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Long-Term Planning, Faith-Based Programs Options for Managing Prison Capacity

The Texas Department of Criminal Justice (TDCJ) should be able to keep pace with current demand for adult correctional capacity, thanks to the recently authorized construction of 4,120 new prison beds coupled with the department's ability to contract with counties or other facilities as needed for additional beds, Tony Fabelo, executive director of the Criminal Justice Policy Council, told the April 1 meeting of the House Corrections Subcommittee on Adult and Youth Prison Capacity. In addition, demands for youth capacity will be met through contracting authority in 1998 and a new 330-bed unit scheduled to be operational by October 1999.

With short-term needs met, Fabelo stressed, now is the time to look at long-term capacity planning that will increase the state's flexibility to manage fluctuations in demand and reduce demand for capacity by improving the effectiveness of rehabilitation programs and establishing prevention policies to slow the potential long-term growth in the system. Fabelo's report to the subcommittee suggested reviewing numerous state policies,

including the long-term use of contracted beds, probation programs as alternatives to incarceration, community justice/restorative justice sentencing options, and electronic and pharmaceutical alternatives. Other witnesses suggested that discussions of capacity issues include faith-based rehabilitation programs, termination of the *Ruiz* lawsuit, and parole policies.

Faith-based prison programs

Texas should heed the fast-growing body of scientific evidence that shows the power of religion and morality to reduce recidivism and fight crime, said Don Willett, director of research and special projects for the governor's policy office. The rehabilitative power of religious programs is no longer in dispute, he said, and Texas should embrace what clearly works to rehabilitate offenders.

The 75th Legislature adopted SCR 44 by Sibley et al., urging the Texas Board of Criminal Justice, juvenile justice agencies, and local officials to recognize the potency of these efforts and allow faith-based correctional programs, facilities, and initiatives to play a more significant role in the rehabilitation of criminal offenders. According to Fabelo, the Legislature should discuss and define the goals of any faith-based prison program so that TDCJ can objectively evaluate its workings.

The Innerchange program, a voluntary immersion-style, faith-based rehabilitation program operating in the Jester II prison unit in Sugarland, has attracted national attention, reported Jack Cowley, program director. The program is open to any inmate, regardless of religion, and includes religious studies, counseling, and job training, an immersion-style rehabilitation program, and six months of aftercare. Begun in March 1997, the 18-month-long program now has about 100 volunteer

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participants. Operated by the Prison Fellowship Ministries founded by Watergate figure Charles Colson, Innerchange pays the costs for the programs inmates attend and supplies staff and volunteers. The state covers shelter, food, and clothing for the inmates and security costs.

The faith-based community can have a significant impact on helping offenders change their minds about a criminal lifestyle, said Ladd Holton, executive director of the Restorative Justice Miniserries Network of Texas. Ladd reported that his organization is working to implement recommendations from the Governor's Advisory Task Force on Faith-Based Community Service Groups by helping church congregations across the state minister to victims of crime, law enforcement professionals, probationers, parolees, and inmates and their families. In addition, the network intends to provide social services and faith-based programs and services to inmates at specific prison units.

Action on *Ruiz*

Rep. John Culberson told the subcommittee that he and Sen. J.E. "Buster" Brown are continuing their efforts to terminate the *Ruiz* prison lawsuit. Terms of the

final judgment in *Ruiz*, signed in 1992, govern operations of the state prison system. The Texas attorney general also has filed a motion in federal district court requesting termination of federal oversight on the ground that the federal Prison Litigation Reform Act has limited the authority of federal courts to continue oversight of state prisons. Rep. Culberson said he and Sen. Brown have filed their own legal motions because of inadequacies in the way the attorney general structured arguments in his pleadings.

In November 1997, U.S. District Judge William Wayne Justice ruled the legislators lacked standing to intervene in the lawsuit. Subsequently, the federal law was amended to grant standing for legislators meeting specified criteria to seek termination of federal oversight, and Rep. Culberson and Sen. Brown filed another request to intervene and terminate the suit. In January 1998, Judge Justice issued a final order denying their motion. The legislators have appealed to the 5th U.S. Circuit Court of Appeals and could have a ruling by late summer or early fall, Rep. Culberson said.

