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BIENNIAL REPORT

THE TEXAS COUNCIL ON OFFENDERS WITH MENTAL IMPAIRMENTS

JANUARY 15, 1995

THE

BIENNIAL REPORT

OF THE

TEXAS COUNCIL ON OFFENDERS WITH MENTAL IMPAIRMENTS

Submitted to the Governor, Lieutenant Governor,
Speaker of the House and the 74th Texas Legislature

January 15, 1995

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TEXAS COUNCIL ON OFFENDERS WITH MENTAL IMPAIRMENTS

MEMBERSHIP

GOVERNOR APPOINTMENTS

- Carol Oeller, Chair
- Michael R. Arambula, M.D.
- C. Anne Bishop, Ph.D.
- Dollie Brathwaite, R.N.
- Betty Hardwick
- Belinda Hill
- Judge Mario Ramirez
- Jeffrey C. Siegel, Ph.D.
- Judge Jodie E. Stavinoha

STATE AGENCIES/ORGANIZATIONS

- Texas Department of Criminal Justice
  - Institutional Division
  - Pardons & Paroles Division
  - Community Justice Assistance Division
- Texas Department of Mental Health and Mental Retardation
- Texas Juvenile Probation Commission
- Texas Youth Commission
- Texas Rehabilitation Commission
- Central Education Agency
- Criminal Justice Policy Council
- Mental Health Association in Texas
- Texas Commission on Alcohol and Drug Abuse
- Texas Commission on Law Enforcement Officer Standards and Education
- Texas Council of Community Mental Health and Mental Retardation Centers, Inc.
- Texas Commission on Jail Standards
- Texas Planning Council for Developmental Disabilities
- Texas Association for Retarded Citizens
- Texas Alliance for the Mentally Ill
- Parent Association for the Retarded Citizens of Texas, Inc.
- Texas Department of Human Services
- Texas Department on Aging

EXECUTIVE SUMMARY

During this biennium, the Texas Council on Offenders with Mental Impairments has experienced unprecedented progress in its response to issues affecting offenders with special needs. Special needs includes offenders who are mentally ill, mentally retarded, elderly, physically handicapped or terminally ill. This progress is best demonstrated by the following accomplishments that occurred during FY94 and FY95:

- Coordinated a multi-agency response to and report on the development of a Continuity of Care System for offenders with special needs;
- Collaborated with represented Council agencies on a position paper for juvenile offenders with mental impairments;
- Expanded program services for offenders with special needs to include all major metropolitan areas in Texas;
- Implemented a pre-release referral and aftercare program for offenders with special needs being released from incarceration from county or state jails, prison or youth facilities;
- Conducted an evaluation of programs serving parolees with mental illness or mental retardation;
- Coordinated the development of a Memorandum of Understanding between TDCJ, TDMHMR and other health and human service agencies; and,
- Received a national award for innovative programming for offenders with mental illnesses.

Despite this progress, continued work is needed to develop a comprehensive service delivery response to adult offenders with special needs. In an attempt to establish such a system of care, the Council has proposed a number of recommendations, that if implemented, would facilitate the development of continuum of care for adult offenders with special needs. A few of the more noteworthy recommendations include the following:

- **To facilitate the timely exchange of client information, changes in statutes or agency policies must be a priority;**
- **To ensure linkages between criminal justice and health and human service agencies, a case management system must be developed that is available on a statewide basis;**

- **To promote better understanding of various agencies' roles and responsibilities, mandatory cross-training of personnel should be required;**

- **To maximize existing resources, criminal justice and health and human service agencies should designate staff within their respective agencies that respond to issues involving offenders with special needs;**

- **To improve early identification, screening standards for jails <u>must</u> be revised; and,**

- **To minimize inappropriate incarcerations in jails, specialized mental health deputy units should be mandatory.**

In respect to juvenile offenders with mental impairments, the Council in collaboration with its represented agency and association members conducted an extensive study of the current status of juvenile offenders with mental impairments involved in local and state juvenile justice systems. The examination revealed a system of care that is fragmented, inconsistent and uncoordinated. As a result, the juvenile offender with mental impairments appears to be falling through the proverbial service delivery cracks right into the juvenile justice system, with little or no recognition of the special services required by such an offender.

