. Glossbrenner

EVG/rg



Alice, Texas 78332

STATE OF TEXAS

SUNSET ADVISORY COMMISSION



Senator Ed Howard, Chairman

Representative Charles Evans, Vice Chairman

Sen. Ike Harris
Sen. Kent Caperton
Sen. Bill Sarpalius
Mr. Vernon A. McGee, Public Member

Rep. Elton Bomar
Rep. Ernestine Glossbrenner
Rep. Gary Thompson
Ms. Carol Bargar, Public Member

January 4, 1983

Mr Bill Wells
Sunset Advisory Commission
P.O. BOX 13066
Austin, TX 78711

Dear Mr Wells:

Regarding the Sunset Commission Rule 10, I have had the following contact with agencies reviewed by the Sunset Commission:

PUBLIC UTILITY COMMISSION:

- | | | |
|------|----------------------------------|------------------------------|
| 1979 | Southwestern Bell Telephone | Intervenor: |
| 1980 | Company--Rate Hike Request | Representing Consumers |
| 1981 | | Union & Texas ACORN on |
| | | behalf of residential |
| | | ratepayers |
| | | |
| 1979 | Houston Lighting & Power | Intervenor: |
| 1980 | Rate Hike Request | Representing Consumers |
| 1981 | | Union & Houston ACORN |
| | | on behalf of residential |
| | | ratepayers. |
| | | |
| 1980 | Petition for Rulemaking for | Petitioner: |
| | Termination of Service Standards | Representing Consumers Union |
| | | |
| 1980 | Cost Study Docket | Intervenor: |
| | | Representing Consumers Union |
| | | & Texas ACORN |
| | | |
| 1982 | Proposed Rule on Late | |
| | Payment Charges | filed comments |

RAILROAD COMMISSION:

- | | | |
|------|---------------------------|------------------------------|
| 1980 | Rulemaking on Termination | Representing Consumers Union |
| | of Service | on behalf of residential |
| | | ratepayers |

A 305

STATE OF TEXAS

SUNSET ADVISORY COMMISSION



Senator Ed Howard, Chairman

Representative Charles Evans, Vice Chairman

Sen. Ike Harris
Sen. Kent Caperton
Sen. Bill Sarpalius
Mr. Vernon A. McGee, Public Member

Rep. Elton Bomer
Rep. Ernestine Glossbrenner
Rep. Gary Thompson
Ms. Carol Barger, Public Member

page 2

RAILROAD COMMISSION:

1982 Petition for Rulemaking on Termination of Service Standards

Petitioner:
Representing Consumers Union & Texas ACORN on behalf of residential ratepayers.

1982 Gas Research Institute Petition

Representing Consumers Union

FINANCE COMMISSION & CONSUMER CREDIT COMMISSION:

1981 Petition for Rulemaking on Debt Collection Practices

Petitioner:
Representing Consumers Union

STATE BOARD OF INSURANCE:

1980 Petition on Problems with Debit Life Insurance

Representing Consumers Union

Sincerely,

Carol Barger
Carol Barger



State of Texas
House of Representatives
Austin, Texas

REP. GARY THOMPSON
STATE CAPITOL
P.O. BOX 2910
AUSTIN, TEXAS 78769-2910

DISTRICT 79
P.O. BOX 8235 ACU STA.
ABILENE, TEXAS 79699
AC 915 677-0211

17 December 1982

TO: SUNSET COMMISSION
FROM: REP. GARY THOMPSON
RE: PECUNIARY/PROFESSIONAL INTERESTS

Pursuant to the disclaimer policy of the Sunset Commission, I herewith submit the following data:

- a. owned: 185 shares of Pengo Crop. stock; Pengo is an oilfield servicing company.
- b. West Texas Utilities has contributed in 1982, \$8,600 toward sustaining Abilene Christian's American Enterprise Forum which I direct. I receive no salary from this program. Funds are used to purchase supplies, defray travel expenses for instructors, and pay a stipend to the instructor.

9441 Sherman Road
Austin, TX 78742
31 August 1981

Dear Senator Howard:

H.B. No. 542, 67th Legislature, R.S. at section 1.03 (b) specifies conditions of eligibility for public members on the Sunset Advisory Commission. Neither I nor Mrs. McGee violate those conditions.

However, my wish is to comply with the spirit as well as the letter of the law. Hence, this disclosure of former associations with the Advisory Council for Technical-Vocational Education in Texas, one of the State agencies scheduled for "sunset" review.

I propose to abstain from voting on any motion or recommendation by the Sunset Advisory Commission respecting the future status of that Advisory Council, subject to your concurrence.

Briefly, the facts about my former associations are these:

By nomination of then Governor Preston Smith, the State Board of Education appointed me a member of the Advisory Council effective Feb. 1, 1969. I served as a member until Aug. 31, 1975; and was chairperson in 1974 and 1975.

Subsequently that Advisory Council asked me to research certain topics as a part-time staff associate. Those episodes, time-periods and amounts paid were as follows:

Sample survey, computer analysis, and narrative summary of responses from former vocational students five years after high school graduation; January through August, 1978; \$10,488.

Review of statutory law specifying role-and-scope in technical-vocational education of all State agencies of public education, for the Council and for Dr. Frank W. R. Hubert's subcommittee; May through July, 1979; \$1,496.

From magnetic tape transcriptions of the Feb. 1980 conference "Business and Industry Speak; Education Listens," derive a summary suitable for publication; compile for students' use job outlooks in the 1980s for 12 occupational clusters, and a student-written brochure on seven qualifications employers universally look for in beginning employees. April-Dec., 1980; \$4,593.

Research 11 topics and prepare resource materials with appendices for changing the image of technical-vocational education in Texas; summer of 1981; \$1,491.

During my membership on the Sunset Advisory Commission, of course, I will have no association whatever with the Advisory Council for Technical-Vocational Education in Texas.

Sincerely,

Senator Ed Howard, Chairman
Sunset Advisory Commission
P. O. Box 12068
Austin, TX 78711

Vernon A. McGee

253

cc: Lieut. Gov. Wm. P. Hobby
bcc: Bill Wells

A-308

EXHIBIT 3



July 2011, NCJ 233982

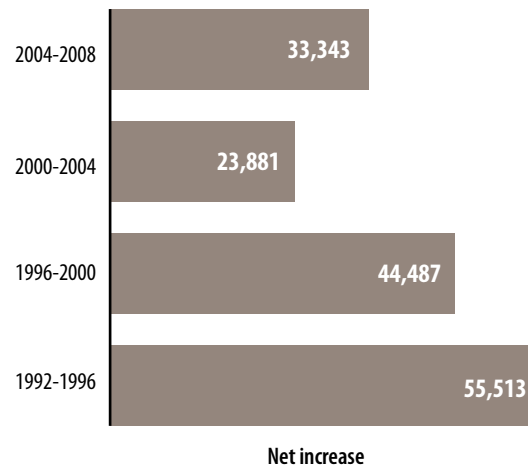
Census of State and Local Law Enforcement Agencies, 2008

Brian A. Reaves, Ph.D., *BJS Statistician*

In September 2008, state and local law enforcement agencies employed more than 1.1 million persons on a full-time basis, including about 765,000 sworn personnel (defined as those with general arrest powers). Agencies also employed approximately 100,000 part-time employees, including 44,000 sworn officers. These findings come from the 2008 Bureau of Justice Statistics' (BJS) Census of State and Local Law Enforcement Agencies (CSLLEA), the fifth such census to be conducted since the quadrennial series began in 1992.

From 2004 to 2008, state and local agencies added a net total of about 33,000 full-time sworn personnel. This was about 9,500 more than agencies added from 2000 to 2004 (figure 1), reversing a trend of declining growth observed in prior 4-year comparisons based on the CSLLEA. Local police departments added the most officers, about 14,000. Sheriffs' offices and special jurisdiction agencies added about 8,000 officers each. From 2004 to 2008, the number of full-time sworn personnel per 100,000 U.S. residents increased from 250 to 251.

FIGURE 1
Net increase in full-time sworn personnel employed by state and local law enforcement agencies, per 4-year period, 1992–2008



HIGHLIGHTS

- State and local law enforcement agencies employed about 1,133,000 persons on a full-time basis in 2008, including 765,000 sworn personnel.
- Local police departments were the largest employer of sworn personnel, accounting for 60% of the total. Sheriffs' offices were next, accounting for 24%.
- About half (49%) of all agencies employed fewer than 10 full-time officers. Nearly two-thirds (64%) of sworn personnel worked for agencies that employed 100 or more officers.
- From 2004 to 2008, overall full-time employment by state and local law enforcement agencies nationwide increased by about 57,000 (or 5.3%). Sworn personnel increased by about 33,000 (4.6%), and nonsworn employees by about 24,000 (6.9%).
- From 2004 to 2008, state and local law enforcement agencies added about 9,500 more full-time sworn personnel than during the previous 4-year period.
- The number of full-time sworn personnel per 100,000 residents increased from 250 in 2004 to 251 in 2008.
- Fifteen of the 50 largest local police departments employed fewer full-time sworn personnel in 2008 than in 2004. The largest declines were in Detroit (36%), Memphis (23%), New Orleans (13%), and San Francisco (10%).
- Ten of the 50 largest local police departments reported double-digit increases in sworn personnel from 2004 to 2008. The largest increases were in Phoenix (19%), Prince George's County (Maryland) (17%), Dallas (15%), and Fort Worth (14%).

State and local law enforcement agencies

The 2008 CSLLEA included 17,985 state and local law enforcement agencies employing at least one full-time officer or the equivalent in part-time officers. The total included—

- 12,501 local police departments
- 3,063 sheriffs’ offices
- 50 primary state law enforcement agencies
- 1,733 special jurisdiction agencies
- 638 other agencies, primarily county constable offices in Texas.

A majority of state and local law enforcement personnel worked for local police departments

Local police departments were the largest employer of full-time state and local law enforcement personnel with about 593,000 (or 52%) of the more than 1.1 million employees nationwide (table 1 and appendix table 1). Sheriffs’ offices employed about 353,000 (31%). Both the 50 primary state law enforcement agencies and the special jurisdiction agencies (those that served a special geographic jurisdiction or had special enforcement or investigative responsibilities) accounted for 8% . (See table 7 for types of special jurisdiction agencies.)

About 461,000 sworn state and local law enforcement employees (60%) were local police officers. Sworn personnel in sheriffs’ offices accounted for about 183,000 (24%). The 50 primary state law enforcement agencies employed about 61,000 (8%), and special jurisdiction agencies employed about 57,000 (7%).

Sheriffs’ offices accounted for 46% of the 369,000 full-time civilian personnel nationwide, and local police departments accounted for 36%. Nearly half (48%) of the full-time employees in sheriffs’ offices were civilians, compared to 35% in state law enforcement agencies and 22% in local police departments (not shown in table).

The largest 7% of state and local law enforcement agencies employed 64% of all sworn personnel

Nearly 1,200 state and local law enforcement agencies (7%) employed 100 or more full-time sworn personnel, with 83 of those agencies employing 1,000 or more officers (table 2 and appendix table 2). The agencies with 1,000 or more officers included 49 local police departments, 20 state law enforcement agencies, 13 sheriffs’ offices, and 1 special jurisdiction agency.

Agencies with 100 or more officers employed 64% of all full-time sworn personnel, and those with 1,000 or more officers employed 29%. (See appendix table 5 for the 50 largest state and local law enforcement agencies.)

About 8,800 state and local law enforcement agencies (49% of the total) employed fewer than 10 full-time sworn personnel, and about 5,400 (30%) employed fewer than 5 officers. Among these smaller agencies, about 2,100

(12%) had just one full-time officer or had part-time officers only.

Agencies with fewer than 10 full-time sworn personnel employed less than 5% of all full-time officers, but 50% of all part-time officers. Those employing 1,000 or more full-time sworn personnel accounted for less than 1% of all part-time officers nationwide (not shown in table).

From 1992 to 2008, the growth rate for civilian personnel was more than double that of sworn personnel

From 2004 to 2008, the total number of full-time state and local law enforcement employees increased by about 57,000 (5.3%). This total included an increase in sworn personnel of about 33,000 (4.6%). Civilian employment in the agencies rose by 24,000 (6.9%). Local police departments accounted for a larger proportion of the growth in sworn officers from 2004 to 2008 than other agency types, and sheriffs’ offices accounted for most of the growth in civilian employees.

TABLE 1
State and local law enforcement employees, by type of agency, 2008

Type of agency	Agencies	Full-time employees			Part-time employees		
		Total	Sworn	Nonsworn	Total	Sworn	Nonsworn
All agencies	17,985	1,133,915	765,246	368,669	100,340	44,062	56,278
Local police	12,501	593,013	461,063	131,950	58,129	27,810	30,319
Sheriff’s office	3,063	353,461	182,979	170,482	26,052	11,334	14,718
Primary state	50	93,148	60,772	32,376	947	54	893
Special jurisdiction	1,733	90,262	56,968	33,294	14,681	4,451	10,230
Constable/marshal	638	4,031	3,464	567	531	413	118

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

TABLE 2
Full-time state and local law enforcement employees, by size of agency, 2008

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	17,985	1,133,915	765,246	368,669
1,000 or more officers	83	326,197	230,759	95,438
500–999	89	94,168	60,124	34,044
250–499	237	133,024	83,851	49,173
100–249	778	174,505	115,535	58,970
50–99	1,300	136,390	89,999	46,391
25–49	2,402	124,492	83,349	41,143
10–24	4,300	98,563	67,132	31,431
5–9	3,446	32,493	23,107	9,386
2–4	3,225	11,498	9,470	2,028
0–1	2,125	2,585	1,920	665

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

*Based on number of full-time sworn personnel.

Reversing a pattern of declining growth observed in the 2000 and 2004 CSLLEA data collections, about 9,500 more full-time sworn personnel were added from 2004 to 2008 than in the previous 4-year period. The percentage growth in the number of sworn officers from 2004 to 2008 (4.6%) exceeded growth from 2000 to 2004 (3.4%), but was about half the 9.1% peak growth rate recorded from 1992 to 1996.

From 2004 to 2008, the growth rate for sworn personnel in sheriffs' offices (4.5%) was about the same as the overall rate. The growth rates for local police departments (3.2%) and the primary state law enforcement agencies (3.4%) were lower than the overall average. The growth rate was highest among special jurisdiction agencies (16.7%).

From 1992 (the year of the first CSLLEA) to 2008, state and local law enforcement agencies added more than 287,000 full-time employees (a 34% increase), including about 157,000 sworn officers (26%) and 130,000 civilian employees (55%) (figure 2).

Nationwide there was 1 sworn officer for every 400 residents

In 2008 there were 373 full-time state and local law enforcement employees per 100,000 residents nationwide, compared to 367 per 100,000 in 2004 and 332 per 100,000 in 1992 (figure 3). There were 251 sworn personnel per 100,000 residents nationwide in 2008, or about 1 officer for every 400 residents. This was a slight increase over the 2004 ratio of 250 per 100,000 residents.

There were more than 300 full-time sworn personnel per 100,000 residents in the District of Columbia (722), Louisiana (405), New Jersey (389), New York (341), Illinois (321), and Wyoming (317) (figure 4). In contrast, there were fewer than 200 full-time sworn personnel per 100,000 residents in Washington (174), Utah (175), Oregon (177), Vermont (178), Kentucky (183), Minnesota (185), West Virginia (186), Alaska (189), Michigan (190), Iowa (195), and Maine (195). (See appendix table 6 for state-by-state agency and employee counts.)

FIGURE 2
Full-time state and local and law enforcement employees, 1992–2008

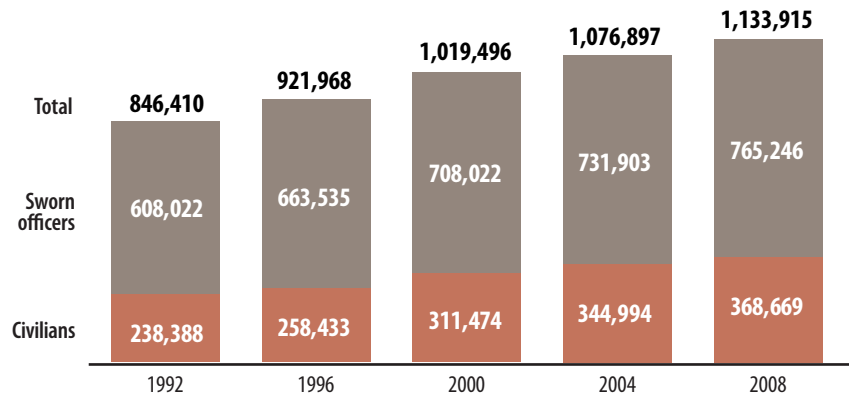
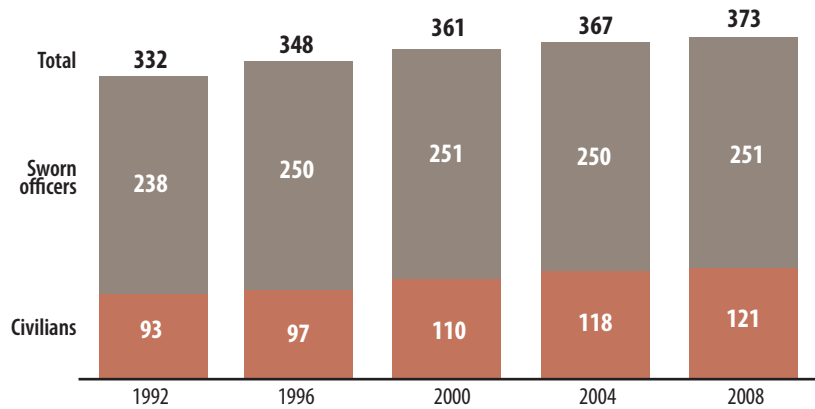
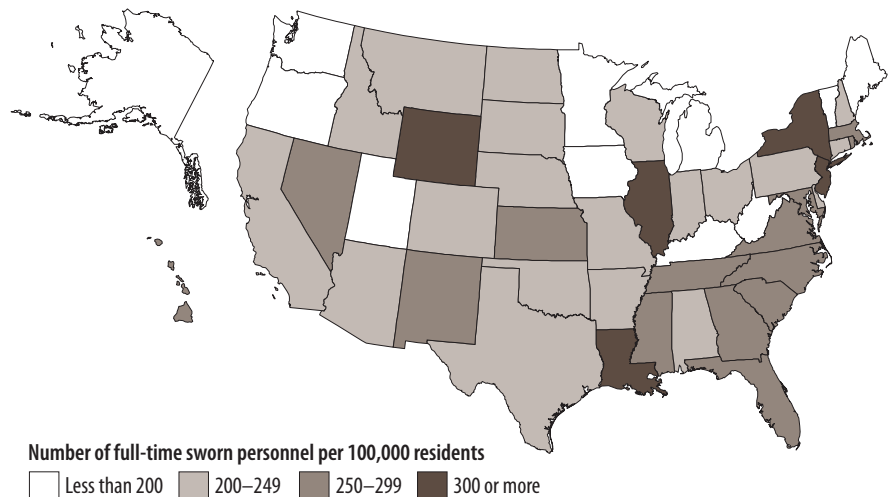


FIGURE 3
Full-time state and local and law enforcement employees per 100,000 residents, 1992–2008



Note: Detail may not sum to total due to rounding.

FIGURE 4
Full-time sworn personnel per 100,000 residents employed by state and local law enforcement agencies, 2008



Local police departments

In 2008, 12,501 local police departments in the United States employed at least one full-time officer or the equivalent in part-time officers. Nearly all (98%) were operated by a municipal government. The remainder were operated by a county, tribal, or consolidated city-county government or served multiple jurisdictions under a regional or joint arrangement. Overall, about a third (35%) of the nearly 36,000 sub-county (municipal, township) general purpose local governments nationwide operated a local police department.

States with the largest numbers of local police departments were Pennsylvania (965), Texas (788), Illinois (701), Ohio (678), New Jersey (476), Michigan (455), Missouri (430), and Wisconsin (429). States with the fewest were Hawaii (4), Delaware (36), Nevada (38), Rhode Island (39), and Alaska (42). (See **appendix table 7** for state-by-state agency and employee counts.)

Although most local police departments were small, most local police officers worked for larger agencies

More than half of local police departments employed fewer than 10 full-time officers, and the overall median size was 8 full-time officers (**table 3**). Although departments with fewer than 10 full-time officers comprised 53% of all agencies, they employed just 6% of all officers (**appendix table 3**). A total of 638 (5%) of local police departments employed 100 or more full-time sworn personnel. These agencies employed 61% of all local police officers.

About 14,000 local police officers were added nationwide from 2004 to 2008, compared to about 6,000 in the previous 4-year period

From 2004 to 2008, the total number of full-time local police employees increased by 20,000 (3.5%) to about 593,000 (**figure 5**). The number of full-time sworn personnel increased by 14,000 (3.2%) to about 461,000 during this period. The number of civilian employees rose by 6,000 (4.6%) to about 132,000.

From 2004 to 2008, the number of local police officers fell by 36% in Detroit and by 23% in Memphis

During 2008 the New York City Police Department (NYPD), with 36,023 full-time officers, remained the largest local police department in the United States (**appendix table 8**). The NYPD employed nearly 3 times as many sworn personnel as the next largest agency—the Chicago Police Department (13,354 officers). The other three local police departments that employed 5,000 or more officers during 2008 were in Los Angeles (9,727 officers), Philadelphia (6,624), and Houston (5,053).

From 2004 to 2008, 15 of the 50 largest local police departments experienced a decrease in number of officers employed, compared to 20 of 50 between 2000 and 2004. The decline was small for some departments, such as the NYPD, which had 95 (0.3%) fewer officers in 2008 than 2004. In other departments, the loss was more substantial. Four of the 50 largest departments experienced a drop of more than 10% in the number of full-time officers from 2004 to 2008:

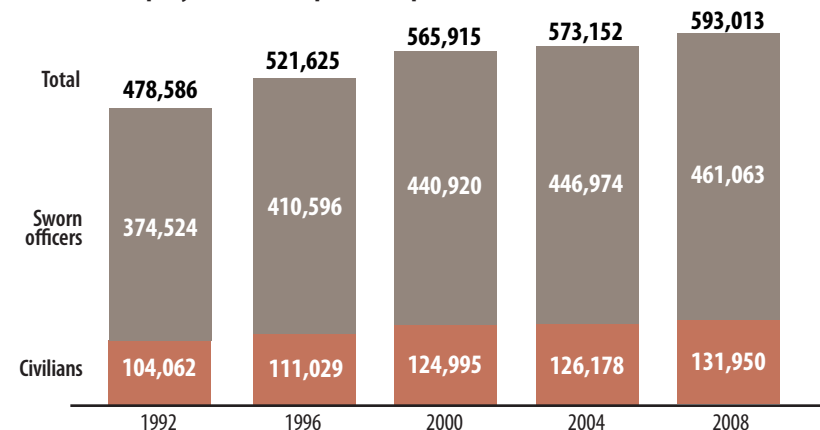
- Detroit Police (down 35.9%)
- Memphis Police (down 23.2%)
- New Orleans Police (down 13.4%)
- San Francisco Police (down 10.5%).

TABLE 3
Full-time local police employees, by size of agency, 2008

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	12,501	593,013	461,063	131,950
1,000 or more officers	49	194,829	150,444	44,385
500-999	43	39,447	29,985	9,462
250-499	101	47,910	36,021	11,889
100-249	445	85,345	64,939	20,406
50-99	815	72,701	56,060	16,641
25-49	1,543	67,743	53,465	14,278
10-24	2,846	55,476	44,520	10,956
5-9	2,493	19,687	16,582	3,105
2-4	2,637	8,405	7,694	711
0-1	1,529	1,470	1,353	117

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.
*Based on number of full-time sworn personnel.

FIGURE 5
Full-time employees in local police departments, 1992-2008



Ten local police departments had a double-digit percentage increase in number of officers from 2004 to 2008

Among the 50 largest local police departments, 35 employed more full-time officers in 2008 than in 2004. The departments serving the following jurisdictions reported a double-digit increase:

- Phoenix, Arizona (up 18.5%)
- Prince George’s County, Maryland (up 17.4%)
- Dallas, Texas (up 15.5%)
- Montgomery County, Maryland (up 15.2%)
- Fort Worth, Texas (up 14.0%)
- DeKalb County, Georgia (up 13.1%)
- Charlotte-Mecklenburg County, North Carolina (up 12.7%)
- Austin, Texas (up 11.2%)
- Boston, Massachusetts (up 11.2%)
- Las Vegas-Clark County, Nevada (up 10.0%).

About half of the 50 largest departments had fewer officers per 100,000 residents in 2008 than 2004

In 2008, the Washington, D.C. Metropolitan Police continued to have the highest ratio of full-time officers (634 officers per 100,000 residents), but this was an 3% decrease from 2004. Despite a 13% reduction in officers since 2004, the New Orleans Police had the seventh highest ratio of officers to residents at 423 per 100,000. This ratio was 19% higher than in 2004 as the city’s population (although growing since 2007) remained well below the levels that existed prior to Hurricane Katrina in August 2005.

Other large local police departments with more than 400 officers per 100,000 residents during 2008 included those in Chicago (472), Newark (472), Baltimore (469), Philadelphia (430), and New York (432). The lowest ratios among the 50 largest departments were in Montgom-

ery County (Maryland) (129), Fairfax County (Virginia) (144), San Jose (146), San Antonio (150), and DeKalb County (Georgia) (168). Overall, 24 of the 50 largest local police departments had fewer officers per 100,000 residents in 2008 than in 2004.

Sheriffs’ offices

The office of sheriff exists in nearly every county and independent city in the United States with a total of 3,085 offices nationwide. A total of 3,063 sheriffs’ offices employed at least one full-time sworn officer or the equivalent in part-time officers during 2008. (Note: Some sheriffs’ offices that have been involved in consolidations of county and municipal governmental functions are classified as local police in the CSLLEA.) States with the most sheriffs’ offices were Texas (254), Georgia (159), Kentucky (120), Missouri (114), Kansas (104), Illinois (102), and North Carolina (100). (See **appendix table 9** for state-by-state agency and employee counts).

Alaska, Connecticut, Hawaii, and Rhode Island do not have any local sheriffs’ offices. In those four states the court related duties typically performed by local sheriffs’ offices are the responsibility of state agencies. The District of Columbia also does not have a sheriffs’ office, where such duties are performed by the U.S. Marshals Service.

Nearly all sheriffs’ offices performed law enforcement and court-related functions; about 3 in 4 operated at least one jail

Nearly all (96%) sheriffs’ offices performed traditional law enforcement functions such as providing patrol services, responding to citizen calls for service, and enforcing traffic laws. A similar percentage performed court-related duties such as serving process (98%) and providing court security (96%). In addition, 75% of sheriffs’ offices were responsible for operating at least one jail.

Nationwide, sheriffs’ offices had the equivalent of 59% of their full-time sworn personnel assigned to law enforcement operations, 23% to jail operations, 12% to court operations, and 6% to other duty areas. (Note: The CSLLEA counts all personnel with general arrest powers as sworn officers regardless of duty area.)

Nearly 400 sheriffs’ offices employed 100 or more full-time sworn personnel

In 2008, 13 sheriffs’ offices employed 1,000 or more full-time sworn officers, accounting for 18% of the full-time sworn personnel employed by sheriffs’ offices nationwide (**table 4** and **appendix table 4**). A total of 378 (12%) sheriffs’ offices employed at least 100 officers, accounting for 66% of sworn personnel.

TABLE 4
Full-time sheriffs’ employees, by size of agency, 2008

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	3,063	353,461	182,979	170,482
1,000 or more officers	13	59,981	32,897	27,084
500-999	27	34,348	17,184	17,164
250-499	98	64,704	34,743	29,961
100-249	240	68,265	36,085	32,180
50-99	327	44,772	23,037	21,735
25-49	573	40,988	20,084	20,904
10-24	910	30,121	14,196	15,925
5-9	569	8,485	3,901	4,584
2-4	261	1,615	822	793
0-1	45	182	30	152

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

*Based on number of full-time sworn personnel.

While more than half of local police departments employed fewer than 10 full-time officers in 2008, less than a third (29%) of sheriffs' offices were this small. The median staffing level of sheriffs' offices was 18 full-time sworn personnel.

Sheriffs' offices added more than twice as many civilian employees as sworn ones from 2004 to 2008

From 2004 to 2008, total full-time staff in sheriffs' offices increased by 27,000 employees (8.2%) to about 353,000 (figure 6). The number of full-time sworn personnel increased by 8,000 (4.5%) to about 183,000 during this period. The number of civilian employees rose by 19,000 (12.5%) to about 170,000.

The Los Angeles County Sheriff's Department was the largest in the United States, employing 9,461 full-time sworn personnel (appendix table 10). About a third of these officers had regularly assigned duties that included responding to citizen calls for service, with the remainder assigned to court and jail-related duties. The second largest sheriff's office served Cook County, Illinois, with 5,655 sworn personnel. Just 4% of these officers were assigned to respond to calls.

Among the 50 largest sheriffs' offices, the percent of sworn personnel assigned to respond to calls for service ranged from 0% to 97%. All but one agency reported having at least some sworn personnel who regularly performed law enforcement duties, and all but four had sworn personnel who performed court-related functions. About two-thirds of the agencies employed sworn personnel who performed jail-related duties.

Primary state law enforcement agencies

The CSLLEA identifies a primary state law enforcement agency in each of the 50 states. Depending on the state, this agency may be a state police agency, highway patrol agency, or a department of public safety. The latter are often more complex organizations and may encompass several agencies or divisions. Comparisons between primary state law enforcement agencies may not always

be appropriate because of differences in organizational structure and responsibilities.

From 2004 to 2008, employment by primary state law enforcement agencies rose by about 4%

In 2008, the 50 primary state law enforcement agencies had 93,148 full-time employees, including about 61,000 full-time sworn personnel (table 5). Twenty

agencies employed 1,000 or more sworn personnel, and 35 agencies employed at least 500 full-time officers.

State agencies had 3,240 (3.6%) more employees in 2008 than in 2004. (figure 7) Employment of full-time sworn personnel increased by about 2,000 (3.4% change) from 2004 to 2008. Civilian employment rose by about 1,300 (4.0% change) during this period.

FIGURE 6
Full-time employees in sheriffs' offices, 1992–2008

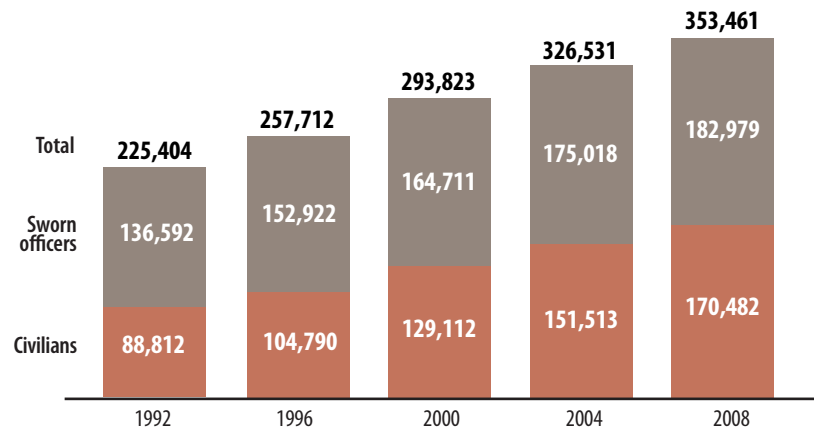
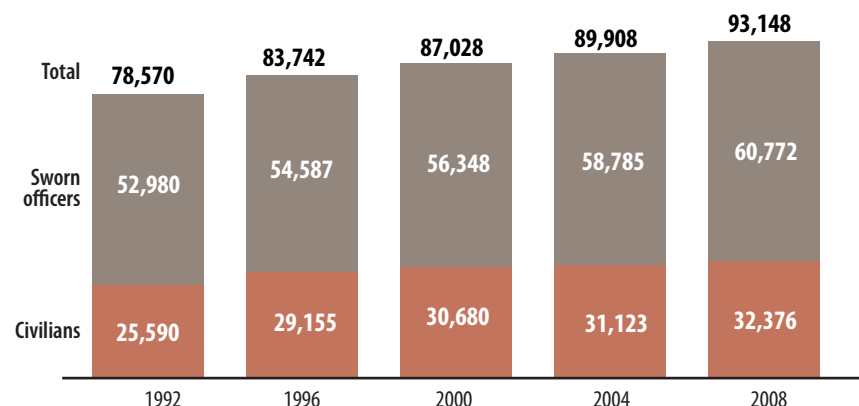


TABLE 5
Full-time primary state law enforcement agency employees, by size of agency, 2008

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	50	93,148	60,772	32,376
1,000 or more officers	20	69,616	45,751	23,865
500–999	15	16,986	10,413	6,573
250–499	10	5,270	3,694	1,576
100–249	5	1,276	914	362

*Based on number of full-time sworn personnel.

