# HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE
# TEXAS HOUSE OF REPRESENTATIVES
# INTERIM REPORT 2004

## A REPORT TO THE
## HOUSE OF REPRESENTATIVES
## 79TH TEXAS LEGISLATURE


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**CHAIRMAN**

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Committee On
Criminal Jurisprudence

December 10, 2004

Terry Keel
Chairman

P.O. Box 2910
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The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Criminal Jurisprudence of the Seventy-Eighth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-Ninth Legislature.

Respectfully submitted,

Terry Keel

Debbie Riddle

Paul Moreno

Robert Talton

Mary Denny

Terri Hodge

Jim Dunnam

Dan Ellis

Aaron Pena

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## INTRODUCTION

At the beginning of the 78th Legislature, House Speaker Tom Craddick appointed nine members to the Committee on Criminal Jurisprudence. The Committee membership includes the following members:

Representative Terry Keel, Chair
Representative Debbie Riddle, Vice Chair
Representative Dan Ellis, CBO
Representative Paul Moreno
Representative Robert Talton
Representative Mary Denny
Representative Terri Hodge
Representative Jim Dunnam
Representative Aaron Pena

Pursuant to House Rule 3, Section 7, the Committee on Criminal Jurisprudence has jurisdiction over all matters pertaining to (1) criminal law, prohibitions, standards, and penalties; (2) probation and parole; (3) criminal procedure in the courts of Texas; (4) revision or amendment of the Penal Code; and (5) the Office of State Prosecuting Attorney and the Texas State Council for Interstate Adult Offender Supervision.

During the interim the Committee held three public hearings, on one occasion traveling to Huntsville, Texas for a tour of various correctional facilities and a public hearing to review the criminal laws and procedures relating to the substantive and procedural rights of defendants in proceedings before the Board of Pardons and Paroles. The Committee members would like to thank the many citizens, public officials, state agency personnel, and organization members who provided the Committee with testimony on the interim study charges and who provided the Committee with various forms of assistance.

## HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE

## INTERIM STUDY CHARGES

- Study moving the DWI administrative license revocation hearing process from the State Office of Administrative Hearings to the trial court handling the DWI criminal prosecution.

- Review criminal laws and procedures relating to the substantive and procedural rights of defendants in proceedings before the Board of Pardons and Paroles.

- Review the Crime Victims' Compensation Fund and in particular evaluate whether there has been a possible diversion of funds from crime victims as a result of prior legislation, and whether the Fund meets the objectives of its authorizing legislation.

- Review Code of Criminal Procedure Article 2.13 and Article 14.03 as they relate to a peace officer's authority to act outside of the peace officer's geographic or territorial jurisdiction.

- Monitor the agencies and programs under the Committee's jurisdiction, including considering the ongoing functions of the Office of the State Prosecuting Attorney.

# ADMINISTRATIVE LICENSE REVOCATION

## CHARGE

*The Committee was charged with studying the DWI administrative license revocation hearing process, and specifically whether it should be moved from the State Office of Administrative Hearings to the trial court handling the DWI criminal prosecution.*

## BACKGROUND OF THE ISSUE

Following an arrest for driving while intoxicated, intoxication assault, or intoxication manslaughter, the arrestee is subject to an administrative revocation of their driver's license if the arrestee either, (1) refuses to take a breath or blood test, or (2) provides a breath or blood specimen that is tested to have an alcohol concentration over the legal limit (0.08 grams in the case of an adult, .04 if the driver holds a commercial driver's license, or any amount if the arrestee is under age 21). This is an administrative suspension of a driver's license, instituted in advance of any finding of guilt for the underlying criminal offense. (It should be noted that a final conviction in the underlying criminal offense results in a separate, determinate suspension of the offender's driver's license mandated by separate statute, unaffected by any temporary administrative suspension occurring before conviction. This interim report addresses only the issues surrounding the temporary administrative suspension).

As a part of the booking process, the law enforcement officer confiscates the arrestee's driver's license on the spot and issues a temporary driving permit. A form is supplied to the arrestee with a notice of the proposed administrative suspension of their license. (If for some reason the notice cannot be given at the time of the arrest, the Department of Public Safety sends written notification to the address on the arrestee's driver's license and the arrestee is deemed to have received notice on the fifth day after the date the notice was mailed by DPS.)

The arrestee has fifteen days in which to request an administrative license revocation hearing. The hearing request has the effect of staying the administrative license suspension until a final decision is rendered by an administrative law judge from the State Office of Administrative Hearings. Hearings are held at a location of no further than 75 miles from the county of the arrest or by telephone conference if the parties to the hearing (DPS and the license holder) agree. The proceedings take place not earlier than ten days after the driver is notified of the hearing and are generally held within forty days after notification of the proposed suspension. If no administrative challenge is initiated by the arrested person, the administrative license suspension begins forty days after notice of the suspension was sent.

The State Office of Administrative Hearings promulgates procedures governing discovery related to such hearings and assigns an administrative law judge who rules on preliminary matters, holds the hearings and renders the revocation decision. Numerous judges and lawyers are employed by the state for the purpose of carrying out this function. The office is currently budgeted approximately $2.7 million for the purpose of disposing of ALR cases, utilizing forty-one percent of the office's total case hours. The core issues relevant to the ruling are essentially whether probable cause is established in regard to the arrest and then whether the suspect either refused a test, or, if a breath or blood test was administered, whether the test indicates a result over the legal limit. If the findings establish that the arrestee refused the test, his driver's license is suspended for 180 days. If it is

found

that the test was taken, but results exceeded the legal limit, the driver's license suspension is for 90 days.

The administrative hearing process occurs independently of the prosecution of the underlying criminal charge and is not coordinated at all with the DWI prosecution that is proceeding at the county level, even though the judge presiding over the DWI charge is, from the inception of the case, in possession of the threshold evidence that answers the very same questions being litigated in the administrative law proceeding. This duplicative effort exists only because the legislature enacted, through Senate Bill 1 in 1991, the current administrative license revocation structure. Prior to the enactment of the ALR administrative hearings process at the state level, a county magistrate --- usually a justice of the peace --- made the initial determination of the issue of the administrative suspension of the defendant's driver's license for the refusal or failure of a blood alcohol test.

***The Existence of a Separate Administrative Proceeding is Counterproductive***

Having a concurrent administrative forum for the litigation of the issue of the license suspension, separate and apart from the criminal proceeding, is costly, inefficient, confusing, and in some respects, detrimental to the prosecution of DWI-related crimes in this state. The elimination of this duplicative administrative forum would maximize judicial economy, promote efficiency, and better safeguard the public while at the same time better protecting the rights of the accused, for many reasons.

The current administrative hearings process encourages frivolous requests for hearings because criminal defense counsel can utilize the administrative discovery process for the ulterior purpose of gaining advance access to evidence that might not otherwise be available to them in the criminal discovery process. Defense counsel can also use administrative hearings to conduct live cross examination of arresting officers, even where no realistic challenge to the license suspension is contemplated in the actual administrative hearing. This has the practical effect of allowing defense counsel to take a criminal deposition, a discovery tool otherwise rarely authorized under criminal law. Furthermore, the prosecutor who will be responsible for prosecuting the underlying offense has no notification of or control over these tactics or proceedings.

The issues to be resolved in the administrative hearing arise solely from the facts that gave rise to the charging of the criminal offense. The criminal court is already, as a matter of criminal procedure in this state, called upon to make an initial determination of probable cause, and in so doing on an intoxication-related offense, would necessarily have before it the evidence of whether a test was administered or refused, and if administered, the results. [See Code of Criminal Procedure Art. 14.06 (". . .the person making the arrest shall take the person arrested without unnecessary delay, but not later than 48 hours after the person is arrested, before a magistrate. . ."). [See *County of Riverside v. McLaughlin*, 500 U. S. 44 (1991) (the U. S. Supreme Court has ruled that states generally must make judicial determinations of probable cause within 48 hours of arrest)]; See Code of Criminal Procedure Art. 15.17 ("Duties of Arresting Officer and Magistrate"); See, also, Code of Criminal Procedure Chapter 16 ("The Commitment or Discharge of the Accused"); See Penal Code Chapter 49 ("Intoxication and Alcoholic Beverage Offenses")].

***The Creation of an Administrative License Revocation Program Has Had No Deterrent Effect on Driving While Intoxicated Offenses***

The legislature has focused on DWI-related legislation for many past sessions, enacting widespread changes to the substantive laws regarding intoxication offenses, providing for the suspension of driver's licenses, lowering the threshold level for the presumption of intoxication, adding mandatory conditions to probation, prescribing mandatory blood testing under certain circumstances, eliminating eligibility for deferred adjudication for DWI offenses, increasing the conditions of bond, raising fines and minimum sentences, imposing special strict statutes on minors, mandating ever more expensive costs of court and many other measures. No change has been as costly or involved so many full-time equivalent state employees as the institution of the administrative license revocation program.

Despite all of these legislative measures, Texas continues to lead the nation in alcohol-related traffic incidents involving serious bodily injury or death. The ALR program is an example of ineffective utilization of limited state resources with no evidence of success in reducing offenses. It should be noted that a license suspended under the administrative license revocation program does not necessarily take a driver off the road. A driver who has a license administratively suspended can apply for an occupational license before a county magistrate and such licenses are virtually always granted upon a showing that the defendant needs to drive for purposes of their occupation or as a matter of personal necessity. The occupational license is valid for the entire time the driver's license is administratively suspended.

## COMMITTEE RECOMMENDATIONS

***The legislature should eliminate the administrative license revocation program and instead return the forum for challenging a driver's license administrative suspension to the court where the criminal prosecution for the underlying driving while intoxicated crime is taking place.*** The Committee recommends that the legislation returning this function to counties include authorization for the county to charge and collect a filing fee for the initiation of each such administrative license hearing.

Concurrent with this change, the Committee recommends that the legislature enact meaningful changes to Penal Code Chapter 49 (Intoxication and Alcoholic Beverage Offenses). The current punishment for first-time driving while intoxicated is a Class B misdemeanor with a minimum confinement of 72 hours and maximum confinement in jail of up to 180 days and a fine of up to $2,000.00, or both. ***The minimum confinement for a first time DWI should be increased to 30 days in jail***. A subsequent offense is currently punishable as a Class A misdemeanor with a minimum confinement of 30 days in jail and a maximum confinement of up to one year in jail and a fine of $4,000.00, or both. ***A second time DWI should be subject to a minimum confinement of 90 days in jail***.