The prison system has remedied the problems that originally led to federal oversight under *Ruiz*, Rep. Culberson said. The system now meets constitutional muster, and state law contains mechanisms to ensure that

Texas criminal justice system: population stats

Approximately 143,000 offenders reside in Texas state correctional facilities. Another 500,000 plus persons are supervised by the criminal justice system through either parole (supervised release from prison subject to specified conditions) or community supervision (court-ordered supervision in lieu of incarceration, or probation). Veronica Ballard, deputy director of TDCJ's Parole Division, reported that as of February 1998, the system included:

- about 73,000 parolees under active supervision of some 1,100 parole officers;
- about 2,000 parolees under more intensive supervision of about 80 parole officers; and
- about 1,000 parolees under the highest level of supervision, called super-intensive supervision, of about 60 officers.

TDCJ records show another 30,000 persons on what is called "inactive parole." This category includes absconders, parolees who report only once a year, and parolees serving out their sentence in another state.

For fiscal 1997, the number of persons on community supervision (probation) averaged 431,000, according to Bonita White, deputy director for TDCJ's Community Justice Assistance Division. About 57 percent of probation cases involved felonies; 43 percent involved misdemeanor offenses. During the year, about 44,600 offenders had their probation revoked and were sent to correctional facilities.

Delinquency prevention resource

The Texas Juvenile Probation Commission has published a compendium of delinquency prevention programs and services offered throughout the state. They include programs focusing on early intervention/first referral, life skills, restitution, gang prevention, and residential life. The programs are categorized by type and cross-referenced by county. For more information on the directory, contact the commission at 512-424-6700.

it remains that way. Termination of the suit would give the Legislature full discretion to manage prison capacity without fear of federal intervention, he added. Although it is unclear how many beds could become available if federal court restrictions on capacity were removed, Rep. Culberson noted, a 1994 Texas Performance Review (TPR) report by the Comptroller's Office estimated that at least 6,100 beds could become available as soon as the decree was terminated. TPR proposals to increase current capacity include double-bunking some inmates in certain dormitories or some inmates held under the tight restrictions called administrative segregation. Rep. Culberson also said that the additional beds could give the state leeway to require that violent offenders serve at least 85 percent of their sentences. (For additional information on the debate over removing restrictions imposed by the *Ruiz* lawsuit, see House Research Organization, Focus Report No. 75-20, *New Demands on Texas Prison Space Revive Debate over Correctional Strategies*, November 5, 1997.)

Parole factors

The rate of parole from prison currently is low, but the number of persons leaving prison without serving all their sentence has not changed dramatically over the last five years, according to Victor Rodriguez, chairman of the Board of Pardons and Paroles. Rodriguez explained that the number of persons leaving prison under the mandatory release law has offset declines in the number

of parolees. Mandatory release is required for eligible offenders when their calendar time served plus good conduct time equals the length of the sentence. Recent changes in the mandatory supervision law applied prospectively will allow the parole board to limit its use, so such releases should have peaked in 1997, Rodriguez said.

Another factor driving the demand for prison space is the number of parole revocations. Rodriguez said the board is examining alternatives to returning all parole violators to prison, possibly by diverting certain offenders to intermediate sanction facilities with lower operational costs. The board also is looking at policies that require time spent on parole to be added back to the sentence of any person whose parole is revoked.

With support from the federal National Institute of Corrections, the parole board will begin revising its 14-year-old guidelines for parole decisions, Rodriguez told the subcommittee. While the current guidelines provide good tools for making decisions about offenders who have never been released on parole, he said, they have not served as well in cases involving offenders reincarcerated after parole revocations. Rodriguez added that parole guidelines are just that — a guide — and that decisions by parole board members remain totally discretionary.

— by Kellie Dworaczyk

Doctors Fault Adjusters for Delays In Processing Workers' Comp Claims

Doctors had their turn March 31 to tell legislators what is wrong with the workers' compensation system. As did insurers at the previous meeting of the House Business and Industry Subcommittee on Workers' Compensation Insurance Carrier Practices, doctors said that the system overall seems to be working. But their testimony also corroborated earlier allegations that adjusters employed or used by workers' comp insurance carriers are creating problems for injured workers and their doctors. Third party administrators, fourth party reviewers, and claims adjusters in the workers' comp system, as well as workers claiming benefits under the system, are scheduled to testify at the subcommittee's next meeting, set for April 23 in Dallas.