FIGURE 7
Full-time employees in primary state law enforcement agencies, 1992–2008



The California Highway Patrol was the largest state law enforcement agency

The largest state law enforcement agency, the California Highway Patrol, had 7,202 full-time sworn personnel, followed by the New York State Police (4,847), Pennsylvania State Police (4,458), Texas Department of Public Safety (3,529), and New Jersey State Police (3,053) (table 6).

Five agencies had fewer than 250 full-time sworn personnel: the North Dakota Highway Patrol (139), South Dakota Highway Patrol (152), Rhode Island State Police (201), Wyoming Highway Patrol (204), and Montana Highway Patrol (218).

The Delaware State Police (75) had the largest number of full-time officers per 100,000 residents, followed by the Vermont State Police (49) and the Alaska State Troopers (40). The Wisconsin State Patrol (9), Florida Highway Patrol (9), and Minnesota State Patrol (10) had the smallest numbers of full-time officers per 100,000 residents.

From 2004 to 2008, 30 of the 50 primary state law enforcement agencies increased the number of full-time sworn personnel they employed. Three agencies increased their number of full-time sworn personnel by more than 20%: the South Carolina Highway Patrol (up 23.2%), the New Hampshire State Police (up 21.1%), and the North Carolina State Highway Patrol (up 20.4%). The largest decreases in the number of full-time sworn personnel were reported by the Utah Department of Public Safety (down 11.7%), the Maryland State Police (down 9.8%), and the Idaho State Police (down 8.3%).

The ratio of full-time sworn personnel per 100,000 residents served increased in 23 agencies from 2004 to 2008. The largest increases of officers per 100,000 residents were reported by the New Hampshire State Police (up 18.4%), the Iowa Department of Public Safety (up 17.6%), and the Louisiana State Police (up 15.3%). The largest decreases were reported by the Utah Department of Public Safety (down 21.0%), the Idaho State Police (down 16.5%), and the Georgia Department of Public Safety (down 13.2%).

TABLE 6
Primary state law enforcement agency full-time sworn personnel, 2008

Agency	Total	Percent change from 2004	Per 100,000 residents	Percent change from 2004
U.S. total	60,772	3.4%	20	-0.5%
Alabama Dept. of Public Safety	763	9.2%	16	5.3%
Alaska State Troopers	274	-5.2	40	-8.8
Arizona Dept. of Public Safety	1,244	10.6	19	-2.0
Arkansas State Police	525	3.3	18	-1.0
California Highway Patrol	7,202	1.7	20	-1.2
Colorado State Police	742	9.0	15	1.5
Connecticut State Police	1,227	6.5	35	5.6
Delaware State Police	658	2.5	75	-3.3
Florida Highway Patrol	1,606	-2.9	9	-8.4
Georgia Dept. of Public Safety	1,048	-5.6	11	-13.2
Hawaii Dept. of Public Safety*	290	18.9	23	15.6
Idaho State Police	264	-8.3	17	-16.5
Illinois State Police	2,105	4.8	16	3.2
Indiana State Police	1,315	13.6	21	10.5
Iowa Dept. of Public Safety	669	19.7	22	17.6
Kansas Highway Patrol	525	-3.0	19	-5.3
Kentucky State Police	882	-5.8	21	-8.8
Louisiana State Police	1,215	14.3	27	15.3
Maine State Police	334	-1.2	25	-2.0
Maryland State Police	1,440	-9.8	25	-11.6
Massachusetts State Police	2,310	5.0	35	3.5
Michigan State Police	1,732	-7.0	17	-6.2
Minnesota State Patrol	530	-2.6	10	-5.4
Mississippi Highway Safety Patrol	594	11.0	20	9.0
Missouri State Highway Patrol	1,028	-6.3	17	-9.4
Montana Highway Patrol	218	5.8	23	1.2
Nebraska State Patrol	491	-2.4	28	-4.6
Nevada Highway Patrol	417	-1.0	16	-11.8
New Hampshire State Police	350	21.1	26	18.4
New Jersey State Police	3,053	10.3	35	9.6
New Mexico State Police	528	-6.7	27	-11.2
New York State Police	4,847	3.9	25	3.0
North Carolina State Highway Patrol	1,827	20.4	20	11.1
North Dakota Highway Patrol	139	3.0	22	2.1
Ohio State Highway Patrol	1,560	3.9	14	3.3
Oklahoma Dept. of Public Safety	825	2.1	23	-1.5
Oregon State Police	596	-4.0	16	-9.3
Pennsylvania State Police	4,458	6.1	35	4.6
Rhode Island State Police	201	5.8	19	7.6
South Carolina Highway Patrol	967	23.2	21	14.9
South Dakota Highway Patrol	152	-1.3	19	-5.0
Tennessee Dept. of Safety	942	-3.1	15	-8.1
Texas Dept. of Public Safety	3,529	2.7	15	-5.3
Utah Dept. of Public Safety	475	-11.7	17	-21.0
Vermont State Police	307	-5.5	49	-6.0
Virginia State Police	1,873	0.2	24	-4.0
Washington State Police	1,132	6.9	17	0.7
West Virginia State Police	667	4.1	37	3.4
Wisconsin State Patrol	492	-3.5	9	-5.5
Wyoming Highway Patrol	204	8.5	38	2.4

*The Hawaii Department of Public Safety was previously classified in the CSLEA as a special jurisdiction agency.

Special jurisdiction law enforcement agencies

More than 1,700 state and local law enforcement agencies served a special geographic jurisdiction, or had special enforcement or investigative responsibilities during 2008. These agencies employed about 90,000 persons full time, including 57,000 sworn personnel (table 7).

About 11,000 full-time sworn personnel were employed at 4-year public universities and colleges

More than two-thirds of special jurisdiction law enforcement agencies served public buildings and facilities, employing more than 21,000 sworn personnel. Within this group were more than 500 campus police departments serving 4-year public institutions. These agencies employed about 11,000 full-time sworn officers. Another 253 campus police agencies served 2-year public colleges, employing more than 2,600 full-time sworn personnel. Additionally, 18 agencies, employing more than 700 full-time officers, served medical campuses.

TABLE 7

Special jurisdiction law enforcement agencies and full-time sworn personnel, by type of jurisdiction, 2008

Type of special jurisdiction	Agencies	Full-time sworn personnel
Total	1,733	56,968
Public buildings/facilities	1,126	21,418
4-year university/college	508	10,916
Public school district	250	4,764
2-year college	253	2,648
State government buildings	29	1,138
Medical school/campus	18	747
Public hospital/health facility	48	715
Public housing	13	250
Other state-owned facilities	7	240
Natural resources	246	14,571
Fish and wildlife conservation laws	56	5,515
Parks and recreational areas	124	4,989
Multi-function natural resources	16	2,926
Boating laws	10	461
Environmental laws	7	368
Water resources	18	185
Forest resources	9	65
Levee district	6	62
Transportation systems/facilities	167	11,508
Airports	103	3,555
Mass transit system/railroad	18	3,214
Transportation—multiple types	5	2,000
Commercial vehicles	12	1,320
Harbor/port facilities	25	876
Bridges/tunnels	4	543
Criminal investigations	140	7,310
State bureau of investigation	22	3,527
County/city investigations	66	2,006
Fraud investigations	13	636
Fire marshal/arson investigations	21	478
Tax/revenue enforcement	6	177
Other/multiple types	12	486
Special enforcement	54	2,161
Alcohol/tobacco laws	22	1,280
Agricultural laws	12	387
Narcotics laws	5	233
Gaming laws	10	231
Racing laws	5	30

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

The largest campus law enforcement agency serving a public institution of higher education was the Temple University Police Department in Philadelphia, which employed 125 full-time sworn personnel (table 8). The next largest were at the University of Medicine & Dentistry of New Jersey (94 full-time officers), the University of Texas Health Science Center in Houston (94), the University of Maryland-College Park (90), and the University of Florida (85). (For more information on campus law enforcement agencies including those serving private campuses and those not employing sworn personnel, see *Campus Law Enforcement Agencies, 2004-05*, BJS Web, February 2008.)

A total of 250 special jurisdiction agencies served public school districts

The 250 police departments operated by public school districts nationwide employed nearly 5,000 full-time sworn personnel. Although some large school systems, including those in New York and Chicago, obtained services from their city police departments, some of the largest systems had their own police departments with full-time sworn personnel. The largest of these in 2008 was the School District of Philadelphia which employed 450 full-time sworn officers (table 9). Other large school police departments included those serving districts in Los Angeles (340 full-time officers); Miami-Dade County, Florida (210); Houston, Texas (197); Palm

Beach County, Florida (176); Clark County, Nevada (157); and Baltimore, Maryland (142).

Another 29 special jurisdiction agencies, employing more than 1,100 officers, were responsible for providing services for state government buildings. Many of these agencies use the name capitol police, reflecting the most prominent of the facilities they protect. In some states, police protection for the capitol and other state government buildings falls under the jurisdiction of a primary state law enforcement agency, such as the state police.

TABLE 8
Thirty largest law enforcement agencies serving public colleges and universities, by number of full-time sworn personnel, 2008

College or University	Full-time sworn personnel
Temple University	125
University of Medicine & Dentistry of New Jersey	94
University of Texas Health Science Center	94
University of Maryland - College Park	90
University of Florida	85
University of Alabama - Birmingham	79
City University of New York - Brooklyn College	79
University of Georgia	78
University of Illinois at Chicago	74
Virginia Commonwealth University	74
University of California - Berkeley	73
University of Pittsburgh	73
State University of New York at Stony Brook	71
Arizona State University	70
Michigan State University	69
Georgia State University	68
University of Central Florida	64
Texas A & M University	64
University of Massachusetts - Amherst	63
University of Mississippi Medical Center	63
University of Wisconsin - Madison	63
Florida State University	62
Georgia Tech University	62
Louisiana State University Police	62
University of Maryland - Baltimore	62
University of Cincinnati	62
Medical University of South Carolina	62
University of Texas - Austin	62
University of Alabama	61
State University of New York at Buffalo	61

TABLE 9
Fifteen largest law enforcement agencies serving public school districts, by number of full-time sworn personnel, 2008

School district	Full-time sworn personnel
School District of Philadelphia (PA)	450
Los Angeles (CA) Unified School District	340
Miami-Dade (FL) County Public Schools	210
Houston (TX) Independent School District	197
Palm Beach (FL) County School District	176
Clark County (NV) School District	157
Baltimore City (MD) Public Schools	142
Indianapolis (IN) Public Schools	90
Dallas (TX) Independent School District	88
DeKalb County (GA) School System	83
Northside (TX) Independent School District	83
Boston (MA) Public Schools	80
San Antonio (TX) Independent School District	71
Austin (TX) Independent School District	70
Detroit (MI) Public Schools	60

Nearly 15,000 full-time sworn personnel were employed in jobs related to natural resources

After agencies serving public buildings and facilities, the next largest employer of full-time sworn personnel among special jurisdiction agencies was the group responsible for enforcing laws pertaining to natural resources. Most of these agencies enforced laws pertaining to fish and wildlife conservation, or provided law enforcement services for parks and recreation areas. Other functions included enforcing environmental pollution laws, boating laws, and protecting vital forest and water resources. Overall, these 246 agencies employed nearly 15,000 full-time sworn personnel.

Many of the largest natural resources law enforcement agencies were operated at the state level, including 28 of the 30 largest (**table 10**). The California Department of Parks and Recreation employed the most full-time sworn personnel (645), followed by the Florida Fish and Wildlife Conservation Commission (626), Texas Parks & Wildlife Department (480), Ohio Department of Natural Resources (394), and California Department of Fish & Game (330).

The largest local-level agency in this category was operated by the New York City Department of Environmental Protection, which employed 168 full-time police officers to protect the city's watershed and water infrastructure. Many

park police agencies also existed at the local and regional levels, and 21 Native American tribes employed separate agencies with full-time sworn personnel to enforce laws pertaining to fish and wildlife conservation.

TABLE 10
Thirty largest state and local natural resource law enforcement agencies , by number of full-time sworn personnel, 2008

Agency	Full-time sworn personnel
California Department of Parks & Recreation	645
Florida Fish and Wildlife Conservation Commission	626
Texas Parks & Wildlife Department	480
Ohio Department of Natural Resources	394
California Department of Fish and Game	330
New York State Department of Environmental Conservation	321
New York State Park Police	305
Tennessee Wildlife Resources Agency	275
Maryland State Forest and Park Service	261
Washington State Parks and Recreation Commission	250
South Carolina Department of Natural Resources	238
Louisiana Wildlife And Fisheries Department	235
Mississippi Department of Wildlife, Fisheries & Parks	230
Colorado Division of Wildlife	226
Maryland Natural Resources Police	224
Georgia Department of Natural Resources	209
North Carolina Wildlife Resources Commission	209
Tennessee Department of Environment & Conservation	209
Missouri Department of Conservation	204
Indiana Department of Natural Resources	201
Minnesota Department of Natural Resources	200
Michigan Department of Natural Resources	195
Pennsylvania Game Commission - Law Enforcement	191
Wisconsin Department of Natural Resources	189
North Carolina Division of State Parks & Recreation	185
Arkansas Game And Fish Commission	183
Kansas Department of Wildlife & Parks	178
New York City Department of Environmental Protection Police	168
Virginia Department Game and Inland Fisheries	160
New York City Parks Enforcement Patrol	149

Agencies tasked with safeguarding transportation systems and facilities employed more than 11,000 full-time sworn personnel

Transportation-related jurisdictions, such as mass transit systems, airports, bridges, tunnels, commercial vehicles, and port facilities, have been a major area of focus for homeland security efforts in recent years. In 2008, 167 law enforcement agencies had specific transportation-related jurisdictions and employed about 11,500 full-time sworn officers. The largest, the Port Authority of New York and New Jersey Police Department, employed 1,667 officers in 2008 (table 11). The multiple jurisdictions of the Port Authority Police included LaGuardia, Kennedy, and Newark Airports, the Lincoln and Holland Tunnels, the George Washington and Staten Island Bridges, the PATH train system, the Port Authority Bus Terminal, and the Port Newark and Port Elizabeth Marine Terminals.

After the Port Authority Police, the five largest transportation-related police forces were employed by the New York State Metropolitan Transportation Authority (694 officers), Los Angeles World Airports (577), Maryland Transportation Authority (456), Washington, D.C. Metropolitan Area Transit Authority (442), and Metropolitan Atlanta Rapid Transit Authority (MARTA) (309).

Law enforcement services for some large airport and transit systems are provided by a local police department or sheriff's office. For example, the police departments in New York City and Chicago are responsible for the subway systems in those cities. In addition, the Chicago Police also provide law enforcement services for O'Hare and Midway airports, working in conjunction with the 251 unarmed sworn officers of the Chicago Department of Aviation.

TABLE 11

Fifty largest state and local law enforcement agencies with transportation-related jurisdictions, by number of full-time sworn personnel, 2008

Agency	Full-time sworn officers
Port Authority of New York & New Jersey	1,667
New York State Metropolitan Transportation Authority	694
Los Angeles World Airports	577
Maryland Transportation Authority	456
Washington Metropolitan Area Transit Authority	442
Metropolitan Atlanta Rapid Transit Authority (MARTA)	309
Massachusetts Bay Transportation Authority (MBTA)	256
Southeastern Pennsylvania Transportation Authority (SEPTA)	256
Chicago Department of Aviation	251
Dallas/Fort Worth International Airport	237
Metropolitan Washington Airports Authority	206
New Jersey Transit	201
Bay Area Rapid Transit (BART)	192
Harris County Metropolitan Transit Authority	179
Dallas Area Rapid Transit	156
Delaware River Port Authority	144
Maryland Transit Administration	140
Port of San Diego	139
Port of Los Angeles	133
Wayne County Airport Authority	125
Port of Seattle	98
Greater Cleveland Regional Transit Authority	97
Metra (Chicago area)	96
Austin-Bergstrom International Airport	91
Lambert - St. Louis International Airport	89
Virginia Port Authority	88
Niagara Frontier Transportation Authority	86
Minneapolis - St. Paul Metropolitan Airports Commission	82
Tampa International Airport	80
Georgia Ports Authority	78
San Antonio International Airport	66
Anchorage International Airport	65
Salt Lake City International Airport	65
Nashville International Airport	61
Minneapolis - St. Paul Metro Transit	60
Kansas City International Airport	54
Cincinnati/Northern Kentucky International Airport	54
Port of Portland	53
Delaware River & Bay Authority	50
Memphis International Airport	49
Alabama State Port Authority	48
Indianapolis Airport Authority	47
Port of Houston Authority	46
Port of New Orleans	44
Allegheny Port Authority	42
Jacksonville Aviation Authority	42
T.F. Green Airport (Rhode Island)	42
Columbus Airport Authority	41
Utah Transit Authority	40
Albuquerque International Sunport	40

Methodology

The Bureau of Justice Statistics’ (BJS) Census of State and Local Law Enforcement Agencies (CSLLEA) is conducted every 4 years to provide a complete enumeration of agencies and their employees. Employment data are reported by agencies for sworn and nonsworn (civilian) personnel and, within these categories, by full-time or part-time status.

Agencies also complete a checklist of functions they regularly perform, or have primary responsibility for, within the following areas: patrol and response, criminal investigation, traffic and vehicle-related functions, detention-related functions, court-related functions, special public safety functions (e.g., animal control), task force participation, and specialized functions (e.g., search and rescue).

The CSLLEA provides national data on the number of state and local law enforcement agencies and employees for local police departments, sheriffs’ offices, state law enforcement agencies, and special jurisdiction agencies. It also serves as the sampling frame for BJS surveys of law enforcement agencies.

The 2008 CSLLEA form was mailed to 20,110 agencies that were determined to potentially be operating on the reference date of September 30, 2008. This master list was created by compiling information from the following sources:

- The 2004 CSLLEA
- Lists provided by Peace Officer Standards and Training offices and other state agencies
- An FBI list of agencies requesting new identifiers since the 2004 CSLLEA

Data were collected on behalf of BJS by the National Opinion Research Center (NORC) at the University of Chicago. More than half (52%) of all responses were submitted in hardcopy version by mail or fax. Another 41% were received through a secure website operated by NORC. The remaining 7% of agencies did not respond by website, mail, or fax within the allotted timeframe and were contacted by phone with BJS’s assistance. The information necessary to determine eligibility was obtained from all agencies.

Responding agencies were screened for eligibility and were excluded if any of the following conditions existed on the CSLLEA reference date of September 30, 2008. The percentage of agencies from the original master list that were ruled ineligible through each criterion is in parentheses.

- The agency employed only part-time officers, and their total combined works hours averaged less than 35 hours per week (5.1% of agencies from master list excluded).
- The agency was closed, represented a duplicate listing, or was otherwise an invalid entry (2.2% excluded).
- The agency contracted or outsourced to another agency for performance of all services (1.7% excluded).
- The agency did not employ personnel with general arrest powers (0.6% excluded).
- The agency did not operate with funds from a state, local, special district, or tribal government (0.6% excluded).
- All sworn officers volunteered their time on an unpaid basis (0.3% excluded).

Data on number and type of personnel were obtained from all eligible agencies. Data on agency functions were obtained from 99.0% and on primary duty area of sworn personnel from 99.4% of eligible agencies.

The ratios of personnel per 100,000 residents were calculated using final population estimates published by the Census Bureau for July 1st of each CSLLEA year. The ratios for county-level agencies in appendix table 8 exclude the population of municipalities within the counties that were operating their own police departments.

The counts generated by the CSLLEA are more inclusive than those of the FBI’s Uniform Crime Reporting (UCR) program. The CSLLEA includes all officers with arrest powers regardless of function, while the UCR data exclude officers not paid out of police funds. This exclusion generally pertains to officers working exclusively for jails or courts.

Another reason the UCR counts are lower than those from the CSLLEA is that the UCR excludes some agencies that do not have an Originating Agency Identifier (ORI) assigned by the FBI. Some agencies without an ORI are still included in the UCR employee counts (but not in the agency counts) because they report their data to another agency, which reports it to the FBI. Overall, the UCR data cover about 95% of the U.S. population, while the CSLLEA covers 100%. In addition to greater population coverage, the CSLLEA has counted about 8% more sworn personnel than the UCR in 2000, 2004, and 2008 (table 12). Over time, the employment growth trends recorded by the CSLLEA have been consistent with those recorded by the UCR.

TABLE 12
Comparison of CSLLEA and Uniform Crime Reports data, 1992–2008

Year	Number of agencies reporting		Total full-time employees		Full-time sworn personnel		Population covered (in millions)		Officers per 100,000 population	
	CSLLEA	UCR	CSLLEA	UCR	CSLLEA	UCR	CSLLEA	UCR	CSLLEA	UCR
2008	17,985	14,169	1,133,915	1,024,228	765,246	708,569	304	286	251	248
2004	17,876	14,254	1,076,897	970,588	731,903	675,734	294	278	250	243
2000	17,784	13,535	1,019,496	926,583	708,022	654,601	282	265	251	247
1996	18,229	13,025	921,968	829,858	663,535	595,170	265	249	246	239
1992	17,360	13,032	846,410	748,830	608,113	544,309	255	242	237	225

APPENDIX TABLE 1**Percent of state and local law enforcement employees, by type of agency, 2008**

Type of agency	Agencies	Full-time employees			Part-time employees		
		Total	Sworn	Nonsworn	Total	Sworn	Nonsworn
All agencies	100%	100%	100%	100%	100%	100%	100%
Local police	69.5%	52.3%	60.3%	35.8%	57.9%	63.1%	53.9%
Sheriff's office	17.0	31.2	23.9	46.2	26.0	25.7	26.2
Primary state	0.3	8.2	7.9	8.8	0.9	0.1	1.6
Special jurisdiction	9.6	8.0	7.4	9.0	14.6	10.1	18.2
Constable/marshal	3.5	0.4	0.5	0.2	0.5	0.9	0.2

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers. Detail may add to total because of rounding.

APPENDIX TABLE 2**Percent distribution of full-time state and local law enforcement employees, by size of agency, 2008**

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	100%	100%	100%	100%
1,000 or more officers	0.5%	28.8%	30.2%	25.9%
500-999	0.5	8.3	7.9	9.2
250-499	1.3	11.7	11.0	13.3
100-249	4.3	15.4	15.1	16.0
50-99	7.2	12.0	11.8	12.6
25-49	13.4	11.0	10.9	11.2
10-24	23.9	8.7	8.8	8.5
5-9	19.2	2.9	3.0	2.5
2-4	17.9	1.0	1.2	0.6
0-1	11.8	0.2	0.3	0.2

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers. Detail may not add to total because of rounding.

*Based on number of full-time sworn personnel.

APPENDIX TABLE 3**Percent distribution of full-time local police employees, by size of agency, 2008**

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	100%	100%	100%	100%
1,000 or more officers	0.4%	32.9%	32.6%	33.6%
500-999	0.3	6.7	6.5	7.2
250-499	0.8	8.1	7.8	9.0
100-249	3.6	14.4	14.1	15.5
50-99	6.5	12.3	12.2	12.6
25-49	12.3	11.4	11.6	10.8
10-24	22.8	9.4	9.7	8.3
5-9	19.9	3.3	3.6	2.4
2-4	21.1	1.4	1.7	0.5
0-1	12.2	0.2	0.3	0.1

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers. Detail may not add to total because of rounding.

*Based on number of full-time sworn personnel.

APPENDIX TABLE 4**Percent distribution of full-time sheriffs' employees, by size of agency, 2008**

Size of agency*	Agencies	Full-time employees		
		Total	Sworn	Nonsworn
All agencies	100%	100%	100%	100%
1,000 or more officers	0.4%	17.0%	18.0%	15.9%
500-999	0.9	9.7	9.4	10.1
250-499	3.2	18.3	19.0	17.6
100-249	7.8	19.3	19.7	18.9
50-99	10.7	12.7	12.6	12.7
25-49	18.7	11.6	11.0	12.3
10-24	29.7	8.5	7.8	9.3
5-9	18.6	2.4	2.1	2.7
2-4	8.5	0.5	0.4	0.5
0-1	1.5	0.1	--	0.1

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers. Detail may not sum to total because of rounding.

--Less than 0.05%.

*Based on number of full-time sworn personnel.

APPENDIX TABLE 5**Fifty largest state and local law enforcement agencies, by number of full-time sworn personnel, 2008**

Agency	Full-time sworn personnel
New York City (NY) Police	36,023
Chicago (IL) Police	13,354
Los Angeles (CA) Police	9,727
Los Angeles County (CA) Sheriff	9,461
California Highway Patrol	7,202
Philadelphia (PA) Police Department	6,624
Cook County (IL) Sheriff	5,655
Houston (TX) Police	5,053
New York State Police	4,847
Pennsylvania State Police	4,458
Washington (DC) Metropolitan Police	3,742
Texas Department of Public Safety	3,529
Dallas (TX) Police	3,389
Phoenix (AZ) Police	3,388
Miami-Dade (FL) Police	3,093
New Jersey State Police	3,053
Baltimore (MD) Police	2,990
Las Vegas (NV) Metropolitan Police	2,942
Nassau County (NY) Police	2,732
Suffolk County (NY) Police	2,622
Harris County (TX) Sheriff	2,558
Massachusetts State Police	2,310
Detroit (MI) Police	2,250
Boston (MA) Police	2,181
Riverside County (CA) Sheriff	2,147
Illinois State Police	2,105
San Antonio (TX) Police	2,020
Milwaukee (WI) Police	1,987
San Diego (CA) Police	1,951
San Francisco (CA) Police	1,940
Honolulu (HI) Police	1,934
Baltimore County (MD) Police	1,910
Columbus (OH) Police	1,886
Virginia State Police	1,873
North Carolina State Highway Patrol	1,827
San Bernardino County (CA) Sheriff	1,797
Orange County (CA) Sheriff - Coroner	1,794
Michigan State Police	1,732
Atlanta (GA) Police	1,719
Charlotte - Mecklenburg (NC) Police	1,672
Port Authority of New York & New Jersey Police	1,667
Jacksonville (FL) Sheriff	1,662
Broward County (FL) Sheriff	1,624
Cleveland (OH) Police	1,616
Florida Highway Patrol	1,606
Indianapolis (IN) Metropolitan Police	1,582
Prince George's County (MD) Police	1,578
Ohio State Highway Patrol	1,560
Memphis (TN) Police	1,549
Denver (CO) Police	1,525

APPENDIX TABLE 6**State and local law enforcement agencies and full-time employees, by state, 2008**

State	Number of agencies	Total personnel		Sworn personnel	
		Number	Per 100,000 residents	Number	Per 100,000 residents
U.S. Total	17,985	1,133,915	373	765,246	251
Alabama	417	18,364	393	11,631	249
Alaska	50	2,107	306	1,298	189
Arizona	141	26,112	402	14,591	224
Arkansas	367	11,165	389	6,779	236
California	509	126,538	346	79,431	217
Colorado	246	17,989	365	12,069	245
Connecticut	143	10,530	301	8,281	236
Delaware	49	3,110	355	2,131	243
District of Columbia	4	5,383	912	4,262	722
Florida	387	81,312	441	46,105	250
Georgia	628	38,926	401	26,551	274
Hawaii	7	4,097	318	3,234	251
Idaho	117	5,290	346	3,146	206
Illinois	877	52,838	411	41,277	321
Indiana	482	19,940	312	13,171	206
Iowa	392	8,896	297	5,830	195
Kansas	371	11,232	402	7,450	266
Kentucky	389	10,412	243	7,833	183
Louisiana	348	25,311	569	18,050	405
Maine	146	3,901	296	2,569	195
Maryland	142	21,267	376	16,013	283
Massachusetts	357	25,361	388	18,342	280
Michigan	571	26,395	264	19,009	190
Minnesota	448	15,458	296	9,667	185
Mississippi	342	12,408	422	7,707	262
Missouri	576	22,484	377	14,554	244
Montana	119	3,229	334	1,950	201
Nebraska	225	5,227	293	3,765	211
Nevada	76	10,097	386	6,643	254
New Hampshire	208	3,940	298	2,936	222
New Jersey	550	43,569	503	33,704	389
New Mexico	146	7,164	361	5,010	252
New York	514	95,105	489	66,472	341
North Carolina	504	35,140	380	23,442	254
North Dakota	114	1,859	290	1,324	206
Ohio	831	37,295	324	25,992	225
Oklahoma	481	13,151	361	8,639	237
Oregon	174	9,431	249	6,695	177
Pennsylvania	1,117	33,670	268	27,413	218
Rhode Island	48	3,462	329	2,828	268
South Carolina	272	16,111	358	11,674	259
South Dakota	155	2,669	332	1,636	203
Tennessee	375	25,697	412	15,976	256
Texas	1,913	96,116	395	59,219	244
Utah	136	8,237	302	4,782	175
Vermont	69	1,612	260	1,103	178
Virginia	340	29,155	374	22,848	293
Washington	260	17,602	268	11,411	174
West Virginia	233	4,411	243	3,382	186
Wisconsin	529	20,150	358	13,730	244
Wyoming	90	2,990	561	1,691	317

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

APPENDIX TABLE 7**Local police departments and full-time employees, by state, 2008**

States	Number of agencies	Total personnel		Sworn personnel	
		Number	Per 100,000 residents	Number	Per 100,000 residents
U.S. Total	12,501	593,013	195	461,063	151
Alabama	309	9,652	206	7,314	156
Alaska	42	1,262	183	793	115
Arizona	96	14,998	231	10,518	162
Arkansas	252	5,101	178	3,924	137
California	341	55,900	153	39,692	109
Colorado	165	9,221	187	6,881	139
Connecticut	120	8,094	231	6,668	190
Delaware	36	1,413	161	1,188	136
District of Columbia	1	4,647	788	3,742	634
Florida	270	31,563	171	22,506	122
Georgia	366	16,238	167	12,947	134
Hawaii	4	3,604	280	2,807	218
Idaho	71	1,952	128	1,498	98
Illinois	701	33,743	263	28,358	221
Indiana	361	9,432	148	7,881	123
Iowa	284	3,956	132	3,284	110
Kansas	230	5,400	193	4,191	150
Kentucky	243	5,571	130	4,713	110
Louisiana	250	7,824	176	6,318	142
Maine	117	2,011	152	1,592	121
Maryland	86	12,590	222	10,494	185
Massachusetts	314	16,530	253	13,703	209
Michigan	455	13,515	135	11,408	114
Minnesota	346	7,291	139	5,947	114
Mississippi	220	5,322	181	3,960	135
Missouri	430	12,766	214	9,810	165
Montana	54	1,024	106	802	83
Nebraska	123	2,603	146	2,111	118
Nevada	38	6,885	263	4,497	172
New Hampshire	187	2,941	222	2,322	176
New Jersey	476	26,801	309	21,875	252
New Mexico	89	4,143	209	2,882	145
New York	391	72,380	372	54,145	278
North Carolina	350	15,197	164	11,933	129
North Dakota	54	773	121	629	98
Ohio	678	20,755	180	16,944	147
Oklahoma	354	7,086	194	5,538	152
Oregon	129	4,848	128	3,640	96
Pennsylvania	965	21,691	173	19,122	152
Rhode Island	39	2,783	264	2,258	214
South Carolina	184	6,153	137	4,934	110
South Dakota	80	1,194	148	900	112
Tennessee	251	10,986	176	8,620	138
Texas	788	45,550	187	34,610	142
Utah	90	3,482	128	2,653	97
Vermont	50	746	120	587	95
Virginia	171	13,808	177	10,947	140
Washington	204	8,767	134	6,635	101
West Virginia	159	1,662	92	1,427	79
Wisconsin	429	10,149	180	8,171	145
Wyoming	58	1,010	190	744	140

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

APPENDIX TABLE 8**Fifty largest local police departments, by number of full-time sworn personnel, September 2008**

City/county	Full-time sworn personnel, 2008			
	Total	Percent change since 2004	Per 100,000 residents	Percent change since 2004
New York (NY)	36,023	-0.3%	432	-2.4%
Chicago (IL)	13,354	1.7	472	2.4
Los Angeles (CA)	9,727	6.9	256	6.7
Philadelphia (PA)	6,624	-3.0	430	-4.7
Houston (TX)	5,053	-0.8	226	-8.7
Washington (DC)	3,742	-1.5	634	-3.2
Dallas (TX)	3,389	15.5	265	11.4
Phoenix (AZ)	3,388	18.5	216	7.5
Miami-Dade Co. (FL)	3,093	--	268	12.0
Baltimore (MD)	2,990	-5.4	469	-4.9
Las Vegas-Clark Co. (NV)	2,942	10.0	216	0.5
Nassau Co. (NY)	2,732	6.1	256	5.5
Suffolk Co. (NY)	2,622	-2.6	194	-3.8
Detroit (MI)	2,250	-35.9	247	-35.1
Boston (MA)	2,181	11.2	343	6.1
San Antonio (TX)	2,020	-1.7	150	-9.7
Milwaukee (WI)	1,987	2.1	329	1.6
San Diego (CA)	1,951	-7.2	149	-9.4
San Francisco (CA)	1,940	-10.5	240	-14.3
Honolulu Co. (HI)	1,934	7.7	214	6.7
Baltimore Co. (MD)	1,910	6.2	242	5.0
Columbus (OH)	1,886	6.1	248	2.9
Atlanta (GA)	1,719	4.6	320	-8.7
Charlotte-Mecklenburg Co.(NC)	1,672	12.7	220	1.9
Jacksonville-Duval Co. (FL)	1,662	2.8	205	-1.5
Cleveland (OH)	1,616	3.6	372	8.8
Indianapolis-Marion Co. (IN)	1,582	-3.4	195	-5.1
Prince George's Co. (MD)	1,578	17.4	248	31.1
Memphis (TN)	1,549	-23.2	229	-22.6
Denver (CO)	1,525	8.5	257	2.2
Austin (TX)	1,515	11.2	197	1.0
Fort Worth (TX)	1,489	14.0	211	-2.5
New Orleans (LA)	1,425	-13.4	423	18.8
Kansas City (MO)	1,421	9.5	296	4.6
Fairfax Co. (VA)	1,419	4.5	144	2.2
San Jose (CA)	1,382	3.0	146	-2.2
St. Louis (MO)	1,351	-3.5	379	-5.1
Nashville-Davidson Co. (TN)	1,315	8.5	216	2.4
Newark (NJ)	1,310	0.8	472	0.5
Seattle (WA)	1,283	2.8	213	-2.6
Montgomery Co. (MD)	1,206	15.2	129	11.5
Louisville-Jefferson Co. (KY)	1,197	1.6	188	-0.6
El Paso (TX)	1,132	1.7	186	-2.7
Miami (FL)	1,104	4.4	256	-8.2
Cincinnati (OH)	1,082	3.2	325	2.8
DeKalb Co. (GA)	1,074	13.1	168	10.0
Oklahoma City (OK)	1,046	1.7	190	-2.9
Tucson (AZ)	1,032	7.4	191	2.7
Albuquerque (NM)	1,020	7.3	195	-0.3
Tampa (FL)	980	2.0	288	-3.8

--Change was -0.03%.

