



**Texas Juvenile Justice Department  
Board Meeting**

Brown Heatly Building – Hearing Rooms 1420 & 1430

4900 North Lamar Blvd., Austin, Texas 78751

Friday, January 18, 2013 – 9:00 a.m.

**BOARD MEMBERS PRESENT:**

Scott W. Fisher, Board Chairman  
Rob Kyker, Vice-Chairman  
The Honorable John Brieden III  
Jane Anderson King  
Calvin Stephens  
The Honorable Jimmy Smith

Melissa Weiss  
MaryLou Mendoza  
The Honorable Carol Bush  
Michael Meade  
Dr. Rene Olvera  
The Honorable Laura Parker

**EXECUTIVE STAFF PRESENT:**

Bill Monroe, Senior Director of Finance & Technology  
Teresa Stroud, Senior Director of State Programs & Facilities  
James Williams, Senior Director of Probation & Community Services  
Linda Brooke, Chief of Staff  
Brett Bray, General Counsel  
Oscar Ruiz, Interim Chief Inspector General  
Eleazar Garcia, Interim Chief Internal Auditor  
Debbie Unruh, Chief Ombudsman  
Jeannette Cantu, Executive Assistant

**OTHER GUESTS PRESENT:**

Sheri Short, Navarro College  
Glen E. McKenzie  
Doug Vance, Brazos County  
Monica Kelley, Hardin County  
Estela Medina, Travis County  
Dona Hanohano, TJJD  
Melanie Cleveland, TJJD  
Chelsea Buchholtz, TJJD  
R.C. Parker, TJJD  
Tracy Levins, TJJD  
Nancy Arrigona, TJJD

Denise Askea, TJJD  
Lynn Jackson, TJJD  
Monika Arvelo, TJJD  
Terri Dollar, TJJD  
Kenneth Ming, TJJD  
Kevin Dubose, TJJD-AID  
Nadine Buttler, TJJD  
Marybel Sanchez, TJJD  
Scott Friedman, TJJD-MID  
Jim Hurley, TJJD

### **Call to Order**

Chairman Scott Fisher called the meeting to order at 9:00 a.m. A quorum was present.

### **Prayer**

Chairman Fisher led the opening prayer.

### **Pledge**

All present recited the Pledge of Allegiance.

### **Excuse Absences**

There were no absences. Mr. Calvin Stephens arrived late due to a conference call.

### **Public Comment**

There were no public comments.

### **November 16, 2012 board meeting minutes**

Judge Brieden moved to approve the November 16, 2012, meeting minutes. Jane King seconded. The motion passed unanimously.

### **Report from the Chairman**

Chairman Fisher announced two big items on the agenda were interviewing finalists for the positions of Chief Internal Auditor and Chief Inspector General. There were two finalists for the Chief Internal Auditor position and three finalists for the Inspector General positions. Chairman Fisher noted that the Board would convene in closed session for a period of time to conduct these second interviews.

A search committee met January 17, 2013 and interviewed candidates for both positions. Chairman Fisher remarked that applicants had an extremely high level of competence. Chairman Fisher expressed on behalf of the search committee that any one of the finalists will be a wonderful selection for the agency.

### **Report from the Executive Director**

Mr. Mike Griffiths, Executive Director of TJJD, presented his report. He stated that in the future there will be a legislative update section in the Executive Director report. The initial filings of the recommended budget were submitted this week. Mr. Griffiths will be meeting with the Legislative Budget Board (LBB) next week. Over the weekend he and his staff will be preparing material that will provide the LBB with information to justify the requests that the agency feels are necessary in order to operate an agency that handles 75,000 youth in the state. Senate Bill 157 has been filed regarding Parrie Haynes; there will be more updates regarding this as they occur.

Ms. Teresa Stroud, Senior Director of State Facilities & Programs, recently appointed Tom Adamski as Director of Operations for State Secure Facilities. Tom is a retired army ranger, taught army ROTC at Cameron University, and has been with the former TYC since 1998. He was the former superintendent at the Ron Jackson facility.

Mr. Griffiths stated there were several annual agency reports that were due by year end and he commended the staff for their work in getting reports submitted. Staff spent many hours preparing these documents and submitted them on time: Effectiveness of Positive Behavioral Interventions and Supports; Comprehensive Report Youth Reentry and Reintegration; Annual Report to the Governor and Legislative Budget Board - Community Juvenile Justice Appropriations, Riders and Special Diversion Programs.

A significant policy change has been made. Effective January 1, 2013, employees must be 21 years of age or older to work in facilities.

A focus nationally and state-wide is the Prison Rape Elimination Act (PREA). PREA impacts both adult and juvenile facilities as well as both county and state programs. Mr. Griffiths stated his appreciation for Mr. Jerome Williams, Ms. Lisa Capers, and all the staff that have been working on PREA. Texas is ahead of the curve. Other states are looking at Texas as a model. Training has been implemented in the counties; there are leadership conferences planned. The team went to Washington to represent Texas in this matter.