In order to bridge the gaps in the existing system, the Council has proposed several recommendations to change current administrative, policy and programmatic practices. A few of the recommendations include:

- **Standardized diagnostic and assessment procedures must be developed and utilized by all relevant educational, health & human service and juvenile justice agencies.**

- **State and federal statutes must be amended to allow for the timely exchange of client information.**

- **Community Resource Coordination Groups should be empowered to serve as the decision makers, providing an interdisciplinary and interagency recommendation for any intervention involving a juvenile offender with mental impairments.**

- **An intensive case management system must be developed that is continuous throughout the juvenile justice continuum.**

- **Examine expanding the role of the Children's Mental Health Plan as a funding mechanism for services required by juvenile offenders with mental retardation.**

The recommendations set forth in this paper establish a framework for establishing a continuity of care system for juvenile or adult offenders with special needs. This framework is built on the premise that current administrative, policy, programmatic and statutory provisions must be revised to accommodate such a system of care.

While some recommendations can be implemented within a short time frame, others will require long-term planning and development. Furthermore, several recommendations can be implemented without fiscal implications, whereas others require additional funding and resources.

The implementation of one or all of the recommendations, however, will require the commitment of the state and local governments. The state must establish statutory or policy mechanisms for such issues as the exchange of information or standardized screening for jails. Local governments must design systems of care that are responsive to their communities' needs and available resources. Collectively, they must strive to improve the overall communication and coordination between local and state criminal justice and health and human service agencies.

I.
OVERVIEW OF THE COUNCIL

The Texas Council on Offenders with Mental Impairments was legislatively created by the 70th Legislature to address the multifaceted problems presented by juveniles and adults with mental illness, mental retardation and developmental disabilities. House Bill 93, 72nd Legislature, expanded the Council's role to include offenders with serious medical or physical disabilities, or who are elderly or involved in the juvenile justice or adult criminal justice systems. The legislative directives to the Council include:

(1) determine the status of offenders with special needs in the state criminal justice system;

(2) identify needed services for offenders with special needs;

(3) develop a plan for meeting the treatment, rehabilitation, and educational needs of offenders with special needs, including a case management system and the development of community-based alternatives to incarceration;

(4) cooperate in coordinating procedures of represented agencies for the smooth and orderly provision of services for offenders with special needs;

(5) evaluate various in-state and out-of-state programs for offenders with special needs and recommend to the directors of current state programs methods of improving those programs;

(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, social service and treatment providers, and the general public;

(7) distribute money appropriated by the legislature to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of programs for offenders with special needs;

(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the council to perform its duties;

(9) develop and implement pilot projects to demonstrate a cooperative program that identifies, evaluates, and manages outside of incarceration offenders with special needs and who do not have an instant offense that is an offense described in Section 3g, Article 42.12, Code of Criminal Procedure;

(10) develop and implement a special needs parole program for inmates who are elderly, physically handicapped, terminally ill, mentally ill and mentally retarded as established in HB93, 72nd Legislature; and,

(11) monitor and coordinate the establishment of a continuity of care system for offenders with special needs.

COUNCIL COMPOSITION

The Council, as outlined in statute, is comprised of agencies and organizations with an interest in offenders with special needs. These include:

- Institutional Division of the Texas Department of Criminal Justice
- Texas Department of Mental Health and Mental Retardation
- Pardons and Paroles Division of the Texas Department of Criminal Justice
- Community Justice Assistance Division of the Texas Department of Criminal Justice
- Texas Juvenile Probation Commission
- Texas Rehabilitation Commission
- Central Education Agency
- Criminal Justice Policy Council
- Mental Health Association in Texas
- Texas Commission on Alcohol and Drug Abuse
- Commission on Law Enforcement Officer Standards and Education
- Texas Council of Community Mental Health and Mental Retardation Centers, Inc.
- Commission on Jail Standards
- Texas Planning Council for Developmental Disabilities
- Texas Association for Retarded Citizens
- Texas Alliance for the Mentally Ill
- Parent Association for the Retarded of Texas, Inc.
- Texas Department of Human Services
- Texas Department on Aging

In addition, the Governor appoints nine (9) at-large members who serve staggered six-year terms.