APPENDIX TABLE 9**Sheriffs' offices and full-time employees, by state, 2008**

States	Number of agencies	Total personnel		Sworn personnel	
		Number	Per 100,000 residents	Number	Per 100,000 residents
U.S. Total	3,063	353,461	116	182,979	60
Alabama	67	5,696	122	2,631	56
Alaska	0	0	0	0	0
Arizona	15	7,703	119	2,253	35
Arkansas	75	3,637	127	1,577	55
California	58	51,883	142	27,707	76
Colorado	62	6,615	134	3,727	76
Connecticut	0	0	0	0	0
Delaware	1	22	3	8	1
District of Columbia	0	0	0	0	0
Florida	65	41,614	226	18,167	99
Georgia	159	17,225	178	10,026	103
Hawaii	0	0	0	0	0
Idaho	44	2,753	180	1,275	83
Illinois	102	13,670	106	9,173	71
Indiana	92	7,487	117	3,184	50
Iowa	99	3,503	117	1,523	51
Kansas	104	3,900	139	2,111	75
Kentucky	120	2,152	50	1,657	39
Louisiana	65	14,484	325	9,568	215
Maine	16	1,018	77	343	26
Maryland	24	3,451	61	2,166	38
Massachusetts	11	4,937	75	1,475	23
Michigan	83	8,724	87	4,909	49
Minnesota	87	6,304	121	2,625	50
Mississippi	82	4,336	147	1,948	66
Missouri	114	4,841	81	2,873	48
Montana	55	1,515	157	712	74
Nebraska	93	1,762	99	1,024	57
Nevada	16	1,594	61	1,061	41
New Hampshire	10	244	18	127	10
New Jersey	21	5,090	59	3,908	45
New Mexico	33	1,468	74	1,122	56
New York	57	11,671	60	4,021	21
North Carolina	100	14,527	157	7,701	83
North Dakota	53	706	110	437	68
Ohio	88	11,372	99	5,748	50
Oklahoma	77	3,421	94	1,439	39
Oregon	36	3,422	90	2,306	61
Pennsylvania	65	1,946	15	1,593	13
Rhode Island	0	0	0	0	0
South Carolina	46	6,950	154	4,457	99
South Dakota	66	845	105	428	53
Tennessee	94	10,696	171	5,071	81
Texas	254	29,225	120	12,340	51
Utah	29	3,636	133	1,283	47
Vermont	14	179	29	126	20
Virginia	122	10,447	134	8,412	108
Washington	39	5,742	87	2,987	45
West Virginia	55	1,397	77	1,016	56
Wisconsin	72	8,289	147	4,163	74
Wyoming	23	1,362	256	571	107

Note: Excludes agencies employing less than one full-time officer or the equivalent in part-time officers.

APPENDIX TABLE 10**Fifty largest sheriffs' offices, by number of full-time sworn personnel, 2008**

Agency	Full-time sworn personnel, 2008		Primary duty areas of by sworn personnel			
	Total	Percent assigned to respond to calls for service	Law enforcement	Jail operations	Court operations	Other
Los Angeles County (CA) Sheriff	9,461	31%	x	x	x	
Cook County (IL) Sheriff	5,655	4	x	x	x	x
Harris County (TX) Sheriff	2,558	25	x	x	x	x
Riverside County (CA) Sheriff	2,147	72	x	x	x	x
San Bernardino County (CA) Sheriff	1,797	56	x	x	x	
Orange County (CA) Sheriff - Coroner	1,794	22	x	x	x	
Broward County (FL) Sheriff	1,624	97	x		x	
Palm Beach County (FL) Sheriff	1,447	38	x		x	
Sacramento County (CA) Sheriff	1,409	23	x	x	x	x
Orange County (FL) Sheriff	1,398	45	x		x	x
San Diego County (CA) Sheriff	1,322	43	x	x	x	
Hillsborough County (FL) Sheriff	1,223	63	x			
Wayne County (MI) Sheriff ^a	1,062	23	x	x	x	
Alameda County (CA) Sheriff	928	19	x	x	x	x
Pinellas County (FL) Sheriff	863	42	x		x	
San Francisco (CA) Sheriff	838	0		x	x	x
Jefferson Parish (LA) Sheriff	825	68	x	x	x	x
Oakland County (MI) Sheriff	796	37	x	x	x	x
Maricopa County (AZ) Sheriff ^a	766	84	x	x	x	
Ventura County (CA) Sheriff	755	55	x	x	x	x
Marion County (IN) Sheriff	740	0	x	x	x	x
King County (WA) Sheriff ^a	721	66	x		x	x
Contra Costa County (CA) Sheriff	679	31	x	x	x	
Collier County (FL) Sheriff	628	39	x		x	
Lee County (FL) Sheriff	621	54	x		x	
Polk County (FL) Sheriff	600	71	x			
Calcasieu Parish (LA) Sheriff	592	31	x	x	x	x
Jefferson County (AL) Sheriff	556	81	x	x	x	x
Pima County (AZ) Sheriff	554	67	x			x
Jefferson County (CO) Sheriff	537	30	x	x	x	x
Gwinnett County (GA) Sheriff	531	14	x	x	x	
Passaic County (NJ) Sheriff	530	21	x	x	x	
Bexar County (TX) Sheriff	526	38	x		x	
Milwaukee County (WI) Sheriff	524	19	x	x	x	
Fulton County (GA) Sheriff	516	0	x	x	x	x
Shelby County (TN) Sheriff	516	30	x		x	x
Tulare (CA) County Sheriff	513	25	x	x	x	
Kern County (CA) Sheriff	512	50	x	x	x	x
Richland County (SC) Sheriff	512	41	x	x	x	x
Orleans Parish (CA) Sheriff (Criminal)	505	9	x	x	x	x
Fairfax County (VA) Sheriff	499	0	x	x	x	x
Brevard County (FL) Sheriff	497	70	x		x	x
Johnson County (KS) Sheriff	496	16	x	x	x	x
Monmouth County (NJ) Sheriff	494	0	x	x	x	
Pasco County (FL) Sheriff	485	46	x		x	
Manatee County (FL) Sheriff	476	62	x			
Fresno County (CA) Sheriff	461	43	x		x	x
Knox County (TN) Sheriff ^a	456	58	x	x	x	x
Franklin County (OH) Sheriff	455	23	x	x	x	
El Paso County (CO) Sheriff	454	26	x	x	x	
Dane County (WI) Sheriff	454	22	x	x	x	x

^aPercent responding to calls is based on the 2004 Census of State and Local Law Enforcement Agencies.

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Office of Justice Programs
Bureau of Justice Statistics



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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. James P. Lynch is the director.

This report was written by Brian Reaves. Andrea Burch provided statistical review and verification of the report.

Catherine Bird and Jill Thomas edited the report, Barbara Quinn produced the report, and Jayne Robinson prepared the report for final printing under the supervision of Doris J. James.

July 2011, NCJ 233982

This report in PDF and in ASCII and its related statistical data and tables are available on the BJS website at: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2216>.

EXHIBIT 4

Texas Department *of* Criminal Justice



Annual Review 2017

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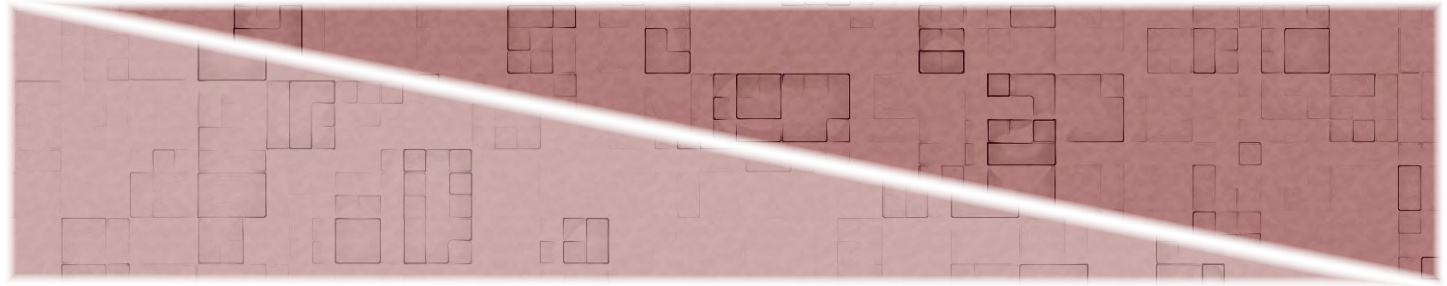
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Mission

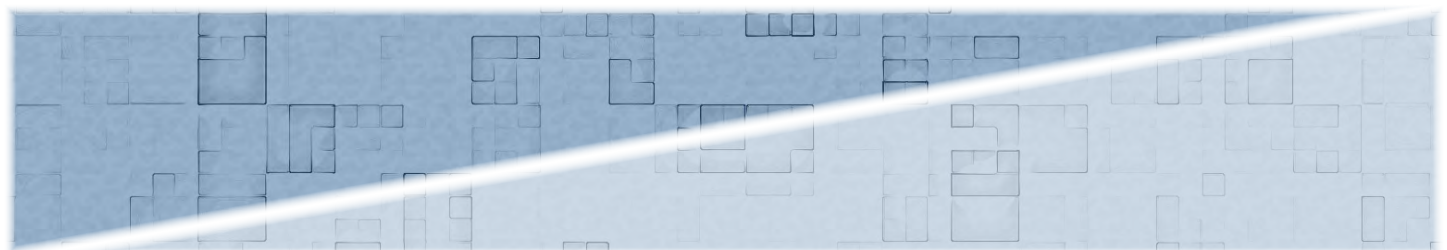
The mission of the Texas Department of Criminal Justice is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society and assist victims of crime.

Philosophy

The Department will be open, ethical and accountable to our fellow citizens and work cooperatively with other public and private entities. We will foster a quality working environment free of bias and respectful of each individual. Our programs will provide a continuum of services consistent with contemporary standards to confine, supervise and treat criminal offenders in an innovative, cost-effective and efficient manner.

Goals

- To provide diversions to traditional incarceration through the use of community supervision and other community-based programs.
- To provide for confinement, supervision, rehabilitation and reintegration of adult felons.
- To ensure that there are adequate housing and support facilities for convicted felons during confinement.
- To provide a comprehensive continuity of care system for special needs offenders through statewide collaboration and coordination.
- To provide supervision and administer the range of options and sanctions available for felons' reintegration back into society following release from confinement.
- To establish and carry out policies governing purchase and public work contracting that foster meaningful and substantive inclusion of historically underutilized businesses.



To the Honorable Governor of Texas and Members of the Texas Legislature
Austin, Texas



I am pleased to present the *Fiscal Year 2017 Annual Review* for the Texas Department of Criminal Justice (TDCJ).

During this past fiscal year, under the outstanding leadership of Executive Director Bryan Collier, employees of the TDCJ accomplished monumental tasks. TDCJ is composed of some 36 thousand individuals, many of whom have dedicated their working lives to a career in criminal justice. They take pride in and are committed to serving the State of Texas.

Fiscal year 2017 was challenging and successful in almost equal measures. At the end of fiscal year 2017, Texas was struck by Hurricane Harvey. The historic storm moved slowly over East Texas causing significant damage to communities. As the Lone Star State weathered the devastating hurricane season, the TDCJ staff remained singularly focused on security and safety. While thousands

of offenders were relocated, all staff and offenders were kept safe from harm. Our first responders knew their roles and performed them admirably. Additionally, the fiscal year was of historical significance as we witnessed the closure of five TDCJ facilities. This multi-faceted process of closing units and relocating offenders was an operational and logistical challenge requiring collaboration among multiple divisions. Our employees were well prepared and successfully met the responsibility.

The employees of the TDCJ are meeting the challenges before them. Their professionalism, hard work, and commitment continue to make a positive difference throughout Texas. The TDCJ professionals continue to earn my respect and appreciation for their service to this great State.

Sincerely,

A handwritten signature in black ink that reads "Dale Wainwright". The signature is fluid and cursive.

Hon. Dale Wainwright
Chairman, Texas Board of Criminal Justice



Dear Chairman Wainwright and Members of the Board:

During fiscal year 2017, the Texas Department of Criminal Justice achieved many successes, most notably the closure of five facilities. Diversion and treatment programs funded by the Legislature and implemented by agency staff have resulted in fewer offenders being incarcerated within the TDCJ.

With the offender population predicted to remain stable, the Legislature authorized these closures, each of which presented logistical and operational challenges. Staff from divisions and departments throughout the agency worked to successfully close two state and three privately operated facilities in FY 2017. As with all offender transfers, providing for the safety of the public, agency staff and offenders was our overriding goal, and I'm pleased to report that security was maintained and essential daily services were provided during this process. Texas continues to be a national leader in criminal justice. Over the past seven years, eight facilities have closed because of the efforts of our staff and elected officials.



Near the end of the fiscal year, Texas endured one of the state's worst natural disasters when Hurricane Harvey made landfall on the Gulf Coast. In a four-day period, parts of eastern Texas received more than 40 inches of rain, causing unprecedented flooding and displacing more than 30,000 people. Fortunately, TDCJ is well prepared to deal with emergencies, even a record-setting hurricane.

Despite the effects of this catastrophic storm, agency staff evacuated more than 6,800 TDCJ-supervised offenders to safety, with nearly 5,840 coming from five CID units and more than 970 parolees or probationers coming from halfway-houses, treatment centers or homes in the Houston and Beaumont areas. I am happy to report there was no loss of life among agency staff and offenders, and the hurricane's overall impact on the agency was minimal given the magnitude of the storm. This achievement was made possible by the dedicated effort of thousands of agency employees from across the state.

In addition to closing five facilities and dealing with the effects of Hurricane Harvey, our hard-working staff, guided by policy decisions of our state's elected officials, achieved several other important goals during the fiscal year, including the following:

- The number of offenders in administrative segregation continued to decline as more rehabilitative programming is targeted toward their needs. The administrative segregation population is now less than half of what it was ten years ago.
- Recidivism rates among released offenders continued to decline, as did revocation rates for parolees and probationers. Texas' recidivism rate remained among the lowest in the nation.
- A Female Pre-release Cognitive Program for releasing offenders was implemented to help women overcome the obstacles they encounter when returning to live in their communities. This program promotes positive change in behavior, encourages responsibility, and provides assistance to help participants lead law-abiding lives.
- The General Population Gang Renouncement and Disassociation Process (GPGRAD) was initiated so general population offenders who are members of a security threat group could renounce their gang association.
- To improve management efficiency, oversight of the agency's Agribusiness, Land and Minerals group was transferred from the Business and Finance Division to the Manufacturing and Logistics Division to create the Manufacturing, Agribusiness and Logistics Division.
- In an economic measure, the Legislature authorized the transfer of payment responsibility for Community Supervision and Corrections Departments' insurance contributions from the Texas Department of Criminal Justice to the Employees Retirement System.

Hiring and retaining correctional officers and parole officers remains an ongoing challenge. In response, recruitment efforts have increased using the agency's website, social media, media advertising and job fairs. To promote hiring of those who served in the U.S. military, TDCJ has an assigned veteran's liaison, and veterans are exempted from pre-employment testing, as are graduates from Texas colleges and universities.

In appreciation of their work, I want to thank the men and women of the Texas Department of Criminal Justice, whose hard work, perseverance and commitment to public safety made the achievements of the past fiscal year possible.

Sincerely,

Bryan Collier,
TDCJ Executive Director



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The Texas Department of Criminal Justice

The executive director of the Texas Department of Criminal Justice (TDCJ) is responsible for the day-to-day administration and operation of the agency, which consists of the following divisions: Administrative Review and Risk Management; Business and Finance; Community Justice Assistance; Correctional Institutions; Facilities; General Counsel; Health Services; Human Resources; Information Technology; Manufacturing, Agribusiness and Logistics; Private Facility Contract Monitoring/Oversight; Parole; Reentry and Integration; Rehabilitation Programs; and Victim Services.

The State Counsel for Offenders, Internal Audit, the Office of the Inspector General (OIG), and the Prison Rape Elimination Act (PREA) Ombudsman report directly to the Texas Board of Criminal Justice (TBCJ).

The Correctional Institutions Division, Community Justice Assistance Division, Parole Division, and the Private Facility Contract Monitoring/Oversight Division are involved in the everyday confinement and supervision of convicted felons. The supervision of probationers is the responsibility of local community supervision and corrections departments.



Texas Board of Criminal Justice

The Texas Board of Criminal Justice is composed of nine non-salaried members appointed by the Governor, with the advice and consent of the Senate, to serve staggered six-year terms. One member of the board is designated by the Governor to serve as chairman.

Statutory Role

Charged with governing TDCJ, the board employs the agency's executive director, and develops and implements policies that guide agency operations. Members also serve as trustees of the board overseeing the Windham School District. The offices and divisions within TDCJ that report directly to the board include the Office of the Inspector General, Internal Audit, State Counsel for Offenders and

the Prison Rape Elimination Act Ombudsman. The board meets, at a minimum, once each calendar quarter and more frequently as issues and circumstances dictate.

Board Membership

Comprising the board during the fiscal year were the Honorable Dale Wainwright of Austin, chairman; R. Terrell McCombs of San Antonio, vice-chairman; John "Eric" Gambrell of Highland Park, secretary; and members E. F. "Mano" DeAyala of Houston, Thomas Fordyce of Huntsville, Larry Miles of Amarillo, Patrick O'Daniel of Austin, Derrelynn Perryman of Arlington, and Thomas P. Wingate of Mission, Texas.

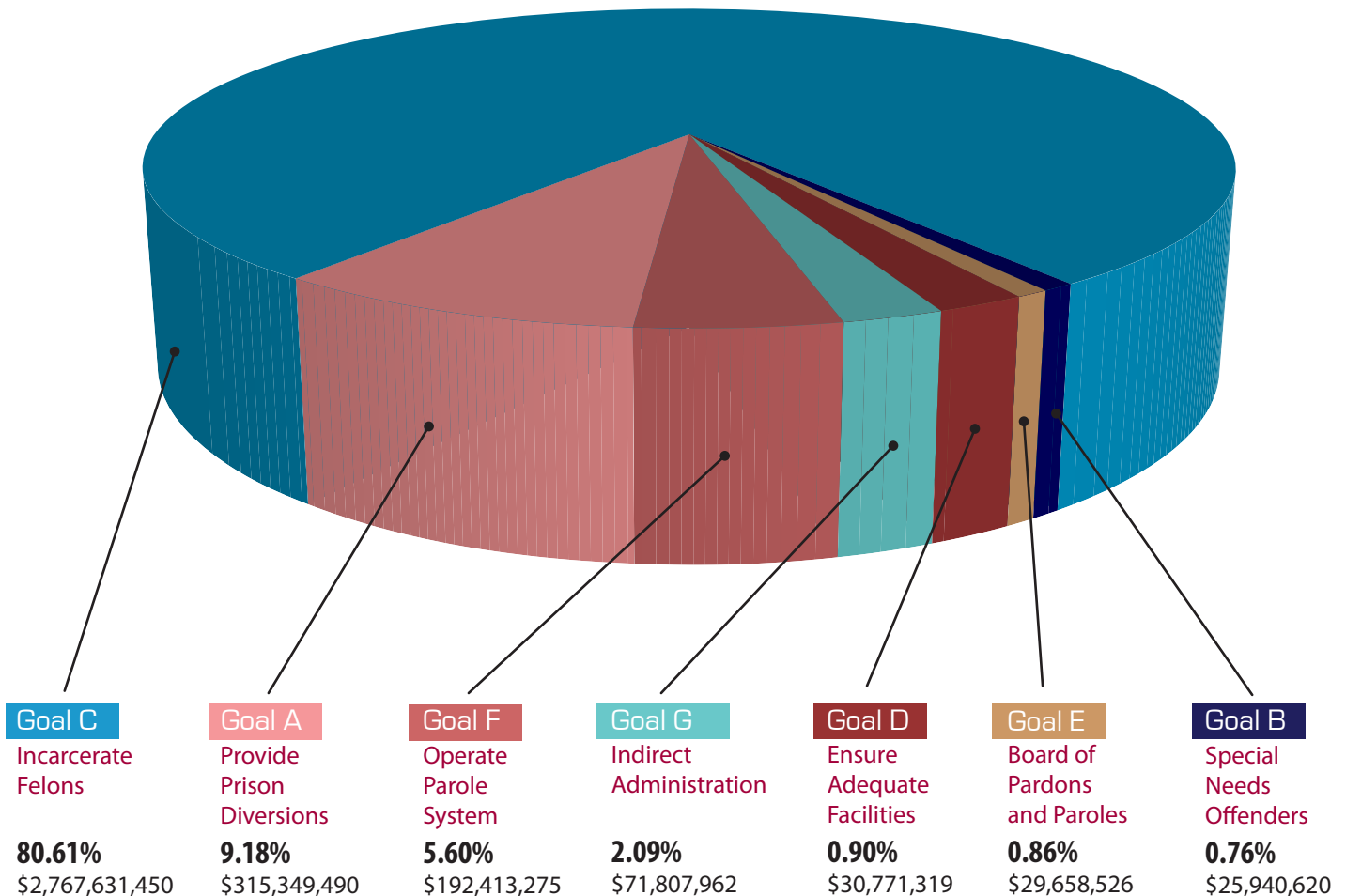


Financial Summary

Operating Budget for Fiscal Year 2017

Goal A: Provide Prison Diversions
 Goal B: Special Needs Offenders
 Goal C: Incarcerate Felons
 Goal D: Ensure Adequate Facilities

Goal E: Board of Pardons and Paroles
 Goal F: Operate Parole System
 Goal G: Indirect Administration



Total Operating Budget

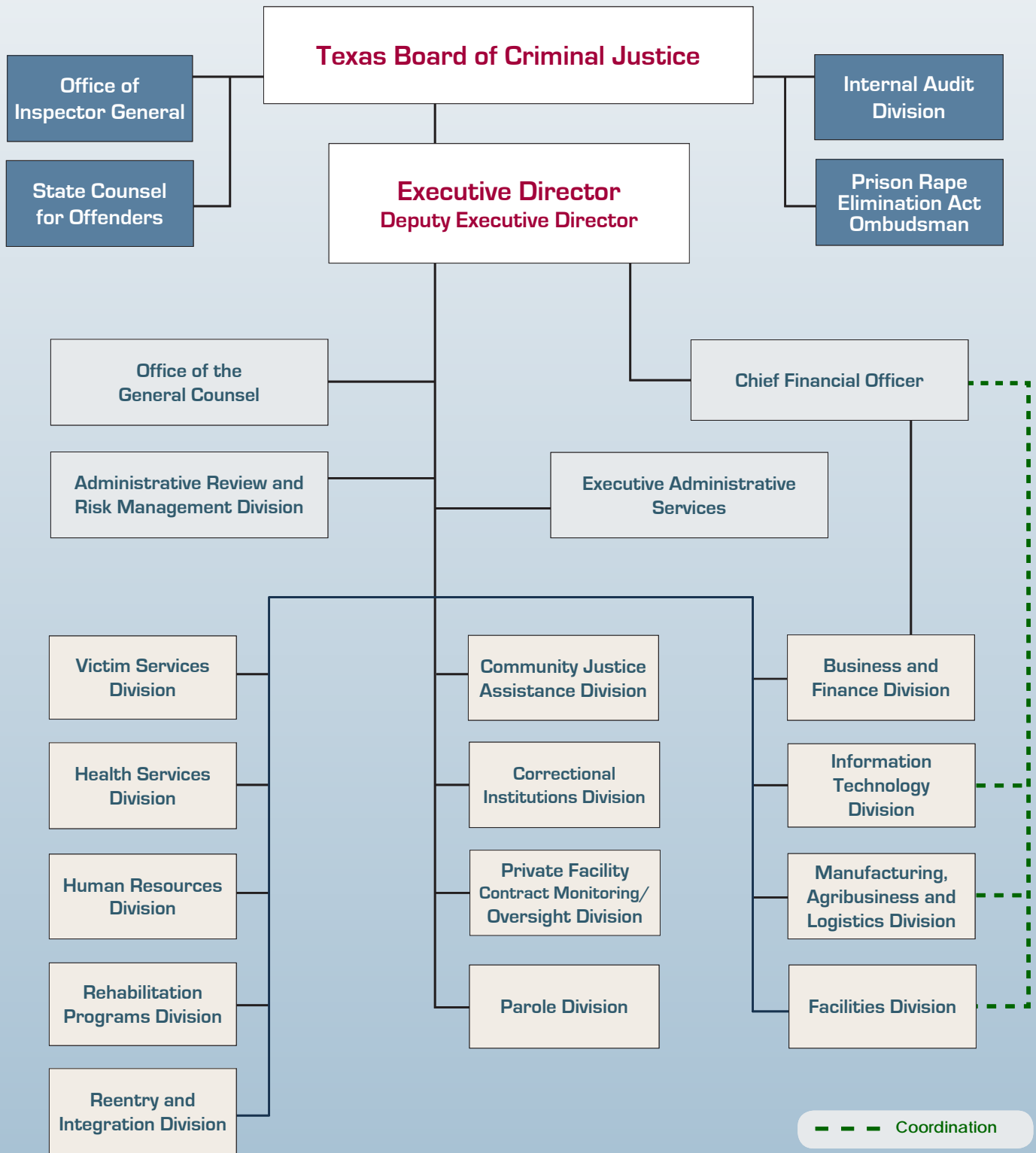
\$3,433,572,642

Source: Legislative Appropriations Request (LAR) for Fiscal Years 2018 and 2019





Texas Department of Criminal Justice Organizational Chart



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Internal Audit Division

The Internal Audit Division conducts comprehensive audits of the Texas Department of Criminal Justice's major systems and controls.

Internal Audit prepares independent analyses, assessments and recommendations concerning the adequacy and effectiveness of the agency's internal policies and procedures, as well as the quality of performance in carrying out assigned responsibilities. To accomplish its mission, Internal Audit performs financial and performance audits according to an annual audit plan approved by the Board of

Criminal Justice. Recommendations for improvements to the agency's system of internal controls are then provided and tracked.

The audit plan submitted annually to the board is developed using risk assessment techniques and may include audits of internal operations, contract providers, and community supervision and corrections departments. In addition to routine auditing, the division may participate in investigations of specific acts.

Office of the Inspector General

The Office of the Inspector General (OIG) is the primary investigative and law enforcement entity for TDCJ. OIG consists of the Administrative Support and Programs Department, the Investigations Department and the Special Operations Department. OIG investigators are commissioned peace officers assigned throughout the state. During FY 2017, OIG opened 4,871 investigations; of those, 4,791 involved criminal investigations and 80 were administrative investigations.

OIG provided critical operational support during Hurricane Harvey, procuring five high-profile vehicles to help transport employees, monitor roads and make damage assessments. OIG officers also assisted some municipalities who needed and requested security help during the storm.

Administrative Support and Programs Department

The Administrative Support and Programs Department is responsible for the OIG budget, human resources activities, records management and information technology support.

Investigations Department

The Investigations Department is dedicated to conducting prompt and thorough investigations of any criminal violations committed on property owned or leased by TDCJ, or alleged or suspected employee administrative misconduct. Through administrative and criminal investigations, OIG investigators identify criminal violations and serious staff misconduct. The department responds to requests for law enforcement services from numerous sources within and outside the agency. During FY 2017, Investigations Department cases returned 847 indictments and 611 convictions.

Special Operations Department

Special Operations Department (SOD) investigators and support personnel work closely with local, state and federal law enforcement. SOD is responsible for the coordination and management of the Fuginet, Automobile Burglary and Theft Prevention Authority, and Crime Stoppers programs, as well as the Information Systems Department.

The SOD focuses on identification, location and apprehension of violent parole violators and escapees, and also targets prison gangs and their counterparts for prosecution for organized crime activities. During FY 2017, SOD made 1,297 fugitive arrests.

OIG criminal analysts continued to receive daily reports on absconded sex offenders. During FY 2017, they conducted research on 4,842 absconded sex offenders and provided information to OIG investigators, as well as law enforcement personnel from the Office of the Attorney General and the Texas Department of Public Safety, to assist in apprehension.

Fuginet

Fuginet provides law enforcement agencies throughout the country with direct access to an extensive database of information concerning Texas parolees on active supervision, as well as persons wanted by TDCJ for violation of their parole. More than 6,000 users from municipal, county, state and federal law enforcement agencies have accessed Fuginet since its inception.

Automobile Burglary and Theft Prevention Authority

Established by the 72nd Legislature in 1991, the Texas Automobile Theft Prevention Authority was the initial



statewide effort to reduce auto theft. The 80th Legislature amended the ATPA mission to include the reduction of vehicle burglaries. The resulting agency, the Texas Automobile Burglary and Theft Prevention Authority (ABTPA), is charged with assessing and analyzing data regarding automobile burglary, theft and economic theft (burglary or theft committed for financial gain), and providing financial support to address these problems.

OIG has entered into an interagency contract with ABTPA to combat the automobile burglary and theft problem in Texas; parole violators with automobile burglary and/or automobile theft-related crimes are located and arrests are facilitated through this initiative. Also during FY 2017, OIG personnel conducted nine onsite training sessions with law enforcement agencies throughout the state, enhancing the effectiveness of Fuginet as a public safety database.

Crime Stoppers

OIG coordinates the TDCJ Crime Stoppers program by providing direct access and interaction with law enforcement investigators both inside and outside the agency. The program solicits tips through online anonymous submissions and Crime Stoppers articles submitted by law enforcement agencies and published in the monthly state prison newspaper, *The Echo*. During FY 2017, OIG received 425 tips, of which 53 were forwarded internally to OIG for action, resulting in 10 arrests and authorization for \$2,750 in reward payments to tipsters.