Mr. Griffiths thanked Dr. Lori Robinson, Grace Davis, and Cris Burton for putting together an ongoing conversation with the National Health Service Corporation (NHSC). This system provides repayment of student loans to clinicians who work in agency facilities. The agency identified three facilities, the NHSC toured them, and qualified staff will be eligible for up to \$60,000 repayment of student loans, a big incentive to work for TJJJ. Mr. Griffiths also mentioned the Hogg Foundation grant and the work of Dr. Robinson, Dr. Tracy Levins, Dr. Moore, and Colleen Buck on this incentive to help fund the agency's clinical internship program.

Mr. Griffiths recognized the staff and youth of the agency in regards to the thousands of notes that have been mailed to men and women in service across the world from staff and youth across facilities.

The Grayson County prevention program was featured in the Sherman Herald Democrat. The positive parenting program empowers families rather than enabling them. One of the challenges that face probation officers is when a family expects the officer to assume the role of parents, and this program puts that role back on the shoulders of parents.

In the first quarter of the fiscal year there have been dramatic reductions in worker compensation claims, and this has a lot to do with leadership in state institutions and efforts from the human resources department. There have been significant reductions especially in aggressive claims.

Mr. Griffiths recognized a list of tenured staff provided in his written report. He acknowledged their dedication to the agency and youth.

A comprehensive review of parole is being implemented. Mr. James Williams, Senior Director of Probation & Community Services, issued a directive to all parole staff that, a) any youth with a high severity risk level leaving the facility will be on electronic monitor; b), any youth that leaves the facility will have maximum supervision until there's a review; and, c), any youth with an alleged violation will have a hearing. This is the beginning of this comprehensive review of the parole program. A question regarding electronic monitoring queried whether monitoring would include GPS tracking. Mr. Griffiths stated that the technology has to be improved, but that this is the plan. A cost analysis will determine the cost to give each youth a GPS tracking device.

A question was asked regarding Dr. Roush's contract, discussed at the previous Board meeting. Mr. Griffiths responded that Dr. Roush was at the Mart facility last week. Mr. Griffiths has had a preliminary exit interview with him and believes Dr. Roush will focus on items helpful to the agency. Mr. Griffiths expects to have a final report for the boards review at the March meeting.

A comment was made regarding tenured staff. Ms. Weiss expressed appreciation for their work and the positive direction in which the agency is moving.

Mr. Meade asked a question regarding staff attrition and turnover. Mr. Griffiths stated that attrition isn't as big an issue as retention. The data acquired over the last fiscal year states that the agency is at about 92% in terms of staffing of available positions, but there is a 40% turnover rate within in the first six months. The focus will be on training. Superintendents are working to be more directly involved. Ms. Capers is working on fitness and readiness.

A question was asked regarding parole and whether Mr. Griffiths is looking at ways to hold youth accountable when they reoffend. Mr. Griffiths stated that they should not be in the community if they are reoffending. A further question was asked regarding situations where youth may be on probation and parole simultaneously. Mr. Griffiths commented that there will be hearings held on all those youth. Prosecutors cannot be prevented from doing something at the same time. Directives from Mr. Williams will form the beginning response to this issue. There will be hearings on youth who have allegedly committed criminal violations or technical violations that jeopardize public safety. Beyond this the 254 counties and their prosecutors may still want to pursue adjudication and

proceedings against those youth, but the agency wants to make sure they are confident that the agency will remove the youth who need to be removed.

Ms. Mendoza asked a question regarding the Positive Behavioral Interventions and Support (PBIS) report. Mr. Griffiths stated that the report is on the website; he will provide a copy to Ms. Mendoza. Ms. Mendoza asked if this program was implemented at all facilities. Mr. Griffiths stated that it was, and that the agency wants to expand and enrich the program further.

### **Independent Ombudsman comments**

Ms. Debbie Unruh, Independent Ombudsman, reported over the last sixty days, the Ombudsman's office completed 40 site visits to different state facilities and parole areas. They received 33 inquiries for information and have referred or answered these. The office has opened 14 individual cases that have either been completed and closed or are currently being reviewed. The office has received 45 incident reports of alleged abuse, neglect, and exploitation from the counties. Most are accusations of physical abuse that are incidental to restraint. Second most are allegations of verbal abuse, emotional abuse, or sexual abuse, but these incidents are not investigated by the Ombudsman's office. One county has a much higher number of incident reports than other counties of similar size and will be watched closely, but the difference could be in the reporting system and differences between what one county reports versus another.

The Ombudsman's office continues to monitor the violence and disruptions in the secure facilities. The office communicates regularly with superintendents and administrative staff. Staff has been very receptive and reactive to the Ombudsman's office concerns and recommendations. There has been open dialogue. Many changes are taking place across the entire agency; as a result of some of these changes, the office has seen improvements. The Corsicana facility has had a dramatic drop in the number of self-harm incidents; youth-on-youth assaults have also diminished. They are averaging a little high but are dropping consistently.

The number of youth-on-staff assaults remains steady, and the Ombudsman's office would like to see that number decrease. The number of youth who have refused to leave security has decreased, and

the office has been unable to substantiate any reasons for them referring other than the fact that they just refer; there have been no complaints about youth feeling unsafe, et cetera. Change takes time, and the office appreciates the reception that they have received from Mr. Griffiths' office.

Chairman Fisher asked a question regarding the 14 cases opened by the office. Ms. Unruh responded that these could involve a youth who has concerns about a program that they haven't been able to complete, and the Ombudsman's office will go and determine whether there was a reason behind their inability to get into or their removal from a program, et cetera. It could also be a complaint regarding a clothing issue. Grievances are referred back to the grievance system.