***Felony DWI convictions or convictions for Penal Code § 49.045 (Driving While Intoxicated with Child Passenger) should include a minimum confinement of 180 days in jail if probation is assessed.***

Intoxication assault is currently a third degree felony (imprisonment for not more than 10 years or less than 2 years and a fine of up to $10,000.00). A defendant can receive probation for intoxication assault. ***If a defendant receives probation for intoxication assault, a condition of probation should include a minimum of 180 days in jail.***

Intoxication manslaughter is currently a second degree felony (imprisonment for not more than 20 years or less than 2 years and a fine of up to $10,000.00). ***If a defendant receives probation for intoxication manslaughter, a condition of probation should include a minimum of 1 year in jail.***

**CONCLUSION:**

***The legislature should eliminate the administrative license revocation program and instead return the forum for challenging a drivers' license administrative suspension to the court where the criminal prosecution for the underlying driving while intoxicated crime is taking place. The legislature should also concurrently act to enhance penalties for conviction of intoxication-related offenses.***

# BOARD OF PARDONS AND PAROLES

**CHARGE**

*Review the criminal laws and procedures relating to the substantive and procedural rights of defendants in proceedings before the Board of Pardons and Paroles.*

## BACKGROUND OF THE ISSUE

The mission of the Texas Board of Pardons and Paroles is to perform its duties as imposed by Article IV, Section 11, of the Texas Constitution.

The Board is comprised of seven members and eleven parole commissioners to make determinations on whether to grant, deny, or revoke parole or to revoke mandatory supervision. In discharging its duties, the Board utilizes three person parole panels, consisting of at least one board member and any combination of board members and parole commissioners. When considering which inmates to release on parole, panel members rely on risk assessments and on offense severity in an attempt to determine which inmates will not increase the likelihood of harm to the public. Another aspect of its duties includes the issuance of clemency and pardon recommendations to the governor, an action requiring full board participation.

***Legislative Actions***

Most recently, during the Third Called Special Session, the legislature altered the composition of the Board of Pardons and Paroles, by reducing the size of the Board from eighteen to seven members. This bill also enabled the Board to employ eleven parole commissioners who, as mentioned above, serve on parole panels and assist in making determinations on whether to grant, deny or revoke parole and to revoke mandatory supervision. An additional bill worthy of note was SB 917 as passed during the Regular Session to establish a specific future date for the review of an inmate for parole purposes. Effective on January 1, 2004, this bill allows the Board to set a specific future review date, from one to five years ahead, called a "set off." Eligible offenders must have a review on an annual basis. However, certain violent offenders may have their review "set off" for up to five years.

***Overview of the Parole Review Process***

Candidates for parole are evaluated on an individual basis. An inmate will be considered for parole when eligible and when the inmate meets the behavior criteria. The inmate must not have had a major disciplinary misconduct report in the six-month period prior to the date he or she is reviewed for parole, which has resulted in a loss of good conduct time or reduction to a classification status below that assigned during that person's initial entry into the Texas Department of Criminal Justice. At the time of review, the person must be classified in the same or higher time earning classification assigned during that person's initial entry. Furthermore, any offender who is otherwise eligible for parole and who has charges pending alleging a felony offense committed while in TDCJ, will not be considered for release to parole or mandatory supervision. However, if after an offender has received an affirmative vote to parole, notification is received that the offender has been reduced below initial classification status or has lost good conduct time, the parole decision will be reviewed and a revote

will be conducted by the parole panel that rendered the decision.

In order to determine which inmates are eligible for parole, the Parole Division identifies the offenders six months prior to their initial parole eligibility date. Subsequent parole review cases are identified four months prior to the next review date. During this period, a notice is sent to trial officials, victims, and victims' family members. An Institutional Parole Officer then interviews the offender and prepares the parole case summary. The offender's file is then sent to the affected board office for review by the parole panel. The first voting member reviews the case and registers their vote. The case is then transferred to the second voting member, who also reviews the case and votes. In the event that both members have a similar vote, that vote is considered final. However, if the first two votes differ from each other, the third voting member of the panel reviews the case and breaks the tie. There must be a majority of two votes for a vote to become final. The Board is not required to meet as a body to perform this duty. The offender is notified of the panel's decision via correspondence.

Interviewing the offender is at the discretion of the board panel member. Granting interviews to individuals in support or protest of an offender's release is also at the parole panel's discretion. However, panel members must grant an interview to the victim, upon request.

***Parole Guidelines***

Parole guidelines are used as a tool to aid in the discretionary parole decision process. These guidelines consist of a risk assessment instrument and an offense severity scale. Combined, these components serve as an instrument to assist parole release decisions. The risk assessment instrument includes two sets of components, static and dynamic factors. Static factors influencing members' decisions include: age at first admission to a juvenile or adult correctional facility; history of supervisory release revocations for felony offenses, prior incarcerations; employment history; and the commitment offense. Dynamic factors include: the offender's current age; whether the offender is a confirmed security threat group member; education, vocational, and certified on-the-job training programs completed during the present incarceration; prison disciplinary conduct; and current prison custody level.

Scores from the risk assessment instrument are combined with an offense severity rating for the sentenced offense of record to determine a parole candidate's guidelines level. The Board has assigned an offense severity rating to every felony offense in the Penal Code. Offense severity classes range from Low for non-violent crimes such as credit card abuse, to Highest for crimes such as capital murder.

After both factors have been considered, the two components are then merged into a matrix that creates the inmate's parole guideline score. This score is calculated based on the intersection of their risk level and the offense severity rating. Parole guideline scores range from 1 for an individual with the poorest probability for success up to 7 for an inmate with the greatest probability for success. This structure enables the board to have discretion in each case, while also establishing benchmarks for making parole decisions.

The adoption and use of parole guidelines does not imply the creation of any parole release formula. The risk assessment instrument and the offense severity scale are not to be construed so as to mandate either a favorable or unfavorable parole decision. The parole guidelines merely serve as an aid in the parole decision process and the parole decision ultimately remains at the discretion of the voting parole panel. When discussing parole, it must be made clear that release to parole is a privilege, not an offender right, and the parole decision maker is vested with complete discretion to grant or deny parole release as defined by statutory law.

***Overview of the Parole Division***

The mission of the Parole Division is to promote public safety and positive offender change though effective supervision, programs, and services. The Division is responsible for supervising offenders released from prison who are completing their sentences in Texas communities. This includes offenders both on parole and mandatory release. Community resources are also utilized to assist offenders in reentry and reintegration.

The Parole Division is divided into five operational regions across the state with 67 district parole offices and nine district resource centers. These resource centers extend a variety of services and classes to an offender population, including cognitive restructuring, cognitive intervention, and anger management. In addition, the division supervises inmates in two pre-release programs, the Pre-Parole Transfer Program and the Work Program. Inmates remain in secure facilities during their participation in these programs.

The Parole Division is also responsible for the violation process whereby warrants are issued for offenders who are alleged to have violated a condition of parole. The Division issues all warrants and tracks all offenders arrested under their authority. When appropriate, such as may be the case with a first time administrative violator who has a valid release plan and no additional criminal law violations, the Parole Division rather than pursuing revocation may withdraw its warrant and continue supervision of administrative release status, possibly with imposition of some sanctions. The Division may also choose to proceed with the violation process and schedule a hearing. In that event, the alleged violation will be considered by the board.

Furthermore, the Division performs certain pre-release functions by investigating parole plans proposed by inmates and by tracking parole eligible cases and submitting them for timely consideration by the Board of Pardons and Paroles. The Division does not make release decisions, nor does it decide whose parole should be revoked or what special conditions should be placed on releases. Authority for those decisions rests with the Board, but the Division works closely with the Board and provides board members with the documentation needed to make informed decisions.

## WITNESS LIST

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|---|---|
| **Rissie Owens** | *Presiding Officer, Texas Board of Pardons and Paroles* |
| **Alvin Shaw** | *Parole Commissioner, Texas Board of Pardons and Paroles* |
| **Bryan Collier** | *Parole Division Director, Texas Department of Criminal Justice* |
| **David Weeks** | *Walker County District Attorney* |
| **Charles Hurt** | *Texas Inmate Families Association* |

## WITNESS TESTIMONY

**Rissie Owens**, Presiding Officer of the Texas Board of Pardons and Paroles, presented an overview of the reorganization mandated by House Bill 7 and a summary of their daily operations. She described the process that the individual board members undergo when voting on a case and discussed current legislation impacting the board.

**Alvin Shaw**, Parole Commissioner, also discussed parole guidelines and the decision-making process. He emphasized that although the Parole Guidelines Committee adopted guidelines for parole, these guidelines were not intended to create an expectation for parole. Mr. Shaw also stressed the need for board diversity.

**Bryan Collier**, Director of the Parole Division for the Texas Department of Criminal Justice, described how the division supervises and manages offenders. He further outlined the control measures and rehabilitative measures used by the Parole Division.

**Charles Hurt**, member of the Board of Directors for the Texas Inmate Families Association, provided testimony recommending changes to the current parole system. These suggestions ranged from allowing offenders to view their TDCJ files to installing telephones within the prisons.

**David Weeks**, District Attorney of Walker County, emphasized the importance of discretion in the criminal justice system. He stated that discretion of prosecutors and parole board members is essential to a successful system. He also discussed falsified reporting of parole violations.