Information Systems Department

The Information Systems Department (ISD) serves as a vital security resource by identifying threats to individuals and facilities, and detecting other kinds of potential criminal activity. This is accomplished through proactive monitoring of the Offender Telephone System, the offender electronic messaging service (JPay), and examining information developed through the course of criminal investigations. In FY 2017 ISD issued 248 intelligence alerts to TDCJ wardens, OIG regional investigators and outside law enforcement agencies based on this information.

ISD provides analytical case support to ongoing OIG investigations and forensic examination of contraband cellular telephones, and acts as a resource for federal, state and local law enforcement agencies. Through participation with the Texas Department of Public Safety Fusion Center and its own direct efforts, ISD facilitates criminal investigations involving transnational gangs, drug cartels and other criminal organizations or individuals suspected of committing crimes. In FY 2017, ISD monitored 58,958 offender telephone calls and conducted 1,683 forensic examinations of contraband or other cellular phones in support of criminal investigations.



Prison Rape Elimination Act Ombudsman

The Prison Rape Elimination Act (PREA) Ombudsman oversees TDCJ efforts to eliminate sexual abuse and sexual harassment in the agency's correctional facilities. The primary responsibilities of the PREA Ombudsman are to monitor TDCJ policies and procedures for prevention of sexual abuse and sexual harassment to ensure compliance with federal and state laws and standards, to oversee administrative investigations of offender complaints of sexual abuse or sexual harassment, to respond to public inquiries related to sexual abuse and sexual harassment to ensure impartial resolution, and collect data regarding all allegations of sexual abuse and sexual harassment.



PREA auditor Barbara King speaks with offenders.

The PREA Ombudsman uses a variety of strategies to achieve its mission, to include reviewing agency policy to determine potential impact on prevention, detection, reporting, response and investigation of allegations of sexual abuse and sexual harassment; directing initial reports of allegations of sexual abuse and sexual harassment to the PREA Ombudsman; responding directly to public inquiries related to allegations of sexual abuse and sexual harassment in TDCJ correctional facilities, and collecting data from TDCJ and the Office of the Inspector General regarding allegations of sexual abuse and sexual harassment in correctional facilities.

In FY 2017, the PREA Ombudsman office conducted PREA presentations at the annual TDCJ Peer Education Conferences for offender peer educators, and presented information on PREA standards to the Community Justice Assistance Division's community supervision and corrections department administrators during their quarterly meeting. In addition to presentations and training, the PREA Ombudsman assisted in preparation of the agency's *Calendar Year 2016 Safe Prisons/PREA Annual Report* and response to the *Bureau of Justice Statistics Survey of Sexual Victimization*.

State Counsel for Offenders

State Counsel for Offenders (SCFO) provides quality legal advice and representation to indigent offenders incarcerated in TDCJ. This enables the agency to comply with constitutional requirements regarding access to courts and right to counsel. There are four legal sections within SCFO that cover criminal defense, civil defense, appeals and general legal assistance, including immigration. In addition to the legal sections, SCFO is supported in its efforts by investigators, legal assistants, legal secretaries and a Spanish interpreter.

Criminal Defense

The Criminal Defense section provides representation to indigent inmates indicted for felonies allegedly committed inside TDCJ units. SCFO attorneys travel to TDCJ units and courts across the state to conduct interviews, provide client consultations and make court appearances on behalf of our clients. Investigators and legal assistants work in

support of these attorneys to help ensure effective representation. Trial attorneys represent clients at all court appearances, file all necessary motions, and fully litigate all relevant issues. In FY 2017, SCFO criminal defense opened 544 new felony cases. The attorneys conducted 1,471 inmate interviews, tried four cases to juries, negotiated 353 plea agreements and obtained dismissals on 41 cases. During the same fiscal year, SCFO investigators served 209 subpoenas and conducted 1,075 interviews in support of the department's mission.

Civil Defense

The Civil Defense section represents indigent sex offenders targeted under Chapter 841 of the Health and Safety Code for civil commitment as sexually violent predators. These cases are tried in the court and county of conviction for the most recent sexually violent offense. In preparation for trial, attorneys investigate cases, depose expert witness-

es, respond to and file discovery motions, and meet with offenders. In FY 2017, 45 files were opened and 39 cases were tried to a jury with four of those trials resulting in a mistrial. Six cases were non-suited, and six cases resolved through agreed judgments.

Appellate Services

The Appellate section assists indigent offenders with appellate and habeas corpus claims. In FY 2017, the Appellate Section filed 37 criminal and civil-commitment appeals, three petitions for review to the Texas Supreme Court, and 10 applications for writ of habeas corpus to the Texas Court of Criminal Appeals.

Legal Services

The Legal Services section assists indigent offenders with pending charges and detainees, extradition and probation

revocation matters, biennial reviews, time and judgment error corrections, family law issues and other legal issues not covered by other sections. This section handled 14,057 pieces of mail consisting of time and general legal inquiries, and participated in 117 biennial reviews of offenders civilly committed under the sexually violent predator statute.

Legal Services also assists indigent offenders in immigration removal proceedings and international prisoner transfer requests. Removal proceedings are conducted at the federal building on the Goree Unit in Huntsville. Attorneys conducted 458 offender interviews and represented 26 offenders at removal hearings during FY 2017. Legal assistants who processed time calculation claims helped obtain 151,028 days of credit for offenders.



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Community Justice Assistance Division

The Community Justice Assistance Division (CJAD) administers community supervision (adult probation) in Texas. Community supervision refers to the placement of an offender under supervision for a length of time, as ordered by a court, with court-imposed rules and conditions. Community supervision applies to misdemeanor and felony offenses, and is an alternative to a jail or prison sentence.

The 123 community supervision and corrections departments (CSCD) in Texas are established by the local judicial districts they serve. CSCDs receive approximately two-thirds of their funding through CJAD. Other funds, such as court-ordered supervision and program fees, help finance a department's remaining budgetary needs. County governments provide CSCDs with office space, equipment and utilities.

CJAD is responsible for developing standards and procedures for CSCDs, including best practices treatment standards, distributing formula and grant funding appropriated by the state legislature, reviewing and evaluating each CSCD's strategic plan and budget, and conducting program and fiscal audits of CSCD operations and programs. CJAD oversees an automated tracking system that receives data from departmental caseload management systems, and provides community supervision officer and residential officer certification, as well as in-service and educational training. CJAD also provides CSCDs with technical assistance, including state insurance benefits training and support.

Strategic plans outline the programs and services offered by each CSCD. Basic CSCD duties include ensuring public safety, supervising and rehabilitating offenders sentenced to community supervision, and monitoring compliance with court-ordered conditions. CSCDs also provide a system of graduated sanctions, regular and specialized caseloads, residential confinement programs, and both residential and nonresidential treatment and correctional programs.

CJAD comprises the following sections: Field Services, Financial Management, Information Systems, Research, and Training and Staff Development.

Field Services

The Field Services section consists of three regional units that provide a range of services to CSCDs, including compliance monitoring, program review, technical assistance, as well as planning and review of strategic plans.

Financial Management

Financial Management is composed of two sections: Fiscal Management and Budget. The Fiscal Management section is responsible for maintaining CJAD's operating budget, reviewing quarterly financial reports from funding recipients, releasing money to CSCDs, tracking the status of each appropriations strategy, supporting the health insurance program for CSCD employees, and analyzing and evaluating independent financial audits conducted on the CSCDs.

The Budget section reviews and evaluates CSCDs' program budgets; processes grant award statements; reviews certification requests for facilities, utilities, and equipment; and processes waivers to CJAD financial standards. In addition, the section coordinates revisions to the *Financial and Contract Management* manuals, provides technical assistance to CSCD directors and fiscal officers, and reviews recommendations for deobligation and redistribution of Diversion Program and Treatment Alternatives to Incarceration Program funds.

Information Systems

The Information Systems section develops and analyzes computer systems and applications for the division. The section developed and maintains a statutory offender tracking system.

Research

The Research section enters and analyzes data reported by the CSCDs. In addition, section staff conducts research on the effectiveness of community corrections programs.

Training and Staff Development

The Training and Staff Development section provides ongoing training for community supervision officers and managers. Staff develops new training strategies, curricula and workshops, including workshops for Community Supervision Officer Certification.

Projects and Goals

In response to requests from the Texas trial judiciary for a comprehensive reference bench guide providing information on a broad array of Texas community supervision sentencing options, including alternatives to conventional incarceration, CJAD prepares the *Texas Progressive Interventions and Sanctions Bench Manual*.

CJAD also hosts the Virtual Skills for Effective Intervention Conference which provides, through webinars, addi-



tional instruction to community supervision officers in the use of evidence-based practices.



CSCD employees attend a training session taught by CJAD staff.

CJAD implemented strategic planning in FY 2016 to replace the previous community justice plan requirement. Strategic plans outline CSCD programs and services, strategies, goals and objectives. Along with improved community corrections data management, strategic plans allow

CSCDs to use their limited resources to support their offender population. Each CSCD submitted their first strategic plan during March 2016, with final updates due March 2017. CJAD also implemented a new grant application process for FY 2018-2019 Diversion Program and Treatment Alternatives to Incarceration Program funding.

CJAD continues working to fully implement the Texas Risk Assessment System (TRAS) across the state, with CJAD providing technical assistance and training to new Community Supervision Officers as needed. New CSO Certification training, which incorporates TRAS and assessment-driven supervision, was fully implemented in January 2017.

To maintain a high level of accuracy and proficiency, all CSCD staff members who are certified to administer the TRAS are required to recertify every three years. CJAD is currently developing an online TRAS recertification refresher course and exam, which will reacquaint the TRAS end user with the scoring rules and test their ability to accurately score an assessment. The online refresher course and exam are expected to be completed and implemented in the field in January 2018.

Correctional Institutions Division

The Correctional Institutions Division (CID) is responsible for the confinement of adult felony offenders. At the end of fiscal year 2017, 145,341 offenders were incarcerated in TDCJ facilities, consisting of 133,600 prison offenders, 7,867 state jail offenders and 3,874 substance abuse felony punishment facility offenders.

CID employed 25,977 correctional officers and ranking officers (sergeant through major), along with 4,196 staff members who worked as wardens, operational, technical and unit support staff, for a total of 30,173 employees at the end of the fiscal year. This division has three components, each led by a deputy director: Prison and Jail Operations, Management Operations and Support Operations.

In preparation for and during Hurricane Harvey, CID worked in conjunction with other agency and emergency response groups, and was responsible for successfully evacuating and housing most of the nearly 6,800 offenders, including parolees and probationers, who were moved to safe areas beyond the reach of Hurricane Harvey's most devastating effects. CID helped evacuate more than 5,800 inmates from the Ramsey, Stringfellow, Terrell, Vance and Jester III units, along with more than 970 parolees and

probationers evacuated from their homes in the community, or halfway houses and transitional treatment centers.



Harvey also brought torrential precipitation and flooding along the Neches River, causing the Beaumont-Port Arthur area to lose both primary and backup water service for several days. Before the storm, the agency had prepared for this potential problem by deploying supplies of bottled water, water tankers and porta-potties to CID units in the area, replenishing them until water service was restored and tested to ensure it was safe to drink.

During the storm, many correctional officers spent night after night helping keep CID units secure, and other correctional officers volunteered to relieve their colleagues in gray. Civilian correctional staff also helped throughout the response, keeping offices open, tracking offender movements, and even bringing home-cooked food to other staff who worked through their meal breaks.

Prison and Jail Operations

The CID deputy director for Prison and Jail Operations oversees six regional directors responsible for the management of adult correctional institutions throughout the state. This position is also responsible for the oversight of the Security Operations Department.

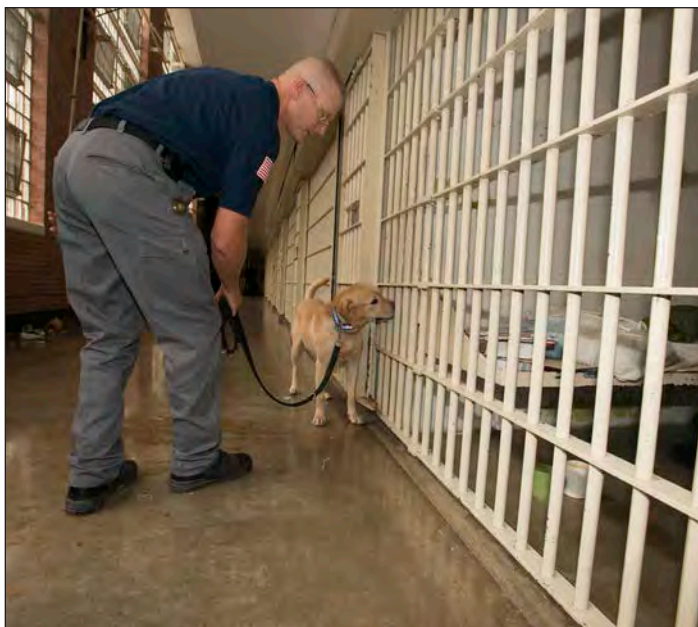
Regional Directors

Each of the six regional directors, in their respective geographical region, is responsible for a hierarchy of staff members who provide security at each state-operated adult correctional institution.

Security Operations Department

The mission of the Security Operations Department is to provide technical assistance and operational support to CID administration and correctional facilities in the areas of staffing, video surveillance, armory, research and technology, budget, security review and serious incident review, field operations and canine operations.

There are 45 units that host kennels, or a combination of kennels, throughout the agency. These kennels house pack canines and scent-specific canines trained to discover cell phones, narcotics or cadavers.



Ellis Unit Sergeant Richard Gabrunas leads 'Snoop' through the unit in search of drugs and drug paraphernalia.

Currently, 82 state-operated facilities have surveillance camera systems installed, nine of which are comprehensive video systems. Six additional facilities have contracts in place to install comprehensive video systems, and these are expected to be operational by the close of FY 2018. These video surveillance systems enhance staff and offender safety, and are used in coordination with unit-based narcotic and cell phone-locating canines, body-orifice scanning chairs, walk-through metal detectors and parcel scanners to improve security by deterring the introduction of contraband into correctional facilities and aiding in its confiscation.

Management Operations

The CID deputy director for Management Operations provides oversight of Correctional Training and Staff Development, the Fusion Center, the Plans and Operations Department, the Safe Prisons/Prison Rape Elimination Act Management Office and the Security Treat Group Management Office.

Correctional Training and Staff Development

During 2017, Correctional Training and Staff Development (CTSD) provided pre-service training to 5,835 participants. All uniformed employees were required to



Pre-service cadets prepare for graduation from the Minnie R. Houston Training Academy, which is located at the Ellis Unit in Huntsville.

successfully pass a physical agility test prior to entering the Pre-Service Training Academy. Additionally, 28,392 employees completed annual in-service training. A total of 4,375 employees received specialized training, 1,688 supervisors attended leadership development training and 4,049 employees participated in ancillary training.

The CTSD also coordinates the Crisis Response Intervention Support Program, which currently has 46 divisional and regional team leaders and more than 1,130 trained staff members who serve as CRISP representatives throughout the agency.

Through the development and presentation of quality training programs, CTSD remains committed to providing correctional staff with opportunities to develop the knowledge, understanding and skills necessary to succeed as corrections professionals.

Fusion Center

The Fusion Center serves as the hub for the collection, assessment, analysis and dissemination of agency-related intelligence information, including gang-related intelligence, to all appropriate stakeholders. Operational duties of the Fusion Center include managing the Texas Anti-Gang Information Tracking (TAGIT) system, and maintaining an information clearinghouse to collect and appropriately process relevant TDCJ information and intelligence received from the Security Treat Group Management Office, other divisions within the agency and outside law enforcement agencies. The Fusion Center helps create informative, timely reports and assessments through comprehensive information and intelligence analysis, encourages collaboration between staff and law enforcement agencies, and oversees the agency's Prison Deterrence Education Programs.

Plans and Operations Department

The Plans and Operations Department provides support to divisional leadership by coordinating all security-related policies and operational plans, and assisting with the tracking and implementation of legislation. Additionally, this department serves as the liaison to other state agencies and government officials, conducts research and evaluation, manages the CID web page and distributes information concerning emergency preparedness. Plans and Operations also audits, coordinates and trains staff in regards to community work project processes, and manages the controlled substance testing program for offenders, to include provision of training and technical support and compilation of statistical reports.

Safe Prisons/Prison Rape Elimination Act Management Office

The Safe Prisons/PREA Management Office (SPPMO) provides administrative oversight for the Safe Prisons/PREA Program. This office gives technical support regarding in-prison sexual abuse policy to unit and regional Safe Prisons/PREA managers and executive administrative staff.

The agency has a zero-tolerance policy toward all forms of sexual abuse and sexual harassment. The SPPMO provides technical support during the PREA audit process and routinely reviews policy to ensure compliance. These stan-

dards were enacted in 2012 and serve to prevent, detect and respond to instances of in-prison sexual abuse.

The Safe Prisons/PREA Program's mission is to maintain a zero-tolerance standard by acting as an information clearinghouse and providing data analysis for result-based decisions that lead to positive change and a safer prison environment. Program training provides staff with an overview of the Safe Prisons/PREA Plan, as well as information regarding how to detect, prevent and respond to sexual abuse, extortion and other acts of offender aggression. The SPPMO maintains a database of reported allegations of offender-on-offender sexual abuse to analyze and evaluate trends in times, locations and patterns.

Security Threat Group Management Office

The Security Treat Group Management Office (STGMO) monitors the activities of security threat groups or "gangs" and their members who threaten the safety and security of TDCJ units, staff and offenders. STGMO provides oversight, training and technical support for the unit-level staff who gather information on the activities of Security Threat Group (STG) members. STGMO also oversees the Fusion Center, sharing information on STGs and their members.

Support Operations

The CID deputy director for Support Operations oversees the support functions on all CID facilities. This department includes Classification and Records; Counsel Substitute; Laundry, Food and Supply; the Mail System Coordinators Panel; Offender Transportation and the Office for Disciplinary Coordination.

Classification and Records

Classification and Records oversees diverse matters pertaining to offender management and provides technical support for various administrative and unit-based departments. It includes the Classification and Records Office, Unit Classification and Count Room, Intake, and the State Classification Committee.

The Classification and Records Office (CRO) schedules, receives, processes and coordinates transport of offenders for intake, transfer and release. It also creates and maintains records on these offenders. During FY 2017, as part of the Electronic Data Management System (EDMS) process, the CRO scanned approximately 450,000 committee cards and 91,000 offender files. In an effort to create electronic offender profiles on all currently incarcerated offenders, the CRO is copying and pasting all imaged committee cards into the Classification Profile.



The Unit Classification and Count Room Department is responsible for conducting division-level audits of all unit classification operations and providing initial training and technical support to unit classification staff. In FY 2017, as part of the EDMS project, unit classification departments continued scanning the records of discharged offenders into the OnBase system in order to merge the contents of their unit file with their permanent master file.

The Intake Department is responsible for administering assessments, creating identification documents, and collecting and compiling offender information to generate offenders' initial classification records. Intake administers the Texas Risk Assessment Screening for all prison and state jail offenders in order to identify recidivism risk levels based on criminogenic factors, and creates transport cards on the date offenders are received as part of the Classification Profile System for prison and state jail offenders. Intake sociologists use the OnBase system to view permanent file material, instead of having the hard copy folder sent to the unit. The sociologists use this information to create an electronic Classification Profile for each prison and state jail offender, replacing the paper travel card which was in use since the 1960's. Intake also conducts regional processing for updating offender photos and identification cards for offenders approved to have religious beards, and works with the Federal Bureau of Investigation in an iris-scanning project at male prison reception facilities where, during the photo identification process, images of offenders' irises are captured for addition into the FBI's iris photo repository. Iris scans of enrolled offenders are used as an additional identification tool at the regional release sites.

The State Classification Committee (SCC) is responsible for making initial custody recommendations and determining appropriate units of assignment for all offenders. The SCC reviews recommendations made by unit classification committees regarding promotions in custody status, placement in various rehabilitative programs, transfers and special housing assignments due to security or safety needs. The committee works closely with the Safe Prisons/PREA Management Office to identify aggressive and vulnerable offenders.

Counsel Substitute Program

The Counsel Substitute Program secures and protects the due process rights of offenders charged with disciplinary infractions by providing trained staff to assist offenders during the disciplinary process. Counsel Substitute Program employees conduct certification training, provide technical assistance and continuous support to the disciplinary hearing officers and Counsel Substitute staff. Counsel substitute training and disciplinary hearing officer training are provided quarterly.

Laundry, Food and Supply

Laundry, Food and Supply manages food, laundry, necessities and unit supply operations. These unit-based programs are vital to the agency's mission and offenders' well-being. The department is responsible for ensuring all offenders are provided access to clean and serviceable clothing, footwear and bedding. Offenders are allowed access to appropriate personal hygiene items and units are provided with supplies needed to operate. Offenders are also provided access to wholesome and nutritious meals, to include therapeutic diets.



Ellis Unit Laundry Manger III David J. Louie oversees offenders as they fold and sort clothing in the unit's laundry facility.

This department employs approximately 1,800 laundry managers, inventory supply specialists and food service managers. Unit-based staff worked in nearly 300 laundry, food service and supply programs, and approximately 29,000 offenders worked in unit food service and laundry departments during FY 2017. In addition to on-the-job training, offenders are afforded the opportunity to participate in educational programs in food preparation through the joint efforts of Windham School District, Alvin Community College and Lee College. After completing these programs, qualified offenders have the opportunity to work in TDCJ's kitchens, as well as the San Antonio Food Bank, to further enhance their cooking skills and employment opportunities.

Mail System Coordinators Panel

The Mail System Coordinators Panel (MSCP) assists offenders in maintaining contact with family and friends and arranges offenders' access to courts and public officials. The MSCP provides procedural training and technical assistance to unit mailroom staff and conducts mailroom division-level operational review audits. This depart-

ment also generates investigations regarding threats and unidentifiable substances received in uninspected mail sent by offenders.

Offender Transportation

Offender Transportation is headquartered in Huntsville with seven hub offices located in Abilene, Amarillo, Beeville, Gatesville, Huntsville, Palestine and Rosharon. This department is responsible for unit-to-unit transfers, state and federal court appearances, medical transfers, off-site medical offender tracking, county jail transfers, out-of-state extraditions, and emergency response or evacuations during floods, hurricanes and any other catastrophic events.

Offender Transportation operates a fleet of vehicles consisting of 131 buses, 60 vans, six vans for the physically-disabled, three vans used to transport regional release offenders, two sedans and one maintenance pickup. More than 4.9 million miles were traveled and 584,099 offenders were transported during FY 2017. This department works closely with Classification and Records to ensure the timely, efficient and safe transport of offenders.

Office for Disciplinary Coordination

The Office for Disciplinary Coordination oversees and monitors facility compliance with disciplinary rules and procedures by conducting division-level operational reviews. This office also produces management statistical reports each month, coordinates revisions to disciplinary rules and procedures, and updates and coordinates the printing of the GR-106, *Disciplinary Rules and Procedures for Offenders*, and the GR-107, *Standard Offense Pleadings Handbook*. During FY 2017, the Office of Disciplinary Coordination completed 38 unit-level operational reviews. In addition, the Office for Disciplinary Coordination oversees the Office of Spanish Language Coordination, which manages the Spanish language assistance service and is responsible for coordinating and processing the testing of employees to determine their proficiency in speaking Spanish. Qualified Spanish language interpreters are designated based on test results. This office is also responsible for conducting division-level operational review audits of the Spanish language assistance service. During FY 2017, the office of Spanish Language Coordination completed 38 unit-level operational reviews, 378 pages were translated and testing was coordinated for 243 employees.



TDCJ

Correctional Institutions Division



REGION 1 FACILITIES MAP



City	Facilities
Diboll	Diboll Unit (private) Duncan Unit
Huntsville	Byrd Unit Ellis Unit Estelle Unit Goree Unit Holliday Transfer Huntsville Unit Wynne Unit
Jasper	Goodman Transfer
Livingston	Polunsky Unit
Lovelady	Eastham Unit
Midway	Ferguson Unit
Woodville	Lewis Unit

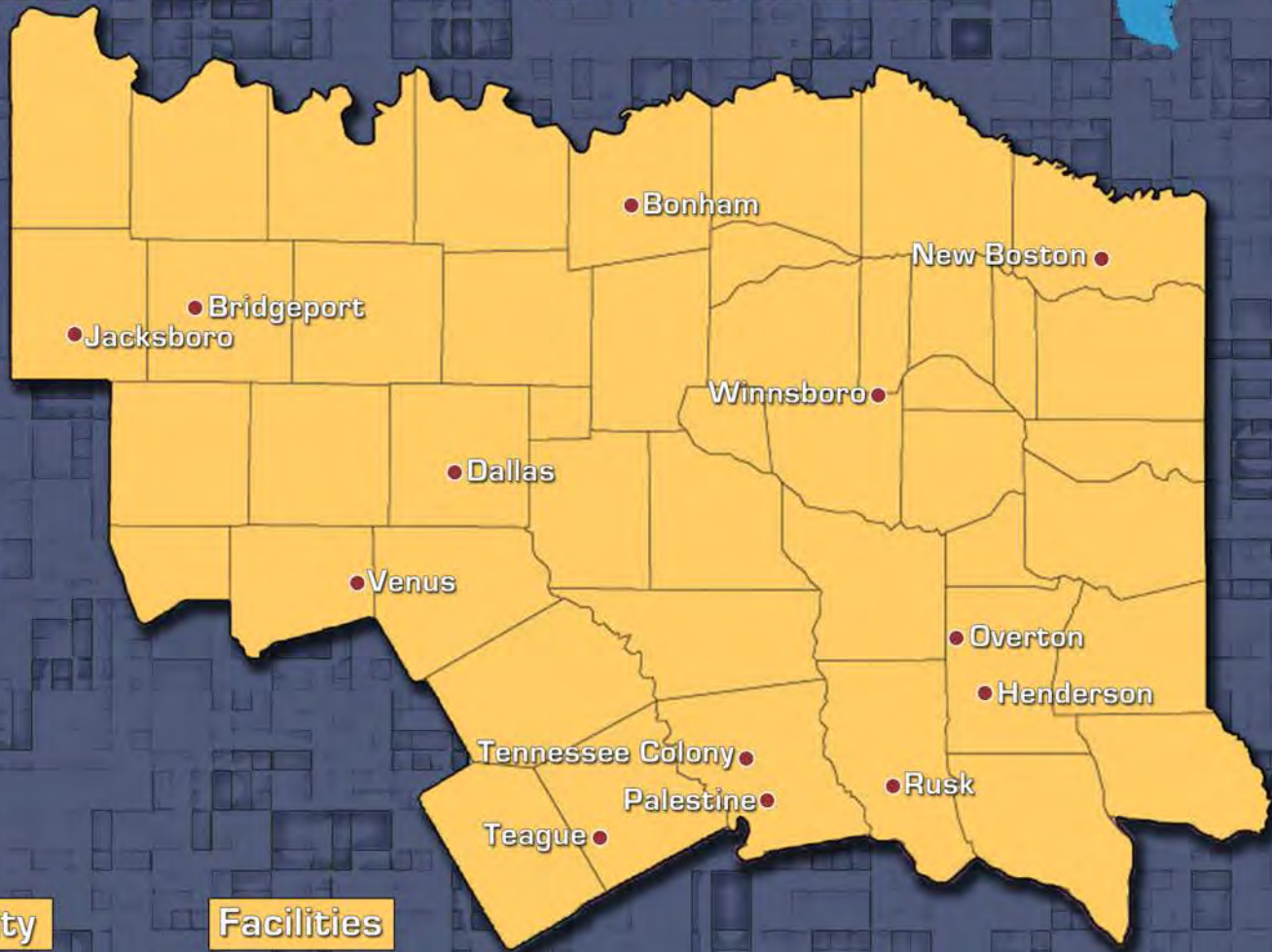


TDCJ

Correctional Institutions Division



REGION 2 FACILITIES MAP



City	Facilities
Bonham	Cole State Jail Moore Transfer
Bridgeport	Bridgeport Unit (private)
Dallas	Hutchins State Jail
Henderson	Bradshaw State Jail (private) East Texas Treatment Facility (private)
Jacksboro	Lindsey State Jail (private)
New Boston	Telford Unit
Overton	Moore Unit (private)

City	Facilities
Palestine	Beto Unit Gurney Transfer Powledge Unit
Rusk	Hodge Unit Skyview Unit
Teague	Boyd Unit
Tennessee Colony	Coffield Unit Michael Unit
Venus	Estes Unit (private)
Winnsboro	Johnston SAFPF

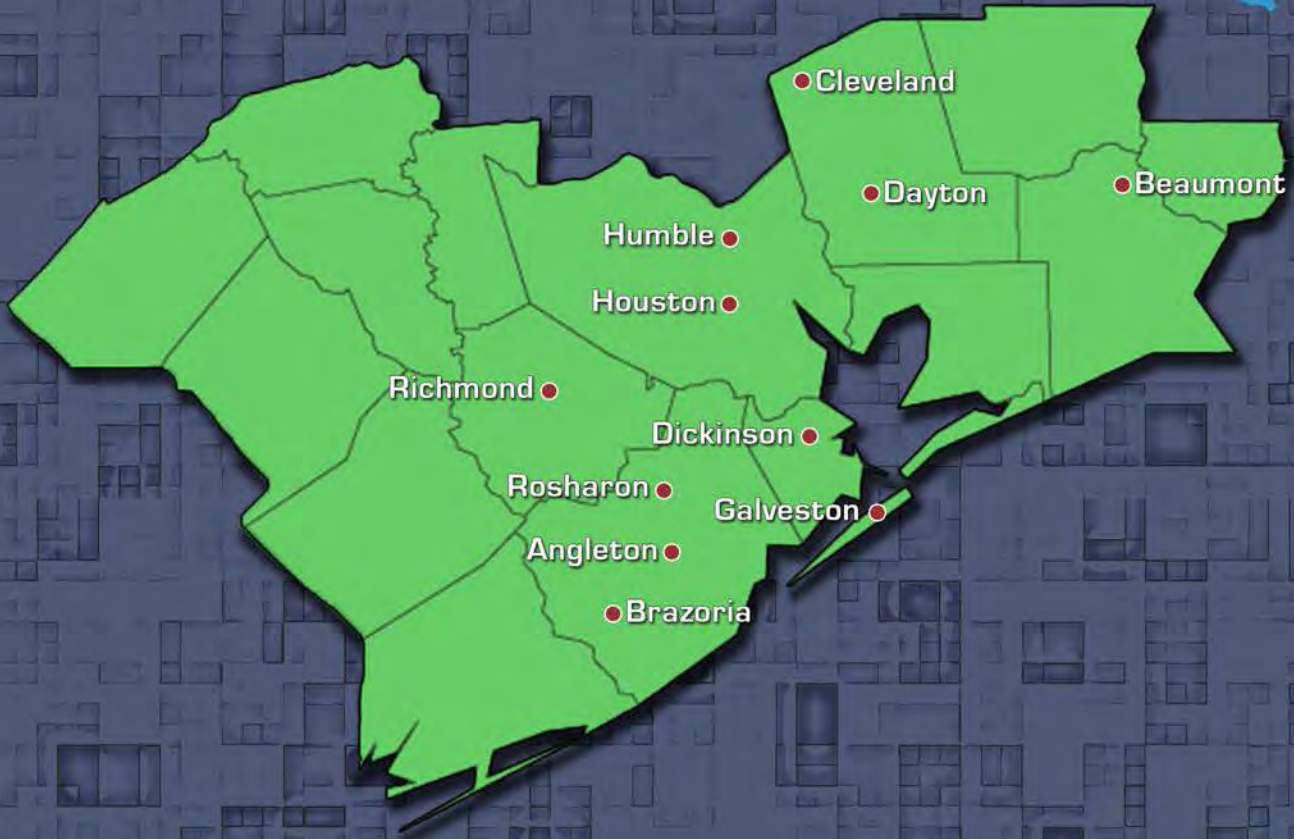


TDCJ

Correctional Institutions Division



REGION 3 FACILITIES MAP



City	Facilities
Angleton	Scott Unit
Beaumont	Gist State Jail LeBlanc Unit Stiles Unit
Brazoria	Clemens Unit
Cleveland	Cleveland Unit (private)
Dayton	Henley State Jail Hightower Unit Plane State Jail

City	Facilities
Dickinson	Young Medical Facility
Galveston	Hospital Galveston
Houston	Kegans ISF
Humble	Lychner State Jail
Richmond	Jester I SAFPF Jester III Unit Jester IV Unit Vance Unit
Rosharon	Darrington Unit Ramsey Unit Stringfellow Unit Terrell Unit