### **Report from the Interim Inspector General**

Mr. Oscar Ruiz, Interim Chief Inspector General, explained materials provided to the Board and stated that Incident Reporting Center (IRC) reports are higher this period by almost 100 additional calls per month. Mr. Ruiz attributed this to probation using the OIG hotline and anticipates that by the next Board meeting those numbers will be much closer.

Mr. Ruiz also stated that the number of criminal investigations referred is higher this year as well as the number of cases being opened. The number of criminal cases being closed is higher than it was last year at this time, which is positive. The number of cases being referred to prosecution is also higher; the number of directives is lower; and the number of apprehensions by OIG staff is lower this period than last period. Mr. Ruiz attributed the latter low number to a couple of hurdles in the OIG's way: holidays in November and December in which staff were off; a high profile directive in the Houston area that utilized other OIG staff to assist and during the same time period there was an escape in San Antonio. Mr. Ruiz plans to assist in raising these numbers by the next Board meeting. He referred to charts illustrating process times from two different starting points: one starts the clock when the call is made to the IRC hotline and the other starts from when the case is actually opened.

Mr. Ruiz presented a chart illustrating criminal investigations pending prosecution analysis. Only one case is currently older than 120 days and is being addressed, but the number of open criminal

investigations older than 120 days has been brought down from 32 to 9 to 1. There are currently close to 300 open criminal cases.

There was a question regarding how the incidents in Houston and San Antonio had occurred. Mr. Ruiz stated that the incident in Houston related to a parolee who committed a new crime and a directive to apprehend was issued. He mentioned that most apprehensions deal with parole revocations and escapes are rare. Mr. Ruiz explained that the escapee in San Antonio was caught within two days and he stated that primarily due to budget constraints, he was required to balance staff between these two incidents which could be alleviated if more apprehension specialists were on staff. A question regarding if there were procedural problems that could be fixed to help in these situations and Mr. Ruiz responded that it is more of a staffing issue. Mr. Ruiz was also asked whether the OIG cooperated with other agencies and specialists and he stated that this is the case and that every law enforcement agency is very helpful, but the ultimate responsibility falls under the OIG.

Mr. Ruiz was asked whether apprehension specialists were privy to GPS locators and similar equipment. He stated that the specialists have laptops and computers, and when the GPS tracking system is implemented, he is sure they will have access to it, but they are not privy to such technology at this time. Mr. Ruiz is unaware of any GPS units at this time. He was asked whether the youth involved in the incidents discussed would have been easier to find if they had had GPS tracking devices and he responded that it would not necessarily be easier. He explained that if someone is on the run, they will remove the device and that most violations occur when the monitor is removed, they leave their boundaries. When asked if a tamper-proof system would be useful, Mr. Ruiz affirmed that it would be helpful if one could be acquired.

### **Report from the Advisory Council**

Ms. Estela Medina, Chief Juvenile Probation Officer in Travis County and Chair of the Advisory Council, introduced Mr. Doug Vance, Chief in Brazos County and Vice-Chair of the Advisory Council. The Advisory Council met on December 5, 2012 in Fort Worth, Texas. As part of its continuing work, the standards subcommittee has met twice since November 2012. A conference

call was hosted in December 2012, and on January 7, 2013 the subcommittee met in Austin. The recommended revisions to Chapter 343 have been completed by the committee. Ms. Medina commended the subcommittee for their work. The next step is to review and finalize the language that will be presented as part of the recommendations to the Board in regard to the revision in existing language and any substantive changes that may occur.

TJJD management staff will continue their review of the document, and Mr. Griffiths and his team will provide another layer of review. The plan is to have all of these recommendations and revisions to the Board for review and approval at the March board meeting. Ms. Medina recognized the work of the subcommittee, Doug Vance, Phil Hayes, and members from regional and statewide professional associations, as well as staff from TJJD. The discussions have been very productive, and the council looks forward to the opportunity to present these documents to the Board at the March meeting.

At the request of Mr. Griffiths, the subcommittee will begin work on the development of standards for nonsecure programs. The committee will continue to invite members that are working on the subcommittee, but an invitation will also be extended to all counties who currently operate nonsecure programs. With work scheduled to start in the February-March time frame, the goal is to have that work completed and presented to the Board in September, 2013.

Another initiative is the opportunity to continue to work with TJJD staff regarding the proposed guidelines for certified officers and the disciplinary process. The Advisory Council had additional discussions regarding this issue during its December 2012 meeting. Mr. Brett Bray, General Counsel, presented an update with much of the feedback and discussions received from the field. At that time, the council submitted the updated information to the regional association asking for another opportunity for comments and feedback from the field. This feedback was provided to Advisory Council members, Mr. Bray, and TJJD staff. This has been a good opportunity for feedback and to have open and healthy conversations and review a lot of the information. Ms. Medina highlighted a couple of items from the feedback received.