## COMMITTEE RECOMMENDATIONS

***The legislature should work with the State Bar of Texas to effect the establishment of continuing legal education programs on the issues of the substantive and procedural rights of defendants in proceedings before the Board of Pardons and Paroles, including the development of a CLE curriculum specifically focused on the unique aspects of this complex subject matter.***

# CRIME VICTIMS' COMPENSATION FUND

## CHARGE

*Review the Crime Victims' Compensation Fund and in particular evaluate whether there has been a possible diversion of funds from crime victims as a result of prior legislation, and whether the Fund meets the objectives of its authorizing legislation.*

## BACKGROUND OF THE ISSUE

With the creation of the Fund in 1979 and passage of the Crime Victims' Bill of Rights in 1985, the State of Texas signaled its strong commitment to the needs of victims of crime. The Fund, while not receiving taxpayer dollars, is able to provide financial assistance to victims primarily through the collection of court costs and fees imposed on perpetrators of crime.* However, in the last decade, the Fund has undergone significant changes which have resulted in both increasing the size of the Fund and the Fund becoming an enticing source of revenue for other programs during difficult budget years. In 1997, after recovering from a crisis that threatened the solvency of the Fund, legislation was passed that first allowed grants and appropriations to victims' assistance organizations and other state agencies to be made from the Fund.[1]

Though these grants and appropriations were to be used for victim-related services, as required by the constitutional amendment making the Fund a dedicated account[2], increasingly these expenditures have been used for programs which do not provide direct services to victims. In addition, while the initial expenditures were only a small portion of the Fund's expenses, in recent bienniums the expenditures have regularly exceeded the amount paid as compensation to victims of crime.** Furthermore, these expenditures also result in the loss of federal matching funds awarded through the federal Victims of Crime Act (VOCA) grant. This grant reimburses the State for sixty percent of the amount paid directly to victims. As a result, when money is appropriated or paid out in grants to pay for programs that provide services to victims which could otherwise be paid for by compensation claims, the State receives no federal matching funds.

In determining the appropriate course of action to ensure the solvency of the Fund, it is important to consider how the Fund has met past financial crises. As mentioned above, the Fund has faced insolvency before. In 1993, with the collection of court costs lagging, the Fund had more expenses than revenue collected. In response, victim compensation payment amounts were reduced forty percent and new restitution and subrogation measures were implemented to track fund reimbursement. Additionally, the legislature passed HB 2178, which increased court costs ($45, $35, and $15 depending on the offense level and class) and created an $8 monthly fee for parolees. As a result of these actions, during the next fiscal year the amount of court costs collected increased ninety percent, allowing compensation payment amounts to be restored.

Although the remedies undertaken in 1993 effectively solved the financial crisis, at that time the Fund was not charged with financially sustaining other programs in addition to paying victim compensation claims. For this reason, when weighing options for solving the current crisis, it is

* See Table B for a breakdown of the Fund's revenue sources

** See Table A for a breakdown of the Fund's expenditures over the past four bienniums

difficult to justify undertaking similar actions as were taken in 1993, due to the fact that most of the revenue currently utilized by the Fund is not spent on victims' compensation payments, the original purpose of the Fund. Therefore, if collection of court costs remains constant, it is only appropriate that the legislature determine whether the Fund meets the objectives of its authorizing legislation and the constitutional amendment approved by the people of Texas dedicating the Fund for "victim-related compensation, services or assistance."

While it is certainly necessary to identify if money is being diverted from the Fund, it is also essential to identify whether all of the revenue from court costs and fees that offenders are ordered to pay is being collected. According to the Office of Court Administration, there is approximately $397 million of court costs and fees that go uncollected each year. In an attempt to increase the amount of collection, in 1998 the OCA instituted the Fine Collection Program. The goal of the program is to assist counties and municipalities to develop collection programs that treat unpaid court costs and fees in the same manner as private businesses. This method focuses on utilizing computer programs that send offenders invoices and reminder notices, similar to an accounts receivable department. As a result of instituting the fine collection program, those localities that have implemented the program and have reported data, report an increase in collection rates from an average of 33% to 62%, resulting in an estimated $2.9 million increase in revenue deposited into the Fund in FY 2003.[3] Through the use of seminars and conferences OCA is attempting to bring awareness of their program to local communities in order to bring about higher collection rates that will assist local governments as well as victims of crime through increased revenue for the Fund.

# WITNESS LIST

*State Agency Representatives*

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|---|---|
| **Herman Millholland** | *Office of the Attorney General* |
| **Ray Ramirez** | *Texas Department of Criminal Justice* |

*Crime Victims' Advocates*

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|---|---|
| **Dianne Clements** | *Justice For All* |
| **Verna Lee Carr** | *People Against Violent Crime* |
| **Sebastian Sarate** | *People Against Violent Crime* |
| **Bill Lewis** | *Mothers Against Drunk Driving* |
| **Janice Sager** | *Texans for Equal Justice* |
| **Chris Lippincott** | *Texas Association Against Sexual Assault* |

*Emergency Shelter Representatives*

| | |
|---|---|
| **Deborah Moseley** | *The Bridge Over Troubled Waters* |
| **Sharon Obregon** | *The Family Place* |
| **Thomasina Olaniyi-Oke** | *SafePlace* |
| **Matt Starr** | *SafePlace* |

*Local Government Victims' Assistance*

| | |
|---|---|
| **Charyl Naron** | *Travis County Sheriff's Office* |
| **Marisa Churchin** | *Travis County Sheriff's Office* |
| **Andy Kahan** | *City of Houston Mayor's Crime Victims Office* |

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|---|---|
| **Lisa Halili** | *Victim of Crime* |

## WITNESS TESTIMONY

***State Agency Witness***

**Herman Millholland**, the Crime Victim Services Division Chief from the Office of the Attorney General, provided the Committee with a short history of the Fund, detailed the various expenditures, and informed the Committee that due primarily to these outside expenditures, the Fund would become insolvent during FY 2007. Mr. Millholland explained that in the past several legislative sessions, due to the amount of excess funds, the Fund has become a source of revenue for funding other programs. In as few as four years, the expenditures have increased from $13 million in the 2000-2001 biennium to $114 million in the current 2004-2005 biennium.

**Ray Ramirez**, representing the Texas Department of Criminal Justice, indicated that frequently victims of crime are unaware of the existence of the Fund and that they have not been encouraged to follow up with claims.

***Crime Victims' Advocates***

Crime victims' advocates representing **Justice For All, People Against Violent Crime, Mothers Against Drunk Driving, and Texans for Equal Justice,** universally expressed displeasure that revenue from the Fund is being appropriated by the legislature to programs that do not provide direct victims services. Although the programs were seen as well intentioned, the point of contention was rather the source of funding. However, one program which witnesses overwhelmingly expressed reservation about was the Battering Intervention and Prevention Program, which provides services to offenders. In addition, the witnesses encouraged greater public information campaigns to help make victims aware of the availability of the Fund.

While supporting the Committee's effort to protect the solvency of the Fund, **Chris Lippincott,** from the Texas Association Against Sexual Assault (TAASA), cautioned that narrowing the focus of the Fund could hamper delivery of services and the training victims' assistance organizations such as TAASA provides to those who provide direct services.

***Emergency Shelter Witnesses***

The Committee also heard from representatives of family violence shelters including **SafePlace, The Family Place, and The Bridge Over Troubled Waters,** that receive Crime Victims' Compensation (CVC) Funds through grants from the Department of Human Services. These witnesses emphasized that victims of family violence do qualify as crime victims and the assistance victims receive from these organizations meets the objective of the Fund, providing "victim-related…services or assistance." The witnesses recommended additional public service announcements or even school presentations, as is done with the DARE program, to create more awareness among families of the existence of the Fund.

***Local Government Victims' Assistance & Victim of Crime***

Witnesses representing the **Travis County Sheriff's Department Victims' Services Office,** expressed concern that there are currently few consequences to law enforcement agencies that do not adhere to the crime victims' bill of rights, a sentiment echoed by **Lisa Halili,** a victim of crime who

advocated requiring prosecutors to document their attempt to inform victims of the existence of the

Fund. While **Andy Kahan**, from the Houston Mayor's Crime Victims Office, expressed his concern that the Fund not resort to the strategy used in 1993 when compensation payments were reduced.

## COMMITTEE RECOMMENDATIONS

The House Committee on Criminal Jurisprudence was charged to address whether there has been a possible diversion of funds from crime victims as a result of prior legislation, and whether the Fund meets the objective of its authorizing legislation. ***The Committee determined that the Fund has been diverted to needs not directly related to assisting victims of crime in contravention of the original legislative intent in establishing the fund. The Committee recommends that the legislature act immediately to preserve the integrity of the Fund by acting to disqualify current expenditures that are inappropriate.***

The Crime Victims' Compensation Fund was established in 1979 as the payer of last resort to victims of violent crime, designed to provide reimbursement to a victim for expenses resulting from the crime that cannot be paid with other sources. Typical burdens include burial costs, medical bills, lost wages, and relocation expenses. The overwhelming bulk of the Fund is generated through fees imposed on criminal defendants in the courts of this state, parole fees, and restitution. Payments into the Fund initially outpaced, to a great degree, demands for expenditures. As surpluses accumulated, various and sundry "victim-related" programs and services were increasingly added over the years, greatly expanding the original scope of what constituted eligible expenditures. This has been exacerbated to such a degree that the fund is projected to be insolvent by the 2006-2007 biennium.

Nearly all of the expenditures from the Fund go for worthy, compelling programs. However, in many instances the Fund now pays for programs and services that not only do not directly assist victims of crime, but furthermore violate the Texas Constitution's plain wording in Art. 1 Sec. 31, which reads as follows:

> *(a) The compensation to victims of crime fund created by general law and the compensation to victims of crime auxiliary fund created by general law are each a separate dedicated account in the general revenue fund.*
>
> *(b) Except as provided by Subsection (c) of this section and subject to legislative appropriation,* ***money deposited to the credit of the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund from any source may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance.*** (emphasis added)
>
> *(c) The legislature may provide by law that money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund may be expended for the purpose of assisting victims of episodes of mass violence if other money appropriated for emergency assistance is depleted. (Added Nov. 4, 1997.)*

The Committee noted several egregious departures from the original intent of the Fund. The Fund currently pays $2,500,000 (appropriated 2004-05) to the Texas Department of Criminal Justice for a

battering intervention and prevention program (BIPP) to support rehabilitation programs for *offenders* on probation. The justification for the program is that it is supposed to help offenders change their beliefs and attitudes about domestic violence. Testimony was received by the Committee from numerous victim advocacy groups particularly offended by the use of the Fund for a purpose so far afield from a proper expenditure to benefit direct services for victims. While the point can undoubtedly be made that such programs may prevent the victimization of future crime victims, the same can be said of a myriad of other equally meritorious counseling or intervention services, as well as numerous creative interdiction programs by law enforcement. Using the CVC Fund as the source of funding for the BIPP is inappropriate and has served to undermine confidence among crime victim advocacy groups in the stewardship of the Fund.

