

TACIR Panel Discussion – December 6th, 2016

Good Morning Mr. Chairman and members,

My name is Wes Landers and I am the Chief Financial Officer for the Tennessee Department of Correction. With me today is Ms. Debbie Inglis, Deputy Commissioner of Administration and our General Counsel and Mr. Bob McKee, no stranger to anyone in the room I think, who is our County Jail Liaison.

Let me first thank you Mr. Chairman and members for your kind invitation to participate this morning and the Committee staff (Bob and David) for their hard work on researching the details on how the Department of Correction reimburses the Local Jails for the housing of State Inmates. Certainly, we know how important this particular issue is and I look forward to explaining in greater detail the role of the Department and, hopefully, providing some of the reasons why and how payments are made the way they are currently.

To open the discussion this morning, we thought it would helpful to discuss some of the numbers related to Population and Costs:

- TDOC's State Prosecutions Account, which is where we are budgeted to pay the Local Jails, is \$173M for FY17 and accounts for roughly 18% of our total budget.
 - Those funds are specifically allocated to pay for State Inmates housed at the local level as either **Locally Sentenced Offenders or the Jail Backup population**
 - **A Locally Sentenced Offender** is defined as a convicted felon ordered by the Judge to serve their sentence at the local level – generally, a 1-3 year sentence or 1-6 years in Shelby or Davidson counties.
 - **Jail Backup** is defined as a convicted felon sentenced to TDOC custody but awaiting transfer to a TDOC institution.
 - **Excluded populations** from State Reimbursement are Pre-Trial Detainees, Inmates held for Federal or City Ordinance charges and Convicted Misdemeanants. **NOTE: This excluded group on average accounts for 2/3rds of the total Jail Population and pre-trial detainees account for 50.1% alone (14,410 of the 28,744 in FY16)**

- In addition to payments for housing felons, the State Prosecutions Account also funds contract medical reimbursements for those offenders and over \$4.1M in Miscellaneous costs at the local level including Jury Sequestration, Offender Transport and Emergency Hospitalization just to name a few.
- Since this population **peaked in July 2012 at 10,478**, the Total Felon Population in the County Jails has decreased by 18% or 1,835 (from 10,478 to 8,643 currently).
- TDOC has added net capacity of more than 2,500 beds since **2012**:
 - The **Locally Sentenced population dropped 10%** or 982 and the **Jail Backup is down 17%** or 899
 - Keep in mind that the **Rate of Backfill** is a large part of the equation – to illustrate, Site 1 at the West Tennessee State Prison recently changed missions from a Male facility to a Female Facility – The Female Backup population in the County Jails was 873 on August 1st...From August 1st through October 31st, we moved 374 Females to the new WTRC...however, on October 31st, the Female Backup population was 728 – meaning that moving 374 out of the jails and into a state bed **only reduced the population in the Jails by 145 beds. The other 229 were immediately “Backfilled”**.
 - This **“Backfill Effect”** is a significant contributor to the problem – perhaps the most significant. It also illustrates that simply adding State Prison Capacity is not the way to manage or solve overcrowding concerns.
 - Reforms like the ones included in the Public Safety Act represent the best way to safely and effectively manage the growth of the Offender Population. Specifically, the PSA of 2016 does many things but the one with the most impact on this issue is the Graduated Sanctions & Incentives piece – which targets the Pre-trial detainees issue that I know many of you are concerned about.
 - Historically, 40% of all TDOC’s new admissions to Prison have been the result of a Technical Violation or some non-compliant behavior by offenders on Probation, Parole or Community Corrections.
 - § Last Fiscal Year, this group made up 39.6% of New Admissions – 5,083 of 12,834. In FY15, this group accounted for 40.3% of New Admissions – 5,081 of 12,588.
 - § The PSA creates a series of Graduated Sanctions giving the supervising officer a way to address non-compliant behavior of these offenders

without automatically revoking them and sending them to your local jails waiting to appear before the judge.