There was concern expressed from the field that these proposed guidelines would remove discretion and decision-making by local juvenile probation departments, particularly as they may relate to any disciplinary action or any disciplinary guidelines that a particular county may have. The clarification provided by TJJD indicates that these guidelines are really for the purposes of the process as they may relate to an officer's certification. TJJD was very supportive in indicating that any matter regarding employment issues and the beginning of the disciplinary process would start at the local level. However, there are standards and requirements with which all staff must comply in terms of the certification process.

Another interest was in reducing the amount of time required to have these matters investigated. TJJD was very open to looking at processes that will help enhance and recognize this area. If the Board approves this, there will be another opportunity for public input as required. Ms. Medina expressed that it has been a good process. There have been many opportunities to provide input and feedback. Mr. Bray and his staff have addressed a lot of this feedback directly.

The Advisory Council has been working with TJJD staff to help put together some information that would help support the request that has been made by TJJD staff regarding additional funds for mental health services. Those requests were represented in the Legislative Appropriations Request (LAR) that was submitted. A survey was created that was sent out to all Chief Juvenile Probation Officers and the departments that they represent. The council has received initial information regarding those surveys. One task is to better clarify and identify the specific areas of need in local juvenile probation departments as they relate to mental health services.

Ms. Medina referred to survey results distributed to the Board which are in draft form and should be finalized in February 2013 when the Advisory Council next meets. The council has received surveys from 60 probation departments representing 81 counties. Some departments have multiple counties that they oversee and work with. There were a series of questions asked, and Ms. Medina highlighted two of these. The first, what positive impact would receiving additional funds have for your particular jurisdiction and your ability to serve youth at the local level? In general, responses have stated that these funds would help reduce the number of outside placements and might reduce the number of TJJD commitments, because the more the counties know about what the particular

needs of a youth are, the more prepared they are to provide services to them. It also might reduce the number of detentions; i.e., the number of youth waiting for psychological assessments. Another question asked was, how many kids do you anticipate we could serve with these funds? Approximately 10,000 youth could be served throughout the jurisdictions that responded, both in those department that operate facilities as well as the counties who do not operate facilities but who have as great a need to provide mental health services. The council intends to layer even more information for the Board in the future.

With the filing of House Bill 1 and Senate Bill 1, the Advisory Council looks forward to working with the Board, TJJD staff, and other stakeholders to help support the budget recommendation that have been presented by the Board. A question was asked regarding the survey and how to interpret the responses. Ms. Medina stated the survey results are presented in the materials distributed to the Board.

The next Advisory Council meeting is scheduled for Thursday, February 7, 2013 in Austin.

### **New appointments to the TJJD Advisory Council (Action)**

Mr. Griffiths reported there are five retirees from the Advisory Council that include Larry Thorne, Homer Flores, Phillip Hayes, William Carter, and Randy Turner. These five vacancies will need to be filled. The process for nominations was reviewed regarding representation from large, medium, and small counties. A question was asked whether there were term limits; it was determined that there are none.

Chairman Fisher called for a ten-minute break. After the break, Chairman Fisher opened the floor for Advisory Council nominations from the Board. Judge Parker nominated Judge Larry Thorne to serve another term in the Juvenile Court Judge position. By acclamation, Judge Thorne was appointed to the TJJD Advisory Council for another term.

A nomination was made for Carrie Barden for the Panhandle area. By acclamation, Carrie Barden was appointed to the TJJD Advisory Council. A nomination was made for Randy Turner for the

North Texas Chiefs Association position. Another nomination was made for Brandon Caffee for this same area. There were seven votes for Randy Turner and five votes for Brandon Caffee. Randy Turner was elected for the North Texas Chiefs Association position.

The South Texas Chiefs Association nominee is Homer Flores. By acclamation, Homer Flores was appointed to the TJJD Advisory Council. The Northeast Texas Chiefs Association nominee is Phillip Hayes. By acclamation, Phillip Hayes was appointed to the TJJD Advisory Council.

### **Finance and Audit Committee report**

Judge Brieden presented the report because Mr. Stephens was on a conference call and could not present the report. Regarding the Cottrell House audit, auditors found there was a positive environment for students and observed mutual respect between staff and students.

Regarding first quarter performance measures, by and large most measures were missed due to populations being down. This is of concern because while population numbers are indeed down, these populations are more difficult and have a higher need of specialized services such as mental health needs, substance abuse needs, and other programming. LBB may look at population numbers and make budget cuts based on lower numbers, but due to the population having these specialized needs, it will actually cost more per student.

Regarding the Colorado County detention facility, the county owns the facility and will be leasing it to a corporation, but since it was originally built with Texas Juvenile Probation Commission (TJPC) bonds, TJJD has to approve the leasing of this facility. TJJD has no liability here and is strictly an approval authority.

The budget update indicates that TJJD is on track. This implies that even though there is a smaller population and TJJD is funded for a higher population, the funding is meeting current needs. This needs to be emphasized to the LBB in terms of their consideration of the upcoming budget. The LBB is making assumptions that populations will continue to decrease, but there will come a point

when this won't be the case, and demographics suggest that there will be youth aging into the program.

The update on construction projects indicated there are very few change orders and construction is nearing the end of the process.

A comment was made that there will be more and more youth with mental health issues who will require specialized programming and treatment, and funding will be needed for these.

### **Safety and Security Committee report**

Mr. Brown reported that the Safety and Security Committee met on January 17, 2013. Attending members were Judge Parker, Judge Bush, and Mr. Brown. The committee heard reports from the Inspector General and the Administrative Investigations Division.