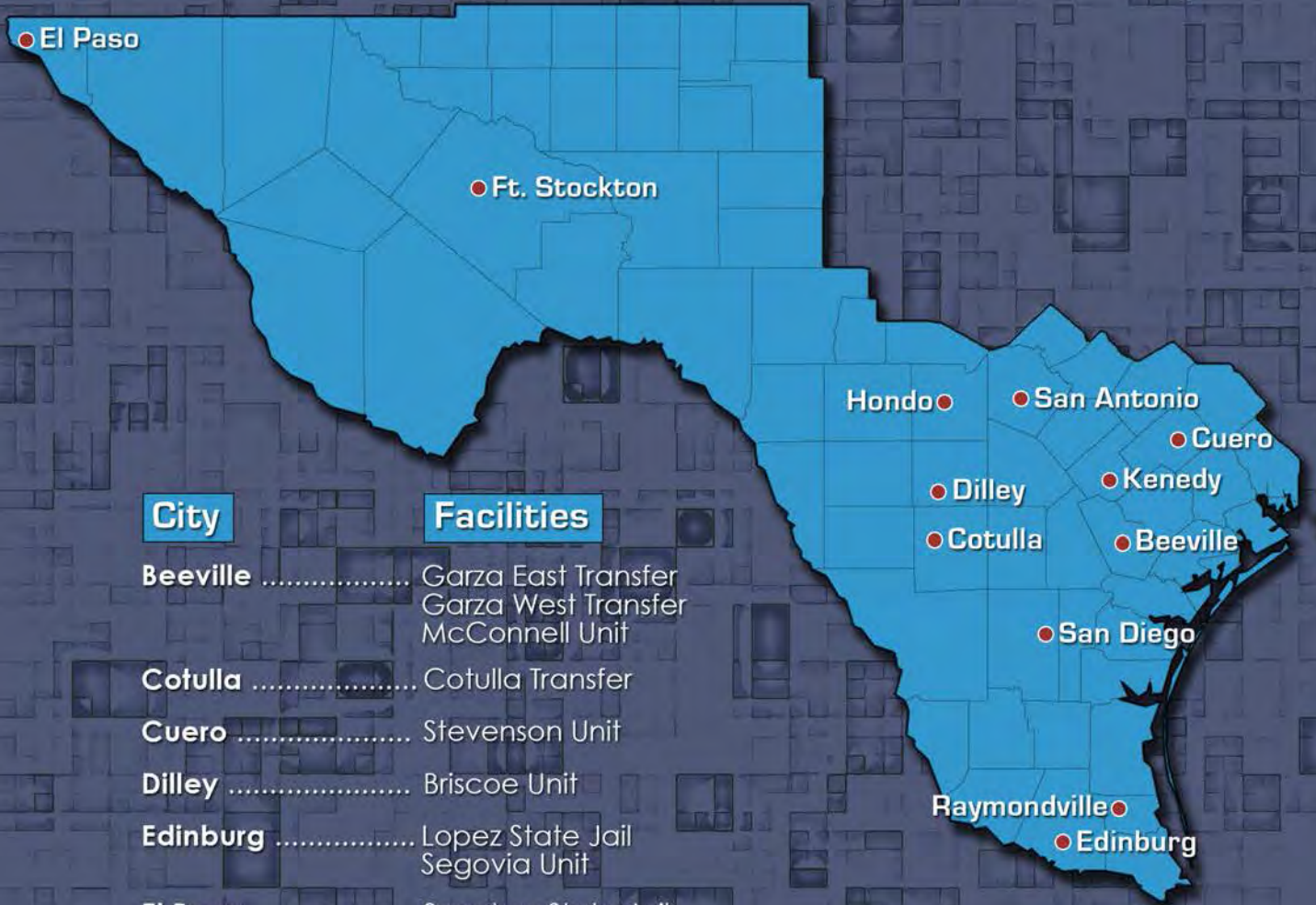


TDCJ

Correctional Institutions Division



REGION 4 FACILITIES MAP



City	Facilities
Beeville	Garza East Transfer Garza West Transfer McConnell Unit
Cotulla	Cotulla Transfer
Cuero	Stevenson Unit
Dilley	Briscoe Unit
Edinburg	Lopez State Jail Segovia Unit
El Paso	Sanchez State Jail
Ft. Stockton	Ft. Stockton Transfer Lynaugh Unit
Hondo	Ney State Jail Torres Unit
Kenedy	Connally Unit
Raymondville	Willacy County State Jail (private)
San Antonio	Dominguez State Jail
San Diego	Glossbrenner SAFP

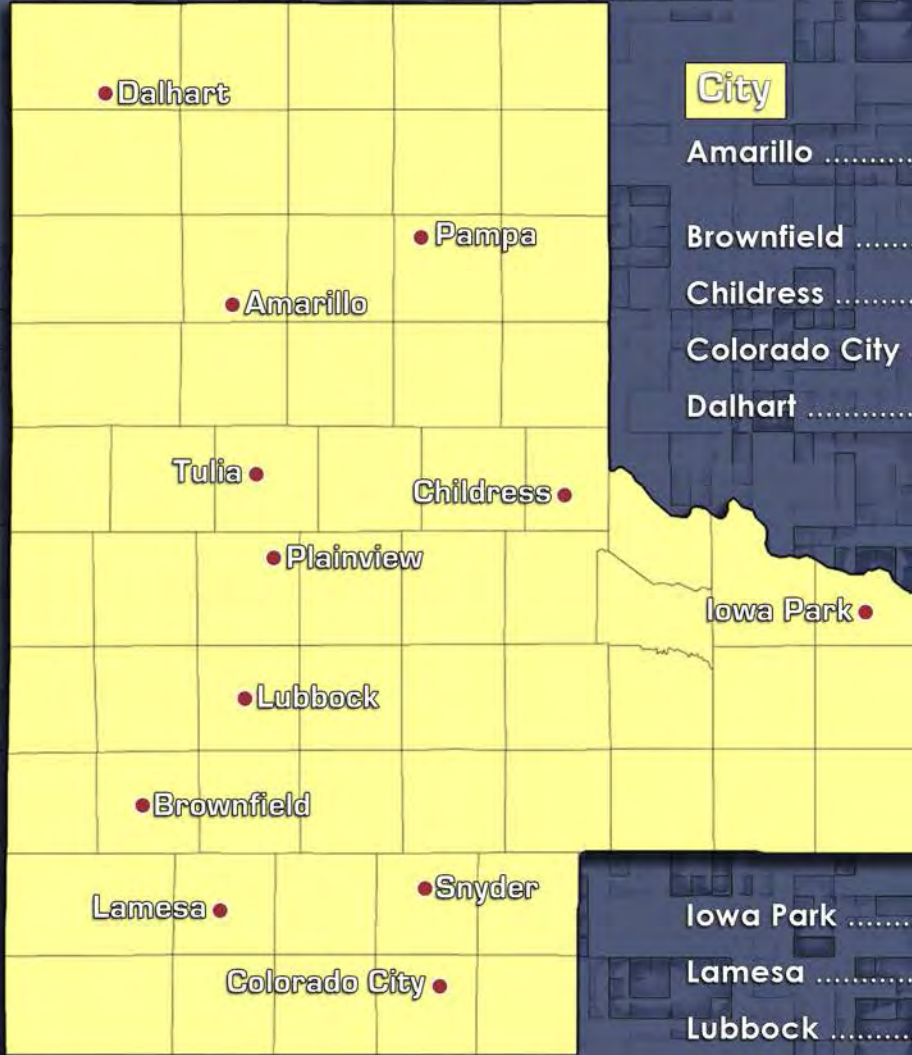


TDCJ

Correctional Institutions Division



REGION 5 FACILITIES MAP



City	Facilities
Amarillo	Clements Unit Neal Unit
Brownfield	Rudd Transfer
Childress	Roach Unit
Colorado City	Wallace Unit
Dalhart	Dalhart Unit
Iowa Park	Allred Unit
Lamesa	Smith Unit
Lubbock	Montford Unit
Pampa	Jordan/Baten Unit
Plainview	Formby State Jail Wheeler State Jail
Snyder	Daniel Unit
Tulia	Tulia Transfer

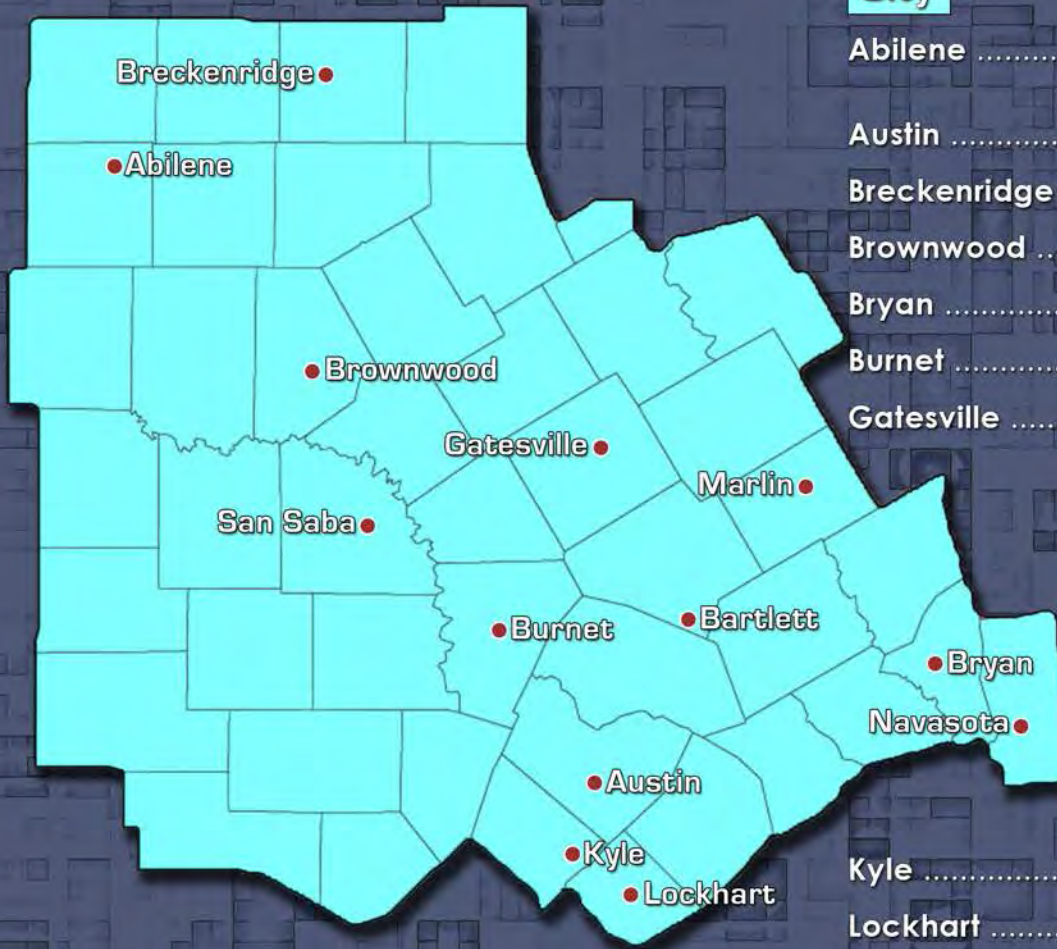


TDCJ

Correctional Institutions Division



REGION 6 FACILITIES MAP



City

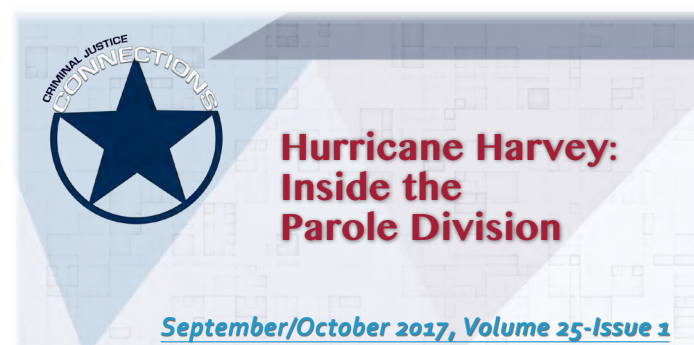
Facilities

Abilene	Middleton Transfer Robertson Unit
Austin	Travis Co. State Jail
Breckenridge	Sayle SAFPF
Brownwood	Havins Unit
Bryan	Hamilton Unit
Burnet	Halbert SAFPF
Gatesville	Crain Unit Hilltop Unit Hughes Unit Mountain View Unit Murray Unit Woodman State Jail
Kyle	Kyle Unit (private)
Lockhart	Lockhart Unit/PPT (private)
Marlin	Hobby Unit Marlin Transfer
Navasota	Luther Unit Pack Unit
San Saba	San Saba Transfer

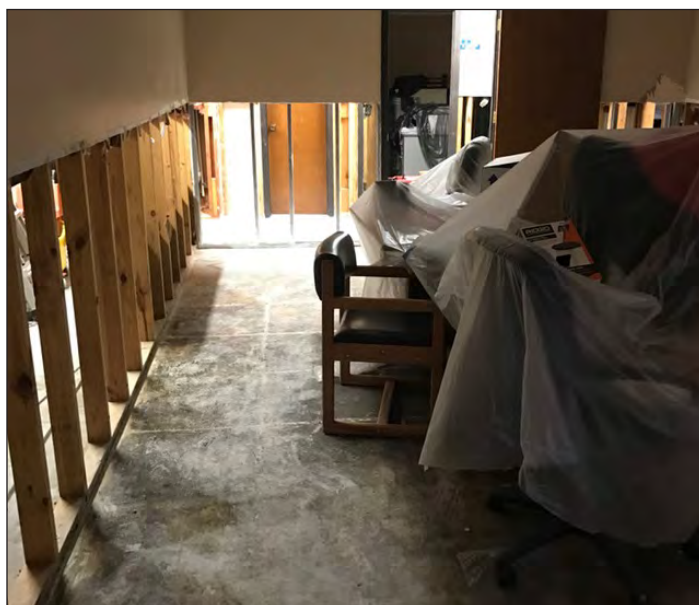


Parole Division

The Parole Division supervises offenders released from prison on parole or mandatory supervision to complete their sentences in Texas communities. The mission of the division is to provide public safety and promote positive offender change through effective supervision, programs and services.



Before every hurricane season, Parole Division staff identifies clients who may have to be evacuated during a storm, to include offenders who are monitored, sex offenders, and those residing in facilities who have no alternate housing options. Due to Hurricane Harvey, more than 970 parolees and probationers were transported and temporarily housed in safe areas around the state, including several secure CID facilities away from the coast, where they were kept separate from the unit's regular inmate population and safe from the storm's reach.



Hurricane Harvey flood damage at one of the TDCJ parole offices.

Parole staff came in from areas unaffected by the storm to help supervise clients who had been evacuated to a secure facility in a safe area. Parole worked with CID and Private Facilities to set up a protocol where the parole director,

parole deputies and CID chain-of-command were notified when an offender on supervision departed from a secure facility. Parole officers, assisted by Reentry and Integration Division staff, helped transport many offenders, so most of the agency's large transportation vehicles would be available for other uses. When possible, Parole staff coordinated with clients' family members so they could come and pick them up.

Field Operations

In FY 2017, more than 85,700 parole and mandatory supervision offenders were under active supervision by approximately 1,422 district parole officers. Offenders must report to parole officers and comply with release conditions established by the Board of Pardons and Paroles. Violations can result in increased supervision, arrest or re-incarceration. Officers also supervise offenders transferred to Texas from other states through the Interstate Compact and from the Texas Juvenile Justice Department.

Region directors in Dallas, Houston, Lubbock, San Antonio and Tyler manage 67 district parole offices across the state. Officers monitor an offender's compliance with conditions of release and Texas law, applying supervision strategies based on an assessment of each offender's risks and needs.

Interstate Compact Office

The Interstate Compact Office coordinates the transfer of supervision to a state outside an offender's state of conviction. The Interstate Compact for Adult Offender Supervision is the statutory authority for the transfer of offenders among the 53 member states and territories of the Compact. The Texas Interstate Compact Office establishes practices, policies and procedures that ensure compliance with Compact rules. In FY 2017, monthly averages of 6,817 Texas probationers and 3,112 parolees were supervised outside the state. Monthly averages of 4,654 out-of-state probationers and 2,140 out-of-state parolees were supervised in Texas.

Ombudsman

In FY 2017, the Parole Division Ombudsman responded to 10,754 inquiries from offenders' family members, parole and mandatory supervision offenders, legislative offices and the public.

Management Operations

Management Operations oversees post-release programs designed to help offenders reintegrate into society and supports parole staff training program compliance. Man-

agement Operations includes Specialized Programs, Internal Review/In-Service Training and Parole Officer Training Academy.

Specialized Programs

Specialized Programs administers and evaluates a variety of programs and services to enhance the Parole Division's ability to supervise and reintegrate offenders back into society following release.

District Reentry Centers target newly released, high-risk and high-need offenders using a comprehensive approach to promote personal responsibility and victim empathy. Programming provided through the reentry centers addresses the needs of the offender and their family, while maintaining the goal of public safety. Volunteers and community agencies assist staff in addressing anger management, cognitive restructuring and substance abuse, while also participating in Victim Impact Panel classes and pre-employment preparation. In FY 2017, a monthly average of 1,062 offenders was served.

The Serious and Violent Offender Reentry Initiative provides offenders who were housed in administrative segregation with reentry services that begin during incarceration and continue through supervision in the community. In FY 2017, 95 SVORI program offenders were released from the Correctional Institutions Division to Parole supervision.

The Special Needs Offender Program provides supervision to offenders with intellectual development disorder (IDD), mental impairments (MI), and those with terminal illnesses (TI) or physical handicaps. Averages of 99 IDD, 6,169 MI and 878 TI or physically handicapped offenders were supervised monthly. Also during FY 2017, there was a monthly average of 177 Medically Intensive Supervision (MIS) offenders, and 75 MIS offenders were released to parole supervision during the fiscal year.

The Sex Offender Program supervised a monthly average of 7,117 offenders in FY 2017. Sex offender treatment services are provided statewide through contracted vendors, with the Parole Division subsidizing treatment for indigent offenders.

The Therapeutic Community Program offers continuity of care to offenders who need substance abuse treatment. This three-phase aftercare program targets offenders who have participated in an In-Prison Therapeutic Community or Substance Abuse Felony Punishment Facility. A monthly average of 7,130 offenders received services from contracted vendors, Parole Division counselors, and specially trained parole officers during FY 2017.

The Substance Abuse Counseling Program provides relapse prevention services to offenders with substance abuse treatment needs. Level I prevention services were provided to 21,088 offenders in FY 2017. Vendors and Parole Division counselors provided Level II outpatient treatment services to an average of 1,289 offenders per month.

The Drug Testing Program utilizes instant-read screening devices to improve accountability and identify suspected drug and alcohol use. On average, 174,857 drug and alcohol tests were conducted each month in FY 2017.

Internal Review/In-Service Training

The Parole Division's In-Service Training section provides In-Service Training to parole office staff, and other training courses such as Principles of Supervision, the Unit Supervisors Course and the Parole Supervisors Course, and assists with Specialized Officer Supervision Schools.

In-Service Training is based on training needs assessments and includes, but is not limited to, topics such as best practices for motivational interviewing and the Texas Risk Assessment (TRAS) process, which includes case plan development through documentation of the client's progress and providing the client with clear and specific expectations of supervision. In-Service Training also focuses on Parole Division-specific topics such as the Hearing Process and the proper updating of the Offender Information Management System (OIMS). In FY 2017, a total of 1,627 parole employees participated in In-Service Training classes. In addition to training, performance reviews of all district parole offices were completed during the fiscal year to include the review of selected cases generated from Offender Related Incident Reports (ORI).

Parole Officer Training Academy

The Parole Officer Training Academy provides 240 hours of pre-service foundation training for new officers, and there were 282 trainees in 12 classes during FY 2017. The training academy also conducts the Parole Division's 40-hour Firearms Certification Course, and 30 staff members graduated from the firearms certification course in FY 2017. The Specialized Programs section conducts Specialized Officer Supervision Schools on a quarterly basis, offering classes on the Super-Intensive Supervision Program, electronic monitoring, as well as the Sex Offender, Therapeutic Community, District Resource Center and Special Needs Offender programs. During FY 2017, a total of 670 staff members attended these specialized classes. There were also 30 staff members who graduated from the Unit Supervisor School and five staff members who graduated from the Parole Supervisor School.



Support Operations

Support Operations consists of the Central Coordination Unit, Review and Release Processing, and the Warrants section. All provide direct support to Field Operations.

Central Coordination Unit

The Central Coordination Unit monitors detainer/deportation caseloads, verifies death notices, monitors Early Release from Supervision and Annual Report cases, reviews and monitors Super-Intensive Supervision Program cases, receives and monitors interstate transfers and arranges for placement of offenders into and out of intermediate sanction facilities (ISF) and substance abuse felony punishment facilities. In FY 2017, 8,979 offenders were placed in ISFs. The Kegans Intermediate Sanction Facility provided services to 1,790 offenders in the Substance Abuse Counseling Program, and the East Texas Treatment Facility counseled 1,126 offenders during the fiscal year. Programs and services offered in these facilities encourage offender compliance through appropriate supervision and interventions.

Review and Release Processing

Review and Release Processing (RRP) is responsible for reviewing and processing offenders for release on parole and mandatory supervision.

Department staff prepares file material for supervision purposes, reviewing and analyzing each file through the release plan approval process. Prior to issuing a release certificate, RRP staff processes requests for the imposition and withdrawal of special conditions. In FY 2017, the department issued approximately 36,400 parole/mandatory certificates.

The Huntsville Placement and Release Unit (HPRU) is responsible for the placement of offenders into contracted residential reentry centers (halfway houses) or the Temporary Housing Assistance Program when all other residential resources have been exhausted. This unit is also responsible for placement of Substance Abuse Treatment offenders into transitional treatment centers following participation in the In-Prison Therapeutic Community Program and the Substance Abuse Felony Punishment Program. HPRU placed 11,249 offenders into residential reentry centers and 4,374 offenders into transitional treatment centers, and processed 34,601 parole and mandatory releases to supervision.

The Central File Coordination Unit (CFCU) coordinates the movement and maintenance of approximately 170,000 offender case files under the Parole Division's jurisdiction. CFCU tracks and verifies restitution owed by offenders, processes fee affidavits and offender discharge certifi-

cates, responds to requests for file material, open records requests, business records affidavits, expunctions, subpoenas and correspondence. The unit also facilitates the delivery of notifications to trial officials.

Warrants Section

The Warrants Section is primarily responsible for the issuance, confirmation and withdrawal of pre-revocation warrants. In FY 2017, 39,562 warrants were issued. This section also oversees the Super-Intensive Supervision Program, which uses Global Positioning System tracking, and the Electronic Monitoring Program, which uses radio frequency equipment to monitor offenders.

The Warrants Section has two units in operation 24 hours a day. The Command Center processes violation reports submitted by parole officers and alerts from GPS/EM vendors and halfway houses.

The Texas Law Enforcement Telecommunications System Unit responds to requests for warrant information/confirmation from law enforcement and maintains wanted persons information. Additionally, these units operate an absconder tip line, which allows the public to inform officials about offenders who fail to report.

The Extradition Unit tracks Texas offenders arrested in other states and offenders returned to a TDCJ correctional institution who have not been through the revocation process. This year, 747 offenders were extradited to Texas and 135 warrants were issued for Texas offenders under Interstate Compact supervision in other states.

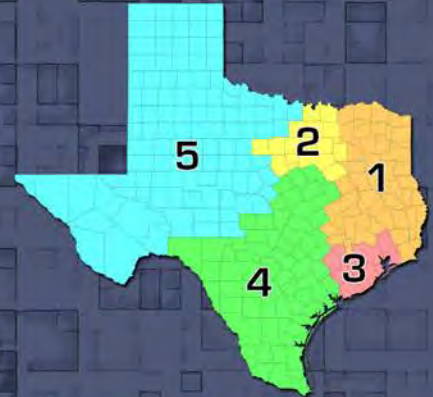
The Tracking Unit tracks offenders held in Texas county jails on pre-revocation warrants and ensures that the offender's case is disposed of within the time limits prescribed by law. This unit calculates the amount of time credited to offenders while in custody on a pre-revocation warrant.

The Super-Intensive Supervision Program imposes the highest level of supervision and offender accountability, including active and passive GPS monitoring. An average of 239 offenders were on active GPS monitoring during each month of the year, with real-time tracking in place for those at highest risk. A monthly average of 3,249 offenders was monitored on passive GPS, which downloads tracking information every six hours and immediately when alerted.

Electronic monitoring allows an officer to detect curfew and home confinement violations. Offenders at higher risk of reoffending, or who have violated release conditions, may be placed on an electronic monitor. A monthly average of 2,024 offenders was on electronic monitoring during FY 2017.



TDCJ Parole Division

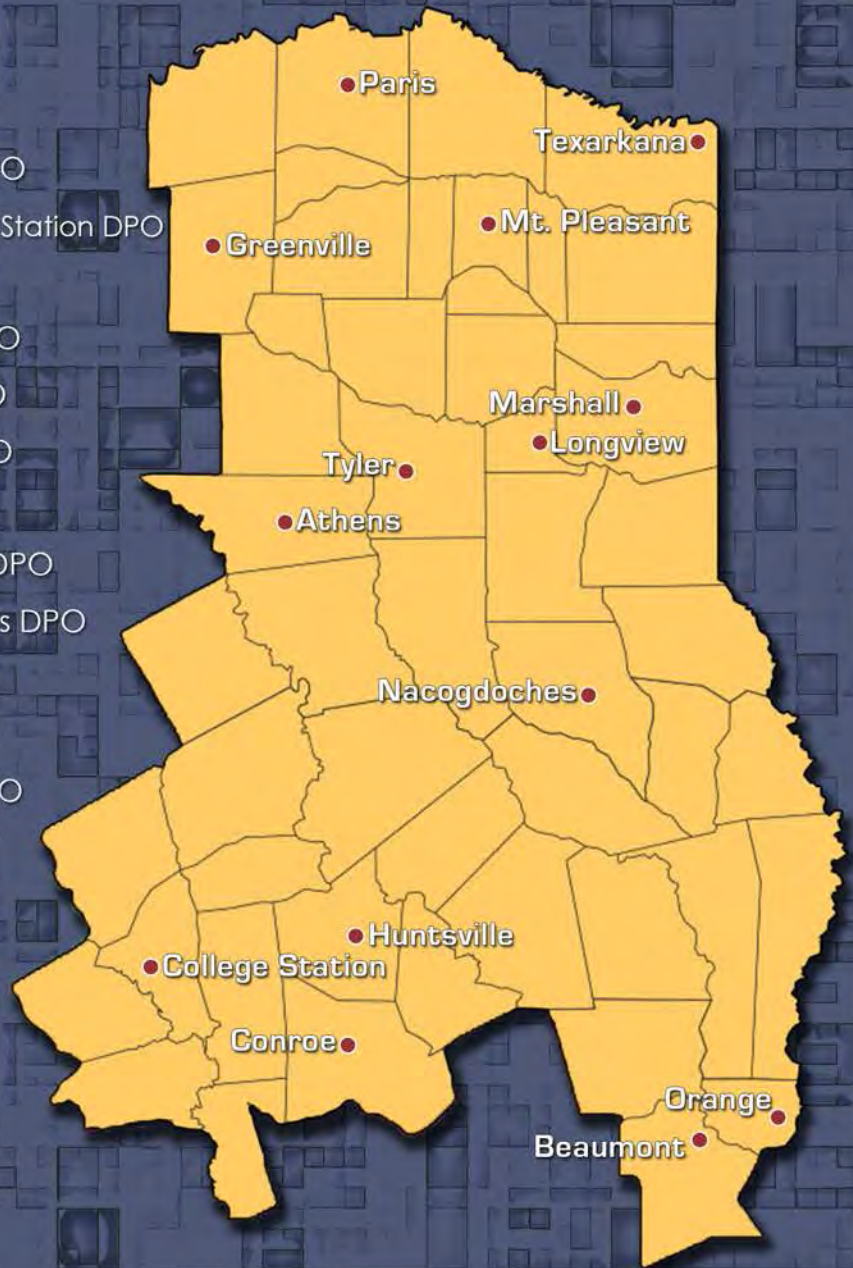


REGION 1 DISTRICT PAROLE OFFICES MAP

City

Offices

Athens	Athens DPO
Beaumont	Beaumont DPO
College Station	Bryan/College Station DPO
Conroe	Conroe DPO
Greenville	Greenville DPO
Huntsville	Huntsville DPO
Longview	Longview DPO
Marshall	Marshall DPO
Mt. Pleasant	Mt. Pleasant DPO
Nacogdoches	Nacogdoches DPO
Orange	Orange DPO
Paris	Paris DPO
Texarkana	Texarkana DPO
Tyler	Tyler DPO



TDCJ Parole Division



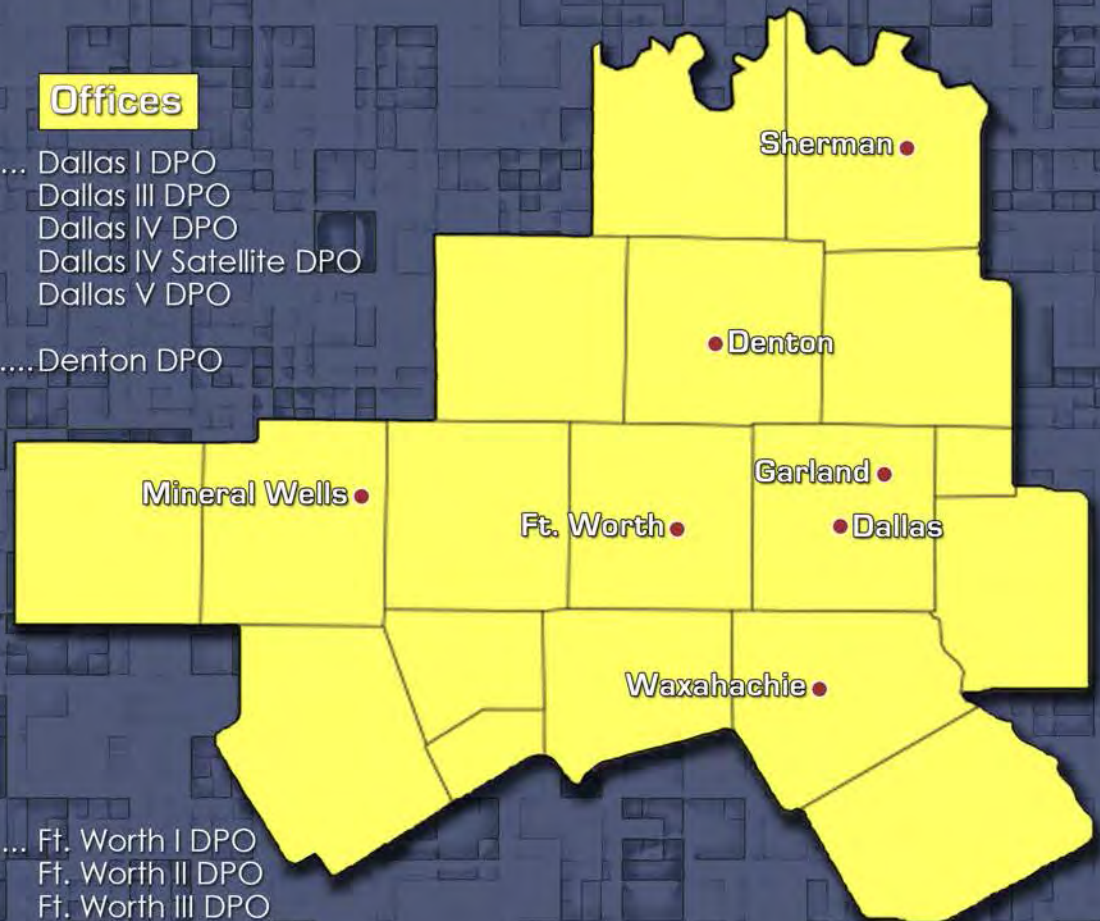
REGION 2 DISTRICT PAROLE OFFICES MAP

City

Offices

Dallas Dallas I DPO
 Dallas III DPO
 Dallas IV DPO
 Dallas IV Satellite DPO
 Dallas V DPO

