

**ANALYSIS OF ACTION ON  
AGENCIES UNDER SUNSET REVIEW**

70th Legislature

1987

**SUNSET ADVISORY COMMISSION MEMBERSHIP**

**70th Legislature**

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**SUMMARY**

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**SUNSET IN THE 70th LEGISLATURE**

## SUMMARY - SUNSET IN THE 70TH LEGISLATURE

During the 70th Regular Session of the Texas Legislature, 20 agencies were scheduled to be abolished unless legislation was passed to continue them. At the close of the session, legislation had passed continuing 18 of the agencies. Two agencies, the Technology Training Board and the Medical Care Advisory Committee to the Health and Human Services Coordinating Council had no legislation to continue their operations and were automatically abolished.

Final legislation continuing the 18 agencies are shown in the following exhibit:

Agency	Bill	Author
Texas Department of Human Services <sup>1</sup>	S.B. 298	Senator Edwards
Texas Department of Mental Health and <sup>2</sup> Mental Retardation	S.B. 257	Senator Farabee
Texas Diabetes Council	S.B. 244	Senator McFarland
Commission for the Deaf	H.B. 550	Representative Vowell
Texas Youth Commission	S.B. 33	Senator Farabee
Texas Juvenile Probation Commission <sup>3</sup>	S.B. 17	Senator Farabee
Texas Adult Probation Commission <sup>4</sup>	H.B. 83	Representative P. Hill
Board of Pardons and Paroles	S.B. 341	Senator Farabee
Texas Department of Corrections	S.B. 245	Senator McFarland
Texas Conservation Foundation	S.B. 296	Senator Edwards
Texas Board of Private Investigators and Private Security Agencies	H.B. 888	Representative P. Hill

<sup>1</sup>Includes continuation of Advisory Committee on Child Care Facilities; Advisory Council on Child Care Administrators; Advisory Committee for Services to Aged and Disabled; and Compact on Placement of Children.

<sup>2</sup>Includes continuation of Interstate Mental Health Compact.

<sup>3</sup>Includes continuation of Advisory Council on Juvenile Services.

<sup>4</sup>Includes continuation of the Interstate Parole Compact.

The statutes of the 18 agencies that were continued contained a number of significant changes to current state policy. Examples of those changes are:

- Establishment of a clear definition of child abuse and neglect by defining what constitutes physical emotional and sexual abuse of a child, as well as what constitutes physical or emotional neglect of a child. This will eliminate much of the current confusion regarding what the public can expect in the protection of children from abuse and what the responsibilities of the state will be in investigating abuse and neglect of a child.
- Implementation of a single portal of entry system for persons with mental illness. This should clearly address problems associated with patients being admitted to state hospitals when they could be more appropriately treated in their community. A legal framework is created which will allow mental health professionals, instead of the courts, to determine where patients should be placed for treatment. Numerous safeguards have been included in the statutory provisions to ensure the system is only implemented in areas with local mental health authorities that are fully capable of serving in this capacity.
- Creation of a better system to deal with prison inmates. This system has four basic components. The division of the prison population into violent and non-violent categories and providing different release requirements for the two categories; the elimination of mandatory release for violent offenders and the reduction of good time awards; the redirection of good time to education and work related activities; and the reduction of flat time and parole eligibility date.
- Creation of a state competitive review process through which the Department of Mental Health and Mental Retardation, the Department of Corrections, and the Department of Human Services will identify costs of commercial activities performed in-house and compare costs with those of the private sector. If state costs exceed private sector costs by more than 10 percent, the agencies would reduce costs so that they did not exceed private costs by more than 10 percent.

In addition to changes in state policy, sunset recommendations had a positive fiscal impact. Overall changes brought about by sunset legislation are projected to

produce net revenue of \$62.4 million over the next five years. The fiscal impact is shown in the following exhibit.

FISCAL IMPACT OF SUNSET LEGISLATION - 70th LEGISLATURE

Net Savings (Cost)

	1988	1989	1990	1991	1992	Total
Texas Department of Human Services*	\$ (435,722)	\$ 7,079,712	\$ 14,029,622	\$ 14,060,381	\$ 14,115,506	\$ 48,849,499
Texas Department of Mental Health and Mental Retardation**	1,847,000	1,947,000	1,947,000	1,947,000	1,947,000	9,635,000
Texas Diabetes Council	(10,610)	(10,610)	(10,610)	(10,610)	(10,610)	(53,050)
Texas Commission for the Deaf	22,142	22,239	26,102	26,102	26,102	122,687
Texas Youth Commission	-0-	-0-	-0-	-0-	-0-	-0-
Texas Juvenile Probation Commission	144,000	144,000	144,000	144,000	144,000	720,000
Texas Adult Probation Commission	(91,999)	(88,759)	(88,759)	(88,759)	(88,759)	(447,035)
Board of Pardons and Paroles	112,670	112,620	112,620	112,620	112,620	563,150
Texas Department of Corrections	(1,911,639)	(2,502,810)	(2,502,810)	(2,499,477)	(2,499,477)	(11,916,213)
Texas Conservation Foundation	-0-	-0-	-0-	-0-	-0-	-0-
Texas Board of Private Investigators and Private Security Agencies	1,045,590	1,003,592	987,083	971,829	953,632	4,961,726
Comp. Review	(93,600)	2,500,000	2,500,000	2,500,000	2,500,000	9,906,400
<b>Total</b>	<b>\$ 721,432</b>	<b>\$ 7,706,984</b>	<b>\$ 14,644,248</b>	<b>\$ 14,663,086</b>	<b>\$ 14,700,014</b>	<b>\$ 62,442,164</b>

\*Includes state and federal costs and savings.

\*\*Does not include costs or savings to units of local government.

**SUNSET ACTION COMPARED WITH FINAL  
ACTION OF THE 70TH LEGISLATURE**



**SUNSET COMMISSION RECOMMENDATIONS COMPARED  
WITH FINAL ACTION OF THE 70TH LEGISLATURE**

<u>Agency</u>	<u>Date Created</u>	<u>Sunset Commission Recommendation</u>	<u>Final Action 70th Legislature</u>
Texas Department of Human Services	1939	Continue with changes	Continue with changes
Texas Department of Mental Health and Mental Retardation	1965	Continue with changes	Continue with changes
Texas Diabetes Council	1983	Continue with changes	Continue with changes
Texas Commission for the Deaf	1979	Continue with changes	Continue with changes
Texas Youth Commission	1949	Continue with changes	Continue with changes
Texas Juvenile Probation Commission	1981	Continue with changes	Continue with changes
Texas Adult Probation Commission	1977	Continue with changes	Continue with changes
Board of Pardons and Paroles	1936	Continue with changes	Continue with changes
Texas Department of Corrections	1927	Continue with changes	Continue with changes
Texas Conservation Foundation	1969	Continue with changes	Continue with changes
Texas Board of Private Investigators and Private Security Agencies	1969	Continue with changes	Continue with changes
Technology Training Board	1985	Abolish	Abolish
Medical Care Advisory Committee	1983	Abolish	Abolish

**ANALYSIS OF LEGISLATION FOR AGENCIES  
THAT WERE CONTINUED UNDER SUNSET**

**TEXAS DEPARTMENT OF HUMAN SERVICES**

**TEXAS DEPARTMENT OF HUMAN SERVICES**  
**S.B. 298 by Edwards**

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

**Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 298 as originally introduced contained the recommendations of the Sunset Commission for the Texas Department of Human Services. A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of recommendations proposed by the Sunset Commission. All the standard across-the-board recommendations proposed by the commission were included in the final bill, although the conflict-of-interest language was changed to allow persons who receive funds from the department to serve on the board, so long as these funds do not exceed 25 percent of their total income. In addition, physicians were exempted from the across-the-board provision regarding public display of complaint procedures.

A major change to the bill as introduced dealt with the size of the Board of Human Services. The original bill maintained the current size of the board at three members. The final legislation increased the board to six members, effective January 20, 1989. Expansion of the board had been considered by the Sunset Commission but was rejected.