A major complaint of doctors is that adjusters lacking medical training and free of regulatory oversight deny claims and pre-authorization for medical treatment or reduce payment for claims on a seemingly arbitrary, perhaps cost-driven, basis. For example, impairment ratings over the 15 percent threshold required for income benefits are almost always questioned, said witnesses at the March 31 hearing. They noted that insurance carriers have little to lose by routinely denying claims, while the consequences are significant to injured workers needing treatment or income benefits or to doctors who must await the results of the dispute resolution process in order to be paid. "Why is it not fraud when an insurance company arbitrarily down-codes a claim [reducing it to a lower reimbursement code] as it is when a provider reports a false treatment code to receive a higher reimbursement?" asked J.P. Word, executive director of the Texas Chiropractic Association.

Doctors said adjusters often defend treatment denials by citing what is written on the accident form that employers are required to submit to the insurance carrier, rather than on the diagnostic form submitted by attending doctors. For example, an employer may report that a worker fell and injured his arm, yet the worker also may have had injury to the neck that was not apparent at the time of the accident. The neck pathology is later discovered or suspected by the doctor, but further treatment is denied by the adjuster on the grounds that a neck injury was not mentioned in the employer's accident report. One doctor said an adjuster denied further treatment to a patient who developed bladder control problems after treatment for a crushed pelvis

suffered in a work-related accident. Delays in treatment can exacerbate medical problems and thwart efforts to return injured workers to the job, doctors added.

Doctors also testified about document control problems that seem to plague adjusters, even when medical information and forms have been sent to them repeatedly or by certified mail. Paperwork shuffles perpetuated by adjusters unnecessarily delay patient treatment and claims payment and increase the cost of providing health care to injured workers, doctors said. One doctor reported that he personally went to an adjuster's office and found the required form sitting on the adjuster's desk. Doctors also complained that adjusters are unavailable for pre-authorizations at lunchtime or on Friday afternoons. Some sort of system should be set up for patients awaiting treatment during those times, they said.

Witnesses also suggested that the workers' compensation insurance system could be improved by:

- outcome studies to determine which treatment methodologies are successful in getting injured workers back to work;
- more incentives for doctors and employers to find meaningful, modified jobs for injured workers;
- better training and oversight of designated doctors chosen to help settle a medical or impairment rating dispute between a carrier and an injured worker; and
- updated provider fee schedules.

June Karp, director of the Workers' Compensation Research Oversight Council, said that over the past three years the council has received an increasing number of complaints by workers about how they are being treated by adjusters who have contracted to process claims for insurance carriers. Karp explained that these third party adjusters are not subject to insurance regulations as are third party administrators of other health care claims. In response to a question from the subcommittee, Karp said she believed that these adjusters have escaped regulation because they have had a very strong lobby, including representatives of such political subdivisions as school districts, that is focused on limiting workers' comp insurance regulation.

— by *Kristie Zamrazil*

Lines Drawn Over Voluntary Air Permitting Proposal

The air permitting process in Texas has been successful in reducing pollutant emissions and should be extended to grandfathered facilities currently not subject to the process, agreed witnesses at an April 2 hearing of the House Environmental Regulation Subcommittee on Grandfathered Facilities. Witnesses from divergent camps disagreed, however, on whether a permitting program for such facilities should be mandatory or voluntary.

The Texas Natural Resource Conservation Commission (TNRCC) is seeking public comment on a proposed voluntary plan based in large part on recommendations made by the Clean Air Responsibility Enterprise (CARE) Advisory Committee, said Commissioner Ralph Marquez. Under HB 3019 by Allen, the 75th Legislature required the agency to have a voluntary permitting plan for grandfathered facilities in place by December 1998 (see House Research Organization, Focus Report 75-22, *Texas Looks to Grandfathered Facilities for Air Quality Improvements*, April 2, 1998).

Already 36 companies with facilities grandfathered from having to meet air permitting requirements of the 1971 Texas Clean Air Act have volunteered for permits, pledging to reduce air emissions by a total of 25,000 tons. This amount is equivalent to the emissions produced by half a million automobiles, Marquez said. Many more companies are discussing permitting options with the TNRCC, he added. "This is the tip of the iceberg."

"Our unwritten goal is to reach the 1 million car equivalent by the time the CARE plan is finalized in June," said Marquez. "Before July 1, we will have another sizeable number of companies and reductions to announce." Rep. Ray Allen, subcommittee chair, said initial reductions represented a "down payment" on future improvements to air quality and served as an indication that "volunteerism will work."