A review of Fund expenditures also shows that $2,197,404 (appropriated 2004-05) was spent on foster care courts. The primary costs of this expenditure were for the salaries of judicial court masters and assistants, administered through the State Office of Court Administration though the operation of 15 specialized foster care courts established around the state. The justification for the use of the Crime Victims' Compensation Fund to pay the salaries of these civil magistrates and court personnel is that they expedite the judicial administration of child abuse and adoption cases. This justification is so tenuous as a circuitous benefit to victims of crime that it cannot be even loosely categorized as a program of direct benefit to crime victims. Use of CVC Funds for foster care courts should be eliminated immediately.

The “Crime Victims' Institute” (appropriated $595,065 in 2004-05) conducts academic studies on the impact of crime, develops policy recommendations related to victims, and gathers data related to “victimization.” It is currently housed at Sam Houston State University. It should be noted that Sam Houston State University has done an admirable job with the program under its purview. (Prior to 2004-05 this was funded at the Office of Attorney General). However, an academic exercise, though potentially promising of relevant data or insight into crime or victims, would best be funded by another source, such as through funds directly appropriated to a university itself, rather than from the Crime Victims' Compensation Fund.

Among programs that do deliver services to victims, there are inappropriate allocations of the Fund for certain aspects of services. An example is the Sexual Assault Prevention and Crisis Services Program, ($13,930,604 appropriated for 2004-05) under the tutelage of the Office of the Attorney General where grants are awarded to fund material and supplies for law enforcement and medical staff that are more appropriately the responsibility of the investigating law enforcement agency. Expansion of the Fund to include funding of tools of criminal investigation has placed the entire compensation fund program in jeopardy.

The Committee is sensitive to the merit and compelling nature of many of the numerous and expensive programs funded by tapping this source of money. However it is imperative that the legislature reign in the many expenditures of the Crime Victims' Compensation Fund that, although spent for worthy causes, do not directly benefit crime victims. Failure to act will result in the

insolvency of the Fund, and the concomitant failure of the Fund to be available to pay for those most

basic and fundamental needs of crime victims.

**CONCLUSION:**

***The Committee determined that the Fund has been diverted to needs not directly related to assisting victims of crime in contravention of the original legislative intent in establishing the Fund. The Committee recommends that the legislature act immediately to preserve the integrity of the Fund by acting to disqualify expenditures that are inappropriate.***

## OFFICE OF THE ATTORNEY GENERAL
## HISTORY OF APPROPRIATION AND REVENUE FOR THE CVC FUND
## 1998/99 BIENNIUM TO 2004/05 BIENNIUM

| TABLE A | 1998-1999 Biennium | 2000-2001 Biennium | 2002-2003 Biennium | 2004-2005 Biennium |
|---|---|---|---|---|
| **APPROPRIATIONS** | | | | |
| **Attorney General:** | | | | |
| *Crime Victims' Compensation:* | 64,804,393 | 69,631,822 | 112,292,964 | 101,818,139 |
| *Crime Victims' Institute (OAG)* | - | 841,921 | 688,522 | - |
| *Victim Assistance:* | | | | |
| Victim Coordinator/Liaison Grants | - | 2,000,000 | 4,806,800 | 4,788,486 |
| Statewide Victim Notification System | - | - | 7,149,690 | 7,149,690 |
| Sexual Assault and Crisis Prevention | - | 1,000,000 | 7,318,238 | 13,930,604 |
| Other Victim Assistance Grants | - | - | 20,000,000 | 20,724,500 |
| Children's Advocacy Centers | - | 2,749,516 | 7,998,006 | 7,998,006 |
| CASA | 1,000,000 | 3,000,000 | 4,000,000 | 6,000,000 |
| Legal Services Grants | - | - | 5,000,000 | 5,000,000 |
| Sexual Assault Services Grant (TAASA) | - | 500,000 | 750,000 | 750,000 |
| Victim Assistance Total: | 1,000,000 | 9,249,516 | 57,022,734 | 66,341,286 |
| **Attorney General, Total:** | **65,804,393** | **79,723,259** | **170,004,220** | **168,159,425** |
| **Other Agencies:** | | | | |
| SHSU - Crime Victims' Institute | - | - | - | 595,065 |
| TDCJ - BIPP & Victim Services | - | 4,700,000 | 5,380,664 | 5,465,550 |
| DHS - Family Violence Shelters | 3,600,000 | 8,600,000 | 30,712,664 | 34,693,696 |
| DFPS - Foster Care & Adult Prot. Srvc. | - | - | 31,965,418 | 65,565,418 |
| ERS - Peace Officer Death Benefit | - | - | - | 5,479,902 |
| OCA - Foster Care Courts Program | - | - | 2,150,000 | 2,197,404 |
| **Other Agencies, Total:** | **3,600,000** | **13,300,000** | **70,208,746** | **113,997,035** |
| **FUND 469 APPROPRIATIONS, TOTAL:** | **69,404,393** | **93,023,259** | **240,212,966** | **282,156,460** |
| **REVENUES (Actual through 2002-03; Comptroller projection for 2004-05)** | | | | |
| Fees from Court Costs | 132,115,098 | 148,663,762 | 150,321,757 | 157,732,000 |
| Copies | 21 | 718 | 261 | 2,000 |
| Conf./Seminar/Training Reg. Fees | 0 | 8,214 | 16,450 | |
| Fees for Admin. Services (Parolee Fees) | 1,579,274 | 3,149,709 | 4,207,313 | 4,678,000 |
| Restitution | 1,690,725 | 1,949,055 | 1,808,023 | 1,866,000 |
| Gifts/Grants and Donations | 406,045 | 564,639 | 368,899 | 388,000 |
| Sales of Furniture & Equipment | 1 | 59 | 26 | 0 |
| Official State Coin Royalties | 30 | 0 | 0 | 0 |
| Warrants voided by Statute of Limitations | 66,953 | 101,599 | 82,261 | 66,000 |
| Third Party Reimbursements | 5,027 | 6,988 | 9,562 | 4,000 |
| Subrogation | 635,342 | 606,859 | 807,155 | 582,000 |
| **Total Revenue - State Funds** | **136,498,516** | **155,051,603** | **157,621,707** | **165,318,000** |

## TABLE B

| REVENUE SOURCES FOR THE CVC FUND | |
|---|---|
| **STATE COURT COSTS** | In 2003, the legislature, through HB 2424, consolidated court costs in an effort to make collection of these costs easier. These costs, from which the Fund will receive at least 37.63%, range from $133 for a felony conviction, $83 for a Class A or Class B misdemeanor conviction, and $40 for a nonjailable misdemeanor conviction. Court costs and fees comprise approximately 95% of all state revenues for the Fund. |
| **FEDERAL VOCA GRANT** | The Fund receives a partial reimbursement from the VOCA grant, which matches sixty percent of the amount paid directly to victims through compensation claims during the previous biennium. |
| **RESTITUTION** | Offenders may be required to reimburse the Fund for compensation payments made to their victims. If no reimbursement is due, the judge may require a probated offender to pay a one-time fee of up to $50 for misdemeanors or $100 for felonies. |
| **PAROLE SUPERVISION FEE** | Offenders on parole for a crime that occurred after September 1, 1993, pay $8 per month to the Fund. |
| **DONATIONS** | Jurors are offered an option of donating their daily reimbursement to the Fund. |
| **SUBROGATIONS** | When a crime victim is awarded money in a civil suit, the Attorney General can ask that the victim or claimant reimburse the Fund the amount paid on behalf of the victim, up to the amount of the civil award. |

## TABLE C

### DESCRIPTION OF THE ATTORNEY GENERAL'S VICTIM ASSISTANCE GRANTS[4]

| | |
|---|---|
| **VICTIMS' ASSISTANCE COORDINATOR & LIAISON GRANTS** | This program provides grants to local law enforcement agencies and prosecutors' offices to fund statutorily required victim assistance coordinators and crime victim liaisons. |
| **STATEWIDE VICTIM NOTIFICATION SYSTEM** | Informs victims of crime of changes in offender status, and court events. |
| **SEXUAL ASSAULT PREVENTION & CRISIS SERVICES PROGRAM** | Provides funding and technical assistance to sexual assault programs in the state. Distributes training materials for law enforcement, medical personnel, and sexual assault staff and volunteers. Provides evidence collection protocol for sexual assault forensic evidence collection. Certifies sexual assault training programs and Sexual Assault Nurse Examiners. |
| **OTHER VICTIM ASSISTANCE GRANT PROGRAM** | The purpose is to provide grant funds to support various programs in the state that serve victims of crime, such as Mothers Against Drunk Driving, SafePlace, and People Against Violent Crime. |
| **CHILDREN'S ADVOCACY CENTERS** | Develops and supports local child advocacy programs that offer a coordinated, multi-disciplinary response to cases of suspected child abuse. |
| **COURT APPOINTED SPECIAL ADVOCATES** | Develops and supports CASA programs, which advocate for the best interest of abused children in the legal and welfare system. |
| **LEGAL SERVICES GRANTS** | Funds Texas Supreme Court contracts providing civil legal services for victims of crime. |
| **SEXUAL ASSAULT SERVICES PROGRAM GRANTS** | Provides a grant to the Texas Association Against Sexual Assault for program development, technical assistance, and training to support local sexual assault programs. |

## TABLE D

### DESCRIPTION OF DIRECT APPROPRIATIONS FROM THE CVC FUND[5]

| | |
|---|---|
| **SAM HOUSTON STATE UNIVERSITY - CRIME VICTIMS' INSTITUTE** | Studies impact of crime on victims and their families, develops policy recommendations for improving treatment of victims by criminal justice system, and gathers data related to victimization. (Originally located in the Attorney General's Office) |
| **TEXAS DEPARTMENT OF CRIMINAL JUSTICE - BATTERING INTERVENTION & PREVENTION PROGRAM (BIPP) & VICTIM SERVICES** | Provides grants to local non-profits to support rehabilitation programs for offenders. Supports TDCJ victims' services division which provides notification to keep victims informed of an offender's status after conviction and sentencing. |
| **DEPARTMENT OF HUMAN SERVICES - FAMILY VIOLENCE SHELTERS** | Funds family violence contractors that provide services such as emergency shelters, hotlines, and other victims' services. |
| **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES - FOSTER CARE & ADULT PROTECTIVE SERVICES** | Grants benefit payments to providers of foster care for abused and neglected children and funds investigations of abuse, neglect, and exploitation of elderly persons. |
| **OFFICE OF COURT ADMINISTRATION - FOSTER CARE COURTS PROGRAM** | Provides for the operation of 15 specialized foster care courts established throughout the state. The purpose is to reduce the time children spend in temporary foster care by expediting the judicial administration of child abuse and adoption cases. |
| **EMPLOYEES RETIREMENT SYSTEM - PEACE OFFICER DEATH BENEFIT** | Payment of beneficiaries of certain law enforcement officers, firefighters, and emergency medical technicians killed in the line of duty. |

