

- SUBJECT:** Continuing the Texas Commission on Jail Standards
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 9 ayes — Coleman, Stucky, Anderson, Cason, Longoria, Lopez, Spiller, Stephenson, J. Turner
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Matthew Lovitt, National Alliance on Mental Illness Texas; Brian Hawthorne, Sheriffs Association of Texas)
- Against — (*Registered, but did not testify:* Susana Carranza; Julie Gilberg; Idona Griffith; Georgia Keysor; Vanessa MacDougal; Gregg Vunderink)
- On — Rachel Gandy, Sunset Advisory Commission; Brandon Wood, Texas Commission on Jail Standards
- BACKGROUND:** The Texas Commission on Jail Standards (TCJS) establishes minimum standards for jails, including standards on the custody, care, and treatment of inmates, as well as jail construction, maintenance, and operations. It monitors compliance with those standards through inspections and investigates complaints, takes enforcement actions, and gives technical assistance to jailers, administrators, and sheriffs. The agency also reviews inmate deaths and escapes; approves jail construction, renovation, and operations; and reports on inmate population, incarceration rates, and more.
- The agency has authority over jail systems operated by counties and over jails operated by private vendors for counties and cities. It currently oversees 239 jail systems with a total bed capacity of about 95,000.
- A nine-member commission oversees the agency, and commissioners serve staggered six-year terms. The governor appoints the commission with the advice and consent of the Senate and appoints the chair of the

commission. The commission's membership must include two county sheriffs, a county judge, a county commissioner, a licensed medical practitioner, and four members of the public.

In fiscal 2019, TCJS received about \$1.4 million, 98 percent of which came from general revenue and the rest from collected fees. The agency had 22 full-time employees in fiscal 2019 and generally has four employees conducting routine jail inspections. Government Code sec. 511.009(a)(13) requires the commission to determine annually whether each jail is in compliance with commission rules and procedures.

The Texas Jail Standards Commission will be abolished September 1, 2021, unless continued by the Legislature.

DIGEST:

CSHB 1545 would continue the Texas Commission on Jail Standards until September 1, 2033.

The bill would make several changes to the statutes governing the agency. The changes would:

- revise the commission's process for developing jail standards and require it to adopt minimum standards that take into consideration facilities' different needs and risks;
- require the commission to use a risk-based inspection process for facilities and revise the process for re-inspections;
- revise the process for collecting and analyzing complaint information;
- require the adoption of graduated sanctions for facilities that remain in noncompliance with agency standards;
- authorize the commission to establish advisory committees; and
- institute procedures for investigating deaths in custody when agencies being asked to investigate the death claim a potential conflict of interest.

Jail standards. CSHB 1545 would require the commission to ensure that its minimum standards for jails take into consideration facilities' different

needs and risks. The commission would have to review and revise standards on an ongoing basis.

When revising standards, the commission would have to consider factors listed in the bill, including establishing tiered or separate standards that depend on the size, resources, or type of jail. The commission could not lower any standard in effect on September 1, 2021, as a result of such reviews.

The commission would be required regularly to review its rules and procedures. The commission's compliance with the statutory requirements for its duties, particularly those about adopting rules and procedures, would not be contingent on any additional legislation.

Risk-based inspections. The bill would require the commission to adopt a policy prioritizing jail inspections based on risk level and would eliminate the requirement that the commission determine at least annually whether each county jail is in compliance with the commission's rules.

The commission's currently required plan used to identify the overall risk level of each jail would have to be used to schedule announced and unannounced jail inspections and determine the frequency and intensity of its risk-based inspections. The inspection policy could authorize the commission to use alternative inspection methods for jails determined to be low-risk, including abbreviated inspections or other methods, rather than conducting in-person inspections. The bill would allow the risk factors currently used to assess the overall risk level of a jail to include the number of months since the commission's last inspection.

The commission would be required to adopt rules and procedures to re-inspect a jail following a determination that it was not in compliance with minimum standards. The rules would require the commission to:

- re-inspect jails not in compliance;
- establish a percentage of re-inspections in which the commission assessed the jail's compliance with all minimum standards and not

- just with previously violated standards; and
- randomly select the jails subject to re-inspection of all standards.

The commission would be required to analyze data collected during inspections or reported to the commission to identify trends in noncompliance, inspection outcomes, serious incidents, and any other related area of jail operations.