Denton Denton DPO



Ft. Worth Ft. Worth I DPO
 Ft. Worth II DPO
 Ft. Worth III DPO

Garland Dallas II DPO

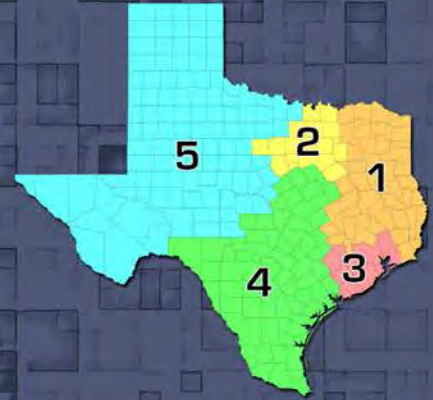
Mineral Wells Mineral Wells DPO

Sherman Sherman DPO

Waxahachie Waxahachie DPO



TDCJ Parole Division

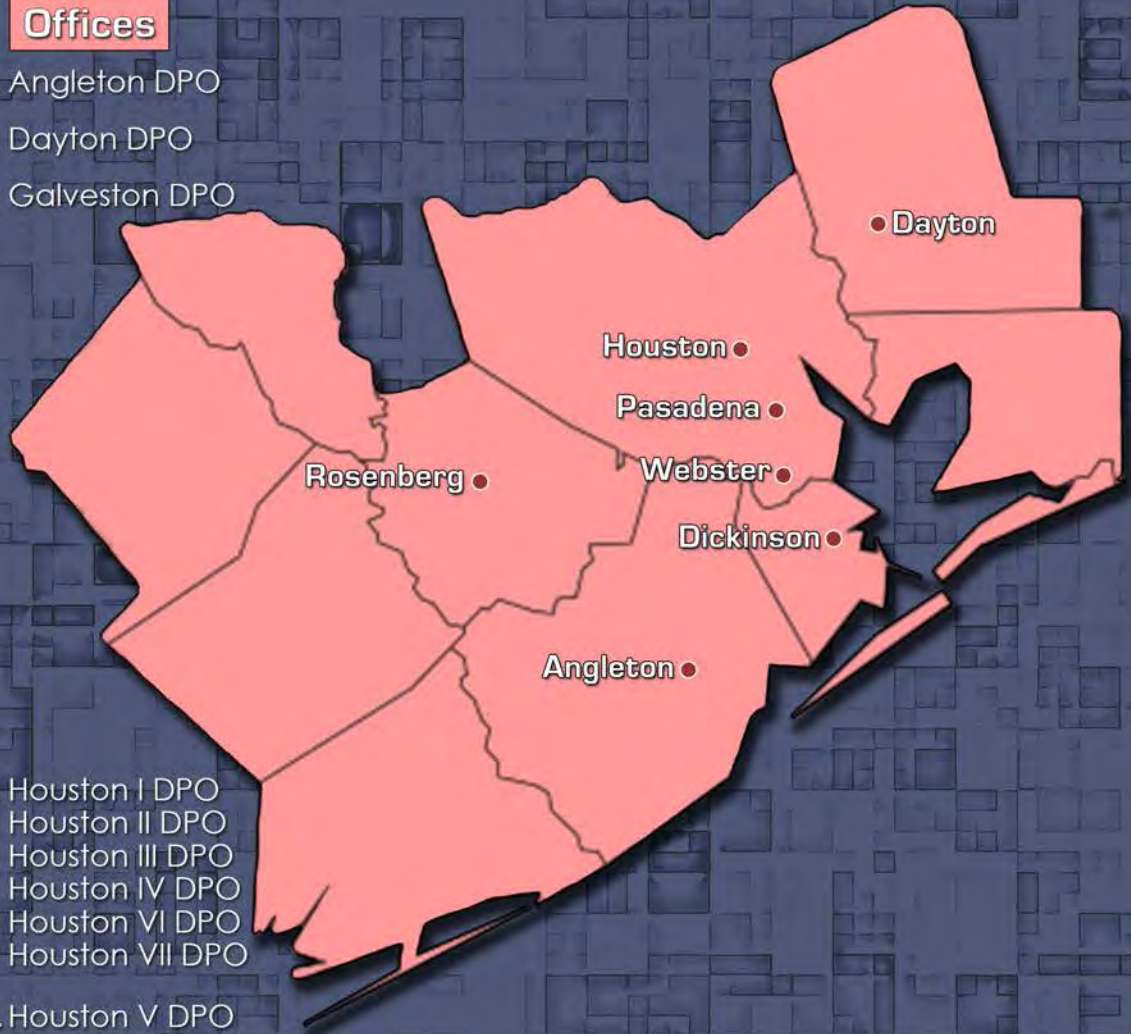


REGION 3 DISTRICT PAROLE OFFICES MAP

City

Offices

Angleton Angleton DPO
 Dayton Dayton DPO
 Dickinson Galveston DPO

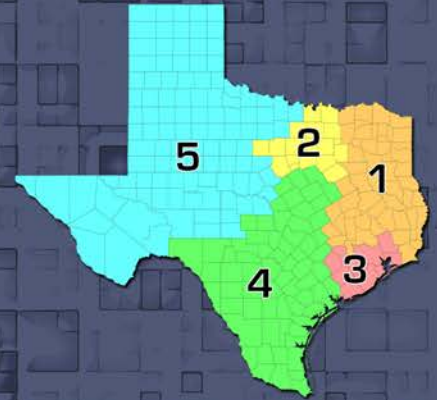


Houston Houston I DPO
 Houston II DPO
 Houston III DPO
 Houston IV DPO
 Houston VI DPO
 Houston VII DPO

Pasadena Houston V DPO
 Rosenberg Rosenberg DPO
 Webster Webster DPO

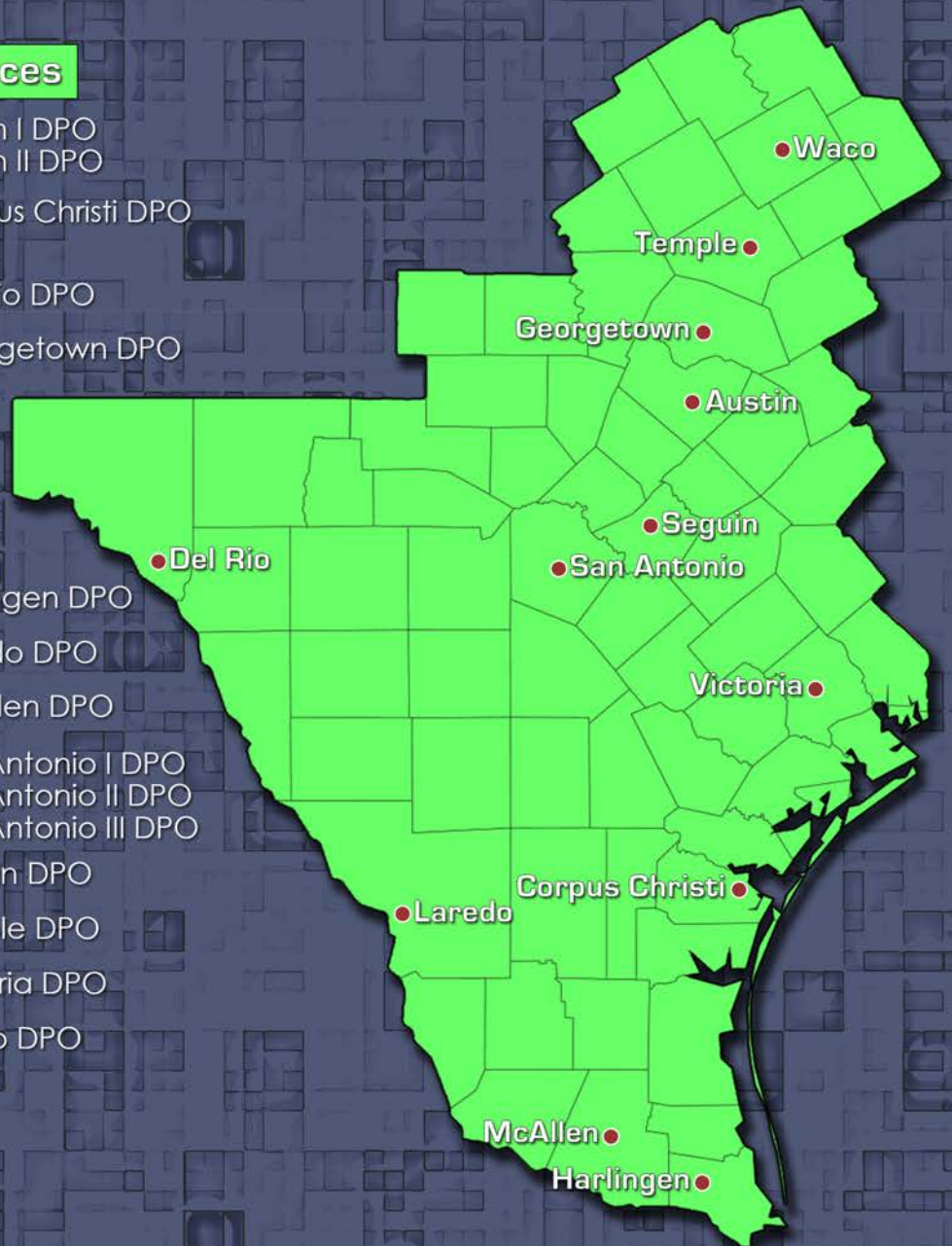


TDCJ Parole Division

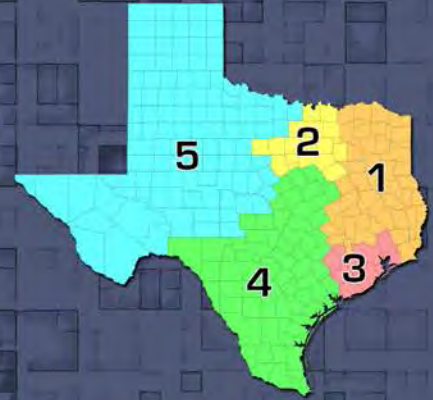


REGION 4 DISTRICT PAROLE OFFICES MAP

City	Offices
Austin	Austin I DPO Austin II DPO
Corpus Christi	Corpus Christi DPO
Del Rio	Del Rio DPO
Georgetown	Georgetown DPO
Harlingen	Harlingen DPO
Laredo	Laredo DPO
McAllen	McAllen DPO
San Antonio	San Antonio I DPO San Antonio II DPO San Antonio III DPO
Seguin	Seguin DPO
Temple	Temple DPO
Victoria	Victoria DPO
Waco	Waco DPO

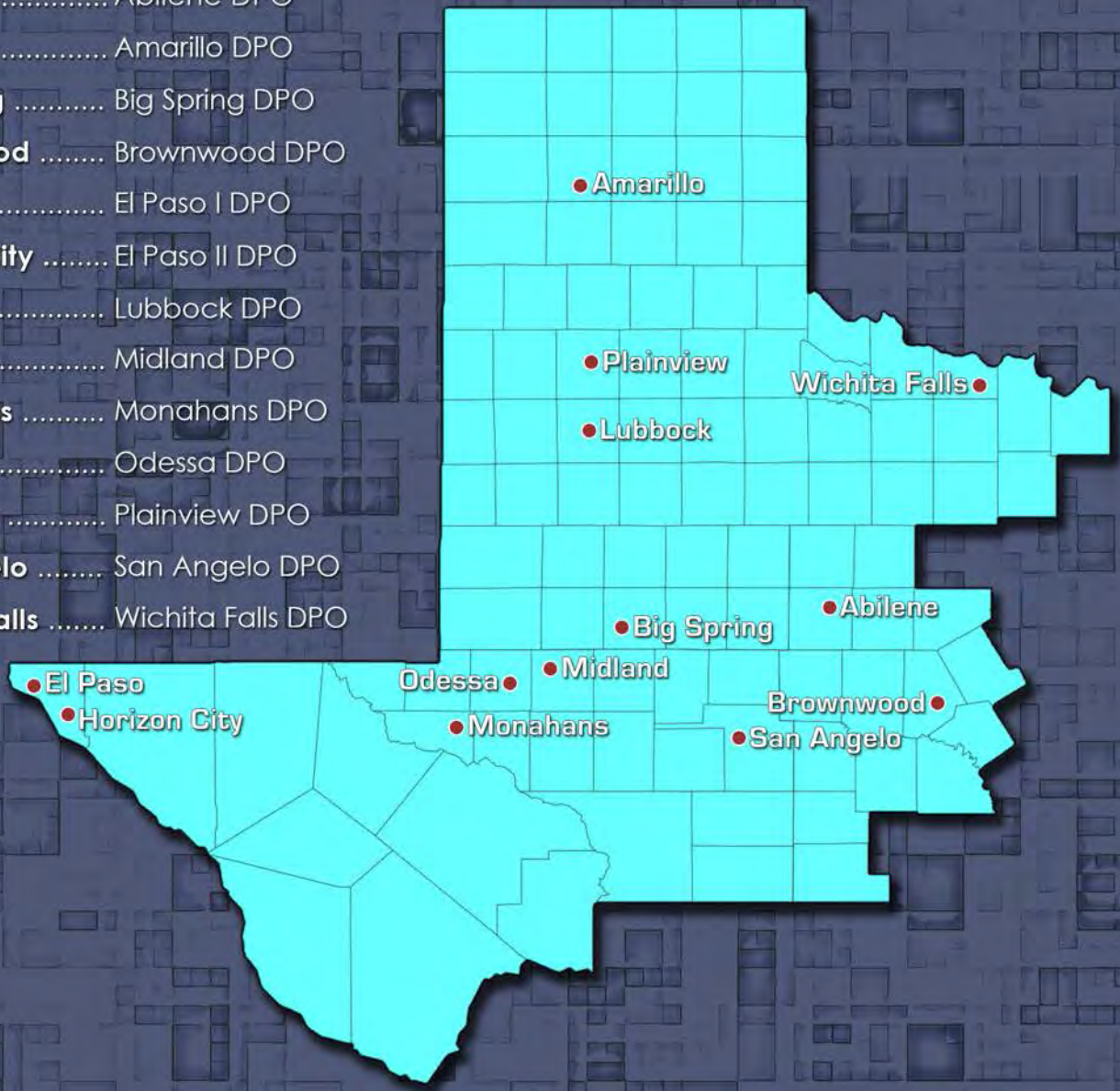


TDCJ Parole Division



REGION 5 DISTRICT PAROLE OFFICES MAP

City	Offices
Abilene	Abilene DPO
Amarillo	Amarillo DPO
Big Spring	Big Spring DPO
Brownwood	Brownwood DPO
El Paso	El Paso I DPO
Horizon City	El Paso II DPO
Lubbock	Lubbock DPO
Midland	Midland DPO
Monahans	Monahans DPO
Odessa	Odessa DPO
Plainview	Plainview DPO
San Angelo	San Angelo DPO
Wichita Falls	Wichita Falls DPO



Private Facility Contract Monitoring/Oversight Division

The Private Facility Contract Monitoring/Oversight Division (PFCMOD) is responsible for oversight and monitoring of contracts for privately operated secure facilities and community-based facilities, to include substance abuse treatment service providers. The PFCMOD protects the public by ensuring constitutionally safe-and-sound facilities through effective management, efficient monitoring and clear communication between the agency and its contracted representatives.

The PFCMOD provides contract monitoring and oversight, performs contract reviews, works with the private vendors to address any compliance issues, and works collaboratively with multiple divisions within the agency.

Contract monitoring staff members coordinate and conduct compliance reviews as well as follow-up reviews. The division responds to ombudsman and other inquiries and provides after-hours emergency contact coverage for secure and community-based facilities. The division is organized into three sections: Operations Monitoring, Programs Monitoring and Compliance Monitoring.

Operations Monitoring

Operations Monitoring is responsible for contract monitoring and oversight of privately operated secure correctional facilities. During FY 2017, regional supervisors oversaw 15 contract monitors who performed daily, onsite operational and contractual monitoring of seven correctional centers, three state jails, one work program co-located on a correctional center and one multi-use treatment facility. There were 10,934 beds at these secure correctional facilities monitored by PFCMOD during FY 2017. Operations monitoring assisted in closing the South Texas Intermediate Sanction Facility, the West Texas ISF, the Bridgeport Pre-Parole Transfer Facility and the Bartlett State Jail, while successfully transitioning the Willacy State Jail, the Bradshaw State Jail and the Lindsey State Jail to different vendors.

Programs Monitoring

The Programs Monitoring section is responsible for oversight and monitoring of contracts for community-based facilities and substance abuse treatment services. During FY 2017, regional supervisors oversaw 14 contract monitors for privately operated halfway houses and substance abuse treatment program contracts, which include in-prison treatment programs co-located on state-run or privately operated facilities, residential aftercare treatment programs and outpatient treatment programs.

In FY 2017, this section monitored contracts for eight privately operated halfway houses, 20 substance abuse residential treatment facilities, 10 privately operated substance abuse felony punishment facilities/in-prison therapeutic community programs, three facilities providing the Driving While Intoxicated (DWI) Program, four in-prison treatment programs located on four intermediate sanction facilities, and six state jail substance abuse programs co-located on state-run or privately operated facilities.

Compliance Monitoring

The Compliance Monitoring Section is responsible for contract management, quality assurance and control, Transitional Treatment Center placement for offenders in residential and substance abuse facilities, as well as training and business operations for all PFCMOD contracts. Functions include, but are not limited to, completing the divisional risk assessment on contracted vendors; conducting peer reviews, facility assessments, quality assurance reviews, quality control reviews and training; monitoring expenditures and projecting future needs; preparing contract modification and renewal documents; monitoring and verifying contractors' monthly invoices; and calculating deductions for noncompliance.

Programs

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Reentry and Integration Division

The Reentry and Integration Division (RID) works toward developing a seamless resource support system for offenders as they transition back into society. RID works with internal divisions and departments, as well as external agencies and groups to identify gaps in service delivery and promote best practices on reentry, while sharing information to help maximize efficiency.

A reentry task force composed of criminal justice, health and human services, education, regulatory, judicial and advocacy groups provides technical assistance and advice on strategies for improving local and state reentry activities. In addition, the task force establishes topic-specific working groups to address priority reentry issues such as housing, identification documents, employment, family reunification, access to treatment services and other critical supports. The division's programs include Reentry Planning and the Texas Correctional Office on Offenders with Medical or Mental Impairments.

Reentry Planning

During FY 2017, 136 RID case managers provided pre-release services and 53 case managers provided post-release services to offenders across the state. An additional 10 special needs case managers provided pre-release services to offenders with a severe and/or persistent illness at select units. Over half of the more than 65,000 offenders released annually from TDCJ are subject to no supervision requirements, but all releasing offenders are provided with referral information for assistance finding health care, social services, veteran-specific needs, substance abuse counseling and employment as well as a toll-free reentry hotline phone number that allows them to quickly and easily contact RID staff for continued post-release assistance and referrals.

Many offenders participate in a three-phase reentry program that helps prepare them for successful return to the community upon release from TDCJ supervision. Phase I helps eligible offenders acquire important identification documents such as a Social Security card, a certified birth certificate and a Texas identification card to help their reentry into society. During Phase II, Assessment and Case Planning, unit-based reentry case managers assess the offender's criminogenic needs and risk of reoffending. Phase III, Community Case Management, is available to Phase II pre-release participants or those with a moderate or high-risk assessment of reoffending, who are self-referred or referred by a parole officer. Phase III provides assistance with employment and budgeting, education, nutrition and health, life and parenting skills, medical and mental health needs, transportation support and cognitive skills.

Special needs case manager's work directly with offenders, unit medical staff, human services specialists, community resources, and the offender's family to ensure post release continuity of care planning. In addition, pre-release benefit applications are submitted for those offenders who have a severe or persistent illness to minimize delay in receiving eligible entitlements.

In fiscal year 2017, Reentry Planning provided pre-release individualized reentry planning services through the use of the Texas Risk Assessment System (TRAS) to 23,957 eligible offenders scheduled for release within six months. During this same year, the division processed and submitted applications for 38,563 Social Security cards and 43,378 certified birth certificates. As a result of verified Social Security cards and certified birth certificates, 28,442 inquiries were submitted to the Texas Department of Public Safety leading to 16,914 applications for Texas identification cards for releasing offenders. Copies of the division reentry resource directory containing more than 42,000 resources were made available for offender review in multiple locations on TDCJ correctional facilities.



Reentry and Integration Case Manager II Yolonda Williams meets with an offender on the day of his release to deliver his Social Security card and birth certificate.

Through a partnership with the Texas Veterans Commission, RID provided coordination and oversight for the Veterans Reentry Dorm program at the Travis County State Jail and identified and helped 409 eligible offenders file post-release pension reinstatement claims, as well as veteran benefit applications.

The post-release Community Reentry Program provided case management services to 8,278 clients and distributed 7,784 identification documents to post-release clients. Reentry resource information was provided to 5,548 callers via the division's toll-free hotline.

Texas Correctional Office on Offenders with Medical or Mental Impairments

The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) provides continuity of care to both juvenile and adult offenders with special needs, with additional targeted funds for case management and intensive treatment services. TCOOMMI also provides continuity of care for non-offender populations, such as defendants initially found incompetent to stand trial, mental health discharges from the Texas Juvenile Justice Department and wrongly imprisoned persons. TCOOMMI case managers coordinate with county jails and courts to find alternatives to incarceration for offenders identified with ongoing mental health issues.

A 28-member committee composed of representatives from the juvenile and adult criminal justice systems, health and human services, education providers, advocacy groups, regulatory and law enforcement entities, and the courts serves in an advisory capacity to the Board of Criminal Justice and TCOOMMI staff.

In FY 2017, through formalized agreements with local mental health authorities, TCOOMMI provided community-based behavioral health services for 26,367 offenders and medical continuity of care services to 10,914 offenders, along with case management services for 907 juvenile and 7,507 adult offenders.

Rehabilitation Programs Division

The rehabilitative and treatment programs provided to offenders by TDCJ are the result of the cooperative efforts between divisions within the state criminal justice system and other entities involved in the rehabilitative process. The Rehabilitation Programs Division (RPD) is the central administrator and manager for offender treatment program activities. The RPD is responsible for ensuring consistent quality of all treatment programs during planning and implementation, including integration and delivery of treatment programs across divisional lines.

The RPD facilitates offender programs, coordinating with other TDCJ divisions, the Windham School District, the Board of Pardons and Paroles, faith-based and community-based organizations, and volunteers to provide effective, evidence-based treatment services for offenders throughout their incarceration and post-release supervision.

Offenders in prisons and state jails are placed in appropriate programs based on needs identified by a variety of assessments, evaluations and interviews, or through a parole vote which indicates an offender may be released to parole upon successful completion of a particular program. Offenders can also volunteer to participate in programs if they meet eligibility criteria and where space and time permit.

Administrative Segregation Offender Programs

Administrative segregation offender programs are designed to help offenders previously housed in administrative segregation, sometimes referred to as “Ad Seg.” Administrative segregation refers to the non-punitive separation of an offender from general population in order to

maintain safety and security. Offenders are placed in Ad Seg if they pose a threat to others, have a Security Threat Group or “gang” affiliation, or have exhibited repeated behaviors that create a continued security risk. Ad Seg offenders often exhibit limited social and behavioral skills and are housed in individual cells where they have strictly controlled contact with other offenders.

Offenders identified as an affiliate of a Security Threat Group at the time of a new incarceration in TDCJ may elect to participate in the Administrative Segregation Diversion Program (ASDP). The ASDP is a coordinated effort of RPD, the Correctional Institutions Division and the Windham School District, and helps divert returning offenders from administrative segregation to general population housing.

The Corrective Intervention Pre-release Program is designed to reduce recidivism by preparing offenders formerly housed in administrative segregation for successful reentry into their communities. The program provides offenders with lessons on topics such as anger management, thinking errors, cultural diversity and substance abuse education, along with self-help material.

The Administrative Segregation Transition Program is designed to assist offenders processing from administrative segregation to general population custody. The process involves three phases, which includes a double-cell housing assignment and various program components targeting emotional balance, beliefs, dysfunctional thinking patterns, life and coping skills, problem solving, and building and maintaining appropriate and healthy relationships.

The Serious and Violent Offender Reentry Initiative (SVORI) provides pre-release, in-cell programming for



male offenders who were formerly housed in administrative segregation. SVORI is a coordinated partnership between RPD, CID, the Parole Division and the Board of Pardons and Paroles. The program is six to 18 months in duration and consists of one or two phases: Phase I is a seven-month in-cell cognitive-based program provided through computer-based equipment and self-help materials, using a curriculum which addresses the leading causes of recidivism; Phase II is required for offenders whose parole stipulation includes SVORI aftercare.

Baby and Mother Bonding Initiative (BAMBI) Program

This program partners RPD with the Health Services Division, CID, the University of Texas Medical Branch, Santa Maria Hostel, Inc. and local foundations to provide a bonding program in a residential setting for up to 20 new mothers. The program allows participants the opportunity to form a healthy attachment with their newborns in a secure setting. The offender receives training in child development education, life skills, infant first aid and CPR, nutrition, peer recovery, cognitive skills, anger management and family reunification. Additional programming may include substance abuse education and GED classes. Each participant works with a case manager to prepare a transition plan for herself and her infant.

Chaplaincy Services

Chaplaincy uses a holistic approach to enhance an offender's spirituality. Programs focus on the development of life-changing goals and are delivered through spiritual growth groups, mentoring and volunteer programs. TDCJ Chaplains facilitate opportunities for the incarcerated and paroled to pursue their religious beliefs and practices, and provide pastoral care and counseling services to those incarcerated in TDCJ-operated units, contracted facilities and to clients who are on parole.

Chaplaincy serves more than 338 different faith preferences and facilitates 120 faith-based dorms on 97 units. Faith-Based Dorms (FBD) are designed to offer support for offenders who desire to incorporate religious faith and practice in a group setting. The FBD offers a curriculum to assist with successful reentry into the local community and/or rehabilitation needs in order to effect improved institutional adjustment.

Civil Commitment of Sexually Violent Predators

The Texas Health and Safety Code provides for the civil commitment of sexually violent predators, with murder and capital murder based on sexually motivated conduct included as qualifying offenses. In accordance with the law,

the agency identifies and refers offenders with two or more qualifying sexual offense convictions.

TDCJ staff members present the offender information to a multidisciplinary team which determines whether the offender has been convicted of at least two qualifying offenses and whether the offender is likely to commit a sexually violent offense after release. If these criteria are met, the multidisciplinary team recommends the offender be evaluated by an expert to determine if they possess a behavioral abnormality. All offenders found to have a behavioral abnormality making them likely to reoffend in a sexually violent manner are referred to the court of conviction for their most recent sexually violent offense for possible civil commitment.

COURAGE Program for Youthful Offenders

The Correctional Institutions Division may supervise both male and female youthful offenders and assigns them to a youthful offender program until they turn 18. The length of time in the program is determined by age rather than completion of prescribed goals, and the issues presented by the population are complex and varied.

The COURAGE program is structured according to a two-track programming system. This system focuses on basic skills and values building, and incorporates an individual strategy for each offender. Track assignment and treatment planning is determined by the transition needs of the participant; that is, whether they will be released to join the general population of offenders or released from TDCJ custody. Offenders in the COURAGE program are given an individualized treatment plan designed to follow them throughout incarceration to release, parole or probation. Weekly comprehensive interdisciplinary treatment programs include education, social skills training, anger management, values development, goal setting, cognitive restructuring, substance abuse education, conflict resolution, aggression replacement and life skills.

Additional programs facilitated by COURAGE staff include the Transitional Program for offenders who are 18 years old and have "aged out" of the COURAGE program, and the Young Adult Transition Offenders Program for offenders transferring from the Texas Juvenile Justice Department and who may be up to 21 years of age.

Faith-Based Pre-Release

Prison Fellowship Ministries operates the faith-based InnerChange Pre-release Program at the Vance Unit. This program spans 18 months of the offender's incarceration and has a six-month transitional aftercare component.

Located at the Torres Unit in Hondo and the Vance Unit in Richmond, the Transformational Ministry Dormitory



is a collaborative effort with Prison Fellowship Ministries, providing a faith-based pre-release program for offenders within 12 to 20 months of release who are returning to the Dallas/Fort Worth, El Paso, Houston or San Antonio areas.



Offenders involved in the InnerChange Freedom Initiative at the Vance Unit meet with a volunteer from the Prison Entrepreneurship Program. Businessmen such as Tim Hamilton (standing) help the offenders develop a sustainable business plan to help them earn a living once released.

Faith-based dorms are located on the majority of correctional facilities and offer support and accountability, along with an intensive faith-based curriculum and mentoring program. The programming is conducted by local faith-based community volunteers whose activities are directed by the unit chaplain and unit administration.

Female Offenders

The RPD ensures that programs meet the needs of female offenders by providing rehabilitation opportunities through evidence-based, gender-responsive courses, using curricula designed specifically for incarcerated females. In addition to the many treatment and rehabilitation programs facilitated by TDCJ, there are a variety of meaningful programs and activities offered by volunteers, community groups and peer mentors.

The Plane State Jail Wraparound Program allows community resource providers to meet female offenders prior to their release. These services increase community support for the offender and help fulfill their identified needs.

Girl Scouts Beyond Bars helps re-forge and maintain the bond between girls and their incarcerated mothers. Through prison visits arranged by the Girl Scout Council, mothers and daughters join for troop meetings and traditional Girl Scout activities. Girl Scouts Beyond Bars is active at the Woodman State Jail in Gatesville and Plane State Jail in Dayton.

Truth-be-Told (TBT) offers female offenders the opportunity to honestly recount, to an attentive and respectful

audience of invited guests, the events which led them to prison. Before they can share their story with an audience, however, they must participate in an eight-week series of classes where they share their story with their peers. TBT is a unique program staffed by volunteers, and fulfills the need for gender-specific programming.

The Sisterhood of RUTH (Restoration, Unity and Transformation through the Holy Spirit) program is managed through collaboration between Prison Fellowship Ministries, RPD and the Carole Young Medical Facility. As the first long-term, Bible-based women's reentry initiative, RUTH offers academic, emotional, cultural, social and spiritual enrichment to the female offenders, as well as their families. This volunteer-provided course is based on the life and teachings of Jesus Christ.

The Women's Storybook Project is a long-term effort to connect children with their incarcerated mothers through literature. Approved volunteers visit women's prisons to record offenders as they read stories for their children. The mothers also give short messages, and the tapes and new books are then mailed to their children, allowing the child a chance to hear their mothers' voices while the mothers are away.

Female Cognitive Pre-Release Program

The Female Cognitive Pre-release Program (FCPRP) provides cognitive-behavioral programming for female offenders who are within six months of release from TDCJ. The program is designed to effectively manage offender behavior and provide opportunities for behavioral changes through faith-based and secular programming. The goal is to motivate participants to change their ways of thinking and behaving, reducing the likelihood of recidivism.



Female Cognitive Pre-release Program Case Manager Irvanette Lofton (left) presents certificates to the first graduating class of the new Female Cognitive Pre-release Program during a ceremony held at the Marlin Unit.

Didactic and therapeutic interventions are designed to impact the cognitive distortions associated with previous destructive and illegal behaviors. Therapeutic interven-

tions also address the underlying issues that perpetuate maladaptive decision-making. By identifying and addressing risk factors, the offender develops the skills needed to function successfully upon their return to society.

The program offers opportunities to practice prosocial behaviors in a controlled environment. The participant learns to identify unhealthy thoughts which lead to inappropriate activities, including promiscuity, alcohol and drug abuse, and other criminal behaviors. Topics range from substance abuse education, anger management, relationships, domestic violence awareness, criminal thinking and victim empathy. The course program was developed as a gender-responsive, trauma-informed and cognitive-behavioral curriculum.

Giving Offenders' Kids Incentive and Direction to Succeed (GO KIDS) Initiative

GO KIDS brings to the forefront the importance of preserving family ties and provides information about positive prevention and intervention services to high-risk children. Maintained by RPD, a page on the agency's website (www.tdcj.texas.gov/gokids/index.html) provides a reliable connection to valuable resources and services across Texas.

Several organizations work in collaboration with GO KIDS. These organizations - Big Brothers Big Sisters of North Texas, Amachi Texas, No More Victims, Inc., Texas Boys Ranch and KICKSTART - work directly with the children of offenders and offer mentoring, counseling and empowerment opportunities.

Offender DNA Collection

TDCJ acts in accordance with state laws that require deoxyribonucleic acid (DNA) specimens be collected from all convicted offenders incarcerated in TDCJ facilities and facilities under contract with the agency. Offender DNA specimens are collected, scientifically analyzed, preserved and recorded for the purpose of creating a forensic record. The Texas Department of Public Safety's Combined DNA Index System (CODIS) receives offender DNA for analysis and entry into the Convicted Offender Database.