## SUMMARY OF THE COMPENSATION TO VICTIMS OF CRIME FUND
## FY 1991-FY 2003[6]

**TABLE E**

| FY | FUND REVENUE | CVC EXPENSES | OTHER APPROPRIATIONS | FUND CASH BALANCE AS OF AUGUST 31 | COMMENTS |
|---|---|---|---|---|---|
| **1991** | $20,490,647.86 | $25,332,467.71 | | $5,276,495.70 | **72nd Legislature:**<br>**SB 616**: On September 1, 1991, administrative authority of the CVC program transferred to the OAG. |
| **1992** | $27,137,516.73 | $24,752,640.35 | | $7,628,158.21 | Fund took in $2.08 million less in court fees than in 1991. |
| **1993** | $29,576,079.40 | $31,504,973.96 | | $5,374,725.79 | **73rd Legislature:**<br>**CVC Payment Reductions**: To ensure the solvency of the fund, CVC implemented 40% payment reductions on all approved, crime-related services provided on or after March 15, 1993. Lost Wages/Support and child care were not affected by this reduction.<br><br>**Enhanced Revenue Efforts:** CVC also implemented new restitution and subrogation measures to track all sources of fund reimbursement; promulgated new rules for psychiatric care in response to investigations on fraudulent practices; and worked with the Comptroller and the Office of Court Administration to reconcile court cost revenue.<br><br>**Legislation Impacting CVC Fund**<br><br>**HB 2178**: Effective August 30, 1993, increased court costs deposited into fund ($45, $35, and $15); parolees pay monthly fee of $8; authorizes Fund to accept gifts, grants, and donations.<br>**HB 2179:** Required judges to state for the record their reason for not ordering restitution.<br><br>**Legislation Creating/Changing CVC Benefits**<br><br>**HB 2178**: Effective August 30, 1993, limitations placed on attorney fees and requirements for third party litigants to notify the OAG of civil action.<br><br>**SB 209:** Provided for utilization review of mental health claims, and authorizes the OAG to seek administrative and civil penalties for fraudulent claims. |

| | Fund Revenue | CVC Expenses | Other Appropriations | Fund Cash Balance as of August 31 | Comments |
|---|---|---|---|---|---|
| **1994** | $42,080,589.85 | $27,421,765.00 | | $20,679,608.84 | Court fees deposited into Fund increased more than 90% from 1993. Compensation benefits restored to full payment after March 15, 1994. |
| **1995** | $64,402,525.96 | $26,908,321.55 | | $93,515,937.81 | **74th Legislature:**<br>Total revenue for FY 1995 increased 80% from FY 1994. Court fees deposited into the Fund increased more than 78% from 1994.<br><br>**Legislation Impacting CVC Fund**<br><br>**SB 15**: If no reimbursement was due to the Fund through a restitution order, judges could require a probated offender to pay a one-time fee of up to $50 for a misdemeanor and up to $100 for a felony.<br><br>**SB 346:** Allowed jurors to donate reimbursement checks to the CVC Fund or local charities.<br><br>**SB 1049:** Ordered payment of health care services according to medical fee guidelines. This resulted in a reduction of the amount paid to service providers for health care services. It also provided that payments accepted by the provider are considered payment in full.<br><br>**Legislation Creating/Changing CVC Benefits**<br><br>**SB 1049:** The maximum award for catastrophic injuries increased from $25,000 to $50,000; crime scene cleanup reimbursement added; dependent care added when the need for care resulted from the crime; vehicular offenses such as DWI and Criminally Negligent Homicide became compensable crimes; all immediate family members of a child or a deceased victim became valid claimants; and reimbursements were added for property seized as evidence. |
| **1996** | $65,230,419.39 | $29,870,977.15 | | $93,515,937.81 | |
| **1997** | $67,501,127.98 | $32,066,057.83 | | $128,653,140.03 | **75th Legislature:**<br>**Legislation Impacting CVC Fund**<br><br>**HB 3062**: Required that there be a $10,000,000 emergency reserve fund and made CVC the payer of last resort. |

| FY | Fund Revenue | CVC Expenses | Other Appropriations | Fund Cash Balance as of August 31 | Comments |
|---|---|---|---|---|---|
| **1997** | | | | | **SJR 33:** Proposed a constitutional amendment dedicating the CVC Fund only for the purposes of assisting victims of crime. The constitutional amendment passed in November 1997.<br><br>**SB 987:** Allows the legislature to appropriate money from the Fund to state agencies delivering or funding victim-related services. It also authorizes the OAG to use money appropriated from the Fund for grants or contracts supporting victim-related services. *The legislature began appropriations under TCCP 56.541.*<br><br>**Legislation Creating/Changing CVC Benefits**<br><br>**HB 3062:** Increased maximum award on a claim from $25,000 to $50,000, and the maximum on catastrophic cases from $50,000 to $100,000; lost wages and travel for participation in the criminal justice process or receipt of medical care were added; firefighters and peace officers were made eligible to receive benefits; life insurance and vacation/sick leave benefits were removed as collateral sources; international terrorism was added as a compensable crime category; loss of support was added for cases not involving a deceased victim; and filing times and reporting limits were changed to allow for more time to apply for compensation. |
| **1998** | $88,196,863.66 | $38,947,296.91 | $2,300,000.00 | $167,882,911.71 | **Other Appropriations**<br>Court Appointed Special Advocates: $500,000<br>Department of Human Services: $1,800,000 |
| **1999** | $80,729,660.90 | $40,796,446.77 | $2,300,000.00 | $205,351,021.35 | **76th Legislature:**<br><br>**Legislation Creating/Changing CVC Benefits**<br><br>**HB 3255**: Added $3,800 relocation/rental reimbursement for victims of domestic violence.<br><br>**Other Appropriations**<br>Court Appointed Special Advocates: $500,000<br>Department of Human Services: $1,800.000 |

| FY | Fund Revenue | CVC Expenses | Other Appropriations | Fund Cash Balance as of August 31 | Comments |
|---|---|---|---|---|---|
| **2000** | $85,461,418.93 | $41,047,396.91 | $11,274,758.00 | $234,869,494.21 | **Other Appropriations**<br>Victim Coordinator/Liaison Grants: $1,000,000<br>Sexual Assault and Crisis Prevention: $500,000<br>Children's Advocacy Centers: $1,374,758<br>Court Appointed Special Advocates: $1,500,000<br>Sexual Assault Services Program Grants: $250,000<br>Texas Department of Criminal Justice - BIPP & Victim Services: $2,350,000<br>Department of Human Services - Family Violence Shelters: $4,300,000 |
| **2001** | $93,014,289.08 | $45,083,712.18 | $11,274,758.00 | $269,461,670.94 | **77th Legislature:**<br>**Legislation Impacting CVC Fund**<br><br>**HB 877:** Allowed for an appropriation to ERS for Peace Officer Death Benefits.<br><br>**Legislation Creating/Changing CVC Benefits**<br><br>**HB 131:** Reimbursements to Law Enforcement for Forensic Sexual Assault Exams.<br>**HB 519:** Added relocation/rental reimbursement for victims of sexual assault occurring in their residence.<br>**SB 850**: Added Disabled Peace Officer Benefits, additional $200,000.<br>**SB 1202:** Maximum amount for catastrophic injuries changed from $100,000 to $125,000.<br><br>**Other Appropriations**<br><br>Victim Coordinator/Liaison Grants: $1,000,000<br>Sexual Assault and Crisis Prevention: $500,000<br>Children's Advocacy Centers: $1,374,758<br>Court Appointed Special Advocates: $1,500,000<br>Sexual Assault Services Program Grants: $250,000<br>Texas Department of Criminal Justice - BIPP & Victim Services: $2,350,000<br>Department of Human Services - Family Violence Shelters: $4,300,000 |

| FY | Fund Revenue | CVC Expenses | Other Appropriations | Fund Cash Balance as of August 31 | Comments |
|---|---|---|---|---|---|
| **2002** | $93,395,064.51 | $49,826,960.44 | $63,334,130.00 | $260,526,165.72 | **Other Appropriations**<br><br>Victim Coordinator/Liaison Grants: $2,403,400<br>Statewide Victim Notification System: $3,293,235<br>Sexual Assault and Crisis Prevention: $3,659,119<br>Other Victim Assistance Grants: $10,000,000<br>Children's Advocacy Centers: $3,999,003<br>Court Appointed Special Advocate: $2,000,000<br>Sexual Assault Services Program Grants: $375,000<br>Legal Services Grants: $2,500,000<br>Texas Department of Criminal Justice - BIPP & Victim Services: $2,690,332<br>Department of Human Services - Family Violence Shelters: $15,356,332<br>Department of Protective and Regulatory Services-Foster Care & Adult Protective Services: $15,982,709<br>Office of Court Administration- Foster Care Courts Program: $1,075,000 |
| **2003** | $81,065,776.09 | $77,279,937.85 | $63,897,350.00 | $191,711,244.15 | **78th Legislature:**<br><br>**Legislation Creating/Changing CVC Benefits**<br><br>**HB 1895:** Added Bereavement Leave/Lost Wage Benefit.<br>**SB 1015:** Added reimbursement for travel to an execution.<br><br>**Other Appropriations**<br><br>Victim Coordinator/Liaison Grants: $2,403,400<br>Statewide Victim Notification System: $3,856,455<br>Sexual Assault and Crisis Prevention: $3,659,119<br>Other Victim Assistance Grants: $10,000,000<br>Children's Advocacy Centers: $3,999,003<br>Court Appointed Special Advocates: $2,000,000<br>Sexual Assault Services Program Grants: $375,000 |

| FY | FUND REVENUE | CVC EXPENSES | OTHER APPROPRIATIONS | FUND CASH BALANCE AS OF AUGUST 31 | COMMENTS |
|---|---|---|---|---|---|
| | | | | | **Other Appropriations Continued**<br><br>Legal Services Grants: $2,500,000<br>Texas Department of Criminal Justice - BIPP & Victim Services: $2,690,332<br>Department of Human Services - Family Violence Shelters: $15,356,332<br>Department of Protective and Regulatory Services-Foster Care & Adult Protective Services: $15,982,709<br>Office of Court Administration- Foster Care Courts Program: $1,075,000 |