Complaints data, investigation process. The bill would revise the process for handling complaints. It would require the analysis of trends in complaints and require distribution of information about complaint procedures. It also would update language to reflect standard Sunset across-the-board recommendations on information about complaints.

The bill would require the commission to expand its current procedures for tracking and analyzing complaints. In addition to criteria that must already be tracked and analyzed, the commission's criteria would have to include categorization and documentation of each alleged violation and documentation on why a complaint was closed if no action was taken on it. The commission also would be required to develop procedures for responding to appeals of complaints.

The bill would require the commission to analyze complaints to identify trends and determine jails requiring additional inspections.

The commission also would be required to make available to the public the report on complaints that it currently distributes to commission members. The commission would be required to adopt rules mandating that jail administrators include information about complaint investigation and resolution in inmate handbooks and display the information prominently in their jails.

Enforcement. The bill would require the commission to establish a system of graduated, escalating enforcement actions it could take against jails that have not made timely progress correcting noncompliance issues or have failed multiple inspections within a certain number of years. The

commission must establish time frames for taking the enforcement actions against jails and would have to have a schedule of actions to guide the enforcement actions. The schedule would have to be made available on any publicly accessible commission website. The schedule would have to recommend enforcement actions based on the severity of the noncompliance and include consideration of mitigating factors and aggravating factors, including repeat violations and failing consecutive inspections.

Advisory committees. CSHB 1545 would authorize the commission to establish advisory committees to make recommendations to the commission on programs, rules, and policies. The commission would have to adopt rules about the operations and purpose of an advisory committee and various other rules including ones on qualification for membership and appointment procedures.

Investigation of deaths in custody. The bill would revise the statute that authorizes the commission to appoint a law enforcement agency other than the one operating a county jail to investigate a death in the jail. The bill would require law enforcement agencies to conduct investigations if appointed by the commission and allow agencies to present evidence to the commission of a conflict of interest in doing the investigation. If the commission determined that a conflict of interest could not be mitigated, the commission would be required to appoint another law enforcement agency to investigate the death.

Other provisions. CSHB 1545 would make additional changes to statutes governing the Texas Commission on Jail Standards, including adding standard Sunset across-the-board language about commission member training and eliminating a requirement for jail officials to report to the commission annually on those under 17 years old held in the jail.

The bill would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 1545 would continue the Texas Commission on Jail Standards for another 12 years because the state has an ongoing need for minimum

standards for jails and to monitor compliance with those standards. The standards help counties run safe jails, both for those held in the facilities and those working there. The commission also increases transparency and accountability for taxpayers. These functions should continue, and there would be no substantial benefit from transferring these duties to another agency or merging the commission with another state agency.

Jail standards. CSHB 1545 would ensure that the minimum standards promulgated by the agency were effective by requiring those standards to take into account the risk levels and needs of Texas jails. The current standards do not take into account the variations among jail sizes and types, which can range from a three-bed lockup to a 10,500-bed facility. One-size-fits-all standards are not as effective as tailored standards could be at keeping inmates and staff safe and mitigating risk for the counties. Overly broad standards can allow facilities to do less than might be allowed under clear, specific standards.

While the commission would be required to consider tiered or separate standards that vary based on differences in jails, all jails would be subject to at least the minimum standards currently in place because the bill would prohibit the agency from lowering any standard in effect on September 1, 2021. This would ensure that all jails were providing a level of care that meets constitutional requirements.

The bill would help ensure the standards are regularly updated by clarifying that the agency can revise, amend, and change rules without legislative action or approval.

Risk-based inspections. Using risk-based inspections would give the agency the flexibility to better use its resources to be more effective. Currently, the agency must inspect facilities annually, which means inspectors spend more time at some facilities than needed, while other facilities may need more of inspectors' time than they receive.

With authority to develop an inspection schedule based on data and risk, the agency could target its limited resources to those with higher risks and

needs. Under this system, no facility would fall through the cracks because the agency would have authority to include the number of months since the last visit as a risk factor. Inspections could occur as soon as a facility went a specified number of months without an inspection.

Other safeguards could ensure facilities were flagged and inspected even if it were on an inspection schedule for low-risk facilities. For example, complaints could be used to trigger an inspection, and data such as overcrowding or particularly high turnover, could be monitored to determine if an inspection was needed. Jails that need technical assistance could ask for and receive it as needed and would not have to wait for an inspection.

Requiring the agency to assess all standards during some re-inspections would encourage jails to continually work to comply with all standards, rather than focus only on ones being re-inspected.

