

SUBJECT: Continuing the Texas Commission on Jail Standards

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 5 ayes — R. Lewis, Bonnen, Denny, Flores, G. Lewis

0 nays

4 absent — Kamel, Chisum, Christian, Gutierrez

WITNESSES: For — Jim Barron and Jim Allison, County Judges and Commissioners Association of Texas; Donald Lee, Conference of Urban Counties; Mark Mendez, Tarrant County

Against — None

On — Jack E. Crump and Debbie Fillmore, Texas Commission on Jail Standards; John Hubbard, Sunset Commission

BACKGROUND : The Texas Commission on Jail Standards (TCJS) was created in 1975 to oversee county jails in Texas. The commission's duties include adopting rules and establishing minimum standards for the construction and operation of county jails; establishing minimum standards for the treatment of prisoners and prisoner programs and services; adopting rules and minimum standards for the required number of jail supervisory personnel; inspecting jails for compliance with state laws and commission rules; providing consultation and technical assistance for county jails; and requiring annual reports on county jail conditions and on juveniles detained in city and county the facilities.

Currently, TCJS regulates jails in 242 counties, including overseeing city jails operated by private companies. Counties without jails contract with neighboring counties for jail space. Eleven of the jails it oversees are operated by private companies through a contract with a county or city.

The commission has nine members, appointed by the governor with Senate consent. Four of the members must be citizens who do not hold public office, at least one of which from a county with a population of 35,000 or

less; one member a sheriff of a county with a population of more than 35,000; one a sheriff of a county with a population of 35,000 or less; one a county judge; one a county commissioner; and one a doctor licensed in Texas.

The commission is funded primarily through general revenue appropriated by the Legislature. The commission is also appropriated criminal justice grants from the Governor's Office and receipts from the sale of their standards books. For the fiscal 1996-97 biennium, the board was appropriated about \$1.9 million.

TCJS is subject to the Sunset Act and will be abolished on September 1, 1997, unless continued by the Legislature.

DIGEST:

HB 2532 would continue the Texas Commission on Jail Standards until September 1, 2009, establish rules allowing only cities, counties, private vendors operating under a contract with a city or county, and the state to operate correctional facilities to house out-of-state inmates, and require the commission to make unannounced inspections of jails.

The bill would make other changes implementing standard Sunset Advisory Commission recommendations including ones on conflicts of interest for commission appointment, training for commission members, complaint handling, legislative review of funds.

HB 2532 would take effect September 1, 1997.

Facilities housing out-of-state inmates. HB 2532 would allow only the state, counties, cities, and private companies operating a facility under a contract with a county or city to house out-of-state inmates. Private entities not associated with a city or county could not contract with another state to house out-of-state inmates.

Counties and cities could enter into contracts to house out-of-state inmates only if: (1) the county or city gave the TCJS a statement of the type and availability of capacity that would be used to house the inmates and a written plan explaining procedures to deal with riots, rebellions, escapes or other emergency situations; and (2) TCJS inspected the facility, reviewed

the written plan, and determined that the facility was proper for housing the inmates.

City and county contracts to house out-of-state inmates would have to meet the following criteria:

- require facilities to meet TCJS minimum standards;
- require inmates to be released from custody in the state that sent them; and
- require the facility to review the out-of-state inmate's records for compliance with TCJS standards concerning the sending state's classification of the inmates, the inmate's conduct while confined in the sending state, and medical information, including certification of tuberculosis screening or treatment.

The custody level for out-of-state inmates would have to be determined by the facility receiving the inmates, in accordance with TCJS rules. Facilities housing out-of-state inmates would be entitled to terminate a contract at will with 90 days notice to the sending state.

Texas facilities could not accept inmates with a record of institutional violence involving the use of a deadly weapon or a pattern of violence while in custody in the sending state or a record of escape or attempted escape. This prohibition could be waived if TCJS determined that the receiving facility was capable of confining an inmate with one of these records.

TCJS would be authorized to require a state sending inmates to Texas or an entity housing out-of-state inmates to reimburse Texas for costs incurred in responding to a riot, escape or other emergency at the facility.

Counties, cities, or private vendors would have to:

- send the commission a copy of their contract to house out-of-state inmates;
- require all employees to be certified as required by the Commission on Law Enforcement Officer Standards and Education;
- submit to inspections by TCJS; and
- immediately notify TCJS of any riot, rebellion, escape or other emergency situation.

TCJS could impose a fee on private vendors operating facilities housing out-of-state inmates to compensate the commission for the cost of regulating and providing technical assistance to the facility.

TCJS would be authorized to adopt rules regulating the number of federal prisoners and prisoners from jurisdictions other than Texas who are housed in county or city jails or a private facility operated under contract with a city or county. TCJS would be authorized to adopt rules regulating these facilities as necessary to protect the health and safety of out-of-state prisoners, Texas prisoners, jail personnel, and the public.