# PEACE OFFICER JURISDICTION

**CHARGE**

*Review Code of Criminal Procedure Article 2.13 and Article 14.03 as they relate to a peace officer's authority to act outside of the peace officer's geographic or territorial jurisdiction.*

## BACKGROUND OF THE ISSUE

The language of the interim charge, though not limiting discussion solely to multi-jurisdictional drug task forces, is intended to focus attention on the problems these task forces have experienced, and in some instances, created. Debate on the effectiveness and the necessity of task forces has been steadily growing as a result of questionable methods being utilized, and in particular, misconduct uncovered in the Tulia case. In 1999, a task force operating in Tulia, Texas, arrested approximately 40 people, predominantly minorities, on drug trafficking charges. Of these, 39 were convicted, many of whom received sentences ranging from 20-99 years in prison. However, it was later discovered that the undercover officer responsible for the arrests, Tom Coleman, lacked credibility. Mr. Coleman has subsequently been indicted for perjury.

Although the Tulia case brought national attention to the issue of task forces and prompted the legislature in 2003 to intervene to free the final 13 people who were still behind bars,[7] this case is by no means an isolated incident, a fact which has propelled the debate on the wisdom of continuing to utilize such task forces as a means to enforce drug laws.

### *Multi-jurisdictional Drug Task Forces and Byrne Funds*

Multi-jurisdictional drug task forces involve two or more separate law enforcement entities which have different jurisdictional responsibilities. These entities combine resources to enforce drug laws, under the premise that criminal activity does not limit itself to specific locations and often moves across several counties.[8] In an effort to combat such activities, local governments combine resources and apply for federal Byrne funds to finance the newly created task force, comprised of peace officers from different territorial jurisdictions. However, since task forces employ officers from various jurisdictions, there is a concern that officers are not adequately supervised.

The Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program is a federal grant program with the purpose of assisting state and local governments enforce drug laws and fight violent crime. There are currently 29 program purpose areas for which Byrne funds may be utilized, including but not limited to drug education programs, drug courts, anti-terrorism planning, and multi-jurisdictional drug task forces.[9] Under the program, the Governor's Criminal Justice Division (CJD), the state agency charged with administering the grant, develops multi-year strategies to combat drugs and control violent crime and awards grants according to the priorities that the agency identifies.

In the agency's *2004-2007 Strategy*, the CJD has set enforcement of drug laws as the top priority followed by drug prevention and treatment programs and homeland security.[10] The decision to place

top priority on enforcement is currently at odds with both the National Drug Control Strategy[11] and Texas' Drug Demand Reduction Strategy as formulated by the Drug Demand Reduction Advisory Committee,[12] which place prevention and treatment programs ahead of enforcement. As a result of the decision to place such a high priority on enforcement, in FY 2004 86% of the approximately $30 million the state received in Byrne funds was awarded to multi-jurisdictional drug task forces.[13]

***Current Status of Multi-jurisdictional Drug Task Forces***

In an effort to bring accountability and stability to multi-jurisdictional drug task forces, in 2002 the CJD and the Department of Public Safety (DPS) entered into a memorandum of understanding (MOU) giving DPS operational command and control over all multi-jurisdictional drug task forces in Texas. This move allowed DPS to establish uniform policies for drug task forces regarding intelligence gathering, information sharing, and officer performance, which DPS monitors on a quarterly basis. Task forces that are found not to be in compliance with the guidelines may be at risk for losing funding.

While the MOU gives DPS the authority to establish guidelines for the drug task forces, criticisms have been made that the policies themselves do not go far enough and that DPS lacks the authority to discipline task force officers who fail to comply with the policies. One such concern is that while DPS policies and state law prohibit racial profiling and require the law enforcement agencies to report the race and ethnicity of those whom task force officers detain, task forces officers report this data to their parent agency, for inclusion in that agency's annual report. Such practice, it is argued, makes it difficult if not impossible to determine the race or ethnicity of persons detained as a result of task force operations.

An additional concern that is often raised is the use of "consent searches." Under state law, persons who commit "minor" fine-only traffic offenses, other than speeding or violating the open container law, may be placed under arrest. The concern is that officers may stop a vehicle based on a minor violation and ask for permission to search the vehicle. If the motorist objects, the officer may then threaten to arrest the motorist on the minor violation unless consent is received to search the vehicle. It is argued that this can lead to an environment where task force officers will neglect the use of intelligence and instead utilize such tactics, which combined with concerns over racial profiling, may place minority citizens in jeopardy of being targeted. Attempts at restricting arrests for fine-only offenses through legislation and by challenging the constitutionality of the Texas statute have not been successful.[14]

While these concerns may have merit and the authority of DPS to monitor and enforce the policies is questionable, as mentioned earlier those task forces that fail to comply face losing Byrne funding. In fact, to date there have been two task forces, the Metro Narcotics Intelligence & Coordination Unit (Tarrant County) and the 25th Judicial District Narcotics Task Force (City of Seguin), that have lost funding due to the failure to comply with DPS policies. However, provided the history of problems with multi-jurisdictional drug task forces combined with the concern over proper day-to-day operational oversight, the House Committee on Criminal Jurisprudence was directed by the Speaker of the House of Representatives to review the authority of peace officers who act outside of their jurisdiction, as is the case with task force officers, and to make recommendations on the future of

such authority.

## COMMITTEE RECOMMENDATIONS

***The legislature should amend the Code of Criminal Procedure to mandate the designation of a responsible local agency where particular police actions are being undertaken. The legal structure of multi-jurisdictional task forces as stand-alone entities---consisting of officers from cities or counties vested with authority to operate outside of their own originating agency's jurisdiction---should be changed to require the presence of an officer who has original local jurisdiction where interdiction efforts are conducted.***

In previous sessions, legislation has been introduced---but not passed---to address scandals involving multi-jurisdictional drug task force operations and in an effort to protect the continued availability of federal Byrne grant funding to our state for narcotics interdiction efforts. Multi-jurisdictional drug task force operations have experienced corruption, misuse of public funds, the fabrication of evidence, and the falsification of testimony. These scandals, including the deaths of an officer and innocent civilian, have been inherent to numerous programs since the inception of task forces in their current form in 1987. This problem has been exacerbated by a lack of clear accountability for addressing misconduct, with the task force officer often unaccountable to any traditional local chain of command or accountable elected official.

The State of Texas and some local governments are currently under civil and criminal jeopardy arising out such problems involving task force officers, including alleged civil rights violations involving perjury, false arrests, illegal searches, and the incarceration of multiple innocent suspects. Continuing to sanction task force operations as stand-alone law enforcement entities --- with widespread authority to operate at will across multiple jurisdictional lines---should not continue.

The current approach violates practically every sound principle of police oversight and accountability applicable to narcotics interdiction. One of the problems has been that participating officers from various agencies are not supervised by their own agency's chain of command, have little or no contact for long periods of time with their superiors, remain in an undercover capacity for periods longer than that recommended for such operations, and thus do not operate under even minimal standards mandated by most law enforcement agencies in the United States for narcotics operations.

Certainly this has not been the case with each and every task force. However, the incidents have been numerous, serious, and widespread enough to warrant legislative action. The committee's recommendation is designed to end the current flawed structure of task force operations, but maintain the ability of the Governor's office to distribute funds where local law enforcement agencies coordinate resources to interdict on narcotics crimes.

The failure of the Texas Legislature to address the current way task force operations are organized puts at risk the continued availability of federal Byrne grant funding to our state. Addressing the flawed structure of multi-jurisdictional task force operations in Texas will insure that the state can continue to avail itself of federal funding administered through the Governor's Criminal Justice Division (CJD). The funds can go directly to local law enforcement agencies individually for enhanced enforcement and the funds will also still be available for agencies to enact cooperative

agreements with other local, regional, or statewide law enforcement agencies

The practical effect of the recommended legislative change will be an end to the ability of a narcotics task force to operate as an entity with no clear accountability resting with a particular agency that has jurisdiction originating where the law enforcement operation takes place. A law enforcement officer who has local jurisdictional authority where the arrest or search is being executed should be required to be present and share in operational command with officers from the other agencies who are operating outside of their original jurisdiction. This is consistent with existing state law requirements for all other law enforcement officers who operate in the state. This principle of law, which had no exceptions until the advent of the multi-jurisdictional task force structure, restores accountability and clear responsibility. It will also facilitate a clear avenue for local redress should citizens wish to question the propriety of police operations.

Currently, task force operations, on occasion, comply with the principle of having a law enforcement officer present, especially because of recent changes that placed all operations under the leadership of a Department of Public Safety officer. But task force officers also frequently operate with no DPS or other officer present with local jurisdiction. They can currently legally do so because of the original state law that created multi-jurisdictional task force operations and which gives all officers therein independent peace officer authority throughout the multiple jurisdictions.

Department of Public Safety officers have statewide jurisdiction, and thus their presence vests accompanying officers from other jurisdictions with the ability to carry out law enforcement operations anywhere in Texas. Task force operations throughout the state were placed under DPS command in an attempt to instill some professional consistency into task force operations in response to numerous scandals. The Department of Public Safety oversight improved the professionalism of the operations. However, even after the change, scandals continued.

Even with the oversight of the Department of Public Safety, it is prudent to additionally designate a responsible local agency where the particular police actions are being undertaken. If this legislation is passed by the legislature, the change will restore accountability to a particular law enforcement agency having original jurisdiction to operate where the police interdiction is taking place.