Volunteerism criticized

Others were less positive about the potential of a voluntary program. Rep. John Hirschi noted that

Alcoa, with 139,000 tons of emissions annually, was not on the list of companies that had volunteered to give up their grandfathered status. Jeff Saitas, TNRCC deputy director for air quality, said the company was working with the agency and was expected to volunteer for the program later.

Three dozen companies volunteering to give up grandfathered status for certain facilities is good, remarked George Smith, Sierra Club representative to the CARE Advisory Committee. "But there are 700 others with probably 7,000 facilities," he noted. "This is where volunteerism really doesn't do the job."

Smith said that a major flaw of the program is that it lacks any disincentive for facilities to remain grandfathered. He urged legislative action to increase emissions fees for grandfathered facilities and set a deadline of 2001 for bringing all such facilities into the permitting program.

Facilities exempt from the state air permitting process account for almost 1.55 million tons of pollutant emissions, most from grandfathered facilities, said Peter Altman, director of the Sustainable Energy and Economic Development (SEED) Coalition. A 25,000-ton reduction amounts to less than 2 percent of unpermitted emissions, he pointed out. "At this rate, we'll knock the problem out in about 75 years."

"Nothing deals with air pollution for industry as well as the simple requirement that they get an air permit," Altman maintained. "We're not asking for special regulations or new laws, just that all facilities comply with the same law."

Other witnesses representing public interest and citizen groups also called for a mandatory program with penalties for inaction and deadlines for participation. And the sooner, the better, said Ramon Alvarez of the Environmental Defense Fund. "2001 is too late; we can't wait another three years and two legislative sessions" to see whether a voluntary program works. Alvarez said the burden should be on industry to show significant improvements before the 76th session or face a mandatory program. The TNRCC should be required to analyze emissions re-

ductions achieved under the CARE program in advance of the next session. “If the voluntary program works, we’ll all be cheering for it,” he said. But if the program lacks substance, then the Legislature will be in a position to adopt more stringent measures. Alvarez also suggested legislating certain disincentives for companies to maintain grandfathered status, such as increasing emissions fees for these facilities and removing the cap on emission fee assessments.

Carrots vs. sticks

Industry representatives, on the other hand, urged support for a voluntary program with incentives to encourage participation rather than disincentives to erode support. Wade Stansell, representing the Association of Electric Companies of Texas, said more companies would join if the permitting process were streamlined and allowed for public input via notice and comment procedures, rather than the more burdensome contested case hearing. Companies also are hoping for creative and innovative approaches as alternatives to the more prevalent command and control regulations and programs. “Those are the sticks,” Stansell said. “It’s the voluntary programs that will get us further and further down the road.”

Such considerations are especially important to small agricultural businesses, added Tony Williams,

executive vice president of the Texas Cotton Ginners Association. Cotton gins, grain elevators, and feed mills are the most common grandfathered facilities in the agricultural sector, he said. Because of tight profit margins in these industries, facilities will be leery of any program with a potential for hefty fines or costly requirements, such as extensive public notice. Williams urged a “simple standard permit” for small business and small sources, which typically lack staff or financial resources to hire consultants to process paper. Any permitting process for grandfathered facilities in the ag sector “must maintain some simplicity,” he said, and be voluntary.

“We have not said that the plan we are proposing is the final one,” stressed TNRCC’s Marquez. The public meetings and comment period are intended to help shape the plan, he said. Marquez pointed out that no objections had been voiced about the overall intent of the proposed plan for permitting grandfathered facilities, but only with the specific mechanisms for realizing those intentions. The long history of grandfathered facilities can be extended one more year while the state gauges how well it can work with stakeholders to achieve the goals of the program, he said. “We believe a voluntary program will produce faster progress with better results.”

— by *Linda Fernandez*

Distance Learning Programs Offer New Higher Education Options

Texas institutions of higher education offer a multitude of distance learning programs, and these options will be further expanded with the inauguration of the Western Governors University (WGU), officials of the the Texas Higher Education Coordinating Board told a March 26 meeting of the House Higher Education Subcommittee on WGU. However, Texas schools need to do a better job of advertising these programs to the public, said Dr. John J. Dinkel, chair of the board’s Instructional Telecom-

munications Advisory Committee and a professor at Texas A&M Mays College of Business.

