

# TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR  
Brandon S. Wood



P.O. Box 12985  
Austin, Texas 78711  
Voice: (512) 463-5505  
Fax: (512) 463-3185  
<http://www.tcjs.state.tx.us>  
[info@tcjs.state.tx.us](mailto:info@tcjs.state.tx.us)

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Jennifer Jones  
Executive Director  
Sunset Advisory Commission  
1501 North Congress  
6<sup>th</sup> Floor, Robert E. Johnson Building  
Austin, Texas 78701

Director Jones,

I wanted to thank you and your staff for the courtesy extended and professionalism demonstrated throughout this process. Your team has conducted an exhaustive review of the operations and role of the Texas Commission on Jail Standards as evidenced by the report that has been issued. The different perspective that has been provided will assist the agency, and several of the recommendations have already been started. Staff believes that the responses to each of the recommendations included in the report demonstrates the same level of thoroughness with which we attempt to carry out our mandated duties. We look forward to continuing to work with you and your team to improve the Texas Commission on Jail Standards.

Respectfully,

A handwritten signature in blue ink that reads "Brandon S. Wood".  
Brandon S. Wood  
Executive Director



**Issue 1**

***The Agency's Minimum Jail Standards are Overly Vague, Broad and Stagnant, Creating Risk for Jails and Inefficiencies for the Agency***

***Change in Statute***

**1.1      Require the commission to ensure minimum standards account for varying needs and levels of risk among different jails.**

The agency is charged with developing and enforcing minimum standards for the operation of jails in Texas. Minimum standards are the “minimum” that jails are required to meet, and it applies to all jails. The recommendation in essence requires the development of different minimum standards based on “needs and levels of risk among different jails.” If adopted, this would be a major policy change that will require substantial work by the commission staff and its board to achieve a consensus on which “risks” and which “needs” will drive different standards. This will in turn result in major debate about which jail should be in which category, not only complicating the work of the staff, but also providing an opportunity for local officials to argue about how their jails should be classified.

If this change is enacted, the first step would be to form a work group tasked with identifying which standards would be subjected to the tiered approach. This work group would also identify what the tiers would consist of. Following identification and establishment of the tiers, the work group will have to divide the jails in Texas into different tiers and these tiers would have to be approved by the board.

If a tier approach is adopted, and consensus is achieved on the classification of the jails along the different categories, staff is concerned that this will then establish different thresholds for jails to be subject to litigation. An example that has been discussed is the level of mental health care available to an inmate in Harris County compared to one in Hansford County. Both counties are required to properly screen the inmate, notify mental health and a magistrate, and provide an appropriate level of care and follow the orders of all medical professionals. There is no arguing that Harris County has more resources to address this issue, but an inmate in Hansford County is required to be provided the same minimum level of care. Adopting an approach that clearly ensures (by requiring) an inmate in Harris County will be given more care simply based upon the location of their incarceration seems patently unfair and could be challenged.

**1.2      Clarify the commission has authority to revise, amend, and change rules as needed without specific legislative action or approval.**

Staff agrees with this recommendation.



TCJS Sunset Response 2

**Management Action**

**1.3 Direct the commission to review its rules for vague and ineffective standards, and improve their specificity and usefulness.**

The agency believes all existing standards to be effective. Nevertheless, agency staff will review the standards to identify those that appear vague and will conduct a workshop in which stakeholders may recommend additional standards for review. The Commission board may then permit further workshops to recommend revisions to the standards to improve their clarity.

**1.4 Direct the agency to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.**

The agency will create a comprehensive, staggered, four-year review schedule. Of the existing 844 rules, 201 will not be included in this schedule because these construction rules apply only to jails that were in operation on or prior to December 23, 1975. This leaves 643 administrative rules to be reviewed, published, and readopted on an on-going, continuous basis. There will be sixteen opportunities in the four year cycle to request permission from the board to publish and/or adopt, which will also include preparation of the material for board member review, incorporation of any comments received, and submission to the *Texas Register* for each proposal and adoption. This is not a minor undertaking for any agency, but especially so for one with 23 FTEs, most of whom are currently performing multiple tasks.