- § This change is significant and is projected to reduce this pre-trial population dramatically over the next 4 years – creating savings at the Local and State levels.
- With regard to the reimbursement rates, it is currently appropriated at a maximum of \$37 per inmate per day.
 - **There are 3 notable exceptions:** Locally Sentenced inmates in Davidson and Shelby Counties are, by virtue of their contracts with the Department, reimbursed at Actual Cost (not to exceed \$73 per day in Shelby County) and the Johnson City Jail which receives \$38.75 per day for housing Female Offenders
 - That amount is determined by the Appropriations Act each year (Last year, Section 10, Item 15)
 - The rate has increased twice since 2005 – from \$32 to \$35 in 2006 and again from \$35 to \$37 in 2013
 - In general, every \$1 increase in the rate will cost around \$2.7M
 - With regard to the Pre-trial Population, for the purpose of this meeting, we did an estimate of what the cost to the state would be to add that group to the reimbursement group. In FY16, there were **13,146 admissions with an average pretrial jail credit of 136 day**, so $13,146 * 136 \text{ days} * \49.36 (the average FY16 cost per day) = **\$88,249,000**. In other words, that represents the State's cost to pay for the pretrial days of felons convicted in FY16

Among the frequently asked questions that we receive is regarding why the Department pays higher rates for our offenders housed in the 4 Private Prisons (operated by CoreCivic – formerly CCA) than it does for inmates housed in the Local Jails. The answer is that those facilities are contractually required to follow and comply with all TDOC policies and procedures, including ACA Standards.

Specific examples include 24 hour full time Medical / Dental / Mental Health services, the same levels of Offender Programming (Educational, Vocational, Substance Abuse, Victims Impact, Jobs Training and Religious / Social Services). All of those requirements carry a significant financial responsibility that is not required of the County Jails.

Even with those added requirements, the **average cost per day** for the **privately operated facilities for FY16 was \$56.61 per inmate per day, 24.3% less than the time building State Operated facilities (\$74.80) and just 14.7% higher than the average for the County Jails (\$49.36).**

I'm certain there are more questions that we've not addressed and again, we appreciate the opportunity to participate in the panel this morning and look forward to assisting the Committee and the Staff on this important topic.

Loophole Discussion – Private Prisons

Obviously, I was not privy to how the decisions in the mid 1990's were made for the Hardeman and Whiteville contracts and not able to explain those to you. With regard to the Trousdale County facility however, I can tell you that the need was driven by our projected capacity demands and I suspect that was behind the earlier decisions as well.

All 3 of the contracts were, however, approved by the Attorney General as to "Form and Legality" and all 3 are with the Local / County Governments.

I do understand the question and can appreciate the concern about how the contracts were created and entered in to; however, there are considerable benefits to the State related to adding prison capacity in this manner.

The most significant of which is **Time and Capital Expense**. Using the Trousdale Facility as an example, the facility was built in less than 18 months and carried no cost to the State for the construction. To compare with the last facility the State built – the Bledsoe County expansion – construction costs at the end of that project to add 1,000 state prison beds were in excess of \$230M in state funds and took nearly 5 years to complete. The Trousdale County facility added 2,552 beds and did not cost the state a dime, until the first inmate arrived in January of 2016.

A further benefit is that since the state has no investment in the capital expense for the facility, if the efforts to reduce prison population (like those in the Public Safety Act of 2016) work as expected, the State can 'walk away' from these contracts or reduce the contractual number of offenders quite easily.

Medical Reimbursement

Emergency Hospitalization

TCA 41-4-115 authorizes the reimbursement of emergency hospitalization expenses for state inmates housed in county jails. TDOC's criteria for emergency hospitalization is there must be a threat of loss of life or limb, the inmate is taken to the emergency room and admitted from there to the hospital for over a twenty-four (24) hour stay. Being placed in an observation room for twenty-three (23) hours does not qualify. In addition to the medical reimbursement, TDOC will reimburse the jails for the correctional officer's salary while he/she is required to be at the hospital with the inmate. Per the TCA statute, the emergency hospitalization must be billed as court cost which requires the jail to submit these claims to the Criminal Court Clerk's office. The Criminal Court Clerk's Office will submit them to TDOC Fiscal as they would other court costs. Correctional Officer Salary reimbursement must be submitted along with the emergency hospitalization request, but it is not required to be paid as court costs

TDOC requires a Certification and Petition form to be completed by the jail and submitted to TDOC Fiscal along with a Hospital Discharge Summary and copies of the invoices.

TDOC will only reimburse the county for the emergency hospitalization and will not reimburse the medical provider. It is the county's responsibility to pay the medical service provider.

Mileage, ambulance, or emergency air transport service are allowable expenses.

Contract Medical

Twenty-seven (27) of the jail contracts have a medical clause. Davidson County Detention Facility has a medical clause that allows for reimbursement of emergency care when it doesn't fit the TDOC criteria for emergency hospitalization, HIV, dialysis and oncology expenses. All other twenty-six (26) contracts require the county to pay for the first \$1,000 of medical expenses per inmate per fiscal year and TDOC will reimburse the jail for any expense above that. These claims are submitted directly to the TDOC Judicial Cost Accountant. Once the Judicial Cost Accountant has reviewed and approved the claims, the expenses will be posted to the Payment Summary Sheet and will be added to the next board bill payment.