HB 2532 would not apply to facilities, other than county jails, that house only federal prisoners under a contract between the federal government and a county, city or private vendor. If a county, city or private vendor contracted to house or began to house state, county, or city prisoners or prisoners from another state, it would be required to report to TCJS before putting the inmates in a facility housing only federal prisoners.

HB 2532 would repeal a current provision authorizing the Texas Department of Criminal Justice to adopt rules regulating the number of federal prisoners and prisoners from jurisdictions other than Texas in a county jail.

Inspections based on compliance and high-risk factors. HB 2532 would require the commission to schedule announced and unannounced inspections of jails based on a jail's history of compliance with commission standards and other high-risk factors identified by the commission.

SUPPORTERS
SAY:

HB 2532 is needed to continue TCJS, close a loophole concerning facilities housing out-of-state inmates, and institute a system of unannounced inspections of jails.

Continuing the commission. The Jail Standards Commission should be continued to oversee Texas jails and ensure they are safe, secure and meet minimum standards, including protecting prisoners' civil rights, and to help protect counties against lawsuits. TCJS helps counties and includes numerous representatives of counties, including sheriffs, county judges, and county commissioners. Seven of the 10 most populous states, including

Texas, regulate their county jails.

TCJS helps protect counties against lawsuits and federal court control over county jails. Before the creation of the commission, jails were often regulated through court rulings on lawsuits brought by prisoners, which was costly and inefficient. However, the creation of the commission helped in the dismissal of one lawsuit over the Dallas County Jail because the court said Texas had made a commitment to oversee its county jails and ensure that minimum standards were met. This suit has served as a legal precedent and placed counties in a much stronger positions to defend themselves and to stop or win a lawsuit if the the county is following TCJS regulations. Although the the number of lawsuits filed over county jails has increased, at least in part because of the increase in the prisoner population, the number of suits would be even higher without the TCJS.

The TCJS is needed to set minimum standards for jails, take action when they do not meet requirements, and review plans for jail construction and operations. This ensures the facilities are built and run properly. These standards also can help counties in developing their jail budgets and help ensure that the jails are funded properly. TCJS guidance in running jails can be especially useful in small counties that may not have large staffs or legal advisors and when local officials are new or inexperienced in jail operations. TCJS regulations and inspections also help ensure that prisoners' constitutional rights are protected along with the safety of prisoners and those working in the jails.

Transferring the duties of TCJS to another state agency would not result in substantial savings or benefits to the state because the commission's responsibilities do not overlap with any other agencies' duties or mission.

Facilities housing out-of-state inmates. HB 2532 would close a loophole in state law that allowed some private correctional facilities to escape regulatory oversight and would allow only the state, cities, counties or private vendors operating under the authority of a city or county to contract to house out-of-state inmates. The bill also would clearly state TCJS's authority to oversee facilities housing out-of-state inmates. In addition, the bill would conform the law to an attorney general's opinion concerning private jail facilities, establish uniform requirements for contracts to house

out-of-state inmates, and codify many current policies of Texas Commission on Jail Standards concerning those contracts.

HB 2532 would correct an undesirable situation in which correctional facilities that are purely private and not operating through any other governmental unit escape oversight authority. The TCJS oversees county jails operated by the counties or through private vendors. It also oversees municipal jails that contract with private vendors. The Texas Department of Criminal Justice has authority over private vendors with which it contracts, and private facilities that contract to hold federal prisoners are overseen by the federal government. However, there no entity charged with overseeing purely private facilities that contract with another states to hold out-of-state prisoners. HB 2532 would correct this situation by requiring that all private correctional facilities, except those holding federal prisoners, operate through a contract with the state, counties or cities. While none of these purely private facilities exist currently, HB 2532 would ensure that they do not spring up in the future.

HB 2532 also would codify many current TCJS policies governing jails housing out-of-state inmates. These are reasonable, prudent policies that would help ensure the safety of Texans. For example HB 2532 would require that contracts to house out-of-state inmates require inmates to be released in the state that sent them and that inmate health records be reviewed for compliance with state standards. In addition, facilities would have to develop plans to deal with emergencies and notify the state about an escape or other emergency situation, and TCJS would be able to charge the sending state or the facility for state assistance in an emergency situation. Although TCJS policies cover many of these areas, HB 2532 would strengthen them by making them law and ensure that they could be changed only by the Legislature.

HB 2532 would prohibit facilities from accepting out-of-state inmates with records of escape or violence while incarcerated. However, this requirement could be waived if the TCJS determined that a facility could handle out-of-state inmates with records of violence. Local facilities housed all types of state felons during the jail overcrowding crises, and some are extremely secure facilities built to house violent inmates. These facilities should be used, instead of being moth balled. However, the bill would require that

they would be scrutinized before being allowed to accept these types of inmates. This could help counties meet their financial obligations, especially since they could be paid a higher rate by other states to house this type of inmate. In addition, it is in the state's interest to keep these facilities operating so that they can be used for local or state prisoners, if necessary.