**1.5 Direct the agency to adjust its operational plan approval process so jails may have plans that implement higher-than-minimum standards.**

Agency staff will revise the current policy and procedures associated with the review of operational plans to allow for plans that exceed minimum jail standards to be approved. Although, operational plans that exceed minimum jail standards are already eligible for approval, agency staff has historically cautioned counties that it will enforce the operational plan as approved even if it exceeds minimum jail standards. This means that, although the jail may be in compliance with minimum jail standards, if the jail violates that portion of its operational plan that exceeds minimum standards, it will be subject to a notice of non-compliance the same as if the jail had violated minimum standards. It will be imperative that jails with approved operational plans that exceed minimum jail standards ensure their staff adheres to that plan and do not revert to simply meeting minimum jail standards.

The issue of whether local officials will have an incentive to exceed minimum standards with their operational plans is unclear if a tiered approach is adopted as proposed in Recommendation 1.1. It should also be noted that inspectors will no longer be inspecting each jail only according to minimum jail standards but also to what is contained in their approved operational plan. This will lengthen the inspection and increases the need to review the current inspection program and resources allocated.



**Issue 2**

***The Agency's Inspection and Enforcement Processes Do Not Adequately and Efficiently Mitigate Risk in Jails***

***Change in Statute***

**2.1 Require the commission to establish a risk-based approach to inspections.**

The agency continues to believe that on-site inspections of all facilities under our purview on an annual basis is invaluable and should remain in place. The only way to gain a true understanding of jail operation and the safety and security of the inmates is to inspect the physical facility to ensure that life safety and security equipment is functioning properly and to interact with the inmates in person. The implementation of “desk audits” for a certain percentage of jails as recommended may potentially encounter the same issues as identified in the investigation of complaints. Agency staff understands the approach and value of utilizing risk assessment to guide inspections. However, staff believes that not conducting annual on-site inspections for all jails will reduce the inspector’s ability to pre-empt non-compliance, and the agency, jailers, and inmates all benefit when non-compliance can be preempted.

**2.2 Require the commission to adopt rules and policies for taking escalating actions against jails that remain out of compliance for extended or recurring periods of time.**

Staff will review the proposed penalty matrix and will develop and propose a model that incorporates graduated, escalating actions that can be taken against jails. This model will be presented to the board for consideration and revision along with administrative rules governing its application.

**2.3 Require the commission to adopt rules and procedures to assess compliance with all standards during a certain percentage of jail re-inspections.**

Staff will develop rules and procedures utilizing its enhanced risk assessment process to determine which jails will be subject to a full re-inspection after being issued a notice of non-compliance.

***Management Action***

**2.4 Direct the agency to develop clear, consistent procedures for conducting its monthly risk assessment.**

Procedures for conducting the monthly risk assessment exist but will be reviewed and amended to incorporate the additional elements recommended in the Sunset Review.

**2.5 Direct the agency to create a procedures manual detailing its inspection process.**

The agency currently has what it believes to be a robust policy and procedure for conducting inspections. This includes a check list utilized by each inspector and available to county jails for their own use. Discussions with inspection staff indicate that the biggest shortcoming of the current approach is that there are no established criteria for determining when technical assistance is to be provided in lieu of listing an item as non-compliant.



#### TCJS Sunset Response 4

In order to explore this expanded manual concept, the subject of classification will be utilized as a test case. Not only will it include the number of files to be reviewed, but it will also incorporate specific instructions as to how to view an error that occurs in the initial classification, whether it impacted the classification level of the inmate, and if it resulted in an inmate being housed improperly. It will also list as factors the number of errors that occur and their severity, reclassification, and any additional errors that occurred during that phase. This will result in a “score” that will then determine compliance or non-compliance.