The committee considered a change that the Board will consider in regards to the administrative rule that deals with the discipline process for certified officers. This is generally in response to the delay in the process of discipline. The change is designed to speed up the process and clean up the appeals process.

The committee took up two requests for variances to the administrative rules and is recommending approval of McLennan County's variance dealing with lighting requirements in their facility. The committee chose not to make a recommendation on Harris County variance due to a disagreement between staff as to the approval of this variance. The committee considered the default judgment orders and agreed orders listed below that the Board will consider later in this agenda.

### **Cottrell House Audit (Action)**

Mr. Eleazar Garcia, Interim Chief Internal Auditor, reported that the scope of the audit included fiscal year 2012-2013. Cottrell House, located in Dallas, Texas, is one of nine halfway houses for TJJD. At the time of the audit there were 19 students in this house. The details of the audit were

discussed in detail at the Finance and Audit Committee meeting. The audit reviewed grievances, compared community-based standard surveys, and looked at Administrative Investigations Division (AID) complaints and Ombudsman reports, as well as other documents. The results for Cottrell indicate it provides a positive environment for students, and interactions between staff and students that the audit department observed were positive. The audit team also looked at compliance with financial records related to the student trust funds. Cottrell House does a good job with these records.

The audit team did identify a recommendation related to the halfway house policies. These policies need to be formalized and codified. This is a process that management agrees needs to happen, and they are in the process of visiting all facilities to receive feedback and determine best practices and policies. Work schedules for JCO staff are currently on set dates and this may not be in the best interest of Juvenile Correctional Officers (JCOs).

Mr. Griffiths asked for more clarification regarding JCO schedules. There is no policy dictating whether staff should have a rolling work schedule or have two set days that they are off work. If a JCO's off days are Tuesday and Wednesday, this may be positive or negative for the JCO, depending on needs. Mr. Garcia gave an example of a current JCO who is divorced and who cannot visit his daughter on the weekends due to his work schedule. Tenured staff has the ability to request weekends off, but they have to go through a process. Ms. Stroud's team is in the process of going to the facilities to receive feedback and determine what would work best.

A question was asked whether overall it seemed as though the youth wanted to be at the facility and like it there. Mr. Garcia answered that many youth were very positive. One student stated that he didn't like being there, but he said it was because it was in Dallas even though the youth was from the Dallas area. Students made positive comments about the staff.

Mr. Kyker moved to approve the Cottrell House audit. Mr. Smith seconded. The motion was unanimously approved.

**Acknowledgement of gift by Mr. & Mrs. Frank Starr (Action)**

Chairman Fisher stated a refrigerator was donated to the McFadden Ranch facility for the purpose of a cooking class. The Board is required by law to formally receive this gift.

Mr. Kyker moved to acknowledge the gift. Judge Parker seconded. The motion was unanimously approved.

**Colorado County Detention Facility Lease (Action)**

Chairman Fisher stated this facility was built by Colorado County with legacy TJPC funding from bond money, and due to this, TJJD has the responsibility to approve any sublease. This was brought before the Finance and Audit Committee, and they recommended the agreement be approved. Mr. Bray stated TJJD has no liability for and will receive no money from this agreement. Mr. Bray acknowledged that Mr. Brown from Contemporary Correction Solutions was present at the Board meeting if there were any questions for him.

Ms. Mendoza moved to approve the sublease agreement. Mr. Kyker seconded. The motion was unanimously approved.

**Discussion and possible approval to submit for publication in the Texas Register for a 30-day public comment period revisions to administrative rule 349.410, relating to Administrative Review and Appeal of Investigation Findings (Action)**

Mr. Bray introduced Ms. Chelsea Buchholtz, Deputy General Counsel, who presented this item. General Counsel requested approval to submit for publication in the Texas Register for a 30-day public comment period, revisions to an administrative rule regarding the review and appeal process of a person found to be a designated perpetrator or administrative designee in an abuse, neglect, and exploitation investigation. This rule change is meant to address the request by the field to speed up the process of the discipline of certified officers. General Counsel provided the rule change draft for the Board.

Ms. Buchholtz provided an overview of current practices and changes that this rule change is proposing. The current practice begins with an allegation of abuse, neglect, or exploitation that the administrative investigations team subsequently investigates. Once this investigation is complete, then it comes to the office of the General Counsel for review. During that time the certified officer who is the subject of the investigation has a period of 45 days to decide whether or not he would like to ask for an administrative review of those findings. During this time nothing happens; it's more or less a pause button for that decision to be made by the certified officer. After a request has been made, a member of the General Counsel's office, titled a Hearings Examiner, reviews those findings and either approves them or requests changes. The certified officer then has the ability to appeal those findings to the State Office of Administrative Hearings (SOAH). These are just findings, not disciplinary action. After that appeal process, which can take months, the case comes back to office of the General Counsel for discipline of the certified officer. Discipline is assigned, and then the officer has the opportunity to appeal the discipline to SOHA. This entire process can take months if not years.