The Council's membership includes multi-dimensional expertise in the care and treatment of offenders with special needs and it is an unprecedented opportunity for collaboration between the criminal justice and health and human service systems.

COUNCIL ORGANIZATION

The Council has adopted the following internal committee structure:

- Executive Committee
- Program/Research Committee
- Planning/Legislative Committee
- Finance Committee

Committees have primary responsibility for developing the Council's legislative/programmatic and policy recommendations pertaining to the states response to offenders with special needs.

II. OVERVIEW OF COUNCIL PROGRAMS

As noted previously in this report, the Council has significantly expanded program services during this biennium. During this reporting period, the Council continued and/or implemented the following program initiatives for offenders with special needs:

(1) Development of community based diversion programs for offenders with mental illness/mental retardation in Bexar, Dallas, Tarrant, El Paso, Nueces and Jefferson Counties and expansion of existing programs located in Travis and Harris Counties.

(2) Expanded the special needs parole program for elderly, terminally ill or physically handicapped inmates in county jails in the above referenced locations.

(3) Establishment of pre-release planning and referral services for inmates with special needs were established in the prison system, major metropolitan county jails, and the Ellis Substance Abuse Felony Punishment Facility (SAFPF).

This expanded service delivery capability is attributed to several factors, but primarily as a result of aggressive efforts to utilize federal entitlement programs. By maximizing federal funds, overall state contributions for contract services has been decreased. This in turn has allowed the Council to re-direct these state funds to other locations within the state. Examples of increased federal funding strategies include:

(1) Contract agencies are required to initiate SSI applications for offenders with special needs during their incarceration. Once released, SSI and medicaid benefits are started immediately without any delays.

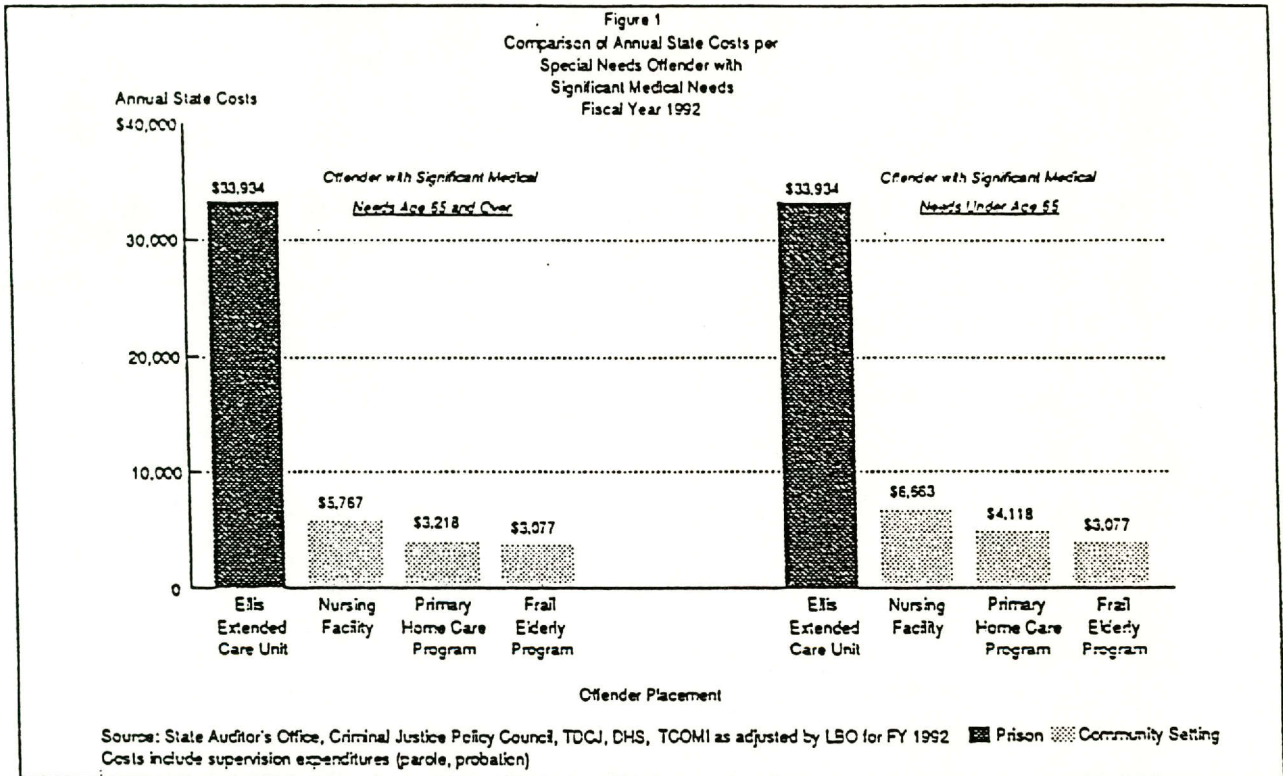
(2) Contract agencies reported that 60-70% of offenders with special needs have been certified and made eligible for SSI. As a result, these federal funds are used to offset state costs normally used to pay for residential, transportation and other daily living costs.