**CONCLUSION:**

***The legislature should amend the Code of Criminal Procedure to mandate the designation of a responsible local agency where particular police actions are being undertaken.***

# OFFICE OF THE STATE PROSECUTING ATTORNEY

**CHARGE**

*Monitor the agencies and programs under the Committee's jurisdiction, including considering the ongoing functions of the Office of the State Prosecuting Attorney.*

## BACKGROUND OF THE ISSUE

In 1923, the legislature created a position to represent the interests of the State in all appeals, suits, and prosecutions before the Court of Criminal Appeals. Several years later, the appointment authority was transferred from the Office of the Governor to the Court of Criminal Appeals and the position was given the title of State Prosecuting Attorney. Subsequent legislation expanded the authority of the State Prosecuting Attorney to include assisting a district or county attorney before any of the fourteen Courts of Appeals. In addition to these duties, the State Prosecuting Attorney reviews decisions from each Court of Appeals, serves as a resource for local prosecutors, and submits petitions for discretionary review to the Court of Criminal Appeals on the issues and cases the office considers to be of the greatest importance to the State.

Recently, however, the question has been raised as to whether it is appropriate for the State Prosecuting Attorney to continue to be appointed by the judicial body before which it argues. Furthermore, other states that do not require local prosecutors to argue appellate cases reserve this duty to the Attorney General alone. Therefore, the Committee on Criminal Jurisprudence has been asked by the Speaker of the House of Representatives to study the ongoing functions of the State Prosecuting Attorney and provide recommendations on its continued existence.

## WITNESS LIST

| | |
|---|---|
| **Matthew Paul** | *Office of the State Prosecuting Attorney* |
| **Sharon Keller** | *Presiding Judge, Texas Court of Criminal Appeals** |
| **Barbara Hervey** | *Judge, Texas Court of Criminal Appeals** |
| **Bill Turner** | *Brazos County District Attorney** |
| **Jaime Esparza** | *El Paso District Attorney** |
| **John Rolater Jr.** | *Dallas County Criminal District Attorney* |
| **Andrea Marsh** | *ACLU of Texas* |

## WITNESS TESTIMONY

**Matthew Paul**, the State Prosecuting Attorney, provided the Committee with an overview of the history of the SPA as well as the its current duties. One of the main functions of the SPA is to serve as a resource for local prosecutors to help avoid reversible error. In addition to representing the State before the Court of Criminal Appeals, the SPA keeps abreast of significant issues that have a

* These witness were testifying on their own behalf and not in their official capacity

potential statewide impact, an ability not often shared by local prosecutors, and when necessary submit petitions for discretionary review (PDR) to the Court of Criminal Appeals. As a result of its ability to focus on significant issues, the rate of PDRs granted by the Court is approximately fifty percent compared to eight percent overall. In response to a question about whether the duties of his office would be better performed by the Office of the Attorney General, due to what could be perceived as a conflict of interest, Mr. Paul expressed his belief that moving the office would create a separation of powers issue because under the Texas Constitution prosecutors are part of the judicial branch, while the Attorney General is an executive branch officer.

**Sharon Keller**, Presiding Judge of the Court of Criminal Appeals, agreed with Mr. Paul's statement that there is not a conflict of interest in having the SPA appointed by the Court. She argued that there is very little difference between this situation and a trial court appointing defense counsel. However, she indicated she could see a conflict if the Attorney General appointed the SPA because the Attorney General is one office holder, whereas Court is comprised of nine members. Judge Keller also expressed her opinion that since appellate law is a specialized practice and local prosecutors, who specialize in trial law, are not as experienced in this practice, an office such as the SPA is needed. She further argued that local prosecutors may only be interested in upholding convictions and therefore may not necessarily see issues that have statewide significance.

**Barbara Hervey**, Judge of the Court of Criminal Appeals, reiterated Judge Keller's view that appellate law is a specialized function and therefore an office such as SPA is needed. Judge Keller sought to assure the Committee that the Court has no input into the policy decisions that SPA will bring to the Court. She also stated that the Court is in the initial stages of discussion about creating an agency that would be a defense equivalent to the SPA.

**Bill Turner**, the Brazos County District Attorney, advocated for the existence of an agency such as SPA, because as a local prosecutor in a small community he wears many hats and is not an expert in appellate law since he rarely performs this task. Mr. Turner also relayed that in his experience, SPA assists prosecutors in bringing attention to the law. While if the duties were placed with the Attorney General, Mr. Turner stated his belief that the Attorney General may decide not to help a prosecutor because they may differ on the policy implications of a case.

**Jaime Esparza**, the El Paso County District Attorney, expressed his belief SPA ensures that the laws the legislature passes are practiced statewide. Mr. Esparza agreed with Judge Keller's analogy that having the Court of Criminal Appeals appoint the State Prosecuting Attorney is no different from a court appointing defense counsel in indigent defense cases.

**John Rolater Jr.,** representing the Dallas County Criminal District Attorney, stated that due to the large caseload and the sheer number of appellate decisions, SPA provides a valuable service to prosecutors. Mr. Rolater indicated that SPA provides a service that cannot be replaced at the local level.

**Andrea Marsh**, representing the ACLU of Texas, argued that the mere existence of the SPA is an example of how the adversarial process is unbalanced because there is no defense equivalent. Compared to prosecutors who have many lawyers, defense attorneys are usually solo practitioners

and SPA further unbalances the quality of representation. Furthermore, the state does not pay defense attorneys to sit and analyze the case law coming from the courts of appeals or to file PDRs. In fact state law prohibits criminal lawyers who are appointed to represent indigent defendants from being paid to file PDRs.

## COMMITTEE RECOMMENDATIONS

The Office of State Prosecuting Attorney represents the state in proceedings before the Court of Criminal Appeals. As a practical matter, action by the office typically occurs in the context of assistance to a local prosecutor who may utilize the agency's services where a criminal case reaches the appellate stage of presentation before the state's highest court on criminal law matters. The assistance the agency provides to prosecutors throughout the state in this context was the justification largely given for its existence in hearings before the House Committee on Criminal Jurisprudence. It was also noted that the personnel of the agency spend time reviewing decisions of the Court of Criminal Appeals, providing a prosecutorial vigilance to the decisions of the court. The office has existed in its current form since the early 20th century.

Among the reasons for its original existence was the geographical challenge this state presented to outlying prosecutors, who otherwise would be required journey to Austin to attend to the appellate hearings on cases originating out of their county. It should be noted that the Committee could find no other state with an analogous prosecutorial agency and Texas has never provided a standing agency counterpart representing defendants.

A question was raised by the Committee in regard to the agency's structure, particularly in regard to the appointment of its personnel. While the State Prosecuting Attorney appears as an advocate for the prosecution in proceedings before the Court of Criminal Appeals, it is the court who appoints the State Prosecuting Attorney, concurrent with rendering legal decisions in the adversarial matters about which the State Prosecuting Attorney is arguing before the very same court. This judicial oversight of a prosecutor's office is unique within Texas, and as far as the Committee could find, in the United States. It raises legitimate questions of potential conflicts of interest regarding the independence of the prosecuting office from the judges who are making the decisions on the cases before the court. While it has always been accepted practice for the presiding judge of a court to appoint defense counsel in indigent criminal cases, that role is much different and distinguishable from the prosecutor, whose role as an arm of the state is heavily immersed in the exercise of sound discretion, which may include decisions not to convict, but rather, to see that justice is done.

Typically the makeup of personnel in prosecutors offices, and certainly their decisions, including whether to even go forward with a case, are exclusive domains of the executive function of the state, and judicial involvement with such matters are deemed an inherent separation of powers conflict. Despite the fact that the Texas Constitution organizes District Attorneys under the Judicial branch, legal decisions and statutory enactments have always treated the prosecutor's role in this state as an executive function. Even the Court of Criminal Appeals has invalidated legislative acts, such as the speedy trial act, that impermissibly intertwined the separate and unfettered prosecutorial discretionary authority with that of the role of the judiciary. While the Committee suggests no actual

or even perceived impropriety throughout history to date regarding the Office of the State Prosecuting Attorney in Texas, or with the honorable judges who have served the state's highest criminal court, it does appear overdue to evaluate the wisdom of continuing the Office of the State Prosecuting Attorney, or in the alternative, whether an analogous office should be established for the advocacy of defendants before the Court of Criminal Appeals.

Anecdotal evidence was received by the Committee from prosecutors attesting to the value of this agency of three attorneys, and their assistance in particular instances. It is the Committee's opinion, however, that the agency should be abolished for a fiscal assessment of $ 615,215 for each biennium, and that there would be no actual detriment to the prosecution of criminal law cases in this state, or the pursuit of those cases on appeal by local prosecutors if the office ceased to exist. In the alternative, the Committee recommends that if the legislature continues funding of the agency, that the Office of State Prosecuting Attorney be absorbed by the Office of the Attorney General, with the Attorney General appointing the position, not the Court of Criminal Appeals judges. In such event, fairness would dictate that an analogous office be established for the advocacy of defendant's cases before the Court of Criminal Appeals, and the Committee would recommend that its personnel be appointed by the Court of Criminal Appeals. The Committee further proposes that if the Office of the State Prosecuting Attorney exists, there should be an equivalent agency for the defense side.

**CONCLUSION:**

***The legislature should abolish the Office of the State Prosecuting Attorney. In the alternative, the legislature should direct that the office be absorbed into the Office of the Attorney General, with the Attorney General appointing the position. In such an event, fairness would dictate that an analogous office be established for the advocacy of defendant's cases before the Court of Criminal Appeals, and the Committee would recommend that its personnel be appointed by the Court of Criminal Appeals.***

# APPENDIX A

WRITTEN COMMENTS RECEIVED BY THE COMMITTEE REGARDING THE INTERIM CHARGE RELATED TO ADMINISTRATIVE LICENSE REVOCATION AND PEACE OFFICER JURISDICTION FROM THE TEXAS MUNICIPAL POLICE ASSOCIATION AND VARIOUS PEACE OFFICERS

## ADMINISTRATIVE LICENSE REVOCATION

TMPA opposes moving the Administrative License Revocation (ALR) hearing to the trial court handling the DWI criminal prosecution for the following reasons:

1. We believe that the suspension process would be further slowed down because of exhaustive court dockets and would require more officers to be present to testify in the hearings than are now required to do so.
2. We believe that moving the ALR to the trial court will increase the formality of an "administrative" proceeding making it even more difficult to suspend a driver's license.
3. We believe a more appropriate means of solving the problems related to ALR would be to move from "implicit consent" to "explicit consent" and make the suspension "Departmental" (handled by DPS like a medical suspension).
4. We further believe that something must be done to fix the refusal rate by creating disincentives for refusing to provide a sample. The refusal rate in Texas is over 50% compared with other states that have near 100%.
5. We also believe that the trial court should have the ability to order a suspension upon conviction.