In an effort to shorten the process, the office of the General Counsel proposes a couple of changes. The first is to cut the timeline that a certified officer has to request the initial administrative review from 45 days to 20 days. Officers should have ample opportunity to make a solid decision, but 20 days is plenty of time. Additionally, General Counsel proposes to remove the absolute right of the certified officer to appear in person before a member of General Counsel during the administrative review process. This conversation can be held by phone, which reduces the time it takes for scheduling and travel.

The last major change being proposed is to the SOAH appeal process. No rights are being removed, but the timing is being changed. The certified officer currently has two chances to appeal; a chance to appeal the findings after the administrative review, and a change to appeal the disciplinary action. The first appeal will be moved to be included in the second appeal, so that the officer has the right to appeal both the findings and the discipline after the discipline has been assigned by the office of the General Counsel.

Additional changes include removing references to TJCP and replacing them with TJJD as appropriate. Additionally, the current administrative process is currently administered by a Hearings Examiner, and General Counsel would like to clarify that definition to specify a staff attorney rather than a Hearing Examiner. This item was considered by the Safety and Security Committee and the committee recommended that the Board approve it.

Mr. Brown moved to authorize submission of the revisions to the Texas Register for public comment. Mr. Smith seconded. The motion was unanimously approved.

**Discipline of Certified Officers – Default Judgment Orders (Action)**

Mr. Brown reported this item was considered by the Safety and Security Committee. All proper notices have been sent to these certified officers. It was recommended that the Board approve these Default Judgment Orders.

Mr. Brown moved to approve all the orders except items C, G, H, and K. Judge Bush seconded. The motion was unanimously approved.

Mr. Brown moved to approve items C, G, H, and K. Judge Parker abstained from this vote. Mr. Smith seconded. The motion was unanimously approved.

- a. Delvin Brooks, DH-12-0051-24574, Milam County
- b. Johnathan Jarrett, DH-13-25075, Hardin County
- c. Dennis Phillips, DH-11-0382, Bexar County
- d. Marcus Reyna, DH-11-23954-100540, Hays County
- e. Crystal Nixon, DH-11-24957-110013, Bell County
- f. Ashley Soto, DH-12-25244-120002, Hays County
- g. Thesus Bryant, ANE-11-0419 and ANE-11-0420, Bexar County
- h. Mark Cunningham, DH-12-0093, Bexar County
- i. Dexter White, DH-13-25635, Bell County
- j. Frank Martinez, DH-12-0009, Cameron County

- k. John Klonek, DH-4535, Bexar County
- l. Eugene Bogany, DH-10-18002-100067, Harris County
- m. Reginald Anderson, DH-12-307, Van Zandt County
- n. Doddrick Quincy, DH-12-0281 & 12-0343, Garza County
- o. Cruz Calderon, DH-12-0254, Duval County
- p. Rafael Gongora, DH-12-0183, Webb County

**Discipline of Certified Officers-Agreed Orders (Action)**

Mr. Brown reported the Safety and Security Committee recommended that the Board approve these orders. These are orders wherein an agreement has been reached with the certified officer. Mr. Brown moved to approve the agreed orders. Judge Parker seconded. The motion was unanimously approved.

- a. Erika Anderson, ANE-12-0099, Dallas County
- b. Tara Gray, ANE-12-0049, Hood County

**Variance Applications for Consideration (Action)**

**McLennan County's Application for Permanent Variance for Title 37 Texas Administrative Code Section 343.226 Related to Natural Light Requirements in Resident Housing**

Chairman Fisher reported the Safety and Security Committee reviewed the variance request and recommends approval by the Board. This is a variance from McLennan County's application for permanent variance related to natural light requirements in resident housing.

Mr. Brown moved to approve the McLennan County variance. Judge Bush seconded. The motion was unanimously approved.

Harris County's Application for Permanent Variance for Title 37 Texas Administrative Code Section 343.600(6) Relating to Pre-Admission Tuberculin (TB) Testing Requirements for Placement of Post-Adjudication Juveniles

Terri Dollar, Director of Monitoring and Inspections, reported this item is Harris County's application for permanent variance in relation to TB testing requirement for placement of post-adjudication juveniles. TJJD staff presented their arguments against the variance. The Harris County Juvenile Board has requested a permanent variance to TAC Section 343.600, number 6, which reads, "prior to a resident's admission, the facility shall receive documentation that a tuberculosis test was administered and results were received no more than 365 calendar days prior to the resident's admission date."

This standard is intended to ensure that every juvenile placed in a secure post-adjudication correction facility has a documented TB test administered and read or interpreted prior to their admission into a secure post-adjudication correctional facility. Harris County is requesting the permanent variance to forgo the final medical reading and interpretation of the TB test prior to the juvenile's placement. There are six factors that must be met before granting a variance. Based on review, staff does not believe that the county has successfully explained why compliance with this standard cannot be achieved and how compliance will result in undue hardship to the county.

More specifically, Harris County is currently complying with this standard, and while Harris County has identified a possible impact on TAC 220 standard related to the prohibition against exceeding a facility's rated resident capacity, the facility is currently in compliance with 343 and 220, and is not exceeding the rated capacity. Harris County's adherence to the TB testing requirement would not automatically create an undue hardship. Specifically, the jurisdiction decision to not administer the appropriate type of TB testing until after a disposition order is entered is a self-imposed practice. Earlier testing in their pre-adjudication facility as early as immediately upon admission to detention would eliminate any delay in transfer and would be more in line with the recommendations of the Texas Department of State Health Services and the Center for Disease Control and Prevention. Both the CDC and the Texas Department of Health have identified correctional facility populations as being an increased risk for TB and recommend enhanced screening and/or testing protocols.