Many of the provisions in the original Sunset Commission legislation were modified in the final legislation to expand on or clarify certain recommendations. The bill as introduced contained a number of provisions related to the investigation of child abuse and neglect. The final legislation expanded on these by 1) narrowing the definition of physical abuse to acts which would result in substantial harm to a child, 2) modifying the department's requirements to respond to anonymous reports of child abuse or neglect, and 3) making certain mandatory aspects of an investigation, such as home visits, permissive. Recommendations on the coordination of services to multi-problem children and youth were expanded. The original bill established a state level coordinating committee and an interagency staffing process to facilitate coordination on the local level. The final legislation expanded the coordinating effort to include three additional state agencies, consumer and advocacy group representation, and increased private sector youth agency representation. The final bill also added provisions for agencies to share costs for

multi-problem youth, avoid duplication, and develop a model for tracking youth being served by multiple agencies. The bill as originally introduced provided for a study of the costs and benefits of combining Texas children and youth services into a single state agency. This provision was expanded in the final legislation to include a study of alternative means of funding contract residential care for children. Finally, the original legislation required the department and other state agencies to develop separate memoranda of understanding to facilitate the coordination of services to disabled persons and services to children and youth. The final legislation expanded these provisions by requiring the agencies to solicit input from advocacy and consumer groups in developing these memoranda.

A number of new provisions were added to the final legislation that were not considered by the Sunset Commission, but were raised during the legislative session. The first relates to the coordination of state agencies in providing, regulating and funding hospital and long-term care services. The final legislation is structured to ensure that new regulations which would increase costs to hospitals and long-term care facilities are not enacted, with certain exceptions, unless funds are made available to cover the new costs. Second, the bill as finally passed includes authorization for the department to conduct criminal history checks on employees of home health agencies and businesses providing in-home respite care for sick children. Current law authorizes the department to conduct these checks on employees of child care facilities. Third, the final legislation contains a new provision which designates the department as the state agency to collect and disburse statistical information on school age pregnancy. Fourth, there is a provision in the final legislation which equalizes the penalties for assault of a patient or resident in a private and public facility. This corrects an inequity in the current law. Fifth, the final legislation extended the maximum time limit from seven to twelve months for the courts to conduct a hearing to review the placement of a child outside his or her home. This was done to ensure that the department would not lose federal funds if the courts had an overcrowded schedule and were unable to conduct the reviews on time. The bill does require the department to conduct an administrative review of the child's placement every five and a half to seven months if the courts are unable to schedule a hearing.

## Analysis of Substantive Changes Contained In Final Sunset Legislation

### Expansion of the Board

Senate Bill 298 expands the size of the Board of Human Services from three to six members, effective January 20, 1989. A six-member board should provide for greater geographical representation and increased public access to members. It provides a larger policy making body to deal with the numerous and complicated issues confronting an agency this size, and has the potential for providing additional expertise on the board in a given area of regulation or service delivery without significantly increasing the costs of operating the department.

### Maximizing Third Party Resource Recovery

The Texas Medicaid program expends over \$1.5 billion per year in state and federal dollars to cover the health care expenses of income and medically eligible persons. All other available resources must be used before Medicaid pays claims. This includes most personal resources, as well as any insurance coverage that may be in place. The sunset review indicated that additional legislative authorization could increase the departments' recovery of funds from third party resources. Senate Bill 298 contains three statutory changes in this area. The department is authorized to 1) recover Medicaid expenditures through liens on property and from the estates of deceased recipients, 2) obtain insurance payments directly from the insurance companies of absent parents of AFDC recipients, and 3) match Medicaid recipient data against worker's compensation claims information to identify private insurance coverage. These changes should enable the department to greatly increase their recovery of third party payments, and make additional funds available for services to Medicaid recipients.

### Improved Enforcement Procedures

Prior to the enactment of S.B. 298, the department had no authority to levy administrative penalties against Medicaid providers involved in fraudulent activities. The department could refer serious cases to the attorney general's office for criminal action or seek civil monetary penalties under federal law. Neither alternative was very timely, and the federal remedy allowed the state to only recover the amount overpaid, with all monetary penalties retained by the federal government. The new approach incorporated S.B. 290 allows the department to take action more quickly by imposing administrative penalties and enables the state to retain the monetary penalty. The bill establishes procedures to ensure that the provider's rights to due process and judicial review are preserved.

The bill also increases sanctions by requiring the department to report any allegation of misconduct or malpractice by a physician employed by or under contract with the department to the Texas Board of Medical Examiners. This will provide the Board of Medical Examiners with additional information relating to physician conduct so the board can more effectively regulate the physician community.

In another area of enforcement, the bill improves the ability of the department to examine the fitness of potential employees of businesses providing in-home care services. The bill authorizes the department to conduct criminal history checks on potential employees of home health agencies and businesses providing in-home respite care for sick children. This change is in line with the department's authority to conduct such checks on potential employees in the child care industry. This new authority will improve the knowledge base for employers who hire persons to provide services to elderly persons and families who need to care for a child at home due to a temporary illness.

#### Modifications to the Investigation of Abuse and Neglect

Prior to the enactment of S.B. 298 there was no statutory definition of child abuse or neglect in Texas. This resulted in confusion regarding what the public should report and what the department was required to investigate as abuse or neglect of a child. Senate Bill 298 defines physical, emotional and sexual abuse of a child, as well as what constitutes physical or emotional neglect of a child. The bill provides for improved procedures to ensure that a person under investigation is made aware of the process in writing and provides a right to a review of the findings. The bill also provides a criminal penalty for making a knowingly false report of child abuse or neglect. This has become particularly problematic in connection with divorce and custody disputes, and the new penalty should provide a strong disincentive to such false reporting. Finally, the bill clarifies the responsibilities of state agencies in investigating child abuse or neglect that occurs in facilities operated or regulated by state agencies. Previously the statute did not address this area, which resulted in confusion over the department's responsibilities and that of the other agencies involved. The bill requires the state agencies involved to conduct initial investigations and establishes independent oversight of these investigations in the attorney general's office to ensure that they are conducted properly and according to consistent rules and policies.

The department also investigates abuse and neglect of elderly and disabled persons. Senate Bill 298 made two major changes in this area. The first provides a criminal penalty for the failure to report abuse or neglect of elderly or disabled individuals. This is consistent with existing penalties for the failure to report child abuse. The second clarifies the responsibilities of state agencies in investigating abuse or neglect of the elderly or disabled in facilities operated or regulated by the state. This is similar to the changes enacted by the bill regarding state agency investigations of child abuse, however, the department is the agency designated to oversee and ensure that investigations of elderly or disabled abuse conducted by other state agencies are done properly and according to consistent rules and policies.

#### Coordination of State Services and Information

Texas provides services to children and youth through eight separate state agencies. The sunset review process indicated there was no vehicle for routine interagency coordination, either at the state or local level. Senate Bill 298 establishes an interagency group to coordinate services for multi-problem children and youth at the state level. The bill requires the adoption of a memorandum of understanding between the department and seven other state agencies providing services to children and youth for the purpose of defining each agency's responsibilities in serving this population. The bill directs these agencies to initiate interagency staffings on the local level to ensure that children with multiple problems can access the services they are eligible to receive. In addition, the bill requires the Health and Human Services Coordinating Council to conduct a study of the costs and benefits of combining children and youth services into a single state agency. These changes should establish a system for improving the coordination of services through the agencies as they are currently structured, and provide the legislature with the necessary data to evaluate whether a reorganization of services should be implemented in the future.

Another area of major concern addressed by the legislation is the coordination of services to disabled persons. The bill requires the department and six other state agencies that provide services to disabled persons to adopt a memorandum of understanding to clarify the financial and service responsibilities of each agency in relation to disabled persons. The bill also requires the department's Advisory Committee for Services to Aged and Disabled Persons to review the department's services to the disabled and to make recommendations on how these services can



be improved. Further, the Council on Disabilities required to examine the services state agencies provide disabled persons and to make recommendations to the 71st Legislature regarding the needed services.

Finally, the legislation addresses the lack of coordination services and information available to address the state's school age pregnancy problem. An interim study of the House Human Services Committee indicates that Texas ranks third in the United States in the number of babies born to adolescents and the state ranks second in the number of pregnancies to teens. In 1981, Texas led the nation in the number of births to women under the age of 14. In 1985, 47,004 young women 19 years of age and under gave birth. The results of these pregnancies cause long term health economic and social problems. For example, low birth weight and infant mortality rates are greater for babies born to teen mothers. Additionally, eight of every ten pregnant teenagers do not complete high school. Although many state agencies serve this school age population, no one agency is responsible for collecting information on this situation to assist in a statewide approach to solving the problems. Senate Bill 298 implements one of the recommendations of the interim committee dealing with improved communication between the state agencies which provide services to school age persons. In addition, the bill addresses improved data collection by those agencies. The bill designates the TDHS as the state agency to collect and analyze statistical information on school age pregnancies and distribute the results to the legislature and appropriate agencies so existing services can be better targeted to these in need and new services can be developed as warranted.