Staff believes that, although this will reduce an inspector’s ability to use discretion, this will be offset by removing the subjectivity of the inspection process. This in turn will ensure that all parties involved are aware of what is required and will provide for consistency between inspectors and inspections year to year.

### **Issue 3**

#### ***The Agency Lacks Key Complaints Data and Investigation Processes to Best Ensure Jails Meet Minimum Standards.***

##### ***Change in Statute***

###### **3.1 Require the commission to adopt rules directing jails to post information on the commission’s complaints process.**

An administrative rule requiring jails to post information on the commission’s complaint process will be promulgated. This rule will require that the complaint process, including the appeals process and our jurisdiction, shall be included in the inmate handbook and posted within inmate congregate areas. Posting of this information within inmate housing areas would subject it to vandalism and will require additional review to determine the most appropriate way for this information to be conveyed to the inmates to ensure delivery.

###### **3.2 Update statute to enhance existing requirements for tracking, analyzing, and reporting on complaints.**

Management has instructed staff to expand its documentation to include all complaint allegations that fall under the agency’s purview to resolve and not merely the three most serious allegations. While all allegations contained in a complaint submitted are reviewed, database limitations would only allow the three most serious to be properly tracked. In addition, the ***Monthly Inmate Complaint Report*** provided to the commissioners at the quarterly meetings will be posted to the agency website to increase public availability.

###### **3.3 Direct the agency to develop clear, detailed procedures for investigating complaints.**

Staff believes that the title for this issue should have been: “expand the existing procedures to include ...” rather than to “develop.” In addition, because the agency and jails typically use the word “investigate” to refer to criminal investigations, the agency believes that it is more accurate to say it “reviews” complaints rather than it investigates them. The agency does have clear and detailed procedures for reviewing complaints. Nevertheless, it also acknowledges that they do need revision



#### TCJS Sunset Response 5

and expansion. The report's recommendation to include procedures for prioritizing complaints fails to acknowledge that the existing policy and procedure already contain a listing of priorities and the length of time allowed for a response. The policy and procedure are currently being reviewed to ensure clarity and remove any uncertainty that could be envisioned by staff assigned the task of reviewing complaints. In addition, staff is currently deciding on an approach to ensure that our complaint process works in tandem and not in conflict with the local grievance process.

The agency will develop a system that will keep inspectors better apprised of founded complaints and will incorporate that into risk assessment.

For a majority of the complaints submitted that the Commission has purview to review (medical), the decision as to whether the complaint is founded or unsubstantiated is NOT based solely on the sheriff's or jail administrator's response, a practice that has not existed for at least 8 years. Although staff may request jails to prepare a timeline or summary of events, the determination is based upon other documentation. However, there are other areas in which a review is conducted where the level of records associated is not the same, and these areas and how they are analyzed merit further review. If an inmate claims he did not receive an indigent pack, the only way to confirm this would be the adoption of a rule requiring the jail to document distribution. If an inmate complains that his meal was not served hot or in the correct sized portion, there may simply not be sufficient records to substantiate the complaint. This approach would result in all jails being required to document each and every function and that it was carried out and to do this even for an event that did not occur but is alleged to have taken place.

#### **3.4 Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency.**

Included in the existing procedures manual are examples of how to respond to non-jurisdictional and potentially criminal allegations to the agency. This procedure will be formally incorporated into the agency policy regarding complaints and the procedure revised and expanded to be more explicit.

The agency would exceed its authority if it tried to ensure that the non-jurisdictional complaints it refers to outside entities for investigation receive proper evaluation. Tracking the number of referrals will be incorporated into our current procedures.