Staff agrees that there are general health procedures to prevent the transfer of a youth with active TB symptoms; however these screening procedures and the companion continuum of health care services ensure youth with either TB disease or infection are not unknowingly transferred into a secure post-adjudication facility without the proper treatment and prevention protocols in place.

Harris County, along with four other Texas counties, has been identified in the Texas Department of State Health Services list of higher risk counties, with a three-year average rate of TB one and a half to two times higher than the average rate for Texas.

Mr. Tom Brooks, Chief Juvenile Probation Officer for Harris County, spoke on behalf of the variance request. He provided an overview of the physical location of the facility in question, a 210-bed facility in downtown Houston that is divided into two areas; one is pre-adjudication, 171 beds; and the other has 39 beds considered post-adjudication. It is not a post-adjudication residential treatment center but rather a post-adjudication residential assessment center where youth are moved over into the RAU so that a comprehensive assessment can be done regarding education, health services, psychological services, et cetera, with the goal of determining what facility would best meet the youth's needs.

Mr. Brooks stated the hardship being experienced is twofold. Because of this standard, a youth cannot be moved into the RAU unit until after the TB test is read. This RAU unit is within the same facility, receives the same medical services, uses the same gymnasium, and goes to the same testing site as everyone else in the building. Brooks gave an example where the facility population in the RAU was 23, leaving 16 open beds, and the pre-adjudication side had 180 youth, which required that these youth be moved to a multiple occupancy unit where youth slept in beds on the floor. A subgroup of these 180 youth could have moved over to the RAU but were unable to due to the standard. TB testing is given in pre-adjudication. When a child appears in court and the courts then place the child into custody for placement, then that child enters the detention facility without having any services such as TB tests because the staff knew it was going to recommend out-of-home placement.

Mr. Brooks requests that the facility be allowed to move youth over to the RAU unit, which will be a better use of the facility. He consulted with medical staff at the facility before making this request and referred to a letter from Dr. Benjamin from UT Health that was submitted with the variance request recommending the variance, stating that it is not necessary to wait for the results of a TB test. Dr. Benjamin refers to a study wherein zero youth that have tested positive for TB, and since 1999, there have been zero youth tested positive for TB. Mr. Brooks believes that the statistics regarding TB in Harris County does not refer to youth but to the overall population. TB has not been a problem in any Harris County facilities. Mr. Brooks commented that the Department of State Health Services does not require that youth be tested for TB in schools in the community. A questionnaire is given instead, and if the questionnaire reveals that the youth is at risk for TB, then the recommendation is not that they be removed from the population pending the evaluation of the TB test. Mr. Brooks stated that the hardship included management of the facility and the use of open beds and further stated that it is probably more dangerous to have youth sleeping on the floor in the MOU.

Dr. Parikh, Medical Director, commented that purely from a medical point of view, the test itself is an injection and it needs to be read 24 to 48 hours after the injection has been made. It can be positive in the early stage, but in order to be confirmed negative, a wait time of 48 hour is required. Incidents are rare in this day in age, but this group has a higher risk, comparatively speaking. Dr. Parikh's personal recommendation was, not knowing the physical layout of the facility, to test everyone at the time of admission. Dr. Parikh recommended not moving youth before results are in, according to national recommendations dealing with closed facilities.

Mr. Brooks replied that his documentation states that youth do not need to be removed while waiting for the results of the test, and commented further that his medical staff would remove any symptomatic youth. Dr. Olvera commented that Mr. Brooks offered a lot of reasons to not follow procedures for TB testing, but he would prefer a more proactive list, in writing, of what Harris County facilities are doing to prevent TB. Harris County is renowned for high TB rates all the way into 2010. Mr. Brooks stated the purpose of the variance is to have the flexibility to move within the same facilities. TB testing would be conducted and the facility would still wait for results before

moving youth out of the facility. Mr. Brooks asked if there is a greater risk in moving a youth from one floor to another within the same facility.

A comment was made that if there is not a risk, then the burden is on Harris County's medical staff to convince TJJD's medical staff that the risk is sufficiently low. The worst-case scenario is that a TB outbreak occurs and the Board has approved a variance against their medical staff's recommendation. A question was asked regarding the details of the variance and clarified that the variance is only asking for flexibility within the building, and this would only take place when overcrowding in one unit is an issue. Mr. Brooks affirmed this. A further question was asked regarding how often this occurs. Mr. Brooks responded that this happens regularly.

A question was asked regarding whether it would be preferable to put a youth waiting for test results with a smaller population in order to reduce risk. In order to isolate all youth waiting for results, the facility would require extra space and is not possible with the present layout of the detention facility.

A question was asked about the fact that youth are already sharing the facility. This is different than moving them outside to a different facility. The concern is that there is nothing in the variance that would preclude moving youth to a different facility, other than Mr. Brooks' assurance. A suggestion was made that perhaps if language was included to specify the circumstance wherein the youth are already sharing a facility, this exception may be made. Mr. Brooks stated that he had no problem with that amendment. A comment was made that the youth will have received their test results by the time they leave the facility. The response was that in the rare instance that a youth may be moved before adjudication, this variance would need to be limited in order to prevent a youth from being transferred out of the building before the results of the TB test were read.