Offender profile entry starts with the Local DNA Index System (LDIS) where the DNA profiles originate, and includes State DNA Index Systems (SDIS) which allow laboratories within states to share information, and the National DNA Index System (NDIS) which allows states to compare DNA information. State law prohibits public release of any DNA profiles or profile information; DNA records stored in the Convicted Offender DNA database are confidential under state law and not subject to disclosure under the public information law.

Our Roadway to Freedom

Our Roadway to Freedom is an intervention and recovery program targeting offenders with a past or current prostitution conviction or history of prostitution. Programming includes self-examination, addressing addictions and criminal thinking errors, increasing social and cognitive competencies, identifying and resolving issues related to trauma and abuse, and peer recovery.

Post-Secondary Contract Academic and Vocational Courses

Post-secondary academic programs give offenders an opportunity to develop their intellectual abilities and provide them with marketable job skills so they can re-enter society as successful, productive citizens. Career and technical training also address the agency's need for qualified offender workers.

Post-secondary programs are provided through contracts with colleges and universities that serve the area where the units are located. Offenders wishing to participate in these post-secondary programs must meet the criteria for admission of each college or university. TDCJ has criteria that must also be met, and offenders must receive security and classification clearance before entry into the programs.

Rehabilitation Tier Tracking and Placement

The Board of Pardons and Paroles has a number of rehabilitation tier voting options. These votes specify that an offender must successfully complete a rehabilitation program and comply with all elements of the individualized treatment plan prior to release on parole. RPD Tier Tracking and Placement staff members track offenders from the time of the board vote to ensure they are eligible for and transferred to the designated program at the appropriate time.

Risk Assessment Review Committee

TDCJ is required by law to establish a Risk Assessment Review Committee composed of at least seven members. These members are selected by their respective agencies and departments. The committee, to the extent feasible, must include at least one member with experience in law enforcement, one member with experience working with juvenile sex offenders, one member with experience as a sex offender treatment provider, one member with experience working with victims of sex offenses, the executive director of the Council on Sex Offender Treatment (CSOT), and one licensed sex offender treatment provider selected by the executive director of CSOT. The committee functions in an oversight capacity to ensure that persons using the risk assessment tools are properly trained. It also mon-



itors the use of the risk assessments and revises or replaces them as needed.

Sex Offender Risk Assessment

State law requires all registered sex offenders to be assigned a risk level indicating likelihood of re-offense. The risk level is reported as part of the sex offender registration information recorded by the Texas Department of Public Safety and governs community notification. The risk level may be used when determining the appropriate sex offending treatment regimen. Offenders are required to register with DPS based on a current or a prior sex offense. TDCJ utilizes the Static-99R and the Dynamic Risk Assessment which consists of multiple tools (Hare Psychopathy Checklist-Revised, the Level of Service Inventory-Revised and the Static-99R), as appropriate, to designate the re-offense risk level as low, moderate or high.

Sex Offender Civil Commitment Treatment Program

The Sex Offender Civil Commitment Treatment Program is an 18-month pre-release treatment for offenders that have been civil-committed as sexually violent predators under Health and Safety Code, Chapter 841, and who have not yet released since commitment. Programs provide education and therapy as well as continuity of care for transition upon release to the Texas Civil Commitment Center.

Sex Offender Rehabilitation Programs

All three of the following sex offender rehabilitation programs are designed to reduce the rate of re-offense and move the participant toward a more pro-social lifestyle by addressing offenders' risks and needs.

Sex Offender Education Program

The Sex Offender Education Program (SOEP) is a four-month program designed to assist sex offenders who have been assessed to pose a low risk of sexual re-offense. The SOEP employs a cognitive intervention model utilizing psycho-educational classes. The format of SOEP is didactic, and provides offenders the information and knowledge necessary to change their thought patterns. The structured lesson plans for the classes include topics such as cognitive restructuring, Who Am I and Why Am I in Treatment?, Identifying Feelings, Life Story, introduction to the deviant offense cycle and relapse prevention, needs and issues, healthy sexuality, interpersonal relationships, empathy, stress management and assertiveness training, advanced relapse prevention and moral reasoning. Priority placement is given to offenders with an FI-4R vote from the Board of Pardons and Paroles (BPP).

Sex Offender Treatment Program-9

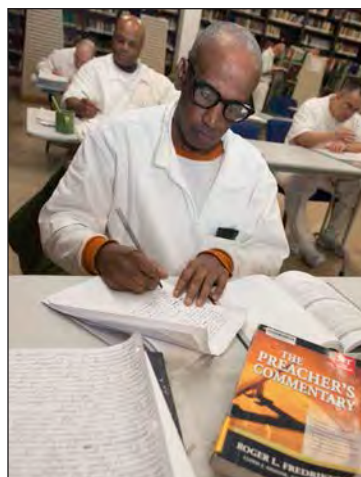
The nine-month Sex Offender Treatment Program (SOTP-9) is designed to assist sex offenders who have been assessed to pose a moderate risk of sexual re-offense. SOTP-9 employs a cognitive-behavioral model and includes four months of psycho-educational classes, as well as five months of group therapy, and individual therapy throughout. The group and individual therapy of SOTP-9 is designed to facilitate acceptance of responsibility, acknowledgment of deviant patterns, and development of needed interventions to correct patterns and resolve underlying issues. Priority placement is given to offenders with an FI-9R vote from the BPP.

Sex Offender Treatment Program-18

The 18-month Sex Offender Treatment Program (SOTP-18) is designed to assist sex offenders assessed to pose a high risk of sexual re-offense. SOTP-18 employs a cognitive-behavioral model and includes four months of psycho-educational classes, 14 months of group therapy, and individual therapy throughout. Additionally, the SOTP-18 involves living in a therapeutic community with daily community activities. The enhanced intensity of the TC and additional group assignments are focused on enhancing victim empathy among offenders assessed to be of higher risk and greater need. Priority placement is given to offenders with an FI-18R vote from the BPP.

Southwestern Baptist Theological Seminary

This educational opportunity is the result of a collaboration between TDCJ and Southwestern Baptist Theological Seminary. Offenders who graduate will receive a four-year, fully accredited Bachelor of Science in Biblical Studies degree. The curriculum focuses on equipping men for ministry in such a way that they will be able to assist in teaching, preaching and ministering to the TDCJ offender population. Upon graduation, the offender will spend the remaining years of his sentence in ministry service within TDCJ to encourage the moral rehabilitation of other offenders.



Offenders seeking a bachelor's degree from the Southwestern Baptist Theological Seminary Program at the Darrington Unit spent their spring break studying. Although they had no formal classes scheduled, they met in the library and computer lab to prepare for upcoming classes.

Substance Abuse Treatment Programs

Substance Abuse Felony Punishment Facilities (SAFPF) and In-Prison Therapeutic Communities (IPTC) provide services to qualified offenders identified as needing substance abuse treatment. Offenders are sentenced to a SAFPF by a judge as a condition of community supervision in lieu of prison or state jail, or voted in by the Board of Pardons and Paroles as a modification of parole. Offenders are voted into the IPTC program by the Board of Pardons and Paroles as a condition of release.

Both SAFPF and IPTC provide six months of in-prison treatment programming followed by up to three months of residential aftercare in a transitional treatment center (TTC), along with six to nine months of outpatient aftercare and up to 12 months of support groups and follow-up supervision. As an alternative to residential aftercare in a TTC, offenders who meet strict eligibility criteria may be released to an approved home plan, reporting to a contracted facility for the same number of treatment hours as received by offenders in a TTC. A nine-month in-prison program is provided for special needs offenders who have a mental health and/or medical diagnosis.

The Pre-release Substance Abuse Program (PRSAP) and Pre-release Therapeutic Community (PRTC) Program are intensive six-month programs based on the principles of a therapeutic community. They are intended for incarcerated offenders with serious risk related to substance abuse, chemical dependency or criminal ideology. Offenders are placed in the program based on a vote by the Board of Pardons and Paroles. The PRTC is a coordinated effort between RPD, Windham School District and the Parole Division.



Offenders enrolled in the In-Prison Driving While Intoxicated Recovery Program received their graduation certificates during a ceremony held at the Hamilton Unit in Bryan.

The In-Prison Driving While Intoxicated Recovery Program uses a six-month multimodal curriculum with an aftercare component and treatment activities, to include group and individual therapy. This DWI Recovery Program uses a specialized, gender-specific curriculum and is a partnership between TDCJ, the Texas Department of State Health Services and a contracted vendor.

The State Jail Substance Abuse Program uses multimodal instruction designed to meet the needs of the diverse characteristics of the state jail population. Eligible offenders are placed in one of two tiers, either 60-90 days or 90-120 days, based on an Addiction Severity Index assessment and their criminal history.

Volunteer Coordination Committee

The Volunteer Coordination Committee was established in 1994 to enhance the utilization of volunteers within the agency. The VCC consists of representatives from the following agency divisions and groups: Correctional Institutions, Health Services, Human Resources, Office of General Counsel, Private Facilities Contract Monitoring/Oversight, Reentry and Integration, Parole, Rehabilitation Programs, Victim Services and the Windham School District. At the close of FY 2017, there were 23,288 approved volunteers serving TDCJ.

Volunteer Services

The Volunteer Services Department manages the recruitment, training and oversight of volunteers for TDCJ. This department's mission is to recognize, encourage and support the valuable contributions of religious groups, businesses, community service and treatment-related providers, and other volunteer groups working to help TDCJ offenders. Through the efforts of volunteers, offenders are given the opportunity to learn healthy life skills, gain an education, acquire vocational training and develop good work habits while abstaining from drug abuse and criminal activity, in order to secure gainful employment and successfully and responsibly reintegrate into the community.

Volunteers offer diverse programs in family living, behavior modification, life skills, education, vocational training, employment and substance abuse prevention. Each of these programs helps rehabilitate offenders so they can successfully transition back into society and keep recidivism rates low.

Victim Services Division

The mission of the Texas Department of Criminal Justice Victim Services Division (VSD) is to provide a central mechanism for crime victims to participate in the criminal justice system.

Victim Notification Section

Victim Notification System

The Victim Notification System (VNS) uses a confidential database to provide registrants (crime victims, surviving family members, witnesses who testified at trial and concerned citizens) notifications regarding an offender's status. VNS registrants have the option of electing to receive notifications via letter, email or both. The VNS provides more than 80 points of notification regarding several phases of an offender's incarceration and supervision, including the parole review process. Since each case is unique and the points of notification are typically driven by the status of the offender, registrants may not receive each type of notification.

Most notifications are automatically generated, while others are created by VSD staff. Individuals are added to the notification system upon their request, either from their completed Victim Impact Statement or by contacting the division directly. At the end of FY 2017, there were 192,775 individuals registered on the system, with 6,214 registrants added throughout the fiscal year. During FY 2017, the division processed 167,971 pieces of correspondence, which included notifications sent, parole protest materials received, Victim Impact Statements and other victim-related letters or emails sent or received.

Since 2014, the VSD has offered text notifications to statutory victims of offenders who are on parole supervision. Statutory victims can register to receive text notifications when a warrant is issued, a warrant is withdrawn or an arrest is made of an offender who is on parole supervision. Text notifications are time-sensitive and are generated 24 hours a day, seven days a week. At the end of FY 2017, 1,137 text notifications had been sent to statutory victims.

Toll-free Information Hotline (800-848-4284)

From 8 a.m. to 5 p.m. Monday through Friday, VSD representatives answer calls and provide information about offender status, the criminal justice system, meetings with the Board of Pardons and Paroles (BPP), and other services available to victims. The Notification Section received grant funding in FY 2017 to upgrade the hotline phone system with more efficient call routing, and call volume and wait time data acquisition. In FY 2017, there were 11,259 hotline calls received.

Automated Telephone Services

In addition to the VNS services, the VSD offers automated telephone services through the Victim Information and Notification Everyday (VINE) system. Victim Notification System registrants can call 877-894-8463 and enter their personal identification number to obtain limited offender information 24 hours a day, in English or Spanish. If requested, registrants can receive an automated telephone call when an offender is being processed for release. In FY 2017, there were 5,342 calls received by the automated telephone system and 1,809 automated calls made to VNS registrants when the offender was being processed for release.

Case File Management

Victim Services Division analysts serve as liaisons for victims, surviving family members and witnesses who testified at trial. Assistance is provided to victims who request explanations of sentencing, the parole process, and imposition of special conditions on an offender's parole supervision or clarification of victims' rights. There were 155 transmittals processed to the BPP in FY 2017 requesting that the BPP reconsider a favorable vote for release or to have special conditions of release imposed.

Texas Crime Victim Clearinghouse

The Texas Crime Victim Clearinghouse (TxCVC) provides technical assistance, information and referrals to victims, victim service professionals, law enforcement and criminal justice professionals. Every odd-numbered year, the TxCVC updates the Victim Impact Statement upon adjournment of the Texas Legislature. The Victim Impact Statement is available online in English and Spanish. The TxCVC provides training, including webinars, to victim assistance and criminal justice professionals on topics such as crime victims' rights and services, the role of a victim advocate, victim sensitivity, and survivor-centered safety planning. During FY 2017, 1,833 law enforcement, criminal justice and victim services professionals attended 70 training sessions. Informational brochures and a web-based quarterly newsletter, *The Victim's Informer*, are produced by TxCVC and are available online or by contacting the TxCVC.

Regional Victim Services Coordinators

Four Regional Victim Services Coordinator positions are strategically placed across the state to provide an array of services to victims in their regions, including assistance with crime victims' compensation, court accompaniment, registering on the VNS and VINE systems, crisis intervention, completing the Victim Impact Statement and victim



advocacy. In FY 2017 the total number of new victims served was 2,421. Regional Victim Services Coordinators also provide training and community education presentations, staff information booths and serve on regional coalitions to help increase awareness of the division's services and crime victims' rights.

Texas Victim Assistance Training Academy

The TxCVC hosted its first three-and-a-half day, in-person Texas Victim Assistance Training Academy in March 2017. The Academy is designed for victim advocates and criminal justice professionals who routinely work with crime victims and have less than three years' experience in the field. The focus of the training was on foundational skills such as knowledge of the victims' experience, needs, and rights from the moment of victimization through the investigation, pre-indictment, prosecution, trial, and the post-conviction phases. Additional topics included ethics, crime victims' rights, influence of cultural factors and resiliency.

Victim Impact Statement: County Observation Study

As part of its legislative mandate, the TDCJ VSD TxCVC collects Victim Impact Statement (VIS) statistics from all Texas counties in accordance with state law. The TxCVC developed the Victim Impact Statement: County Observation Study with the goal of improving the rate of VISs that are received by the TDCJ. The TxCVC identified counties with high rates of success in processing VISs and conducted interviews in those counties to determine the practices that contributed to their success. The published findings in the study indicate that key elements of success include following a written set of policies and procedures that are kept current, networking and collaboration with other county personnel who handle the VIS form, and participating in training.

Texas Victim Assistance Training (TVAT) Online

TVAT Online is a web-based statewide foundational victim assistance training program focused on victim-centered service delivery and professional development, designed

to complement other victim services initiatives and help new victim services professionals acquire baseline professional skills and competence. To address the needs of victim services and criminal justice professionals, the TVAT Online calendar allows individuals to view, search and submit training opportunities ranging from foundational to advanced victim services and criminal justice topics. During FY 2017, 1,458 individuals completed TVAT Online.

Viewing Executions

The VSD arranges for victims' families to view executions if they choose. Upon request, as many as five relatives plus a spiritual advisor can witness the execution. Witnesses may also include law enforcement personnel and trial officials. Victim witnesses are prepared for and accompanied to the execution by the VSD staff. Victims may bring support persons who will not view the execution, but will provide support to those victim witnesses. Staff also provides follow-up support and referrals as needed. During FY 2017, at least one VSD staff member attended five executions, providing support to 17 victim witnesses and eight victim supporters.

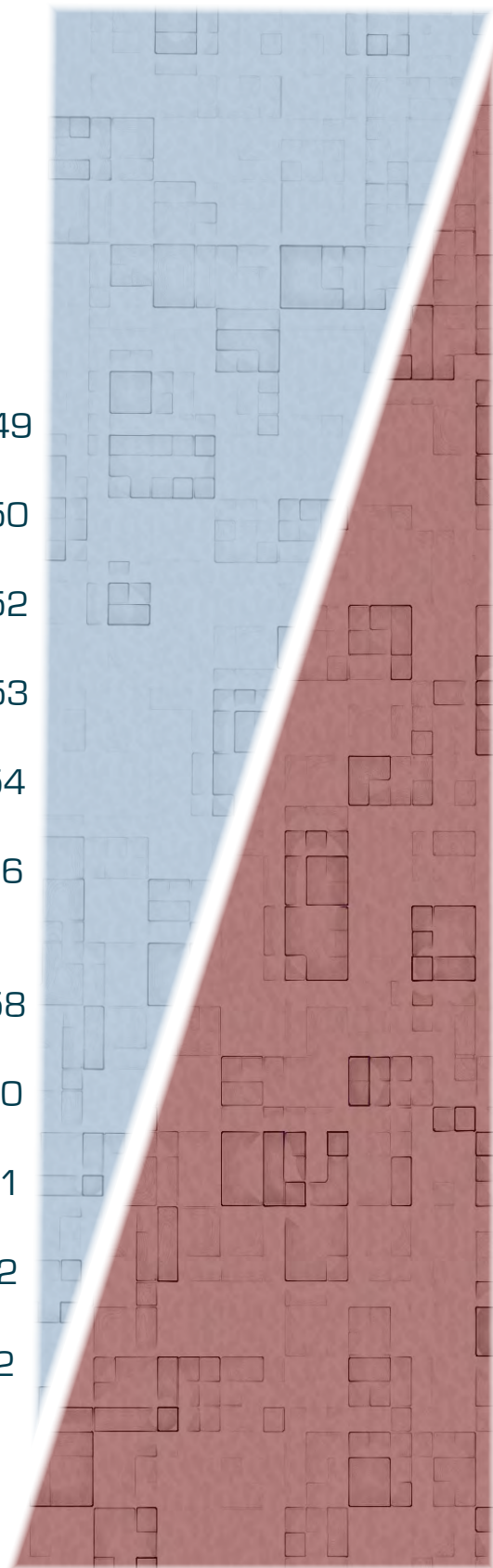
Victim Offender Mediation Dialogue Program

Victim Offender Mediation Dialogue (VOMD) provides victims and survivors of violent crime the opportunity to initiate a structured, person-to-person meeting in a safe environment with the offender responsible for their victimization. Some victims chose to participate in VOMD because they wish to meet directly with their offender to describe the impact of their victimization and receive answers to questions regarding the offense. Participation in VOMD is voluntary for both victim and offender, and is a confidential process. Under certain circumstances, alternatives are used in lieu of person-to-person mediation, such as statements written by the victim and delivered to the offender by VOMD staff. During FY 2017, 83 VOMD cases were initiated or reopened and 31 mediations were facilitated. Of those 31 mediations, 15 were person-to-person and 16 were creative alternative mediations.



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Administrative Review and Risk Management Division

The Administrative Review and Risk Management Division (ARRM) serves as an oversight division focusing on the mitigation of risk and liability to the TDCJ. The ARRM Division monitors correctional practices through policy development, identifying areas of potential risk, analyzing and responding to risk factors and facilitating action to maintain safety and accountability.

Access to Courts

Access to Courts ensures offenders are afforded their constitutional right of access to courts, counsel and public officials, and that such access is adequate, effective and meaningful as required by law. It provides critical functions at all units, including legal research resources, attorney visits and phone calls, public information requests, telephonic court hearings, correspondence supplies for indigent offenders, notary public services, offender legal, educational and religious in-cell storage management, parole revocation hearing reviews and court transcript administration. Law library attendance in FY 2017 totaled 393,123. The number of legal research materials delivered to offenders with indirect law library access totaled 235,717.

Administrative Monitor for Use of Force

The mission of the Administrative Monitor for Use of Force (UOF) is to publish and facilitate updates to the TDCJ Use of Force Plan, and to review Use of Force paperwork to ensure all incidents are reported accurately and in a timely manner, in accordance with the UOF Plan.

The Office of the Administrative Monitor for Use of Force serves as the office of record for major Use of Force reporting. The core functions are to provide technical guidance through review of Use of Force documentation; to develop and update guidelines for the agency UOF Plan and associated policies and procedures; to provide a central point of contact for open records requests regarding UOF and to monitor adherence to the agency UOF Plan.

Monitoring and Standards

The mission of the Monitoring and Standards Department is to monitor TDCJ facilities to ensure operations are in compliance with agency policies and procedures. Oversight by the Monitoring and Standards Department is accomplished, both internally and externally, through three complementary monitoring programs: operational reviews performed by the ARRM Division, regular reaccreditation assessments by the American Correctional Association (ACA) and Prison Rape Elimination Act (PREA) audits.

The primary focus of the Operational Review program is to monitor adherence to agency policy at each correctional facility. Audits are also conducted by an organization independent of TDCJ, such as ACA, to ensure agency policies and procedures are in compliance with national correctional standards.

Monitoring and Standards Department staff, located at the ARRM Division headquarters, oversees all unit-level operational reviews and division-level reviews conducted at least every three years, coordinates with the ACA to provide technical assistance and support for the agency's efforts to maintain ACA accreditation, and coordinates with ACA and PREA auditors. PREA audits are conducted at least once every three years in secure confinement facilities operated by or under contract with the TDCJ, and PREA auditors are certified through the U.S. Department of Justice. In FY 2017, PREA audits were conducted at 47 state and privately operated facilities. The ACA reaccredited 28 state-operated and four privately operated facilities.

Offender Grievance Program

The purpose of the Offender Grievance Program is to promote awareness and positive intervention between staff and offenders, to identify and resolve issues at the lowest possible administrative level, and to facilitate the flow of information between the units and agency leaders. By providing an outlet for offender grievances, the program enhances staff and offender safety while giving agency administrators valuable insight into issues and problem resolution on the units. During FY 2017, unit grievance investigators processed 143,973 grievances at the unit level, while central office staff processed 35,264 appeals.

Ombudsman Program

The Ombudsman office works with other agency staff to answer questions and address concerns from the public and legislative offices. In FY 2017, staff responded to 30,938 inquiries received through the U.S. mail, telephone and the Internet. The office arranged for agency representatives to speak at 32 engagements sponsored by offender family support organizations.

Risk Management

The Risk Management Department coordinates with all agency departments to implement risk reduction strategies regarding the offender population, personnel, property and fiscal resources. This office has oversight of unit and departmental occupational safety standards, accident and injury investigations, and liability loss control.



Business and Finance Division

The mission of Business and Finance is to support the agency through sound fiscal management, provision of financial services and statistical information, purchasing and leasing services, maintaining a fiduciary responsibility over offender education and recreation funds, and ensuring fiscal responsibility through compliance with laws and court-mandated requirements. Business and Finance includes the departments of Accounting and Business Services, Budget, Commissary and Trust Fund, Contracts and Procurement, Historically Underutilized Business, Office of Space Management, and Payroll Processing.

Accounting and Business Services Department

Accounting and Business Services consists of Financial Systems and Reporting; Accounting Services; Accounts Payable; Cashier, Travel, Restitution and Fees; and Compliance and Review.

Accounting and Business Services carries out the financial operations of the agency by providing meaningful financial information, supporting financial processes and maintaining effective financial control. In FY 2017, Accounts Payable received and processed approximately 128,000 invoices from vendors.

The department is responsible for general accounting of state funds and produces the agency's annual financial report. This is achieved through the use of the agency's financial system, LONESTARS, which is managed by the department, and the Uniform Statewide Accounting System.

Budget Department

In providing financial oversight for all other agency departments, the Budget Department plans, formulates, analyzes and monitors agency revenues and expenditures by activity, function and department. The planning process is initiated through preparation of the Agency Strategic Plan and monitored quarterly by a system of performance measures. The department then compiles the biennial Legislative Appropriations Request, which serves as the fiscal representation of the Agency Strategic Plan.

The 85th Texas Legislature appropriated approximately \$6.6 billion to the TDCJ for the 2018-19 biennium, which provides funding for the projected probation and parole populations in an effort to sustain current caseload ratios, and maintained the treatment and diversion initiatives (substance treatment programs, halfway house beds and intermediate sanction facility beds) at current operational levels. Also, based on the decisions made by the 85th

Texas Legislature, five facilities (the South Texas Intermediate Sanction Facility, the Ware Unit, Bartlett State Jail, West Texas Intermediate Sanction Facility and Bridgeport Pre-Parole Transfer Facility) were closed and funding was eliminated.

Other key FY 2018-19 initiatives include funding for the agency's major repair and renovation efforts to maintain our existing physical plant, additional funding for pretrial diversion programs, and the permanent transfer of funding for community supervision and corrections department (CSCD) health insurance from TDCJ to the Employees Retirement System. In addition, the \$1.1 billion in funding for Correctional Managed Health Care, while representing a decrease from the 2016-17 biennial funding level, will transition Hospital Galveston to a Medicare standard dollar amount (SDA) payment methodology and cap indirect administrative costs at 2.75 percent. Additional funding has been provided for targeted salary adjustments to health care delivery staff, expansion of infirmary operations and hours of coverage, renovations at the Jester III and Telford units to increase medical beds, and extending prescriptions to 30 days for releasing offenders.

The department routinely interacts with the state's executive, legislative and regulatory agencies, to include the Legislative Budget Board; the Office of the Governor, Budget Division; the Public Finance Authority and the Bond Review Board.

Commissary and Trust Fund Department

The Commissary and Trust Fund Department is responsible for the administration and operation of the agency's commissaries and inmate trust fund. The inmate trust fund provides offenders access to personal funds for the purchase of commissary items, periodicals and subscriptions, some over-the-counter medications and other approved expenditures such as craft shop supplies. In FY 2017, more than 1.9 million deposits totaling \$125.6 million were received and processed. The majority of deposits were received electronically through third-party vendors. An automated remittance processing system is used to encode, image, endorse and prepare money orders received for deposit.

The department operates two warehouse and distribution centers that provide merchandise for resale at 173 commissary locations throughout the state. Items sold include snacks, packaged meat and fish products, coffee, soft drinks, greeting cards, shoes and electronics. Using an offender's bar-coded identification card, the commissary's point-of-sale system records detailed sales transaction



information and debits the offender's trust fund account. Sales from commissary operations exceeded \$112 million in FY 2017.

In addition to supporting the commissary and trust fund operations, income from commissary sales is used to fund or supplement other offender programs. These include recreational activities, sports and fitness equipment, television equipment located in common viewing areas, library books and supplies, and *The Echo* newspaper for offenders.

Contracts and Procurement Department

The Contracts and Procurement Department is responsible for procuring the goods and services necessary to support the mission of the agency. Certified purchasers and contract specialists approve, record and process purchases requisitioned by agency staff. The department's mission is to acquire the right goods and services at the right time and at the right price in accordance with laws, rules, policies and sound business judgment. Agency requirements range from basic needs, such as food for offenders, to complex professional services and construction projects.

During FY 2017, the department processed approximately 59,000 Advanced Purchasing and Inventory Control System (ADPICS) requisitions, with approximately 51,300 purchase order procurement actions processed. In addition, the department completed approximately 600 contract procurement actions.

The Contracts and Procurement Department continues to promote the Historically Underutilized Business (HUB) Program and strives to improve HUB participation in the procurement of goods and services.

Historically Underutilized Business Program

The mission of the Historically Underutilized Business Program (HUB) is to promote and increase equal contracting opportunities with historically underutilized businesses. The HUB program provides those businesses and agency staff with the assistance necessary to ensure the success of this mission.

A HUB, as defined by the Texas Comptroller of Public Accounts, is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC §20.23, has its principal place of business in Texas, and is at least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, an American woman and/or Service Disabled Veteran, who resides in Texas and actively participates in the control, operations and management of the entity's affairs. The HUB Program sponsors an annual vendor fair and participates in numerous forums and events across the state. The program also assists the State Comptroller's Office with identification and certification of HUB vendors.

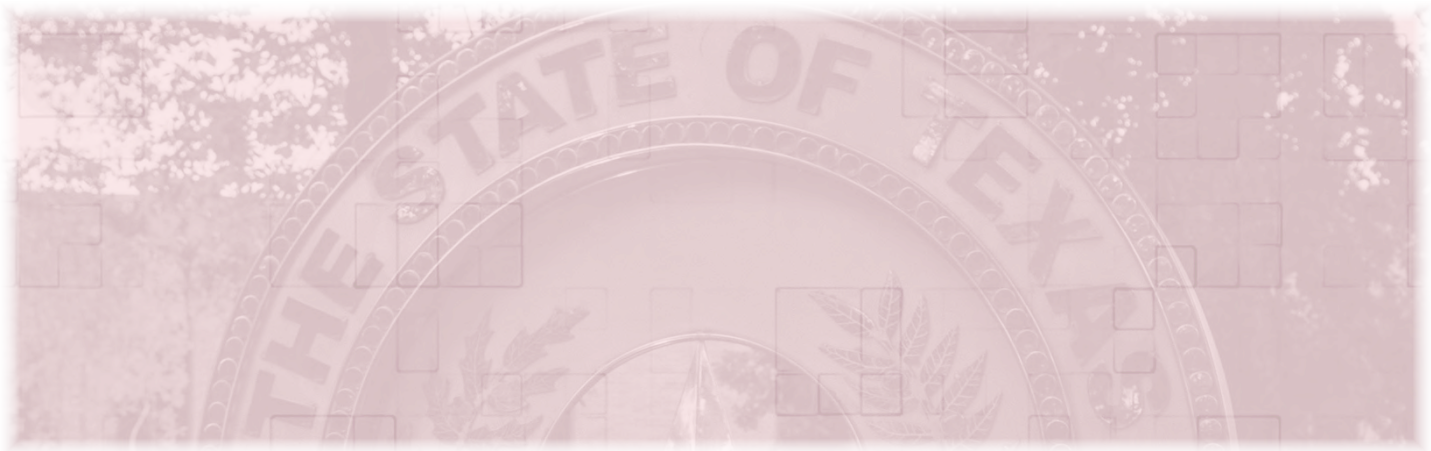
Office of Space Management

The responsibility of the Office of Space Management (OSM) is to acquire, allocate, approve and manage administrative leased space based on TDCJ's needs and in compliance with various state statutes and departmental rules and regulations.

OSM activities include site visits to ensure efficient use of both leased and state-owned administrative properties. Other routine OSM functions include liaison activities involving the Texas Facilities Commission (TFC), resolving payment issues between Accounts Payable and lessors, and assistance in resolution of maintenance issues between tenants and lessors. When an emergency occurs in a leased administrative space, OSM staff provides immediate, on-site assistance with relocation, communications support, assistance related to public safety issues and proper notification of the emergency to the TFC.

Payroll Processing Department

The responsibility of the Payroll Processing Department is to process accurate monthly salary payments with authorized deductions for approximately 38,000 employees while ensuring compliance with state and federal laws. Core functions include payroll processing, payroll deductions, direct deposit program, employee time program, distribution of payroll warrants and federal tax reporting.



Facilities Division

The Facilities Division provides a full range of facility management services to TDCJ, including facility planning, design, construction, maintenance, and environmental quality assurance and compliance. The division's headquarters are located in Huntsville, but it has maintenance employees working at state-owned-and-operated facilities throughout the state. Those employees provide long range and day-to-day maintenance as required to keep the facilities in proper working condition and to support each facility year-round.



In late August of 2017, the first major Atlantic hurricane of the season, Hurricane Harvey, made landfall near Rockport on the Texas Gulf Coast. The storm moved slowly, eventually dropping more than 40 inches of rain in many parts of the state, causing widespread flooding.



The maintenance building at the Ramsey Unit in Rosharon, Texas during flooding caused by Hurricane Harvey.

As Harvey approached, Facilities staff helped prepare the agency's infrastructure items in storm-threatened areas to withstand high winds, heavy rain and flooding. Trees were cleared away from transformers and power lines, generators were checked to make sure they were fueled and operational, and agency equipment moved to areas safe from floodwaters. Facilities also helped deploy sandbags, portable generators and water tankers to areas likely to be hardest hit.

When water and power outages occurred during the storm, Facilities worked to restore these critical services. As soon as possible after the storm, Facilities staff moved in to assess and quickly repair wind and flood damage.

Engineering

The Engineering Department provides professional architectural and engineering services to support TDCJ. The department provides overall project design and construction management for all delivery methods, including contract design and construction, and internal design and construction activities. The engineers and architects also act as consultants to the Maintenance Department and to any other office requiring technical assistance. Oversight is provided for all activities affecting engineering and environmental interests to ensure compliance with all state and federal rules and regulations.