#### Improvement of Public Access and Input to the Department

Studies indicate that many people who are eligible for and could benefit from services of the department do not apply for services. For example, estimates show that only 34 percent of those eligible actually obtain food stamps and about 57 percent of those eligible for AFDC actually participate. This is due, in part, to lack of awareness of such programs even though the department develops and distributes a large variety of public awareness information such as pamphlets, posters, news releases, and public announcements. Senate Bill 298 addresses this problem by requiring the department to develop a memoranda of understanding with other state service delivery agencies to provide for the distribution of public awareness information and it authorizes the department to require service providers who contract with the department to display public awareness information. These changes should assist clients currently receiving state supported

services to be aware of and obtain the continuum of services for which they may be eligible.

The sunset review process indicated that the department actively uses advisory committees to obtain input concerning major programs of the agency, but there was a lack of statutory directives concerning their structure and use. Senate Bill 298 specifies that advisory committee membership should provide for a balanced representation of the general public, providers, consumers and other interested parties. It requires the department to provide advisory committees with the opportunity to assist in the development of and comment on proposed rule changes affecting the programs related to the purpose of the committee.

#### Reduction of Financial Uncertainty for Service Providers

Over 70 percent of the nursing home beds being used in Texas are occupied by Medicaid recipients. A much smaller, but significant, percentage of general hospital beds are filled by Medicaid patients. Payments for the recipients are made through combined funding from the state and federal governments. In 1986, for example over 1,000 nursing homes in the state participated in the Medicaid program and received payments totalling over 450 million dollars. To receive the funding, the nursing homes and hospitals must meet standards and regulations developed by the federal government and the Texas Department of Human Services. The homes and hospitals must also be certified and licensed by the state's health department. Facilities that serve mentally retarded persons must also comply with program standards developed by the Department of Mental Health and Mental Retardation. This oversight and funding structure can be cumbersome and lead to unexpected expenses on the part of providers. For example, recent licensing standards developed by the Health Department increased the number of hours that nursing staff must be present in nursing homes. Although this new standard will improve the care provided in the homes, it also increases the costs to the operators of the homes which is eventually paid for by the state through the DHS. In this past session, the legislature appropriated over 1.2 million new dollars to cover this cost. To address the need for better communication between the agencies, S. B. 298 requires the development of a memorandum of understanding regarding hospital and long term (nursing home) care between the TDHS, Department of Health and TDMHMR. The memorandum must provide that no new rules that increase costs to providers can be adopted unless funds are available to reimburse costs needed to comply with the new regulations. This requirement can

be bypassed if the new regulations are needed to protect the health or safety of service recipients or to comply with state or federal law.

**TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**

**TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION**  
**S.B. 257 by Farabee**

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

**Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 257, as originally introduced, contained the statutory recommendations of the Sunset Commission for the Texas Department of Mental Health and Mental Retardation (TDMHMR). A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of recommendations proposed by the Sunset Commission. The across-the-board recommendations proposed by the commission for this agency were included in the final bill with two modifications. The standard requirement to develop an equal employment opportunity policy was modified by adding reporting requirements. Also, an amendment to the across-the-board language on public member qualifications deleted the prohibition from appointment to the board if a person or person's spouse (a) is employed by or participates in the management of an entity regulated by or receiving funds from the department, or (b) uses or receives goods, services, or funds from the department and is a parent or guardian of a departmental patient or client. The other changes fall into three categories. These include changes that modified the recommendations of the Sunset Commission, reversed the commission's recommendations, or changes that had not been considered by the commission. These are summarized below.

One modification to the bill, as introduced, deals with the appointment of a medical director. Currently the commissioner is required to be a physician and the Sunset Commission recommended removing this requirement. The commission also recommended authorization of the appointment or designation of a medical director, but did not make it mandatory. The final bill removes the requirement that the commissioner be a physician and makes the appointment of a medical director mandatory. A second amendment that modified the commission's recommendations was related to the development of a long-range plan by the TDMHMR and the Texas Department of Human Services. The bill, as introduced, required these two agencies to develop a plan for mental retardation services. The final bill expands the plan to cover services to persons with developmental disabilities, including mental retardation. A third change relates to fees paid by parents. The

bill, as introduced, required the department to establish a fee schedule to recover costs from parents of minor and adult clients for the client's care and treatment. Current law does not require parents to be financially responsible for the care and treatment of adult clients and sets a limit on the fees paid by parents of mentally retarded minor children. The final bill removes the limit, applies the fees only to parents of minors, requires the development of a sliding fee scale based on parents' net taxable income, requires the department to consider other factors affecting parents' ability to pay and adjust the fees accordingly, and prohibits the denial of services due to inability to pay. The bill also requires the TDMHMR board to appoint a Fee Advisory Committee, made up of a majority of parents of departmental clients. The committee will assist in developing the fee schedule, study its impact, and report to the 71st Legislature. A fourth amendment modified a Sunset Commission recommendation that the department establish objective criteria for the closing or consolidation of a state facility. Under current law, there is no objective way to make such a determination. The amendment expanded the development of criteria to include criteria that would help the legislature know when a new facility may be needed and when an existing facility should be expanded.

One recommendation of the Sunset Commission, which was removed from the bill, related to the conversion of an in-patient mental health commitment to an out-patient commitment. Existing law does not allow this to occur without a court hearing. Concerns were expressed during the review that this process failed to protect clients who no longer require hospitalization, but do not seek the out-patient services they need. The commission's recommendation would have allowed an automatic conversion of an in-patient commitment to an out-patient commitment if certain findings were made at the time of the original hearing. This included a finding that the person is at risk of deterioration without continued care.

Several amendments were adopted that added provisions not considered by the Sunset Commission. One of these requires the TDMHMR to evaluate emotionally disturbed children referred by the Texas Department of Human Services (TDHS), if evaluations are not immediately available through a local mental health authority. It authorizes the TDHS to pay fees for this service. Also, it authorizes the TDMHMR to use the fees to contract for community-based residential placements for emotionally disturbed children. The intent is to ensure

prompt evaluations and to provide needed money to purchase residential services for these children. Another new provision was added to the bill which requires the TDMHMR to notify each adult patient of his right to have a family member notified of the patient's discharge from a state facility. If the patient grants permission, the department is required to make a reasonable attempt to notify the patient's family before his discharge. This ensures an adult patient's right to confidentiality, while encouraging family involvement, if desired by the patient, and providing the family time to prepare for the patient's discharge. The final bill also requires the department to promulgate rules to ensure a mentally retarded client and his parents or guardian have the opportunity to participate in treatment planning, including plans to transfer, furlough, or discharge the client from a state facility. The rules must include procedures for informing clients, parents, and guardians of their right to appeal proposed transfers or discharges. The need for these safeguards has increased as more and more clients are being moved to community programs. The bill also includes a new provision which establishes the Alcohol and Substance Abuse Services Oversight Committee. The committee is composed of three senators, three representatives, and three persons appointed by the governor. Currently alcohol and substance abuse services are provided or funded by numerous state entities. This method of service provision has raised concerns that the lack of coordination and accountability has resulted in gaps and duplications in services. The committee will be responsible for coordinating services and ensuring financial accountability for all alcohol and substance abuse funds expended by state entities.

### **Analysis of Substantive Changes Contained in Sunset Legislation**

#### **Strengthen Agency Management**

Since the creation of the Texas Department of Mental Health and Mental Retardation, the qualifications for the department's chief executive have repeatedly been the subject of controversy. More specifically, this debate has focused on whether or not the commissioner should be a licensed physician. Senate Bill 257 addresses this issue by removing a statutory requirement that the commissioner be a physician licensed to practice in this state. The final legislation requires that the commissioner have professional training and experience in the administration or management of comprehensive health care or human service operations and to have demonstrated administrative and management ability. In addition, Senate Bill 257 requires the appointment of a medical director who must

be a physician licensed to practice in Texas and have proven administrative ability. These two provisions will give the department additional flexibility in hiring a commissioner with strong management skills whether or not he or she is a physician, while at the same time ensuring that sound medical expertise is available within the agency's management staff.

Besides addressing concerns over the qualifications of top department administrators, the final legislation also addresses concerns with agency accountability. As more and more of the TDMHMR's services are being delivered in the community through performance based contracts, the monitoring of those services becomes more critical. The TDMHMR has been reviewing community center programs approximately every three years and has not yet reviewed its own community outreach programs for adherence to the department's community standards. Under this schedule, reviews do not occur frequently enough to assure that programs maintain compliance with applicable standards. Senate Bill 257 requires the department to review each departmental facility outreach program and each designated community provider once each fiscal year.