A 2010 study by the National Association of County's compared State Reimbursement of County Jails and Tennessee's rate was comparable to other states.

At the time the survey was done, the 8 states around Tennessee paid:

Alabama - \$3 per day

Arkansas - \$28 per day

Georgia - \$22 per day (theirs was increased to \$28 in 2013)

Florida - Male = \$32 per day; Females = \$42.45 per day

Kentucky - \$31.34 per day

North Carolina - \$40 per day

Missouri - \$37.50 per day

Ohio - \$0

The Southern Legislative Conference – Council of State Governments 2015 Member States survey reflects much the same:

**TABLE 8
UTILIZATION OF LOCAL JAILS
(as of July 1, 2015)**

STATE		Total Local Jail Population	Max. Design Capacity	Percent of Capacity	No. of State Inmates	STATE PAYMENT PER	
						Inmate Day	Inmate Year
ALABAMA	(a)	N/A	N/A	N/A	1,676	\$1.75	\$639
ARKANSAS	(b)	N/A	N/A	N/A	2,970	\$20.00	\$7,300
FLORIDA	(c)	53,892	N/A	N/A	0	N/A	N/A
GEORGIA		N/A	N/A	N/A	0	N/A	N/A
KENTUCKY	(d)	N/A	N/A	N/A	8,731	\$31.34	\$11,439
LOUISIANA	(e)	35,895	45,511	78.9%	19,044	\$24.39	\$8,902
MISSISSIPPI	(f)	N/A	2,006	N/A	1,208	\$20.00	\$7,300
MISSOURI		N/A	N/A	N/A	0	N/A	N/A
NORTH CAROLINA		N/A	N/A	N/A	0	N/A	N/A
OKLAHOMA	(g)	N/A	N/A	N/A	577	\$41.20	\$15,038
SOUTH CAROLINA		N/A	N/A	N/A	310	\$0	\$0
TENNESSEE	(h)	27,723	32,943	84.2%	9,584	\$49.24	\$17,973
TEXAS		66,278	95,084	69.7%	0	N/A	N/A
VIRGINIA	(i)	27,336	N/A	N/A	8,362	\$12.00	\$4,380
WEST VIRGINIA	(j)	N/A	N/A	N/A	1,129	\$48.25	\$17,611
Total		211,124	175,544		53,591		
Average	(k)					\$24.82	\$9,058

(a) Alabama's State Finance Department (not AL DOC) pays the flat rate reimbursement set by the legislature.

(b) Arkansas has a flat rate of \$28 per day for county jail backup and \$12 per day for contracted jail beds. The \$20 per day rate is the average of both.

(c) Florida DOC does not house state prisoners in local jails.

(d) Kentucky's flat rate is based on state policy and legislation.

(e) Louisiana reimburses all facilities at a flat rate of \$24.39 per day except for Work Release Facilities which are reimbursed at \$14.39 for non-contract programs and \$10.25 for contract programs, and one facility that earns an additional \$7 per inmate per day through an approved cooperative endeavor to provide and capitalize additional beds for the state. All parishes are also eligible to have approved extraordinary medical expenses reimbursed. Orleans Parish is reimbursed an additional per diem of \$2 for medical expenses for state inmates, \$7 for all inmates served by their mental health unit and \$3 per day for the Intensive Incarceration and Parole Supervision Program.

(f) Mississippi's state legislature and federal courts determine its capacity of approved jails to include the allotment of beds for state inmates.

(g) Oklahoma has 343 inmates waiting admission into custody that are under its jurisdiction.