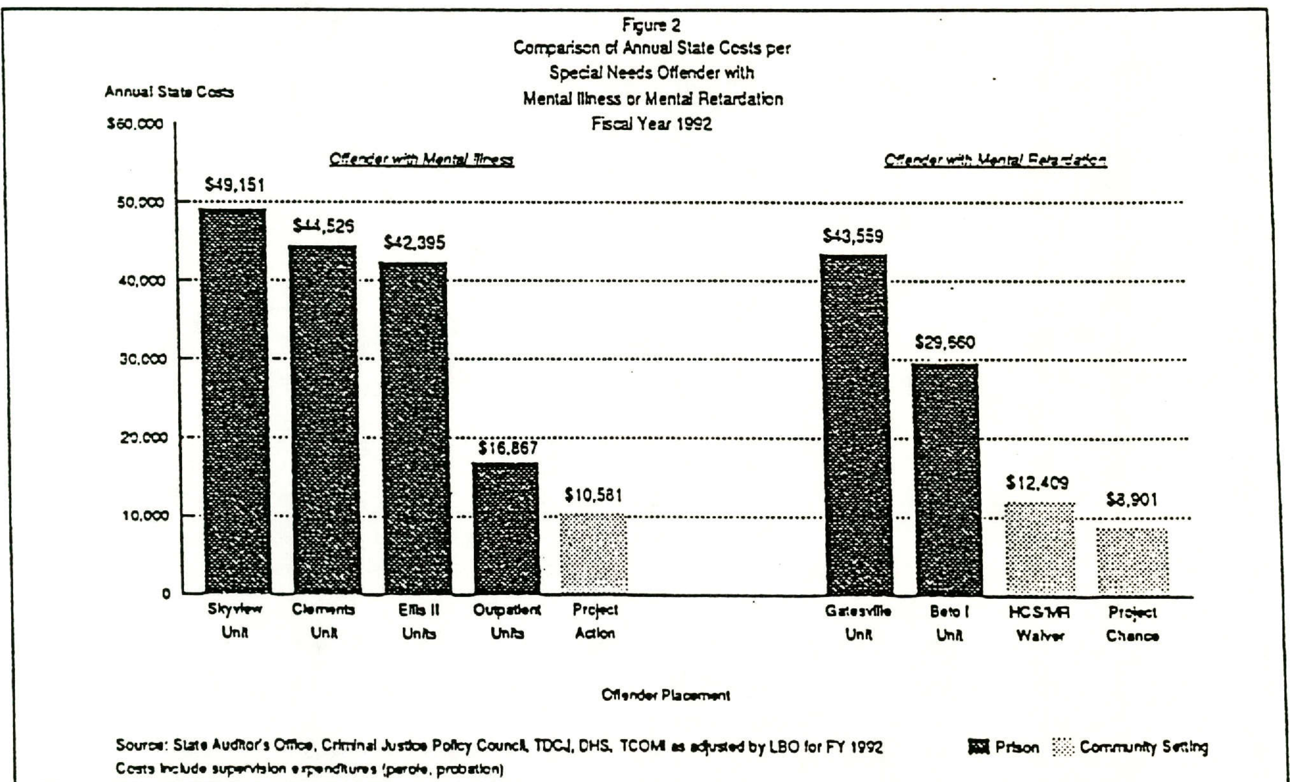
(3) Services such as case management, in-patient psychiatric, or hospice, to name a few, are reimbursable through Medicaid at 64% to 100% of the service cost.