#### Improve Client and Family Participation

Senate Bill 257 contains two provisions designed to increased the participation by patients, clients and their families in treatment and discharge planning. First, the department is required to notify each adult patient of his right to have his family notified of his release or discharge. Second, the department is required to promulgate rules ensuring mentally retarded clients, and their parents or guardians, the opportunity to participate in treatment and discharge planning. The rules must also ensure that these parties are informed of their right to appeal transfers, furloughs or discharges proposed by the department. These provisions will allow the input from affected parties to be incorporated into all phases of the treatment process.

#### Formalize Interagency Coordination

The services of TDMHMR are part of a comprehensive state service delivery system. Conditions like autism, genetic disorders, child abuse, mental retardation and alcohol and substance abuse often require intervention from several agencies and funding sources. Although attempts to coordinate the various programs have been made, problems persist, particularly with respect to "gaps" in the system, and financial accountability. Service gaps in the above mentioned areas exist because responsibility is divided between different agencies, and effective ways of tying



these varied services together into a complete package have not been developed. In addition, there is no common basis to account for services and funds expended.

To address these concerns, changes were required in the planning process and coordination of services across human service agencies. These were incorporated in Senate Bill 257. They include an interagency council for autism and pervasive developmental disorders, an interagency council for genetic services, an alcohol and substance abuse services oversight committee, and two joint studies with the Department of Human Services to develop a long-range plan for persons with developmental disabilities, and a study of treatment for abused children.

The legislation requires the agencies involved to initiate studies of costs and services, develop guidelines, or identify strategies that can provide additional or improved services. These requirements are to be accomplished with existing agency resources and are to result in a series of plans on how state services can best be structured and financed. These changes are intended to move the state toward a comprehensive service delivery system that is proactive, with coordinated plans for improved and cost-effective services. A series of reports to the 71st Legislature will provide a means to evaluate progress toward these goals and make necessary adjustments to the way interagency services are organized and funded by the state.

#### Require Payment for State Services

There is currently no coordinated and consistent policy in Texas regarding who is responsible, and to what extent, for the cost of MHMR services. Fees for parents of children in state schools and state hospitals have not been adjusted since they were originally developed in 1968 and bear no relationship to the actual cost of providing the services. When fees are assessed, the department has very limited authority to pursue collections of delinquent debts. The division of financial responsibility between the state and local MHMR authorities is also inconsistent. Areas served by community MHMR centers are required to provide matching funds for state funds they receive while areas served by state facility outreach programs have no similar requirement.

Senate Bill 257 establishes a consistent and coordinated policy regarding payment for state services through three primary provisions. First, the legislation requires the TDMHMR, with the assistance of a Fee Advisory Committee, to develop, by rule, a fee schedule for parents of minors in state facilities. Fees under the new schedule must be based on the parents' ability to pay and are

designed to recover the full cost of providing treatment when parents can afford it. The department is prohibited from refusing to provide services to anyone because of their inability to pay fees. The bill also contains a provision which authorizes the department and community MHMR centers to file liens on non-exempt property of persons for nonpayment of debts to the department. Finally, S.B. 257 requires that local matching requirements for state funds be applied consistently across the state regardless of whether an area receives services from a community MHMR center or a state facility. These measures will help to ensure that the cost of providing MHMR services is distributed fairly among responsible parties.

#### Reallocate State Resources More Equitably

In recent years, the state's philosophy and methods of providing MHMR services have changed, but the resources have not fully shifted to reflect this change. The department's focus has moved from being primarily an institutional service provider, to being the manager of a statewide comprehensive service delivery system. More and more people are receiving MHMR services in their home communities, instead of state schools and state hospitals. Between 1976 and 1986, the average combined population in Texas' state schools and hospitals declined by over 4,000 people, or about 24 percent. The department's facilities and budgets have not been reallocated to fully reflect these population shifts. The department has surplus property which is not likely to be used in the future, while facilities in other areas are inadequate. There are vacant beds in state facilities and many community programs are overcrowded. In terms of state funding for MHMR services, the dollars have not followed the people from state facilities to community programs as rapidly as many groups feel is possible.

Senate Bill 257 contains provisions which will help the department allocate its resources more effectively. The bill authorizes the department to lease surplus property that has no role in its service delivery system and use the proceeds to improve its facilities and programs. The bill also requires the department to establish objective criteria for determining whether facilities should be consolidated or expanded as populations shift. In addition, the legislation directs the department to determine the degree to which the cost of operating its facilities changes as their populations change. If the cost of operating the department's facilities declines, the cost savings must be transferred to community-based MHMR programs. These provisions will allow the department's limited resources to

be shifted into areas where they are needed most, without unduly disrupting current programs.

#### Pilot Program to Improve Continuity of Care

Legislative studies of the mental health system in Texas have repeatedly identified a problem with patients being admitted to state hospitals when they could more appropriately be treated in their community. Despite statutory attempts to correct this problem, it continues to be a concern of such magnitude that the department has focused its Initial Strategic Plan on the development of a system to address the problem. Senate Bill 257 provides the necessary legal framework and authorizes the department to establish a Single Portal of Entry system on a limited basis. The single portal of entry system eliminates inappropriate commitments to state hospitals by requiring that commitments be made instead to local mental health authorities. This allows the local authority to treat the patient locally, if appropriate, or to transfer the patient to a state hospital if more intensive treatment is necessary. Such a system allows mental health professionals, instead of the courts, to determine where patients should be placed for treatment. The system is limited to a maximum of six service areas in the next biennium and numerous safeguards are incorporated in the statutory provisions to ensure the system is only implemented in areas with local mental health authorities that are fully capable of serving in this capacity.

#### Examine Alternative Methods of Providing Services

As mentioned before, the department has been changing the MHMR system from primarily facility-based care to emphasize more community-based treatment. Community MHMR centers and private providers have been encouraged to take on increasing responsibilities for service delivery. As the system has changed, gaps, and to some extent duplication, have developed. To address the issue of gaps in community services, the legislation requires the department to solicit proposals for shifting certain less intensive state hospital services to community providers. The types of hospital units specifically included for review are those designed for psychiatrically stable elderly patients, patients who have been hospitalized over five years, and patients who are receiving special training to prepare for community living. This would focus state hospital services on acute psychiatric care, shifting less intensive care services into the community. This would expand the range of community-based services available. In addition, the legislation requires the department to periodically assess whether community providers offer

services which are similar to the services provided by the department, and whether the quality and cost of those services is comparable.

To address a potential area of duplication, the legislation requires the department to study the feasibility of combining efforts in service areas which have a state center and a community center. In these communities, the department continues to administer community-based services even though community MHMR centers have developed. Reducing administrative duplication by combining efforts could free up additional money for direct services.

#### Increase Local Responsibility

As clients of the mental health and mental retardation service delivery systems move from facility-based to community-based treatment, the need for local accountability has increased. Assurances are needed that clients leaving state institutions have the help necessary to secure a safe place to live and ongoing treatment. Senate Bill 257 strengthens the existing responsibilities for local involvement in aftercare planning and adds a new requirement to further increase local accountability. Previously, state facilities were required to prepare a plan for each patient's care after discharge from an institution. The local MHMR authorities were only required to participate in this discharge planning to the extent that resources were available to participate. These providers are an essential participant in this type of planning if it is to be effective. The legislation therefore removed the provisions limiting local participation based on available resources.

The legislation also establishes new responsibilities for local MHMR authorities concerning the quality of boarding homes to which they refer clients. The local authorities must refer clients only to boarding homes which they have inspected and approved. To be approved, the home must provide the personal services that clients need, and must meet local health and safety requirements.

**TEXAS DIABETES COUNCIL**

## TEXAS DIABETES COUNCIL

### S.B. 244 by McFarland

**Final Action:** The agency was continued for a 10-year period rather than the standard 12-year period. It will be reviewed in 1997 when the Texas Department of Health, which provides administrative support to the council, is reviewed.

#### **Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 244 as originally introduced contained the recommendations of the Sunset Commission regarding the Texas Diabetes Council. A comparison of the introduced and final version of the bill shows that the final legislation contains a majority of the recommendations proposed by the Sunset Commission. All the standard sunset across-the-board recommendations proposed by the commission were included in the final bill. The major changes to the bill as introduced related to the composition of the council. The final legislation increased the number of the council's private citizen members from six to eight members and deleted the graduate degree requirement for one private citizen member. The final legislation included an instructional provision requiring the governor to appoint the two additional members to the council. The bill as introduced did not change the original composition of the council.

#### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

##### **Improvements in Organization**

Some of the significant changes contained in Senate Bill 244 include requiring the chairman of the board of each of the five agencies represented on the council to appoint the agency's council representative and authorizing the council to accept gifts and grants. The final bill also adds two public members to the council.

##### **Coordination with Health Planning Bodies**

The need to coordinate the activities of the Texas Diabetes Council with other health planning bodies was addressed by two statutory changes reflected in S.B. 244. Agencies affected by the diabetes state plan are required by the final legislation to determine resources necessary to implement the plan and submit funding information concerning the plan to the council, the Legislative Budget Board and the Governor's Budget Office. The legislation also requires the council to submit a biennial state plan for diabetes control to the agency designated as the state health planning and development agency to improve coordination between the two planning processes.

### Increasing Public Awareness

Early detection of diabetes often helps to prevent severe complications of the disease. The final legislation requires the five state agencies represented on the council to work through the council to develop, produce and disseminate public awareness information to clients served by these agencies.

**TEXAS COMMISSION FOR THE DEAF**



## TEXAS COMMISSION FOR THE DEAF

### H.B. 550 by Vowell

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

#### **Comparison of Sunset Commission Legislation with Final Legislation**

House Bill 550, as introduced, contained the recommendations of the Sunset Commission for the Texas Commission for the Deaf (TCD). A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of the recommendations proposed by the Sunset Commission. In addition, all the standard sunset across-the-board recommendations proposed by the commission were included in the final bill.

The introduced version of the bill repealed a provision limiting the salaries of TCD staff to 25 percent of the agency's appropriation. In addition, two provisions dealing with the commission's administrative expenditures were added to the original sunset legislation by the 70th Legislature. A statutory definition of "administrative costs" which excludes salaries, was included in the final legislation and administrative costs were limited to 20 percent of the commission's total appropriation. Current law does not contain such a provision.

#### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

##### **Requirement of Fees for Services**

Unlike most human service agencies which have income eligibility requirements or a sliding scale for charging fees, the Texas Commission for the Deaf has historically provided all direct services to deaf or hearing impaired persons free of charge, regardless of income level. It was noted during the sunset review that only a small fraction of the demand for services, particularly interpreter services for the deaf, can be met with funds available to the commission. House Bill 550 includes a provision to help increase program funding and thereby increase the accessibility to interpreter services for deaf individuals. The bill requires that the commission adopt a sliding fee scale for interpreter services paid for by the TCD in non-governmental settings. Those who can afford it will be asked to make a contribution toward payment for services received. However, the bill specifies that no person shall be denied interpreter services due to inability to pay.

### Requirement for Rehabilitation Counselor Evaluation

There are currently 55 vocational rehabilitation counselors employed by the Texas Rehabilitation Commission (TRC) with caseloads of 15 or more deaf clients. House Bill 550 requires the TCD's Board for Evaluation of Interpreters to work jointly with the TRC to develop a communication competency evaluation for vocational rehabilitation counselors and other TRC staff who work with deaf and hearing impaired clients. This provision is intended to insure that the TRC employees working with deaf clients can communicate adequately with the deaf population and can translate their needs to others.

### Improvement of Service Delivery Coordination

Prior to enactment of H. B. 550, no formal mechanism had been developed to coordinate services delivered to the deaf population by various state agencies. House Bill 550 requires the commission and other agencies involved in delivery of services to deaf individuals to adopt by rule a memorandum of understanding (MOU) to coordinate service delivery to deaf persons. The development of MOUs between the TCD and other agencies involved with service delivery to deaf individuals will allow the agencies to identify service gaps, reduce or eliminate any gaps identified, and reduce any duplication of services delivered.

### Other Changes

The bill also makes the following changes to current law for the purpose of improving the efficiency of the operations of the agency: 1) discontinues the interpreter training program and requires the commission to establish a course approval system in its place; 2) requires the commission to establish and charge reasonable fees for some or all commission publications to recover publication costs; 3) requires the commission to charge certification fees in amounts sufficient to recover the cost of the certification program; 4) clarifies that the commission may not purchase additional telecommunication devices for the deaf unless authorized by specific appropriation and stipulates that the devices be placed only with public, non-federal entities; 5) allows the commission to charge an entity for the costs incurred in repairing telecommunication devices placed with that entity; and 6) prohibits TCD from contracting with former employees within two years after termination of employment with the commission.

**TEXAS YOUTH COMMISSION**

## TEXAS YOUTH COMMISSION

### S.B. 33 by Farabee

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

#### **Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 33 as originally introduced contained the recommendations of the Sunset Commission for the Texas Youth Commission. A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of recommendations proposed by the Sunset Commission. All the standard across-the-board recommendations proposed by the commission were included in the final legislation.

Two significant changes were made in the original Sunset Commission legislation. The provisions which authorized TYC to receive payments for the cost of care from parents who are financially able to pay, and court-ordered child support payments from divorced parents were removed from the bill. A provision was added to the Texas Juvenile Probation Commission Sunset bill however, which requires juvenile courts to order parental contributions toward the cost of out of home placements, including TYC, when parents are financially able.

The second significant change in the bill, as introduced, dealt with the "Communities in Schools" program. The original provision was modified so that the Texas Employment Commission (TEC) was given primary responsibility for administering the program instead of the Texas Education Agency (TEA). Other requirements were added which directed the TEC and the TEA to work together to maximize the program's effectiveness and to mutually develop a memorandum of understanding which spells out how the program will be implemented and operated.

#### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

##### **Delinquency Prevention Efforts Strengthened**

Texas has historically spent more time and money trying to rehabilitate children after they get into trouble than it has spent trying to prevent them from getting into trouble in the first place. Senate Bill 33 contains two provisions which are designed to address children's problems before they result in delinquent conduct.

First, the bill expands the "Communities in Schools" program, which is a special program for children at risk of dropping out of school or getting into

trouble. By concentrating on the children's social and personal skills as well as their academic and vocational skills, children are better prepared to find employment or seek further training, and stay out of the criminal justice system. The legislation also contains language which encourages the expansion of drug, inhalant, and alcohol abuse services for youth, since substance abuse problems are contributing factors in many cases of juvenile delinquency.

#### Reduce Commitments to TYC of Minor Offenders

The Texas Youth Commission's limited space is intended for youth who have committed serious violations and can not be served in their communities because they present a danger to themselves or to society. Under certain circumstances however, it is possible for children who have committed only very minor offenses to wind up in TYC. This situation occurs most frequently in cases where probation or parole is revoked because the child has violated the conditions of his or her probation or parole. Senate Bill 33 contains two provisions which are intended to reduce probation and parole revocations when violations are minor in nature.

First, the legislation prohibits probation revocations for "status offenses" (truancy, running away from home) and minor misdemeanors punishable by fine only in the adult criminal justice system. Second, the legislation authorizes TYC to require restitution, when appropriate, as an alternative to parole revocation. These provisions will help to eliminate the commitment to TYC of children whose offenses are minor, leaving TYC's limited space for those who need it most.

#### Cost-Effectiveness Improved

Senate Bill 33 contains several provisions which are designed to help TYC make better use of resources outside the agency and to measure the effectiveness of its programs in terms of results, as opposed to the more procedurally oriented reviews currently being used. The bill requires TYC to contract for halfway house services that are added in the future when it would be cost effective to do so. Senate Bill 33 also contains a provision that encourages TYC to use local juvenile probation departments instead of its own parole officers to supervise TYC youth on parole, when it would result in similar services being provided more economically. In addition, the legislation requires TYC to use performance based standards to evaluate the effectiveness of programs it operates. When feasible, TYC shall also provide performance standards for contract programs serving ten or more children. These measures will increase the agency's use of service contracts when they are cost effective, and help to ensure that the agency's limited resources will be used for programs that perform well.

**TEXAS JUVENILE PROBATION COMMISSION**

## TEXAS JUVENILE PROBATION COMMISSION

### S.B. 17 by Farabee

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

#### **Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 17 as originally introduced contained the recommendations of the Sunset Commission for the Texas Juvenile Probation Commission. A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of recommendations proposed by the Sunset Commission. All the standard across-the-board recommendations proposed by the commission were included in the final bill, although the conflict-of-interest language was changed to allow employees of local juvenile probation departments to be eligible to be appointed to the commission. Major changes to the bill, as introduced, include an alteration to the composition of the commission. Current law provides for three district court judges and six public members on the commission. The final legislation reduces the number of district court judges from three to two, while adding one county judge or county commissioner to the membership. The Sunset Commission did not consider any changes to the membership of the commission.

