

TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
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August 3, 2010

The Honorable Rodney Ellis
P.O. Box 12068,
Capitol Station, CAP 3E.6
Austin, TX 78711

Dear Senator Ellis,

I am in receipt of your letter dated July 26, 2010 referencing the Harris County jail. I wish to thank you and members of the Harris County delegation for your concern and interest. I share your concern but permit me to assure you that this agency is doing everything within its authority to ensure that all state laws and rules are upheld. Please allow me to address each of your concerns.

Variance beds:

As available to all Texas counties under Texas Administrative Code Title 37 Part 9 Rule 299, Harris County officials, at different points in its history, have requested variance beds to contend with its inmate population. Upon receipt of an application from any county, I make recommendations to the Texas Commission on Jail Standards (TCJS) Commissioners to either accept or reject the application. It is the ultimately the decision of our nine-member Commission to approve or deny the issuance of variance beds in a facility.

The use of variance beds in Harris County is a complex issue. In 2002, Harris County opened the 1200 Baker Street facility and all previously-approved variance beds were cancelled. In 2005, Harris County's inmate population began to increase and officials applied to have 850 variance beds distributed among its three facilities that were approved by the Commissioners.

To complicate matters in 2005, at the same time of contending with a rising inmate population, Harris County was also having difficulty in recruiting and retaining a qualified work force to meet the state mandate of 1 jailer to 48 inmate ratio. In addition, minimum jail standards require at least one jailer on each floor when there are 10 or more inmates. Due to Harris County's multi-story configuration, they were unable to meet the staffing standard. Simply stated, a housing unit with 72 inmates requires the same amount of staff—two—that a housing unit with 96 inmates does. By congregating the inmates in specific areas, Harris County was able to

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properly schedule and staff the housing pods to maximize available personnel. Furthermore, Harris County was operating under a remedial order issued by the Commissioners to limit its inmate population to available staff. It should be noted that Harris County was and is currently utilizing large amounts of overtime to maintain compliance with the 1:48 ratio.

While far from an ideal situation, the proper supervision of inmates at the expense of the clear square footage was presented as one of the primary justifications by the county and accepted by the Commissioners. In the ensuing years after 2005, Harris County applied and was granted variance beds to a peak of 2,064 in 2007. In 2008, Harris County requested to have 224 variance beds cancelled and in May 2009, the Commissioners, at my recommendation, removed 228 beds from Harris County. The current count of variance beds is at 1,612.

It is my goal to reduce Harris County's variance beds incrementally and made the recommendation to cancel more variance beds at the November 2009 Commission meeting. However, Harris County Sheriff Adrian Garcia advised that the variance beds were needed during the renovation of the 701 San Jacinto facility. During current renovation on the various floors, inmates are being moved to other parts of the Harris County complex. The Commissioners voted to retain all current variance beds for one year.

In reviewing all other urban counties use of variance beds, the following list provides the requested information:

<u>County</u>	<u>Current # of variance beds</u>	<u>Note</u>
Bexar County	1048 beds	Ordered by a Federal Judge
Dallas	0 beds	972 beds were rescinded in 2009 by TCJS for failing to remain in compliance with standards
Tarrant County	648 beds	Currently operating at 70% capacity and has maintained compliance for the last 15 years.

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Travis County

565 beds

Incrementally reducing their reliance on variance beds from a previous high of 736

To ensure that counties are reviewing jail diversion programs, the Commission recently, through formal rulemaking procedures, added a question to the variance application in which counties are required to advise of any alternatives to incarceration they have explored or implemented to address rising inmate populations.

Contracting of Inmates to other counties:

In 2007, Harris County notified this agency of its intention to house inmates in Epps, Louisiana at the West Carroll Detention Center. After extensive research, this agency was unable to locate a state statute that empowered this agency to either prevent or inspect out-of-state facilities housing Texas inmates. In addition, to the West Carroll Detention Center, Harris County is also utilizing Texas county facilities in La Salle, Burleson, Bowie, Dickens and Newton counties. As of June 2010, Harris County is housing 1570 inmates in facilities outside of Harris County.