Complaints data, investigations process. CSHB 1545 would ensure that the agency had a clear process for tracking, prioritizing, investigating, and analyzing complaints, something it lacks now. Analyzing complaints and identifying trends would help the agency identify violations and get a full regulatory picture of what is happening in the state's jails. This type of analysis could ensure complaints were handled uniformly and let the agency target its resources to address systemic issues and help those facilities needing assistance.

The bill would ensure that inmates and the public received complete, uniform information about complaints by requiring jail administrators to post information about the process and put it in the inmate handbook. Providing this information could help reduce complaints that are not in the agency's jurisdiction and allow the agency to focus on complaints within its purview.

Enforcement. Requiring the agency to adopt a system of graduated actions to take against jails not in compliance with agency standards would help the agency handle violations in a fair, predictable way. This

would address issues with current enforcement, which can be inconsistent and confusing. Consistent enforcement through graduated actions would help incentivize compliance and allow the commission to hold facilities accountable for noncompliance which in turn would benefit the facilities.

Investigation of deaths in custody. CSHB 1545 would clear up questions about what should occur if the commission appoints an outside law enforcement agency to investigate a death occurring in a specific jail and an agency refuses or declines to investigate. The bill would resolve any confusion by establishing that agencies must conduct the investigation and would create procedures in cases with potential conflicts of interest.

Advisory committees. Requiring the agency to use advisory committees to make recommendations on programs, rules, and policies, instead of informal work groups, would improve the transparency, inclusivity, and effectiveness of the agency's work. Rules regarding the purpose of advisory committees would ensure the committees were focused. Transparency would be improved because advisory committee meetings are open to the public and their actions are public record, while informal work groups generally are not. Having formal rules, including rules on member qualification and appointment, could help ensure more diverse representation than has been achieved using work groups and would help the agency engage in more strategic planning.

CRITICS
SAY:

CSHB 1545 could result in jail standards that were not broad enough and a risk inspection process that strained resources and should include more guidance on what is considered a death in custody.

Jail standards. The uniform minimum standards currently required for all facilities in Texas work well. The broad standards allow inspectors, jailers, those incarcerated, and the public to know what standards should be met in any facility, while allowing facilities the flexibility to meet those standards.

Requiring the agency to consider different needs and risks based on jail type and sizes could lead to an appearance that the standards condone

different levels of care. Jails could jockey to be in different tiers and those incarcerated might try to use varying standards as the basis of complaints.

Risk-based inspections. The current system of annual inspections should not be replaced by a risk-based inspection system that could result in some sites not being visited annually. On-site visits help inspectors understand how a facility is operating by looking at whether life-safety and security systems are operable, determining if a facility is maintained properly, and interacting with inmates and staff. On-site inspectors can identify things that would not be noticed if they were not there in person and can look deeper into issues as they come across them. Inspections that are not done on site, possibly through desk audits, could miss such issues. While risk-based inspections may work for other agencies, jails are a unique environment that benefit from annual, on-site inspections.

Current inspections are unannounced and consider risk, while ensuring every jail receives an on-site inspection within 14 months. These inspection, combined with the re-inspection process, work well to make sure all risks are considered and addressed.

Risk-based inspections could result in a disproportionate amount of the commission's resources going to some jails that chronically are at risk. Other jails, while at low risk, could miss the benefits they gain from personal interactions with commission staff.

Requiring that some re-inspections be full inspections could strain the resources of the commission and jails. Re-inspections should continue to focus on the issue needing re-inspection, so that the commission could focus on other facilities or in giving technical assistance to jails.

Investigation of deaths in custody. The bill should give more guidance on what constitutes a death in custody that triggers a full investigation so that uniform information would be reported statewide. Since January 2018 jails have been required under Government Code sec. 511.020 to report to the commission monthly on certain incidents, including suicides, attempted suicides, and deaths in custody. There have been reports of jails

not notifying the commission of deaths because the jail claims the inmate was no longer in its custody after having been released with a serious medical condition and passing away quickly or having been released abruptly on a personal bond or immediately transported to a hospital.

While some of these instances may have been done with the intent to avoid reporting a death in custody, others may not have been and the release from custody and death could have been based on medical reasons with no malfeasance intended. Jails, investigators, and the public could benefit from a clear or more nuanced definition of deaths in custody so that releases that might involve an effort to avoid reporting a death in custody could be distinguished from ones based on medical or other reasons. A clear definition for when a death is considered to be in custody would ensure the intent of the Legislature was met in these situations.