Distance learning or distance education is generally defined as using technology to deliver educational materials to students outside the traditional classroom. The repertoire of technologies available for distance learning has grown as a result of technological advancements in telecommunications, according to material presented by Dr. Dinkel. Older technologies

— such as videotape, microwave distribution systems that provide live one-way video and telephone hook-up for questions, satellite systems with one-way video and two-way telephone hook-ups, and cable television — are giving way to emerging technologies that allow for interaction via systems that deliver video and audio in real time in both directions. Distance learning programs at both the University of Texas and Texas Tech make use of this new technology, said Dinkel. Interactive computer technology via the Internet and computer disks and CDs also allow for instruction over distances.

Dinkel said that earlier problems with distance learning programs — incompatible infrastructure and lack of collaboration between institutions — have been remedied in large part, and criticisms thus have softened. Standardized infrastructure technology is

allowing increased interconnectivity, while collaborations between institutions are on the upswing. For example, components of the University of Texas and Texas Tech University system have interconnected video networks that regularly share programs. The Virtual College of Texas, a major collaborative distance learning initiative involving 50 community college districts and the Texas State Technical College, will go on line in the fall of 1998. The consortium will share courses, credits and funding and allow students to take courses throughout the state.

At present, 100 of the state's 111 institutions of higher education have approved distance learning degree programs, up substantially from the 59 approved degree programs in 1994. Moreover, 38 of the state's 41 university/health science centers and 67 of its 75

WGU: virtual learning across state lines

The Western Governors University (WGU) is a “virtual” university incorporated as a nonprofit corporation in the State of Utah in January 1997 to expand access to higher education through technology, explained Dr. Jeffrey Livingston, CEO for the university. A distance learning institution focused on educational needs for developing markets, WGU will grant degrees based on competence and learning outcomes rather than traditional credit hours. WGU will have no faculty and courses, but will act to broker programs and courses supplied by both traditional institutions and such nontraditional educational providers as corporations that train employees for specific skills. WGU anticipates a 1998 start-up with an initial offering of an associate of arts degree and certification for electronic technicians.

Livingston said that WGU will not compete for students with traditional institutions of higher education, but will serve as an alternative for students seeking competency-based credentials, such as an associate degree in electronic manufacturing.

Governors from 18 western jurisdictions — Alaska, Arizona, Colorado, Hawaii, Idaho, Indiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Oklahoma, Texas, Utah, Washington, Wyoming, and Guam — have signed a Memorandum of Understanding to participate in WGU. (Citing its own in-state distance learning programs, California declined to participate.) Each participating jurisdiction has paid a \$100,000 “initiation” fee to be part of WGU. Texas' fee was covered by a \$125,000 grant from the Telecommunications Infrastructure Fund to Dallas County Community College, the institution designated by Gov. George W. Bush to pilot WGU in Texas.

In addition to the \$1.8 million from state initiation fees, WGU has raised \$7.7 million from foundations, the University of Colorado, and corporations, including IBM, AT&T, Microsoft, Novell, and Cisco Systems. Students will pay WGU an application and administration fee plus an additional fee of \$30 per course. Tuition will be determined by each school offering a course.

community/technical colleges have distance learning programs. Overall, 31 institutions of higher education offer 149 degree programs through distance learning technology. Coordinating board records show that about 60,000 of the state's 900,000 students are presently enrolled in distance learning courses.

According to Dinkel, Texas already offers the variety of courses now being planned for the Western Governors University, but does not provide an overarching umbrella that brings together all the programs available in the state. For example, noted Dr. Marshall Hill of the coordinating board, Texas is part of the Southern Regional Electronic Campus, a distance learning program of 15 southern states that gives traditional degrees. Hill also pointed out that Texas has numerous distance learning programs, in-

cluding the board's "Texas Colleges on Line," which provides web links to all colleges and universities that offer electronic courses, as well as individual programs provided by Texas community colleges and the University of Texas System UT TeleCampus.

UT Telecampus is a coordinated, one-stop shopping, distance learning internet website for the UT System's nine academic and six medical components, explained system official Dr. Darcy Hardy. The website will be up and running by the middle of May, Hardy said. UT System components generally charge \$25 to \$50 per credit hour for distance learning classes.

— by *Patricia Tierney Alofsin*

House Research Organization

Texas House of Representatives
Capitol Extension
Room E2.180



P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0752
FAX (512) 463-1962

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