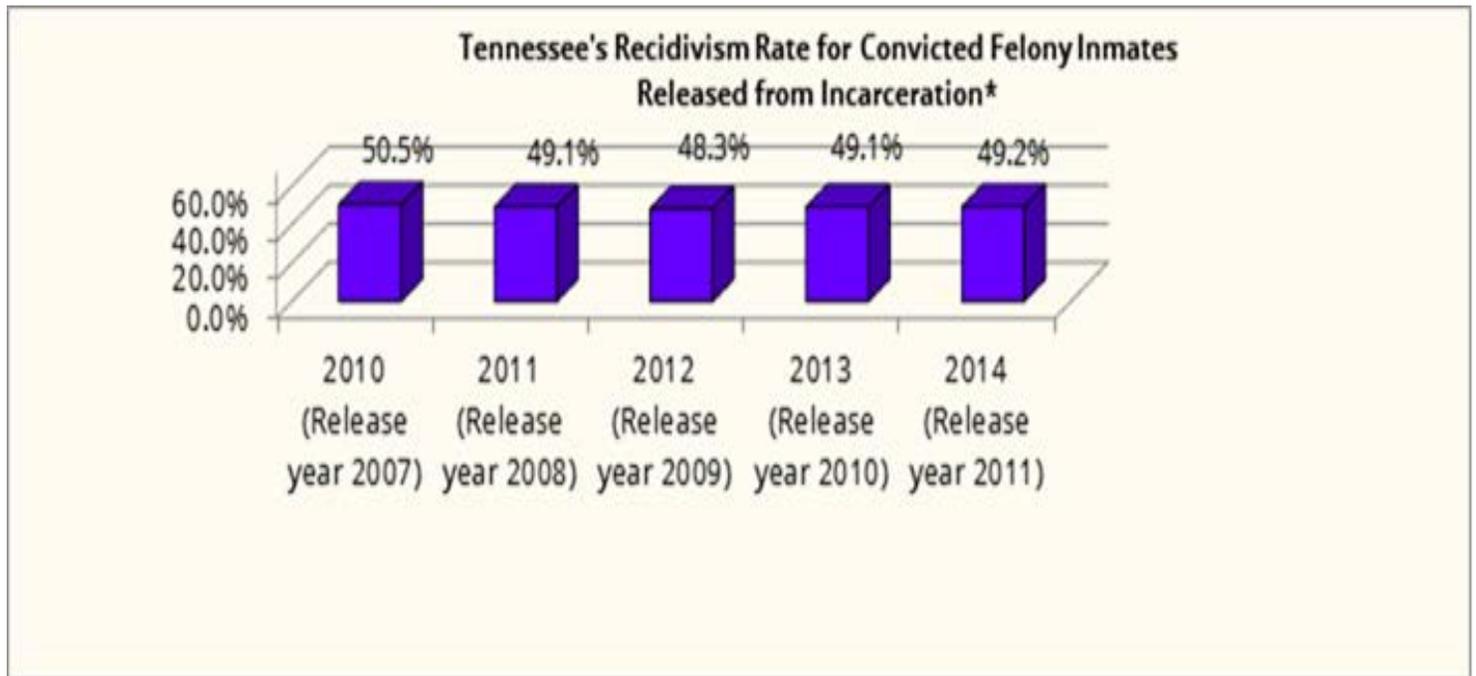
(h) Tennessee has four types of reimbursements: contract fixed rate, contract reasonable allowable, fixed rate and resolution allowable.

(i) Virginia's Compensation Board provides payment to any locality that had an average daily jail population under ten in FY 95 an inmate per diem rate of \$22 per day for local responsible inmates and \$28 per day for state responsible inmates held in these jails in lieu of personal service costs for correctional officers.

(j) West Virginia's flat rate is based on West Virginia's Jail Authority statute and rule.

(k) The reported average reflects only the nine states reporting state payments by inmate day and years. Note: The July 1, 2015 computations were based on a 365 day year.

Recidivism Rates for offenders released from the County Jails are significantly higher (52.9%) compared to State and privately operated facilities (42%)



Private Prison Contract Act

The Private Prison Contract Act provides that prior to renewal of the SCCF contract; a comparative evaluation must be completed.

The quality of services provided by the contractor must be compared to the quality of the services provided by the state at comparable facilities (NECX and NWCX, in this case).

The contract may only be renewed if the contractor is providing essentially the same quality of services as the State at a cost of five percent (5%) lower than the State, or if the contractor is providing services superior in quality to those provided by the State, at essentially the same cost. The cost evaluation is created by TDOC and reviewed by the Comptroller's Office

Comparative Evaluations

The comparative evaluations consist of a performance and fiscal comparison to similar facilities which are NECX and NWCX.

The performance comparison is conducted using TDOC's annual inspection instruments and approximately 12 months of evaluation data.

These instruments are updated annually to reflect current law, policy and regulations. The inspection process is comprehensive and is usually completed over the course of a week. The audit instrument consists of about 700 items.

South Central Correctional Facility received a score of 96.5%, Northeast Correctional Complex received a score of 97.6%, and Northwest Correctional Complex received a score of 97.3%.

All three scored well and SCCF is within about 1% of the compared facilities.

The fiscal comparison is conducted by calculating a blended rate of cost per day for the two state facilities and comparing it to the cost per day for SCCF.

The blended state Cost per Inmate per day rate is \$55.36 and the SCCF rate is \$51.05.

This translates to SCCF's cost being 8.4% lower than the state blended rate.