Mr. Brooks stated that in the past the assessment piece was conducted at a different facility, and thus the assessment process was much more time consuming. With the assessment unit in the facility, turnaround time can be as short as 10 days, and therefore the youth do not leave the facility at all until all requirements are met. A comment was made agreeing with Mr. Brooks that it is potentially more problematic to have youth sleeping on the floor in the MOU.

The Board does have the authority to change the wording of the resolution to specify that the variance only applies within the facility in question.

A question was asked whether it is true that if a youth has had a TB test within the prior 365 days, the facility does not have to conduct one. This was confirmed. A question was then asked of Mr. Brooks whether they do testing anyway if this is the case. Mr. Brooks answered that the facility does conduct this testing, but not if there is firm documentation that testing has taken place in the last 365 days. A comment was made that this exposes a bit of a flaw in the system in that the rule allows for a youth to not be tested at the facility even if they've spent 300 days in the general population following their last test. A comment was made that the point of the rule was to prevent TB being spread to other locations and that the concept of having pre- and post-adjudication units within the same building is relatively new. Further discussion ensued.

A question was asked regarding the liability risk involved in the TJJD Board approving the variance against the recommendation of TJJD medical staff should there then be a TB outbreak in the facility. Mr. Bray responded that there is sovereign and official immunity that covers the acts the Board takes in good faith as members of the Board. In this instance, medical experts would be heard on both sides. Some would support the Board and some would not. Mr. Bray does not see exposure to the Board in trying to make a good-faith determination in this case. The variance process is in place for a reason. A further query was whether the agency could be found to be grossly negligent.

Mr. Brooks stated that every youth is not automatically tested for TB. Many youth come in to the facility and are there less than 48 hours, so it's not recommended that this test be administered because they are not there long enough for the test to be read. Testing is given to those who will remain in custody. Chairman Fisher asked Mr. Griffiths for his opinion. Mr. Griffiths stated that he was in favor of the staff's recommendation to deny the variance.

Mr. Brown moved to deny the variance. Mr. Smith seconded. Further discussion ensued.

Comments indicated that more information is needed and a more thorough proposal needs to be made that utilizes language specifying the circumstances involved. Further commentary was made

that overcrowding is an issue here and that youth sleeping on the floor is a health risk and potentially a bigger health risk than waiting for a TB test for youth already sharing the same building.

Ms. King moved to table the discussion pending further research, which would then be presented at the March board meeting. Judge Brieden seconded. The motion was unanimously approved.

Mr. Brooks asked the Board what information they would like him to provide. Chairman Fisher responded that Mr. Brooks should spend some time with others coming up with more specific language as per this conversation. Chairman Fisher stated that he had a difficult time going against the recommendation of TJJJ's Medical Director on medical related issues, and recommended that Mr. Brooks meet with Dr. Olvera and Dr. Parikh on this issue.

#### **Closed Session – Executive Session**

Prior to going into closed session, Chairman Fisher reminded the Board that they will be receiving a letter from the ethics commission and that Board members must file personal financial statements by April 30, 2013. There is a \$500 fine if this deadline is not met.

The Board recessed and convened in closed session.

#### **Reconvene in open session, discussion and possible action regarding matters deliberated in closed Executive Session**

#### **The Board considers a resolution to accept and confirm the Executive Director's signature on the Settlement Agreement with Karen Roe**

Judge Bush moved to authorize Mr. Griffiths to sign the settlement agreement with Karen Roe. Judge Brieden seconded. The motion was unanimously approved.

Mr. Stephens asked for the opportunity to express his concern for the lack of diversity with regards to the appointments to the Advisory Council. He apologized that he wasn't present during the vote

for that agenda item but wanted to go on record to express his concern and also requested that Mr. Griffiths relay his concern to the Advisory Council. Chairman Fisher further clarified that because of the way the legislation was written, we as a Board, don't have the option to make a recommendation in this regard, the nominations for appointment to the Advisory Council are left to the discretion of the Regional Chief Associations.

Mr. Stephens moved to extend the offer to Eleazar Garcia for the position of Chief Internal Auditor with a salary of \$92,000 per year. Judge Brieden seconded. The motion was unanimously approved. The position will be effective upon acceptance.

Chairman Fisher commented that the vote for Chief Inspector General is a very difficult for the Board because there were three outstanding candidates. In order to be fully open and transparent, the Board voted on each candidate. The position of Inspector General will be at an annual pay rate of \$98,000 per year. Candidate Martin Phalen received one vote. Roland Luna received eight votes. Oscar Ruiz received three votes. An offer will be extended to Roland Luna to fill the position of Chief Inspector General, effective two weeks from the extension of the offer.

### **Adjourn**

Chairman Fisher noted that the next Board meeting is currently scheduled for March 29<sup>th</sup> which falls upon Good Friday and will need to be rescheduled. Chairman Fisher stated he and Jeannette Cantu will review the calendar to find an alternate date and will notify you of the new dates.

The meeting was adjourned.