Private facilities that hold federal prisoners would remain under federal oversight, and those that house prisoners through a contract with the Texas Department of Criminal Justice would be subject to the department's regulation. The bill would repeal a current provision that authorizes the Texas Department of Criminal Justice to adopt rules regulating the number of federal prisoners and prisoners from jurisdictions other than Texas in a county jails. This authority has never been used and is more properly vested with the TCJS.

Inspections based on compliance and high-risk factors. Requiring TCJS to schedule announced and unannounced inspections of jails based on jails' history of compliance with commission standards and other high-risk factors would allow the commission to prioritize its inspection efforts by focusing on jails that need more scrutiny and technical assistance. About 33 counties were not in compliance with the commission's standards at the end of 1996. Currently, the commission inspects each jail annually and occasionally has unannounced "visits" as its resources permit. Unannounced inspections occur only if TCJS receives substantive complaints of serious violations. TCJS conducted only three unannounced inspections in fiscal 1996.

A formal policy of unannounced jail inspections would allow commission staff to get a more accurate picture of the operations of jails so that it can help bring all jails into compliance with its standards.

**OPPONENTS
SAY:**

The TCJS is not necessary and should not be continued. In addition, HB 2532 may go too far in placing numerous requirements for contracts housing out of state inmates into law instead of giving TCJS the flexibility to set them in rules.

Continuing the commission. TCJS has outlived its mission and should be abolished to save taxpayers money and return control of county jails to local

officials. The commission does not protect counties against frivolous lawsuits, and it is not necessary to protect jail prisoners' civil rights or to publish minimum standards for jails.

Although the creation of the TCJS may have helped with litigation concerning local jails in the 1970s, the situation is different now. Jail conditions and operations are vastly different than they were 20 years ago, and there is no danger that they would return to their previous state of operations in the absence of the TCJS.

TCJS does not protect counties from frivolous lawsuits, but has in fact encouraged litigation over whether facilities meet commission rules. Since the mid 1980s the number of inmate lawsuits has vastly increased, and the existence of TCJS has not stymied this litigation. Often, TCJS rules themselves are cited as the subject of the lawsuits. Counties are already routinely being told what to do by federal courts, and the TCJS not providing protection from these suits. Other states without an entity similar to the TCJS have not lost control of their jails to federal courts.

The commission is not needed to publish minimum jail standards. Two national groups, the National Institute of Corrections and the American Corrections Association, publish model guidelines that TCJS merely adopts. Even the commission's adopted standards are not always enforced because TCJS routinely gives jails variances from the standards. Texas would do better to follow other states that publish standards but do not have a multi-million dollar state bureaucracy to tell constitutionally elected local officials how to run their jails.

Sheriffs sometimes believe that TCJS gives them protection from being underfunded by their commissioners courts. Although some sheriffs may believe that they receive their budget partly as a result of the standards set by the TCJS, these decisions rightfully belong with local officials and should not be influenced by a state bureaucracy.

TCJS is not necessary to protect the civil rights of prisoners because other state and federal agencies are charged with protecting prisoners' civil rights. These include, the Federal Bureau of Investigation, the state attorney general's office, district judges and local district and county attorneys. In

addition, Texas statutes address prisoner rights and protections. For example, sheriffs must report to the attorney general any prisoner deaths.

The commission is not necessary to collect data on prisoner populations. This data is submitted by local jurisdictions to TCJS, which merely compiles it. This function could easily be handled by another state agency.

Facilities housing out-of-state inmates. HB 2532 could go too far in codifying current policies and rules of the TCJS. The commission should retain the flexibility to govern contracts concerning out-of-state inmates without unnecessary statutory restrictions

OTHER
OPPONENTS
SAY:

HB 2532 should not allow a waiver of the policy prohibiting jails from housing out-of-state prisoners with histories of violence or escape. Without this policy there is no guarantee that Texas would not become the dumping ground for other states' violent inmates or those with a history of escape. Even though other states may be willing to pay more for Texas facilities to house these inmates, the extra money would not be worth jeopardizing public safety.

NOTES:

The companion bill, SB 367 by Brown et al., passed the Senate on April 21 and was reported favorably, as substituted, by the House County Affairs Committee on April 29, making it eligible to be considered in lieu of HB 2532.

A related bill, HB 1642 by Keel, which would abolish the TCJS effective September 1, 1997, has been referred to the House County Affairs Committee. On March 19 the House considered an amendment by Rep. Keel to HB 1 by Junell, the general appropriations bill, that would have eliminated funding for TCJS. The amendment was tabled by 110 to 33.

Many of the provisions concerning regulation of out-of-state inmates are also contained in HB 3254 by Hupp, which was passed the House on May 5.