Another change to the bill, as introduced, concerned the authority of juvenile courts to order parental contributions towards the cost of out-of-home placements. The bill, as introduced, required the court to order such contributions, by parents who are financially able to do so, when a youth was placed on probation. The final legislation requires the court to order contributions toward the cost of out-of-home placements, by parents who are financially able, at any stage of juvenile court proceedings, including the commitment of a youth to the Texas Youth Commission.

#### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

##### **Increases in Fees**

A consistent concern within the juvenile probation community related to a lack of adequate funding for services for youth referred to juvenile probation departments. For example, in 1986 there were 43 counties that did not provide local funding for juvenile probation services. Senate Bill 17 addresses these funding needs by making three statutory changes. These changes are intended to

increase the amount of money available for services through additional fees and through parental contributions. The final legislation requires that fees be assessed for court-ordered probation, unless waived for financial hardship, and authorizes fees for other services provided by local juvenile probation departments. These fees are retained by the county to be used for juvenile services. The legislation also requires the court to order parental contributions, when financially feasible, towards the cost of any out-of-home placement of a youth made by the court. In addition, the legislation establishes a cost-of-court fee of \$20 to support a special fund to be used to provide diversion services for juveniles in danger of commitment to the Texas Youth Commission. Such services are considerably less expensive than the cost of a commitment to TYC.

#### Modification of Court Jurisdiction for Class C Misdemeanors

Under current law, a juvenile cannot be prosecuted in juvenile court for a class C misdemeanor unless it can be shown that the juvenile has committed three prior class C misdemeanors. This requirement results in very few cases actually being prosecuted due to the difficulty of proving offenses that may have occurred months or even years earlier. The legislation changes current law by transferring jurisdiction for class C misdemeanors committed by juveniles to municipal or justice-of-the-peace courts. After conviction of a youth on two or more class C misdemeanors, a justice of the peace or municipal judge is authorized to transfer subsequent offenses by the youth for prosecution in juvenile court. This system should allow a juvenile to be appropriately punished for the commission of individual class C misdemeanors and to allow juvenile courts to be used when a "pattern" of misdemeanor violations is established.



**TEXAS ADULT PROBATION COMMISSION**

## TEXAS ADULT PROBATION COMMISSION

### H. B. 83 by P. Hill

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

#### **Comparison of Sunset Commission Legislation with Final Legislation**

House Bill 83, as originally introduced, contained the recommendations of the Sunset Commission for the Texas Adult Probation Commission (TAPC). A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of the recommendations proposed by the Sunset Commission. All the standard sunset across-the-board recommendations proposed by the commission were included in the final bill except the conflict-of-interest provision, which was removed because it would have prevented some board members and agency employees from serving as officers in various corrections associations. Major changes to the bill, as introduced, included the deletion of the provision that would have allowed more serious offenders to be placed in restitution centers, which is restricted by current law. House Bill 83 initially would have allowed judges to place any probationer, regardless of their offense, in such a facility. The final legislation deleted this change and maintained current restrictions. House Bill 83, as passed, also allows deferred adjudication probationers to be placed in the centers.

Two recommendations of the Sunset Commission were expanded in the final legislation. The bill, as introduced, changed current law to make the monthly probation fee mandatory rather than at the discretion of the judge. The final legislation added a related provision that prohibits courts from ordering probationers to make any other fee payments except those expressly authorized by statute. The final legislation also expanded the sunset provision which required TAPC to evaluate the effectiveness of various probation programs by including the Criminal Justice Center at Sam Houston State University in the evaluation process. There were no recommendations considered and rejected by the Sunset Commission that were added to the final legislation.

#### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

##### **Creation of Additional Diversion Opportunities**

In an effort to develop alternatives that would relieve the growing pressure on the state prison population, the sunset review of TAPC focused on alternatives

that would allow persons to be placed on probation instead of being sent to TDC. One of these alternatives allows judges to require as a condition of probation that the defendant submit to electronic monitoring in lieu of being sent to TDC. A second provision gives courts added flexibility in making diversion placements in a restitution center by eliminating the mandatory requirement that a probationer be employed as a condition for placement in a center. A third diversion provision in H.B. 83 permits courts to send a felony probationer to county jail for up to 30 days if the probationer violates administrative conditions of probation or commits a misdemeanor offense while on probation. This provides an alternative to sending the probationer to TDC for minor violations.

#### Better Monitoring and Enforcement of State Requirements for Local Probation Departments

Because local probation departments are primarily supervised by the local district judges in each area of the state, it is sometimes difficult for TAPC to obtain compliance with state standards for program operations, on which state funding is based. In order to improve TAPC's enforcement efforts with the 117 probation departments it funds, H.B. 83 includes a requirement that TAPC reduce, refuse or suspend state aid payments made to probation departments that fail to substantially comply with operation standards set by TAPC. The agency will also be able to impose budget controls over departments that fail to comply. Another provision contained in the bill requires TAPC to monitor county support (office space, utilities and equipment) provided to local probation departments, set standards for adequate support and apply sanctions where support is insufficient.

#### Standardization of Probation Department Management

House Bill 83 addresses the issue of establishing appropriate standards and management processes for the 117 departments TAPC funds and monitors. Some inconsistencies in the use of effective probation department management techniques were found during the sunset review. This problem is addressed by a provision that creates a 12-member advisory committee on probation department management to advise TAPC on appropriate guidelines for the management and organization of probation departments. This committee will be dissolved after its work is complete. Another provision in H.B. 83 creates a probation officer certification program similar to the one the Texas Juvenile Probation Commission has. This requires all probation officers hired after the Act takes effect to receive training and pass an exam to be a certified officer. Such a training program should help promote effective and consistent management techniques statewide.

**BOARD OF PARDONS AND PAROLES**

## BOARD OF PARDONS AND PAROLES

### S.B. 341 by Farabee

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

#### **Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 341 as originally introduced contained the recommendations of the Sunset Commission for the Board of Pardons and Paroles (BPP). A comparison of the introduced and final version of the bill shows that the final legislation contains all the recommendations proposed by the Sunset Commission. All the standard sunset across-the-board recommendations proposed by the commission were also included in the final bill. Only two recommendations contained in the introduced version were changed in the bill as it finally passed. The introduced version required BPP to seek bids from the Tarrant County probation department for the provision of parole supervision. The bill, as it finally passed, expanded this to include a requirement to seek a bid from the Potter County Probation Department for supervision. The bill, as introduced, also included provisions designed to make the collection of parole fees easier. The final bill added another change to ease the collection by allowing parole officers to collect fees.

Senate Bill 341, as finally passed, also included provisions which were not included in the original bill. The final bill eliminates the consideration of consecutive sentences as one sentence for the purposes of parole eligibility. Previously, BPP had the statutory authority to "stack" consecutive sentences so that time served by an inmate and good time earned counted toward the parole eligibility date of all the sentences. The final bill removes this authority and requires an inmate to reach parole eligibility on each sentence separately. Another change included in the bill requires the board, where feasible, to include community service as a condition of release. The BPP, at the time of an inmate's release, can require the inmate to comply with any reasonable condition of release. Community service is a traditional form of punishment or restitution in criminal cases throughout the judicial system. It was felt that releasees should participate in community service programs as part of their release. Releasees that have disabilities or other valid reasons can be exempted by BPP from this requirement.

## Analysis of Substantive Changes Contained in Final Sunset Legislation

### Revision of Parole and Mandatory Release Laws

Current release laws determine how and when inmates are released from TDC and allow control of the prison population through the continued incarceration of some inmates and the release of others. The total impact of current release laws has caused several problems such as unequal application of sentencing laws; reduced incentives for good inmate behavior; increased disciplinary problems caused by certain inmates; reduced ability of TDC and BPP to make discretionary release decisions; and the automatic release of inmates convicted of violent crimes. These concerns were addressed by a proposal developed by the Sunset Commission and included in the final legislation on the BPP and the Texas Department of Corrections (TDC). Senate Bill 341 (BPP), as finally passed, changes parole eligibility for non-violent offenders from the lesser of one third of an inmate's sentence or 20 years to one-fourth or 15 years including good time. Parole eligibility for aggravated, or "3g", offenders, would be reduced from one-third to one-fourth of the sentence in calendar time excluding good time earned. Mandatory release (automatic release when calendar time and good time equal a sentence) is continued for non-violent offenders but no longer applies to offenders with violent crimes.