Maintenance

The Maintenance Department is responsible for maintaining all TDCJ owned-and-operated facilities. A unit maintenance office is located on each correctional facility. Each office has a technical staff, the makeup of which varies according to the unit's mission and offender population. There are six regional maintenance offices supporting the unit maintenance offices. These regional offices have specialty crews performing construction projects, repairs and renovations. This department is also a first responder to evaluate, assess and repair damage caused by hurricanes and other disasters.

Program Administration

The Program Administration Department is responsible for facility project planning and programming functions. It engages in energy conservation initiatives, energy audits and utility billing analysis. Program Administration supports the Facilities Division in all financial phases of design, construction, maintenance and job closings, and coordinates divisional purchases and replacement of unit equipment. By developing and analyzing project budgets, monitoring construction and administrative budgets, and tracking expenditures, Program Administration provides critical information for making accurate budget projections.

Project Administration

The Project Administration Department provides support during both the design and construction phases of project management, including quality assurance performed by internal or contracted parties. This department assists project engineers during design reviews, administers proj-

ect schedules and monitors construction performance as related to established schedules. Project Administration also administers environmental compliance, which

includes preparation of numerous technical and complex reports for all TDCJ facilities and oversight of special investigations, audits and research.

Health Services Division

The Health Services Division monitors access to timely, quality health care for offenders incarcerated within TDCJ. The agency contracts with two universities, University of Texas Medical Branch (UTMB) and Texas Tech University Health Sciences Center (TTUHSC), and private vendors for all healthcare services at TDCJ facilities.

In FY 2017, TDCJ and the Correctional Managed Health Care Committee monitored the provision of health care for TDCJ offenders as contracted with the UTMB at Galveston, the TTUHSC at Lubbock and private vendors. The universities may also contract with private vendors to provide health care services. Each university and private vendor has its own internal organizational structure to ensure the integrity and quality of the managed health care program. Within each program there is a medical director, administrator, nursing director, dental director, mental health director, clinical pharmacist and clinical laboratory personnel, as well as health records staff.

TDCJ, UTMB, TTUHSC and the private vendors are in partnership to implement and enforce the health care delivery system. Each entity functions as an independent organization with separate and distinct lines of supervision and responsibilities.



Offenders on the sheltered housing wing of the Jester III Unit gather to play dominos.

The Health Services Division monitors offenders' access to the various health care disciplines, to include medical, nursing, dental and mental health, while cooperating with the university medical schools and private contractors to monitor quality of care. The clinical and professional resources

of the health care providers are used to the greatest extent feasible for clinical oversight of quality-of-care issues as mandated by state law. Health Services also conducts compliance audits, investigates and responds to offender Step Two medical grievances, inquiries and complaints, works to control the transmission of infectious diseases among offenders, and recommends unit assignment requirements to meet the medical needs of offenders, screening offenders for programs and acting as liaison for the university providers, counties and private vendors.

The TDCJ Health Services Division is organized into four departments: Health Services Administration, Clinical Services, Public Health, and Mental Health Monitoring and Liaison.

Health Services Administration

There are three sections within Health Services Administration: Resource Management, Operational Support and Human Resources. Health Services Administration is responsible for all administrative functions that support the division, which includes staffing, budget management, performance measures, purchasing, travel, records retention, business management and human resource services.

Clinical Services

Clinical Services includes the director of Quality Monitoring and Compliance, director of Dental Services, director of Mental Health Monitoring and Liaison, director of Public Health, and the director of Nursing Administration. The director of Nursing Administration is responsible for all nursing functions and nursing personnel within the division.

The director of Nursing Administration oversees the Office of Special Monitoring, the Health Services Liaison, the Office of Health Services Monitoring and the Office of Professional Standards.

Office of Special Monitoring

The Office of Special Monitoring (OSM) helps confirm that offenders are receiving quality of care, access to care, and continuity of care. The OSM communicates with other departments in the Health Services Division to identify areas for auditing.

Health Services Liaison

The Health Services Liaison (HSL) office coordinates the intake of offenders with special medical and mental health needs from the county jails. The HSL also coordinates intra-system medical transfers, performs medical screenings of offenders entering rehabilitation tier programs, conducts audits of health records to ensure offenders are discharged appropriately from hospitals and infirmaries, and monitors the placement of offenders in private community hospitals and specialty clinics.

Health Services Monitoring

The Office of Health Services Monitoring conducts operational review audits, facilitates the statewide Quality Improvement and Quality Management Program and helps ensure offender access to care. Operational review audits are conducted at TDCJ facilities that provide offender health services.

The statewide health services Quality Improvement and Quality Management Program reviews every facility's self-monitoring of offender access to care. The TDCJ Quality Monitoring Program includes quality assurance audits that monitor chronic disease, acute medical illness and communicable disease management based on nationally accepted standards.

The director of Dental Services performs audits to monitor both access and quality of dental care.

Professional Standards

The Office of Professional Standards (OPS) investigates and responds to Step Two offender medical grievances and third-party correspondence regarding offender health care issues. The OPS Patient Liaison Program performs sick call requests verification audits and operates a family hotline where offender families can call to inquire about offender health care concerns.

Public Health

The Office of Public Health monitors and reports on the incidence of infectious disease among offenders, provides training and consultation services to facility health services staff, and provides technical assistance to both the TDCJ Risk Management Office and Human Resources. In addition, the Office of Public Health coordinates the Offender Peer Education Program, provides training in medical evaluation and evidence collection of sexual assault victims and monitors the quality of sexual assault examinations.

Mental Health Monitoring and Liaison

The Office of Mental Health Monitoring and Liaison monitors mental health continuity of care information for offenders being received by TDCJ from county jails. Operational review audits are conducted by this office and technical assistance is provided to other TDCJ Health Services departments.

Human Resources Division

The Human Resources Division (HR) provides consistent application of TDCJ's human resources programs, policies and services to ensure compliance with federal and state laws, and to fulfill the needs of TDCJ employees.

The HR division comprises Employment and Support Services, Staff Development and Employee Relations departments.

Employment and Support Services

Employment and Support Services is made up of Employment, Employee Services and Administrative Support.

Employment

Employment works to ensure and promote fairness and consistency in the recruitment, selection and retention of qualified applicants, and provides agency staff with HR policy guidance. Employment consists of three functions: Correctional Officer Recruiting and Staffing, Selections and Clearances, and Employee Classification.

Correctional Officer (CO) Recruiting and Staffing actions taken during FY 2017 to positively impact CO staffing included the \$4,000 recruitment bonus for newly hired full-time COs assigned to 17 understaffed units; exempting military veteran applicants from the CO pre-employment test requirement; awarding administrative leave for 23 employees who recruited correctional officers; and participation in 266 job fairs, 39 hiring seminars and 48 Saturday CO screenings. Newspaper, radio and social media ads, 69 special unit-based pre-service training academies and press releases ran in areas with understaffed units. HR coordinated with workforce development boards to target recruiting efforts in areas experiencing business closures and layoffs.

During FY 2017, TDCJ hired 7,701 employees. There were 13,705 CO applicants screened and 6,680 COs hired, of which 1,201 were veterans. An additional 387 employees entered the CO series, for a total of 7,067 new COs during FY 2017.





Human Resources Veterans Liaison Paula Gilbert and CTSD Training Specialist Jeremy Bryant discuss upcoming recruitment opportunities throughout the state.

As of August 31, 2017, the agency's annual overall attrition rate was 23.6 percent, and the correctional officer attrition rate was 28.2 percent. The CO vacancy level was 3,207.5 in August 2017, an increase from 2,003 at the end of FY 2016.

Selections and Clearances processed 2,493 agency application clearance requests for non-correctional officer positions and 5,808 volunteer clearance requests, in addition to 3,898 contract medical requests, 3,591 Private Facilities, 474 contract Facilities Maintenance, and 2,483 contract Agribusiness clearance requests.

Employee Services

Employee Services provides customer service to agency employees, business entities and the public sector. The department's goal is to meet the needs of our customers while ensuring compliance with agency policies and procedures, and federal and state laws. Employee Services is divided into Insurance, Retirement and Other Benefits, and Leaves/Records/Workers' Compensation/Performance Evaluations sections.

Employee Services also provided support for the FY 2017 Everything is Fitter in Texas Challenge, a competition among state agencies, in which the TDCJ took first place in its category, as well as the Chairman's Fitness Challenge. The Chairman's Fitness Challenge included four different physical training challenges designed to encourage employees of all fitness levels. The competition is an initiative of the TDCJ wellness program, Wellness Initiative Now.

Administrative Support

Administrative Support provides HR with technical support and is divided into four operations: Policy Develop-

ment and Legislative Review, Program Compliance and Support Operations, Regional Human Resources Coordination, and Special Projects.

The Policy Development and Legislative Review Department develops, publishes, and manages HR policies and procedures to promote understanding of statutory and agency requirements, and to ease their implementation. This department reviewed 209 bills during the 85th Legislature.

Program Compliance and Support Operations monitors agency operations to ensure compliance with HR policies and procedures, performs Operational Reviews, monitors and implements budgetary and fiscal functions, to include contracts, purchasing, fixed assets, and travel, and monitors the inventory and obtains supplies for HR headquarters and regional offices.

Regional Human Resources Coordination provides technical oversight, supervision and coordination of all HR functions in seven HR regions across the state.

Special Projects designs, develops, and maintains the HR division's web pages. This department responds to Open Records requests and helps prepare reports, publications and presentations.

Staff Development

In FY 2017, the HR Staff Development curriculum was used to deliver more than 137,709 training hours to 18,489 employees. Courses related to equal employment opportunity, diversity, supervision, selections, wellness, payroll, and other HR topics were presented. Two new trainings were released during FY 2017: Communication Skills and the EEO Disciplinary Compliance training video, targeting employees disciplined for EEO-related violations.

Employee Relations

Employee Relations works to provide a positive work environment for agency staff and consists of Intake and Labor Relations/Equal Employment Opportunity departments.

All work-related complaints are received, processed and directed by the Intake Department for appropriate resolution. Employee Relations reviewed and processed 6,209 complaints, accommodations, dispute resolutions and unemployment claims in FY 2017. During the same fiscal year, the Drug-Free Workplace program processed 15,538 substance abuse tests, and the agency's Discipline program processed 9,357 employee disciplines.

Information Technology Division

Automated information services and technology support are provided to all TDCJ divisions and external entities by the Information Technology Division. The division is composed of the Infrastructure and Customer Support Department, Enterprise Applications Department, the Project Management Office, Information Security Officer, and Business Continuity and Operations Department.

Infrastructure and Customer Support

The Infrastructure and Customer Support Department supports approximately 13,000 portable and mobile radios, 178 telephone systems, 83 video conferencing sites and other telecommunication devices operated on behalf of the agency. The Communications group operates and maintains numerous telephone circuits, voice and data cabling, voice networks and long distance calling in support of agency operations. In addition, this group provides operator services for incoming telephone inquiries and processed more than 100,250 calls in FY 2017.

The Customer Support Service group supports about 35,000 devices which include personal computers, laptops, thin clients, printers, multifunction equipment, plotters, scanners, fax machines and various special devices, along with mainframe monitors, terminals, controllers, multiplexors, and line printers in support of agency operations. In FY 2017, more than 136,000 customer service requests were processed.

Enterprise Applications

The Enterprise Applications Department is responsible for the creation, enhancement and maintenance of all major application software for the TDCJ. Examples include offender management, human resources, parolee supervision, payroll and business finance. In addition, the department is responsible for the management and maintenance of servers, network infrastructure and traffic, and Internet access, which supports the agency's enterprise applications. During FY 2017, the Enterprise Applications team completed application or network initiatives for virtually all of the agency's divisions and departments.

During FY 2017, the capabilities of the "Flash Notices" system, which alerts offender supervision staff across the state when an individual of interest is arrested, were augmented so more interested parties would receive notification. Improvements were also made to the Correctional Institutions Division's Fusion Center system and the Texas Anti-Gang Information Tracking system (TAGIT), which help synchronize Security Threat Group Management communications.

The Enterprise Applications Department's Web Services group worked closely with the agency's executive staff and Public Information Office to design a new website to be implemented during FY 2018. This group also enhanced Web applications to meet new coding standards to make them "mobile friendly" for use on smart phones and other mobile devices.

Improvements were made to the agency's purchasing system, ADPICS, to reflect the new comptroller's purchasing guidelines. Asset disposal methods were expanded by State Property Accounting and TDCJ's accounting and asset management system, LONESTARS, was modified to reflect this expansion.

During the reporting year, the network group continued to improve and enhance our Electronic Document Management System's (EDMS) function, and facilitated increased use of the system, especially in regard to document scanning. The group also upgraded the EDMS system (OnBase) to improve functionality.

Project Management Office

The Project Management Office (PMO) is responsible for establishing and maintaining effective project management and system development practices; providing planning, coordination, oversight, and project management support for IT projects; analyzing business and system requirements; designing, testing, and implementing high-quality technology solutions on time and on budget; developing and maintaining technical and user documentation for automated systems; providing training and related support to TDCJ employees in the use of software applications; tracking of IT-related legislation and implementation plans; and performing strategic business assessments that support successful achievement of agency strategic business goals.

The PMO also has an important role in developing and maintaining IT governance processes such as supporting the ITD Project Review Committee, the governing body tasked with classifying new requests for IT services; maintaining the agency's IT Project Management Framework, System Development Life Cycle, and Enterprise Technology Architecture; and developing and coordinating reviews of IT policies and procedures for the *Departmental Policy and Operations Manual*.

PMO project managers provided oversight and management for a wide range of priority projects during the fiscal year: the Unit Network Infrastructure Refresh (UNIR) Project, Texas Risk Assessment System (TRAS) Release II Project, the Texas Correctional Office on Offenders with



Medical or Mental Impairments (TCOOMMI) Incident Report Tracking Project, and the Prison Rape Elimination (PREA) Grant Project. Project managers also coordinated agency efforts in the execution and completion of the Corrective Intervention Pre-release Program (CIPP) Project at the Lane Murray Unit, the iPhone 7 Deployment Project and the BES12 (Blackberry) Project after finalizing the deployment of new mobile devices to Manufacturing, Agribusiness and Logistics Division transportation staff.

The Business Strategies Team (BST) developed the ITD Modernization Plan detailing the information technology infrastructure that supports TDCJ operations, composed of 272 applications and 120 mission-critical Access databases. Legacy systems have been identified and prioritized to create a modernization roadmap for the agency. The BST created a SharePoint site for the coordination of the Legislative Bills and Implementation Plans, as well as other BST projects. Continued training and support were provided to the Parole Division and the Texas Board of Pardons and Paroles (BPP) to address improvements in operations and upgrades to the Offender Information Management System. BST designed a new online Automated Information Systems (AIS) Survey for the agency, and survey results will be analyzed and made available for ITD management in early FY 2018.

Information Security Officer

The Office of the Information Security Officer (OISO) worked with ITD analysts and data owners to create Interconnectivity Security Agreements (ISAs) and Memoranda of Understanding (MOUs) for Windham School District, University of Texas Medical Branch, Department of Public Safety, Keefe Group, and Immigration and Customs Enforcement.

The Office of the Information Security Officer conducted a Criminal Justice Information Services (CJIS) self-assessment to determine ITD's compliance with the Federal Bureau of Investigation policy. The OISO also enabled Forced Transport Layer Security (TLS) for select business partners (state agencies) to ensure that email between TDCJ and state agencies is encrypted.

The annual agency risk assessment was performed in collaboration with Business Continuity Office, Project Management Office, Enterprise System Support and Enterprise Web Applications, and a Controlled Penetration Test (CPT) was conducted by the Texas Department of Information Resources. TDCJ executive leadership was briefed on the risk assessment results and CPT findings in the annual information security report.

Information Security helped the Darrington Unit and Darrington Bible College implement new security controls for the computer network used by offenders. Regular onsite

and remote scans of the Bible College systems ensure that the systems are free of unauthorized software and files, and an assessment was conducted to identify any possible security issues. The OISO also provided security review and testing for the Corrective Intervention Pre-release Program (CIPP) to ensure the systems were secure and that offenders would not be able to compromise the systems.

The Information Resource Security Program (IRSP) was updated to comply with policies set by the updated Texas Administrative Code (TAC) 202. The new IRSP consists of a policy document, a controls catalog and an acceptable-use document. Documented processes were put in place to ensure the agency was compliant with Senate Bill 1910 and House Bill 8, 85th Texas Legislature.

In FY 2017, the OISO also conducted the first Information Security tabletop exercise for ITD staff, which simulated real world information security threats, allowing for a post-exercise review of staff reactions.

Business Continuity and Operations

The Business Continuity and Operations Department provides planning, coordination and synchronization of all Business Continuity Planning/Management (BCP/M), Disaster Recovery (DR), Continuity of Operations (CoOP), Business Impact Analysis and oversight of Data Center Services for TDCJ's Information Technology Division.

The database administrators provided database maintenance and performance optimization services for the agency's DB2 databases during calendar year 2017. Working with developers, improvements have been made to the Sequential Query Language code and the underlying database structure designed to reduced CPU utilization, reduce DASD usage and to improve response times. The database was upgraded to DB2 V11 to provide the advantages of an improved platform. IBM Data Studio is being used to maintain, test and optimize the database as well.

Operations successfully oversaw an upgrade of the Mainframe CPU to a new z13s Processor. This new processor is more powerful and allows for a reduction in the overall size of the hardware while maintaining the same processing power. This department also completed the annual Disaster Recovery Exercise from the Primary San Angelo Data Center to the Recovery Austin Data Center.

Business Continuity completed the 2017 Business Impact Analysis (BIA) cycle while developing and implementing processes for collecting application and system data to assist in Restoral Time Objective/Restoral Point Objective validation and Disaster Recovery planning.



Manufacturing, Agribusiness and Logistics Division

The Manufacturing, Agribusiness and Logistics (MAL) Division manages the agency's agribusiness, land and mineral operations, warehousing operations, fleet and freight transportation services, and provides customers with quality manufactured products and services. The division helps maintain security while teaching incarcerated offenders job skills they need to find post-release employment and make a successful reentry into society.

The division collaborates with the Windham School District, along with TDCJ's Correctional Institutions, Rehabilitation Programs, Reentry and Integration, and Parole divisions to reduce recidivism by providing offenders with opportunities to develop a work ethic and learn marketable job skills.



When Hurricane Harvey struck Texas at the end of FY 2017, MAL staff members demonstrated their professional dedication and perseverance, fulfilling their job duties despite the storm and widespread flooding. In preparation and response to Hurricane Harvey, MAL's dispatch offices coordinated more than 135 freight hauls and truck drivers logged approximately 32 thousand miles.

MAL coordinated response personnel and staged supplies and equipment in areas where the hurricane was expected to make an impact. MAL staff worked with responders in the field to make sure emergency supplies were sent where they were most needed. Flashlights, batteries and rain gear were staged in unit warehouses, additional food, bottled water, ice, water tanks, cots and sandbags were shipped to affected areas, and bulk fuel levels were carefully monitored and refilled. MAL staff also worked to make sure that all evacuated offenders would have sufficient supplies of food, mattresses and other necessity items when they were moved to TDCJ facility in a safe area. MAL provided wrecker services when offender evacuations began, and strategically placed high-profile vehicles to provide assistance during flood response activities.

Agribusiness, Land and Minerals

Agribusiness, Land and Minerals is responsible for oversight and management of the agency's land and mineral resources, to include administration of oil and gas leases, easements and other land issues. Land considered suitable for agricultural use is employed in the production of fresh vegetables, cotton, grain, hay and livestock. In addition to these primary activities, Agribusiness manages livestock, operates two meat processing plants and a canning plant that provide the canned vegetables, eggs, and various finished meat products required to feed the offender population.

During the 2016 calendar year, the department raised 28 varieties of vegetables, with production exceeding 14.5 million pounds. Approximately 33,700 acres were dedicated to the production of cotton, grains and grasses, resulting in the harvest of 81.3 million pounds of production. At the close of calendar year 2016, on-hand livestock included 14,970 head of cattle, 18,950 swine, 247,523 laying hens and 1,399 horses. The poultry program produced approximately 5.2 million dozen eggs and the swine operation shipped 17,258 hogs to the packing plant. During this period, agency food processing plants canned 321,514 cases of vegetables and delivered more than 24.8 million pounds of finished meat items.



Ag Specialist Yvonne Welther oversees the egg production operation at the Darrington Unit. Her job is to make sure the chickens are healthy and producing quality eggs. This unit alone produces more than 1.2 million eggs per week.

Financial Operations

The Financial Operations department includes Information Technology, the Financial Support Office (FSO), the Business Office for Texas Correctional Industries (TCI), Transportation and Supply and TCI Customer Service.

Information Technology supports the division by providing automated information services for more than 500 division users. The department maintains the TCI website, administers a dispatch system and performs troubleshooting related to repairs and maintenance of production software, equipment and peripherals to support facility needs and minimize downtime.

The FSO is located at the Wynne Unit and is responsible for compiling data from various sources to produce the monthly TCI Financial Report, and weekly and monthly warehouse reports. The FSO also provides information and reports to factories, MAL management and agency administration, all of which are used when making business decisions.

The Business Office provides budget oversight for Programs, TCI, and Transportation and Supply, including purchasing approvals and specifications, credit card monitoring, accounts receivable collections and general accounting.

TCI Customer Service is the primary contact for receiving and processing customer purchase orders and complaint resolutions, and providing order status, delivery dates and price quotes.

Programs

Programs includes Offender Work and Training Programs, and Planning and Research.

Offender Work and Training Programs (OWTP) oversees the MAL Division's designated training facilities: Daniel Computer Recovery, Wynne Computer Recovery and Geographic Information System (GIS) and Mountain View Braille.

During FY 2017, Daniel Computer Recovery and Wynne Computer Recovery facilities provided 6,317 refurbished computers to Texas public schools. Daniel Computer Recovery also provides e-text services by converting textbooks into a digital format. The Mountain View Braille facility offers offenders an opportunity to earn braille certifications from the Library of Congress and provides braille transcription services to education agencies. During FY 2017, the braille facility transcribed 126,873 pages of braille and 54,273 pages of tactile braille. The GIS facility provides GIS data conversion services while simultaneously training offenders in computer-aided drafting and GIS programs.

OWTP also documents offender participation in on-the-job training (OJT) programs and other training programs; coordinates with the Windham School District to certify OJT programs, create short courses, apprenticeships and vocational courses; ensures availability of job history and certifications to released offenders with MAL Divi-

sion work experience; and uses Work Against Recidivism (WAR) data to measure post-release employment success.

OWTP provides oversight of the Prison Industries Enhancement (PIE) Certification Program, monitors the program to ensure compliance with state and federal guidelines, and acts as liaison between unit administration and the private business located on a correctional facility. These PIE programs manufacture air conditioning and heating valves, computer components and wiring harnesses. During FY 2017, PIE participants earned more than \$1 million and contributed \$138,096 in federal taxes, \$100,091 to crime victims' compensation, \$10,890 to restitution, \$105,255 for family support and \$454,292 to room and board.

Planning and Research compiles and provides accurate and consistent MAL information for publications, presentations and webpages; coordinates the development and maintenance of division policies and publications; conducts legislative impact analysis; and coordinates, monitors and oversees various division responsibilities. Planning and Research coordinates compliance with American Correctional Association (ACA) – Correctional Industries and provides staff development support and training coordination.

Texas Correctional Industries

Texas Correctional Industries manufactures goods and provides services for sale, on a for-profit basis, to city, county, state and federal agencies, public schools, public and private institutions of higher education, public hospitals and political subdivisions. TCI's statutory objectives are to provide work program participants with marketable job skills, help reduce recidivism and reduce department cost by providing products and services to TDCJ and other eligible entities on a for-profit basis.



Offenders who work at the tire retreading facility at the Darrington Unit learn job skills that can help them gain employment when they're released. On average, they retread 250 tires a month for use on agency freight vehicles.

In 2017, the ACA – Correctional Industries reaccreditation assessment was conducted with a score of 100 percent for both mandatory and non-mandatory standards. In August, 2017 the panel of ACA commissioners awarded TCI with accreditation.

During FY 2017, TCI operated 33 facilities that produced items such as mattresses, shoes, garments, brooms, license plates, printed materials, janitorial supplies, soaps, detergents, furniture, textile and steel products. Services such as furniture refinishing, tire retreading, and auditorium and school bus refurbishing were also available. During the fiscal year, TCI received 12,628 outside customer orders. Sales for the 33 TCI facilities and the four designated training facilities were \$84 million for the fiscal year.

Transportation and Supply

Transportation and Supply includes Fleet and Freight Transportation, and Warehousing and Supply.

Fleet and Freight Transportation has four freight terminals and six mechanical operations. The department is responsible for the management and supervision of TDCJ transportation, mechanical needs, planning and forecasting equipment needs, and emergency wrecker services for the TDCJ.

Fleet and Freight Transportation manages the acquisition and maintenance service of TDCJ passenger vehicles, buses, tractor trucks, trailers and equipment, and over-

sees the evaluation of salvage vehicles and trailers. This department provides transportation through motor pools or vehicle assignments to TDCJ staff and manages approximately 2,200 active vehicles, including 194 tractor trucks and 450 tractor trailers, as well as several thousand trailers and other equipment. In FY 2017, there were 15,195 work orders completed for vehicle and equipment repairs and preventive maintenance such as oil changes, tire rotations, and fluid and belt inspections.

Freight terminals are responsible for goods transportation, shipping and distribution planning, safety education training for employees and offenders, and coordinating the transportation and receipt of customer goods. During FY 2017, the four freight dispatch offices coordinated more than 30,000 freight hauls and truck drivers logged approximately 5.8 million miles.

Warehousing and Supply has eight warehouses and is responsible for economic management and distribution of consumable goods and supplies, including dry, cold and frozen food; TCI and Agribusiness, Land and Minerals produced goods, and Facilities Division maintenance supplies. Warehousing and Supply also oversees the disposal of salvage vehicles. During FY 2017, the warehouses had an average inventory of \$22.8 million and maintained 2,707 items in stock. Approximately \$151 million in supplies were distributed from food warehouses, prison store warehouses and other facilities during the fiscal year.

Office of the Chief of Staff

In FY 2017, the Office of the Chief of Staff provided oversight of Executive Support, Governmental Affairs and Media Services.

Executive Support

Executive Support consists of two departments: Executive Services and the Emergency Action Center.

Executive Services

Executive Services provides technical support to the TDCJ's executive staff. Staff responds to inquiries regarding offender demographics, coordinates survey responses, maintains the Death Row webpage, conducts statistical analyses and provides a variety of statistical information. Staff also prepares agenda and meeting materials for the Texas Board of Criminal Justice (TBCJ) and produces the TBCJ minutes. Additionally, staff coordinates revisions of TBCJ rules, the *Departmental Policy and Operations*

Manual, the *Human Resources Policy Manual* and agency departmental manuals upon request.

Executive Services coordinates the State Employee Charitable Campaign and serves as the TDCJ's Records Management Office. The department conducts internal research and evaluations, and coordinates research conducted by external entities. Executive Services produces unit profiles, agency organizational charts, the *Fiscal Year Statistical Report*, the *General Information Guide for Families of Offenders* and the *TDCJ Records Retention Schedule*.

Emergency Action Center

The Emergency Action Center (EAC) staffs a 24-hour communications desk to provide a link between TDCJ, TBCJ, TDCJ managers, staff members, and other state officials regarding serious or unusual incidents occurring within the agency. The EAC is responsible for receiving all reports of serious or unusual incidents, notifying appropriate



entities and administrative staff of incidents, maintaining custody of all incident records, preparing monthly audit reports, and providing Executive Services with the information required to publish statistical reports. The EAC provides valid, accurate, and timely information, which plays a critical role in managing risks associated with incidents inherent in the correctional environment.

Governmental Affairs

Governmental Affairs works with agency divisions and departments to ensure that all relevant legislation passed by the Texas Legislature is implemented in a timely fashion, and coordinates with legislative committees to assist in supplying departmental statistics and resource information for committee members. This section also assists in the coordination of special projects and in the response to inquiries about TDCJ from legislative and executive offices.

Media Services

Media Services supports the TDCJ by providing media development and production services. Routine duties include production of criminal justice and prison management training videos, providing photography services and photo archive management, and supplying stock video and photos to other criminal justice agencies, news media and educators. Media Services also provides audiovisual support for bimonthly TBCJ meetings and special events.

During FY 2017, Media Services produced the *Criminal Justice Connections* online newsletter for employees, which can be accessed by clicking on the *Connections* link on the TDCJ home webpage. Media Services also produced the *Fiscal Year 2016 TDCJ Annual Review* and regularly updated the *TDCJ Phone and Address Directory*.

Office of the General Counsel

The Office of the General Counsel has three sections: Legal Affairs, Litigation Support, and Program Administration. Attorneys oversee the Legal Affairs and Litigation Support sections, while a program supervisor manages the Program Administration section.

Legal Affairs

The Legal Affairs section provides advice and counsel to the Texas Department of Criminal Justice regarding corrections law, victims' rights, employment law, business transactions, offender health care, sentence time calculation, parole, and community supervision matters. This section drafts formal and informal legal opinions for the TDCJ as requested. Attorneys in the Legal Affairs section provide advice about the Public Information Act, seek rulings from the Office of the Attorney General (OAG) when necessary, and provide legal support regarding subpoena requests, expunctions, and renditions. This section also helps the OAG defend federal habeas corpus writs, and assists state district courts in processing state writs of habeas corpus.

Litigation Support

The Litigation Support section provides litigation support to the OAG for lawsuits in which the TDCJ or its employees are named defendants, including torts, employment, and offender civil rights litigation. Attorneys in this section are involved with all phases of litigation, including discovery, records production, trial support, mediations, and settlements.

Program Administration

The Program Administration section manages the overall administrative support of the OGC, including assisting OGC attorneys, fiscal management, divisional human resource support, preparation of OGC policies, performance measures, case management, records retention, and storage. The Program Administration section monitors the processing of claims for damages involving TDCJ property and schedules video teleconferences for offenders' legal proceedings.



Office of Incident Management

The Office of Incident Management (OIM) is the central oversight authority for TDCJ's emergency management preparedness and response. The office coordinates with divisions throughout TDCJ to develop and update emergency response plans, continuity of operations plans and the Homeland Security Strategic Plan.



The office represents TDCJ on the Texas Division of Emergency Management State Emergency Council and coordinates logistical and law enforcement support activities for the State Emergency Management Plan. The office also works with all of the agency's operational divisions to provide a representative to disaster district committees throughout the state and oversees all agency mitigation reports and activities.

The OIM works to identify potential hazards and threats to the agency and develops mapping, modeling and forecasting tools to lessen their effects. The office also trains agency staff on their roles during emergencies, and works in conjunction with the Correctional Institutions Division to

coordinate all necessary Incident Command System training for security staff and unit personnel.

At the close of FY 2017, OIM began monitoring weather forecasts which predicted a tropical storm to make landfall along the Texas Gulf Coast. This tropical storm suddenly and rapidly intensified and made landfall near Rockport as a Category 4 storm named Hurricane Harvey, an event which tested the agency's ability to fulfill its mission while enduring a catastrophic and widespread weather emergency.

During the agency's preparation, response and recovery from the hurricane, the OIM helped coordinate activities at the agency's emergency command center, ensuring that vital resources were delivered to agency facilities in need, and allowing for a successful response and recovery from this record-setting storm event.



TDCJ Executive Director Bryan Collier (foreground) surveys flooding at the Ramsey Unit following Hurricane Harvey.

Public Information Office

The Public Information Office (PIO) acts as the liaison between TDCJ and the media. TDCJ is often the focus of in-depth reports and documentaries, as well as many timely or breaking news stories. The PIO works with reporters in covering the agency and its events, as well as the activities of the Texas Board of Criminal Justice.

In order to educate the public about TDCJ's mission, operations and many positive programs, the Public Information Office proactively distributes information to the media, distributes news releases on events and activities of significance and public interest, and produces content for the agency's social media sites. The PIO also informs staff of important media activities relating to the agency.

The PIO provides timely and accurate answers to media inquiries covering a range of topics, from policies, proce-

dures and budget details to information about individual offenders. The PIO processes media requests for interviews with offenders, and provides assistance to motion picture producers, researchers and authors. A PIO staff member is always on call to answer media inquiries that come in after regular business hours and on weekends.

The PIO answers questions, from both domestic and foreign sources, concerning the agency's operations and role in the execution process. By providing reliable information, the PIO works to dispel the many myths about the prison system. Public information officers also coordinate death row interviews for media producers and serve as media escort for each execution carried out in Texas.

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