While housing out-of-county and out-of-state is certainly not optimum for the inmate or family members, it is often a necessary solution for counties to maintain compliance with minimum jail and constitutional standards. However, according to our copy of the contract between Emerald Correctional Management and Harris County, Emerald is required to operate and maintain the facility within Texas law. The applicable contract section is as follows:

3.01 Minimum Conditions of Confinement. Emerald shall operate, manage, supervise, and maintain the Facility in compliance with the minimum conditions of confinement established by this Agreement, and all applicable Texas state and federal laws, rules and regulations. (Agreement between Harris County and Emerald; 2007. pg 5).

As mentioned above, state statute does not provide us the authority to inspect out-of-state facilities. However, the Emerald contract does require Harris County to have full access to inspect the facility. In a phone call to Harris County Lt. Ronnie Taylor, he advised that Harris County officials inspect the West Carroll Detention Center quarterly.

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Unfortunately, a Harris County inmate has died in the West Carroll Detention Center. The inmate suffered a pulmonary embolism and died in a local hospital. As required by Texas law, Harris County officials reported the death to this agency. According to Lt. Taylor, upon notification of the death, he, a homicide investigations team, and a medical team went to the facility to investigate.

According to the Emerald-Harris County contract (page 17), "To the extent permitted by the laws of the State of Louisiana, Emerald shall and hereby agree to indemnify and hold harmless the County from any and all damages..." I can only presume that the contract will be enforced; however, if a lawsuit is filed, the decision about liability will rest with the applicable courts.

In regard to programming offered, during a phone call to the Epps, La. Facility Warden, I was advised that Harris County inmates are provided Alcoholics Anonymous and Narcotics Anonymous programming as well as GED programming. In addition, though not as specific as Texas minimum jail standards, the contract outlines each of the services offered such as telephone, visitation, recreation, and mail etc.

In reviewing our complaint database, we have received approximately five complaints in the past three years from inmates and family members about the West Carroll Detention Center. Most of the complaints are about the inability to visit with family members due to distance.

Time credit served:

While we encourage all counties to use all available credits to reduce inmate population, the final use of credit is ultimately left to the sheriff, unless otherwise mandated by statute. Many counties are using all available credits to reduce inmates convicted and serving time; however, the Commission does not track which Texas counties, urban or rural, offer 3-for-1 credit for good behavior, labor and job training.

As you mentioned, Harris County's has recently instituted 3-for-1 credit, and in reviewing Harris County population figures, Harris County's inmate population has been on a steady decline since December 2009. Whether the decline can be attributed to the recent initiative, it is too early to tell. I realize that if in fact Harris County's initiative of 3-to-1 is utilized efficiently and effectively it could result in stabilizing and reducing their inmate population.

Judge Donna S. Klaeger, Burnet, Chair
Stanley D. Egger, Abilene, Vice Chair
Irene A. Armendariz, El Paso

Albert L. Black, Austin
Jerry W. Lowry, New Caney
Larry S. May, Sweetwater

Sheriff Gary Painter, Midland
Dr. Michael M. Seale, M.D., Houston
Sheriff Tam Terry, Panhandle

"The Commission on Jail Standards welcomes all suggestions and will promptly respond to all complaints directed against the agency or any facilities under its purview".

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Summary

In its ongoing effort to assist Harris County and others, the Commission is continually advising officials of ways to address rising inmate populations. As a matter of routine, I always suggest to counties to conduct an audit of their entire criminal justice system to identify any inefficiencies. As you may be aware, the sheriff many times has no discretion in the number of inmates he or she must incarcerate. However, a proactive sheriff, such as Sheriff Garcia, will address his or her concerns with all stakeholders in the county.

As previously mentioned, this agency now requires agencies to provide information about alternatives to incarceration on the variance application. And, as Dallas County officials discovered, this Commission can and will cancel all variance beds when counties fail to maintain compliance.

As you stated, Harris County is on the agenda for the TCJS quarterly meeting, August 5, 2010 and I am positive that Commission members will inquire of Sheriff Garcia what definitive measures Harris County has implemented to reduce their jail population. Upon conclusion of the meeting, I will follow up and advise you with any action taken during that meeting.

In closing, I again thank you for your interest in this matter, and if I, or any member of my staff, can be of additional assistance do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adan Muñoz, Jr.", is written in black ink.

Adan Muñoz, Jr.
Executive Director