In addition to the changes included in S.B. 341, changes in good time proposed by the Sunset Commission were included in S.B. 245, the TDC sunset bill. The changes in release laws in the BPP and TDC bills, taken as a whole, make several changes in how and when inmates are released from TDC. The time served by inmates in TDC is increased, particularly for bad release risks. Violent offenders are no longer automatically released but must be paroled or serve their entire sentence in TDC. The prison crowding problem is not aggravated because the same number of parole eligible inmates is maintained. Also, through the changes in good time in S.B. 245, inmates must work or show some good faith effort to receive significant amounts of good conduct time. This provides TDC with an additional tool to promote good inmate behavior.

### Development of Standard Parole Guidelines

Current law requires that decisions to parole an inmate be made only in the best interest of society. The board has adopted rules which outline parole selection procedures but has not adopted guidelines for actual parole decisions. While decision factors used by parole panel members are generally the same, decision-

makers are not required to use those factors in their decisions. Senate Bill 341 requires the board to establish standard guidelines which will ensure that all parole decisions follow the same procedures using the same decision criteria thus providing better consistency in decisions.

#### Establishment of a Tentative Parole Process

Inmates need to have at least two pieces of information regarding parole. They should know the length of time they must serve before they may be considered for parole and they should know how they can best spend this time. Currently, an inmate does not have a clear indication of when parole will be granted nor does the inmate have a good idea of what can be done to improve the chance of parole. Senate Bill 341 requires the development of a preliminary parole plan and a tentative parole month for qualified inmates. The tentative parole system will let an inmate know what factors will be involved in the parole decision and will give a better indication of when parole will occur.

#### Authorization for Electronic Monitoring

Electronic monitoring of parolees appears to be a cost-effective alternative to hiring additional parole officers. If administered properly, it can provide adequate assurance to the public that a person on parole is properly supervised. Prior to the enactment of S. B. 341, there was no legislative directive that the use of this alternative was appropriate. The bill, as passed, authorizes the board to use electronic monitoring as a condition of parole and establishes this alternative as a high priority budget item.

#### Contracting for Parole Supervision

There are similarities between the supervision of releasees carried out by the board and the supervision of probationers carried out by local probation departments throughout the state. Probation offices, in some areas, are significantly closer to releasees than parole offices and could be used for supervision of both probationers and parolees. However, current law did not specifically authorize this type of contractual arrangement and thus prevented the possibility of cost savings through such an arrangement. Senate Bill 341 specifically authorizes this type of contract and requires BPP to seek bids from probation departments in Potter and Tarrant counties for a pilot project to determine actual savings. The Board of Pardons and Paroles will request that the probation departments bid for the provision of parole supervision services. The board would contract with the

probation departments if they can comply with the standards, terms, and conditions established by BPP. The standards and conditions of supervision would be the same as those used by BPP in its supervision efforts. In conjunction with the proposed pilot projects, the bill requires BPP to develop a process for contracting for parole supervision services statewide and requires the board to ask for requests for proposals (RFP's) from any interested probation department in the state. The board could contract with any department where a cost savings could be realized and the standard of supervision could be met.



**TEXAS DEPARTMENT OF CORRECTIONS**

**TEXAS DEPARTMENT OF CORRECTIONS**  
**S.B. 245 by McFarland**

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

**Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 245 as originally introduced contained the recommendations of the Sunset Commission for the Texas Department of Corrections. A comparison of the introduced and final version of the bill shows that the final legislation contains the majority of the recommendations proposed by the Sunset Commission. All of the standard sunset across-the-board recommendations proposed by the commission were included in the final bill. Major changes to the bill as introduced include modifications to the provision regarding the award of good conduct time. The introduced version of the bill did not change current law which gives TDC the flexibility to set any good time earning level for prisoners entering TDC and to move them to higher earning levels when TDC chooses to do so. In addition, the original bill continued current law in allowing TDC to award good time to inmates regardless of their participation in work or education programs. The legislation, as finally passed, however, modifies these provisions. The final legislation requires TDC to change its good time policy when prison crowding has been reduced. At that time, inmates would be required to enter TDC earning no more than 20 days of good time each month (approximately the mid-point), and they would have to wait 90 days in each time-earning level before graduating to a higher level. The bill also authorizes the TDC director to award good time only if the inmate is actively engaged in a work or education program.

Another change to the bill as introduced concerned a provision for funding the Criminal Justice Policy Council. A mechanism for funding the policy council from the budgets of member agencies of the Criminal Justice Coordinating Council was deleted. Also deleted was a provision which would have required the policy council to coordinate budget planning for the member agencies of the coordinating council. By deleting these provisions, the final legislation maintained current law regarding funding for the policy council and budget planning for the criminal justice agencies.

Also deleted from the bill, as introduced, was a provision regarding the running of the statute of limitations for persons in prison. Current law suspends the statute of limitations for persons while in prison. The bill, as introduced, would

have removed this suspension of the statute of limitations, except for cases brought by an inmate against a TDC employee. The final bill eliminates this exception, allowing the statute of limitations to run for all purposes while a person is in prison.

Senate Bill 245 as finally passed also contained a number of provisions aimed at improving the role of the family in reducing recidivism which were not included in the original bill. Among the provisions added were a requirement that TDC designate a person at each unit to serve as a family liaison officer; the creation of an advisory committee to TDC regarding the role of the family in reducing recidivism; a requirement that TDC establish a uniform visitation policy which allows eligible inmates to receive visitors; and authorization for the department to grant temporary furloughs up to seven days instead of the five days currently allowed. Similar provisions had been presented to the Sunset Commission but were not adopted.

### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

#### **Change in Good Time Laws**

Under current law, the Texas Department of Corrections has broad discretion to award good conduct time credits to inmates, reducing the amount of time they must actually spend in prison. Because they reduce time served, good time awards have become an important tool to help the department control prison crowding. Currently, inmates may earn up to 45 days of good time for each 30 days served (75 days total credit) solely on the basis of their classification. An additional five to 15 days of administrative good time (up to 90 days total credit) is available for inmates participating in certain job training or educational programs. The maximum rate of 90 days of credit for each 30 days served is the highest of any state, except Alabama. In addition, the current law establishes only broad guidelines for good time awards. The department determines the size and conditions of awards. By policy, the department awards most newly-arriving inmates 40 days of good time for each 30 days served (70 days total credit). As long as they avoid disciplinary offenses, these inmates are not restricted in how fast they may be promoted to a higher time-earning level. Also, the TDC policy of "backdating," the retroactive award of higher levels of good time for periods when less time credit was earned, has allowed the department to award maximum good time credits to many inmates for the entire length of their incarceration.

These good time laws and policies have had an adverse effect on the way inmates are released from prison. Currently, inmates are released automatically

when time served plus good time equals the length of the sentence. With high good time awards, an increasing majority of prison releasees were being released automatically, bypassing discretionary release through the parole process. The effect was that inmates -- including some violent inmates -- could not be kept in prison beyond a mandatory release date that was being determined by the state's high good time awards.

Senate Bill 245 addresses the problems in the good time law as part of a package of changes in the laws governing how and when inmates are released from TDC. The other elements of the package regarding changes in flat time, parole eligibility, and mandatory release are discussed in the analysis of S.B. 341, the sunset bill for the Board of Pardons and Paroles.

The changes in good time contained in S.B. 245 are intended not only to reduce the influence of good time awards in driving prison releases but also to improve the incentive value of these awards. Specifically, the bill reduces the maximum award by 15 days per month, making the total available credit 75 days for each 30 days served. The bill also directs the board of corrections to annually review its classification policies and to modify them as prison crowding dictates. When crowding has been reduced, newly-arriving inmates may earn no more than 20 days of good time per month. Inmates would also have to wait 90 days in each time-earning level before advancing to a higher level. Also on the basis of an annual review of prison crowding, the board of corrections is to discontinue its policies of restoring forfeited good time and backdating good time for reclassified inmates. Finally, the bill stipulates that the TDC director may award good time only if the inmate is actively engaged in a work program or educational endeavor unless the inmate is not capable of such participation. Inmates may no longer earn good time based solely on their classification.

#### Authorization for Pre-Release Programs

Among the factors contributing to the recidivism of releasees is the inadequate preparation of inmates for life outside prison. Programs for inmates before they are released may ease this transition, reducing recidivism and, ultimately, the cost of incarceration. Such programs may be especially beneficial if they are located near urban areas, close to the inmate's home and release destination. However, current law does not include any provision for pre-release programming. Furthermore, because of prison crowding and the pressure to release inmates quickly, TDC has been unable to provide comprehensive pre-release programming for all inmates.