#### **3.5 Direct the commission to prioritize complaint investigations by risk level.**

All complaints that are within our purview to resolve will still have to be reviewed, so we are unsure what is meant by ensuring the most efficient allocation of resources toward the highest risk complaints. Prioritization with this in mind would be whether the complaint dealt with medical and was sent for a response and records as soon as it comes in with a due date of 24 hours versus one that is started two to three days after it was received because it dealt with lack of indigent packs.

#### **3.6 Direct the agency to publicize additional information about its complaints process.**

Staff agrees with this recommendation.



***Issue 4***

***The Agency's Poor Data Practices and Weak Communications Limit Its Transparency and Ability to Improve Jail Operations***

***Change in Statute***

**4.1 Require the agency to conduct trend analysis with the data it collects.**

Staff agrees with this recommendation. Conducting trend analysis has been acknowledged as beneficial but viewed as a luxury due to it being a collateral duty and not one mandated by statute. Staff has focused on carrying out its statutorily mandated duties with the limited staff it is allocated but recognizes there are several areas in which improvement is needed.

***Management Action***

**4.2 Direct the agency to publish certain information on its website for a specified amount of time.**

Staff agrees with this recommendation.

**4.3 Direct the agency to regularly review its Public Information Act requests and determine what information could be proactively published to optimize staff resources.**

Staff agrees with this recommendation.

**4.4 Direct the agency to ensure consistent, cohesive data tracking.**

Staff agrees with this recommendation.

**4.5 Direct the agency to expand certain procedures for information gathering and sharing to include more diverse groups of stakeholders.**

Staff agrees with this recommendation.



## **Issue 5**

### ***The State has a Continuing Need for the Texas Commission on Jail Standards***

#### ***Change in Statute***

##### **5.1 Continue the Texas Commission on Jail Standards for 12 years.**

Staff agrees with this recommendation.

##### **5.2 Authorize the commission to establish advisory committees by rule.**

If the agency's enabling statute is amended to allow for the creation of advisory committees, staff will prepare a proposal regarding the use and purpose of advisory committees for the board to consider.

##### **5.3 Remove statutory requirements for jail officials to report certain juvenile justice information to the agency each year.**

Staff agrees with this recommendation.

##### **5.4 Update the standard across-the-board requirement related to commission member training.**

Staff will review the across the board recommendations adopted by the Sunset Commission and begin modifying our current commissioner training to reflect the "good government" standards they represent. This effort will begin with the understanding that the agency's outdated enabling statute will be amended to require this.

#### ***Management Action***

##### **5.5 Direct the agency to conduct a staffing analysis to better align resource allocation with its core inspection function.**

Staff has already undertaken the preliminary steps in the planning process for shifting FTEs from programs that will be expiring at the end of FY2021 to its core inspection function beginning September 1, 2021. Reallocation of these FTEs was not possible prior to this time due to the fact they were carrying out a statutorily mandated program just as inspections are. Staff appreciates the acknowledgement contained in the Sunset Report that 241 annual inspections were conducted by 4 inspectors during FY2019 and took note of the disparity with other programs. In the same time period cited, 92 inspections were conducted by the Texas Juvenile Justice Department with 12 staff and 151 exams were performed by 19 Credit Union Examiners. Implied by this recommendation is the assumption that the expanded amount of work recommended within this report can be conducted with the existing number of staff by "internal efficiencies". If the agency was not already efficient, there would simply be no way for it to accomplish what it currently does. We do recognize that there are areas in which we could perform better and believe that reallocating existing staff upon the completion of the two mandated programs will be a step in the right direction. However, to believe that the recommendations contained in this report do not represent additional work is not accurate in staff's opinion.



TCJS Sunset Response 8

**5.6 The agency should use its annual reporting requirement to proactively identify statutory changes needed to conduct its work more efficiently and effectively.**

Staff will begin making recommendations for statutory changes that may improve its operations and enhance safety in jails. The agency will implement this recommendation with the 2020 Annual Report which covers the time period January 1, 2020 to December 31, 2020 and is due by February 1 of each year.