*Texas Municipal Police Association*

- Get rid of ALR and move the hearing to the trial court
- ALR is currently used as Pre-Trial discovery so it would be better in trial court
- Criminalize the refusal to provide a sample
- "The ALR program is definitely broken and needs something to fix it. I have worked on the APD DWI Enforcement Unit for nearly 3 years, and have been to way too many ALR hearings where all the information that is needed for an ALR conviction was already covered and sworn to in the paperwork I turned in to the ALR office, but yet I'm called in to testify to what I have already sworn to, and then let the defense go on a fishing expedition for more discovery."

*David Boyd*

- You need to do away with ALR PERIOD! Defense attorneys are using it for discovery only. HUGE WASTE OF TIME.

*Daniel Lozano*

- Opposes move to trial court, supports "explicit consent"
- Concerned that more officers would be required to appear and testify

*TMPA Board of Directors - John Daniel (Sgt. Plano P.D.)*

- Suspension from the criminal court. 90 days upon arrest and 90 days upon conviction

*Scott Blanton*

- Make DWI a scaled offense based on the level of intoxication (i.e. .08-.15 class B, .16-.23 class A and .24 or more or a refusal a state jail felony.)
- If the subject provides a sample, give them the opportunity for an ALR hearing (I like the idea of tying it to a conviction in the trial court, including if they plea to something such as Obstructing Roadway). If they refuse to provide a sample they automatically waive their right to an ALR hearing.
- The best idea is the explicit consent.
- Try to get the legislature to include a breath/blood test refusal in the surcharge statute. The whole reason for the surcharge is to penalize people who blow way over the limit, why not use it to discourage refusals which means cases that are more prosecutable.

*David Rhodes*

- Make the suspension part of the punishment by the trial court. Do away with Administrative Hearing Office.
- Make it a separate criminal offense to refuse a specimen with a higher penalty grade than the offense charged.
- Make it impossible to get an occupational license with a prior conviction.

*Doug Mitchell*

- "Get ALR back to what it was meant for! Only to show reasonable suspicion to stop, probable cause to arrest and if they refused or failed chemical test. It doesn't matter where it is held just stop using it as a discovery trial."

*Charles Hoff*

- "Require that ALR judges hear only evidence on probable cause for the stop and whether or not the suspect refused the test. Stop letting defense attorneys turn the ALR hearing into a pre-trial session and/or fishing trip.
- Don't move to trial court for same reason as above or, if it is moved to trial court, hold only one trial not an ALR hearing then the trial.
- Create an affidavit an officer could complete and submit that would result in immediate suspension for refusal. Make it an "Automatic" license revocation instead of an "administrative" license revocation.

*Scott Kniffen*

- Refusal to submit a sample should be an included Class B charge with an automatic and immediate suspension. Submission of a breath sample above .08 should carry an immediate suspension. Immediate suspensions should begin at the time of arrest.
- Stricter guidelines and controls should be placed on the SOAH Judges and influences by the Defense Attorneys associations should be disallowed. The ALR hearings have become nothing more than discovery hearing and the defense attorneys are running the show.

*Michael Scheffler*

## PEACE OFFICER JURISDICTION

TMPA supports any effort to streamline jurisdictional language in the code that would allow officers to conduct criminal investigations using lawful traffic stops outside their primary jurisdiction when appropriate or necessary. The jurisdictional boundaries in most metropolitan areas are contiguous and officers are often faced with crossing their city limits line before being able to catch up with a motorist. This is especially problematic when citizens are calling in potential criminal behavior. The current statutory language is insufficient and the case law is inconsistent. We are concerned that evidence of serious crimes may be discarded by rule of law because of jurisdictional confusion.

We believe that jurisdictional boundary restrictions were created when officers were recruited, hired, and trained locally with little to no consistency from jurisdiction to jurisdiction. Now that Texas peace officers are licensed by the state and are require to maintain training standards, we feel that the necessity for strict jurisdictional boundaries has waned.

*Texas Municipal Police Association*

- Supports broader and more standardized police jurisdiction

  *David Boyd*

- Supports expanding jurisdiction because of the problems caused with DWI taskforces

  *Scott Blanton*

- The CCP, government code, and various court cases have given officers from Type A, General Law cities the same authority as the sheriff. This should probably be expanded to all officers. Local authority, either policy or ordinance, regarding out of jurisdiction authority should control their activity. Abuses should be dealt with locally but swiftly and severely.

  *Scott Kniffen*

# APPENDIX B

## WRITTEN COMMENTS RECEIVED BY THE COMMITTEE REGARDING THE INTERIM CHARGE RELATED TO PEACE OFFICER JURISDICTION FROM THE ACLU OF TEXAS

**Issues**

A. Byrne Grant-Funded Drug Task Forces

Drug task forces raise jurisdictional issues relevant to your charge. Though CCP 14.03(g) disallows officers from detaining citizens for traffic violations outside their jurisdiction, Byrne-grant funded drug task force officers routinely do so.

A recent study by ACLU of Texas entitled *Flawed Enforcement* (May 2004) found that of the thousands of motorists stopped by drug task force officers, about 98% of them received no ticket. That's partly because task force officers, who wear uniforms from their home jurisdiction, are stopping motorists in counties other than the one where they are employed. (A former task force officer says another reason is that motorists who haven't received a ticket yet are more likely to give consent to search.) This creates two concerns:

Confusion among motorists over why they're being stopped by an officer wearing a uniform from another area. Most importantly, which jurisdiction receives ticket proceeds? Task forces have found that, rather than reconcile this politically sticky issue, it's simply easier to not give tickets at all. If the money goes to the county where the ticket is given, as with DPS, then agencies are paying officers to generate revenue for other jurisdictions.

To the extent ticketing fulfills public policy goals, task force traffic interdiction isn't doing so. To the extent ticketing generates revenue, local governments are foregoing millions in revenue statewide from traffic enforcement performed by their officers.

Drug task forces not only have officers enforcing laws outside their jurisdiction within the task force area, they frequently trade officers to perform undercover work in other task force regions by agreement. Given their notorious liability issues, this creates potential problems for all involved.

B. Officers can arrest outside jurisdiction for petty offenses.

CCP 14.03(d) allows officers to arrest outside of their jurisdictions for felonies, breaches of the peace, disorderly conduct and drunkenness committed in their presence. That is a reasonable limitation that allows officers to keep the peace but, by itself, restricts routine law enforcement to officers employed in the jurisdiction.

CCP 14.03(g), however, expands that power dramatically, allowing arrests for "any offense" except traffic violations. (Drug task force officers are even exempt from that.) 14.03(g) completely overrides and subsumes 14.03(d), for the worse, allowing officers to arrest for even the most petty misdemeanors, even fine-only offenses, punishments for which don't even merit incarceration. That's too broad.

C. Proliferation of Special Force Risks Abuse

Proliferation of various types of small law enforcement agencies risks inexperienced, poorly trained and unaccountable officers acting anywhere and everywhere without restraint. Article 2.12 of the Code of Criminal Procedure lists 32 different types of specialized police officers in addition to municipal police and sheriffs. Many of those officers don't receive the same level of training or oversight as regular law enforcement agencies, or, e.g. arson investigators, on paper possess narrow jurisdictions and expertise. Thanks to the problem described in B above, though, these officers can bring the full force of law to bear on even the most minor offenses, whenever they want. That risks all sort of obviously problematic situations.

**Recommendations**

Most important: Delete CCP 14.03(g). The provision in 14.03(d) provides out of jurisdiction officers all the leeway they need to keep the peace. 14.03(g) removes all restrictions on officers actions, making them as powerful outside their jurisdiction as within it.

Officers in their jurisdiction are subject to supervision and oversight; outside their jurisdictions they become potential loose cannons,

creating liability with every law enforcement action.

Disallow drug task force highway interdiction. Require that officers only enforce traffic laws in their home jurisdiction. See the report, *Flawed Enforcement,* for a much more detailed criticism of drug task force highway interdiction practices and problems created by task force officers operating outside their home jurisdiction.

Strictly regulate the ability of drug task forces and other agencies to bring in out of jurisdiction officers through cooperative agreements. Clarify that the both the requesting agency and the home jurisdiction will be liable for any misconduct by officers working by agreement outside their jurisdiction. Consider implementing restrictions on the law enforcement powers of specialized police forces listed in CCP Art. 2.12

## ENDNOTES

[1] Senate Bill 987, 75th Legislature

[2] Senate Joint Resolution 33, 75th Legislature

[3] Source: Office of Court Administration. This figure is based on the amount the localities had been collecting before implementing the Fine Collection Program.

[4] Office of the Attorney General, *Grant Funding & Compensation by County* & written testimony provided to the committee. These are "pass through" grants mandated by the Texas Legislature.

[5] Source: Office of the Attorney General, Written testimony to the committee.

[6] Source: Office of the Attorney General

[7] Senate Bill 1948, 78th Legislature

[8] Bureau of Justice Assistance, United States Department of Justice. Online. Available at: http://www.ojp.usdoj.gov/BJA/grant/byrnepurpose.html

[9] Bureau of Justice Assistance, United States Department of Justice. Online. Available at: http://www.ojp.usdoj.gov/BJA/grant/byrne.html

[10] *2004-2007 Strategy for Drug and Violent Crime Control*, Byrne Formula Grant Program, Criminal Justice Division, Office of the Governor

[11] *The President's National Drug Control Strategy*, March 2004. Office of National Drug Control Policy

[12] *Toward a Drug-Free Texas: A Coordinated Drug Reduction Strategy*, January 2003. Drug Demand Reduction Advisory Committee

[13] Source: Criminal Justice Division, Office of the Governor

[14] SB 730 77(R) and SB 1597 78(R) were both vetoed by Governor Perry and in *Atwater et ux vs City of Lago Vista et al.* the U.S. Supreme Court upheld the constitutionally of the Texas statute.