The final version of S.B. 245 addresses the need for helping the inmate in the transition back to society by establishing an urban pre-release program. The legislation requires TDC to assign at least one-fourth of the inmates to a pre-release program in any new unit built, leased, or operated by the department near an urban area having a population of 100,000 or more. The department may assign to the pre-release program any inmate who is within six months of parole eligibility. Other elements of the program include a work-release program for participating inmates; a requirement that TDC provide certain counseling to inmates; a requirement that the Texas Employment Commission and the Board of Pardons and Paroles provide employment assistance to inmates; and a requirement that TDC, TEC and BPP evaluate the program each year. The final legislation also established a separate program from the urban pre-release program to address the special needs of long-term inmates before they are released.

#### Improvements in Continuity of Care for Special Needs Inmates

Many inmates in TDC have special needs that should be addressed both in prison and on release from TDC. For example, inmates with special needs include those that are mentally ill or mentally retarded, have serious alcohol or drug abuse problems, or are chronically unemployed. Sunset legislation incorporated a number of provisions to ensure that special needs inmates continue to receive proper care on their release from TDC. One of the problems addressed concerns the release of the seriously mentally ill offender. Because of prison crowding and the need to release inmates quickly, TDC personnel often have little advance notice of the release of a seriously mentally ill inmate. The result is that sometimes seriously mentally ill inmates are discharged before TDC can get them committed for mental health treatment in the free world. The Sunset bill establishes a psychiatric commitment process which identifies mentally ill inmates nearing parole eligibility and sets out procedures for getting them committed to a free world mental health facility.

Another concern addressed by the legislation is to ensure that TDC and other state agencies responsible for meeting the special needs of inmates on release communicate effectively with each other about those inmates. To make sure that this continuity of care exists, the legislation requires relevant state agencies to develop memoranda of understanding (MOU) concerning the special needs of inmates. Agencies participating in developing the MOUs are the Texas Department of Corrections, Board of Pardons and Paroles, Texas Adult Probation Commission, and the agencies with responsibility for the mentally ill and mentally retarded, the

elderly, substance abusers, the physically handicapped, and the chronically unemployed.

#### Use of TDMHMR Facilities

The deinstitutionalization of the mentally ill and mentally retarded in the TDMHMR system has caused a reduction in the use of some state schools and hospitals. Such underused TDMHMR facilities could be used by TDC to care for mentally ill and mentally retarded inmates or by the Board of Pardons and Paroles to house mentally ill and retarded releasees under supervision. Senate Bill 245 authorizes TDMHMR, upon the approval of the governor, to transfer or otherwise provide these facilities to TDC or BPP for mentally ill and mentally retarded persons under their jurisdiction.

#### Alternative Incarceration Programs for Young Offenders

Other states have established special shock incarceration programs for young, first-time offenders seeking to discourage them from crime. No such program exists in Texas under current law. Senate Bill 245 establishes such a program for qualified probationers within TDC. Under the provisions of the final bill, the sentencing court may place eligible probationers in a special alternative incarceration program, segregated from the general TDC population. The program requires the young offender to participate in strenuous labor and to learn first-hand about the conditions under which an inmate at TDC lives. The bill specifies that the court's jurisdiction over these inmates continues for 90 days. After 75 days, but before 90 days, the judge may suspend the sentence and place the defendant on probation under special conditions established in the bill. Participants in the program could be transferred to a regular TDC unit if their shock probation were revoked.

#### Better Use of Inmate Labor

Current law requires inmates to work within the prison and on prison farms with a goal of making the prison system self-sustaining while also giving inmates skills to assist in returning to the free world. However, current law does not specify how inmate labor is to be used. Also, many of the statutes dealing with inmate labor are outdated and no longer address the needs of the department or the inmates.

Senate Bill 245 contains a number of provisions to improve the use of inmate labor. As discussed previously, changes in good time laws requiring participation in work programs and the addition of a work-release component in pre-release

programs strengthen and expand existing work programs. In addition, the final legislation includes the following provisions regarding the use of inmate labor:

- authority for TDC to contract with other state agencies and local governments for the use of inmate labor;
- requirement for TDC to pursue arrangements with business and industry for the use of inmate labor and the authority for TDC to apportion inmate wages from these arrangements;
- improvements in the department's agricultural operations by creating an agricultural advisory committee and requiring an annual review of agricultural operations; and
- requirement for TDC and the Board of Pardons and Paroles to develop memoranda of understanding (MOU) to evaluate the effectiveness of TDC job-training programs.

**TEXAS CONSERVATION FOUNDATION**



## TEXAS CONSERVATION FOUNDATION

S.B. 296 by C. Edwards

**Final Action:** The agency was continued for a four-year period. It will be reviewed again in 1991.

### **Comparison of Sunset Commission Legislation with Final Legislation**

Senate Bill 296 as originally introduced contained the recommendations of the Sunset Commission for the Texas Conservation Foundation. A comparison of the bill as introduced with the legislation finally passed shows that the final legislation differs in one respect from the recommendations proposed by the Sunset Commission. The Sunset Commission recommended the the foundation be continued until 1993. The final legislation continues the agency until 1991.

### **Analysis of Substantive Changes Contained in Sunset Legislation**

Senate Bill 296 continues the Texas Conservation Foundation for a period of four years. In 1991, therefore, the foundation's track record for soliciting donations and negotiating real property transactions for the benefit of the state parks, historic sites, and natural resource conservation areas will once again be under review.

**TEXAS BOARD OF PRIVATE INVESTIGATORS AND  
PRIVATE SECURITY AGENCIES**

**TEXAS BOARD OF PRIVATE INVESTIGATORS AND  
PRIVATE SECURITY AGENCIES  
H.B. 888 by P. Hill**

**Final Action:** The agency was continued for a 12-year period. It will be reviewed again in 1999.

**Comparison of Sunset Commission Legislation with Final Legislation**

House Bill 88, as originally introduced, contained the recommendations of the Sunset Commission for the Texas Board of Private Investigators and Private Security Agencies. A comparison of the introduced and final version of the bill shows that the final legislation contains many of the recommendations proposed by the Sunset Commission. All of the standard sunset across-the-board recommendations proposed by the commission were included in the final bill. Major changes to the bill, as introduced, include the deletion of a provision which would have established a separate category of security personnel that patrol private residences referred to as residential patrol personnel. House Bill 888, as introduced, would have required a DPS criminal background check of residential burglar alarm sales persons, alarm installers and residential patrol persons prior to employment. The final legislation deleted this provision.

The bill, as introduced, also included a provision that would have required the board to conduct an additional criminal background check through the Federal Bureau of Investigation on every applicant seeking a security commission prior to employment. Under current law, the board is only required to conduct a criminal background check on applicants for a security commission through the Texas Department of Public Safety. The final legislation deleted the proposed change and maintained current law.

Another significant change to the bill involved changes to the composition of the six-member board of the Texas Board of Private Investigators and Private Security Agencies. Currently, the board is composed of two public members, one member representing city or county law enforcement officers, one member representing the security departments of private businesses and two members representing private investigators and security service contractors. The bill, as introduced, added one member representing guard companies and reduced the number of members representing private investigators and security service

contractors from two to one. The final legislation changed the composition of the board to three public members, two members representing private investigators and security contractors, and one member representing guard companies. House Bill 888, as finally passed, also contained a provision that would exempt from regulation persons who sell burglar alarms in a person's residence. This provision was not considered by the Sunset Commission.

### **Analysis of Substantive Changes Contained in Final Sunset Legislation**

#### **Modification of Licensing Requirements for Security Guards**

Under current law, all commissioned and non-commissioned guards were required to be registered with the board by the companies that employed them. Each guard was required to be registered once every year or every time the guard changed security companies. For each commissioned and non-commissioned guard registered, a separate non-transferable commission or registration card was issued to the company. The security company was required to return the registration card to the board at the end of a guard's employment.

During the sunset review process, it was noted that the workload and paperwork associated with the registration process reduced the board's ability to issue these cards in a timely fashion. House Bill 888 includes provisions aimed at eliminating this problem by requiring the board to issue a two-year transferable commission card for commissioned guards and a four-year registration card for non-commissioned guards. These cards are to be issued directly to the security guard. Licensed security companies are required to inform the board within 14 days of any guard leaving this employment and within ten days of the hiring of any guard. In addition, the licensing fee for non-commissioned guards was reduced from \$15 per year to \$30 every four years.

#### **Strengthening the Board's Ability to Prosecute Unlicensed Companies**

It was noted during the sunset review process that the board experienced difficulty in getting local officials in certain counties to prosecute security companies operating without a license. House Bill 888 includes a provision aimed at eliminating this problem by giving the board the option of having the venue for such an offenses in the county where the offense occurred or in Travis County.