(4) Screening and placement of inmates with terminal or serious illnesses out of county jails or state prisons in community based treatment services has significantly reduced the county and states overall health care costs that would have been incurred if the inmate had remained incarcerated.

The cost effectiveness of community based alternatives to incarceration for offenders with special needs is further demonstrated by a 1992 study conducted by the Legislative Budget Board (LBB). Based upon their findings, the LBB reported that the in-prison costs for inmates with special needs was in some cases almost five (5) times that of diversion programs operated by the Council.

The following graphs provide a comparison of inmates with special needs costs in prison compared to community alternatives.





While cost effectiveness is a critical consideration of a programs viability, the programs impact on recidivism must also be evaluated. The positive impact of the Council's community based treatment programs on recidivism rates is demonstrated by a 1993 study conducted by the Criminal Justice Policy Council (CJPC). In the CJPC's study,the arrest rates of adult offenders with mental impairments was evaluated on a twelve (12) month pre and post program involvement. The results of this study showed a **sixty-three percent (63%) reduction** in arrest rates after twelve (12) months of participation in the Council's programs. The impact of community based treatment programs on recidivism is further reinforced by a study conducted by TDCJ.

The TDCJ - Austin Budget Office conducted a study of the impact on recidivism of state-funded pilot programs for mentally impaired parolees. The Texas Council on Offenders with Mental Impairments funds Project Chance for mentally retarded (MR) offenders in Travis County and Project Action for mentally ill (MI) offenders in Harris County, while TDCJ-PPD funds Project Challenge for mentally retarded offenders in Dallas County and Project RAPP for mentally ill offenders in Tarrant County. Mentally impaired offenders in these and other Texas counties may also be supervised on specialized caseloads for mentally impaired offenders.

The TDCJ study determined recidivism rates (as measured by revocation of parole) of mentally impaired offenders supervised in counties where pilot-program services were available. These recidivism rates were compared to the recidivism rates of mentally impaired offenders in counties where state funded pilot programs were not available. Cases were grouped according to the fiscal year in which placement on a mentally impaired specialized caseload occurred and the cases were followed through fiscal year 1994. The first group of mentally retarded offenders followed were placed on a specialized caseload in FY 1989 and followed for five years through Fiscal Year 1994. In FY 1989 specialized caseloads for mentally retarded offenders were available in Harris, Bexar, Tarrant, and Travis counties. Project Chance, in Travis County, was the only county where a state-funded pilot program was available to provide services to mentally impaired offenders. In FY 1989, 38 mentally retarded offenders were placed on a caseload for mentally retarded offenders in Travis county. In a five year follow-up, **52.6%** (20/38) of those cases were revoked. In the same fiscal year (FY 1989), 111 mentally retarded offenders were placed on specialized caseloads in Harris, Bexar, and Tarrant counties, where no state-funded pilot program for mentally retarded offenders was available. After 5 years, **62.2%** of mentally retarded offenders placed in counties without a state funded program were revoked. In FY90, **45%** (9/20) of MR cases placed in Travis County were revoked in a four year follow-up compared to **63%** (66/105) MR cases placed in counties where state-funded programs for MR offenders were not available.

Utilizing this same methodology, mentally retarded offenders placed in FY91, FY92, and FY93 were followed, as well as mentally ill offenders placed in FY91 (the first year Project Action, for mentally ill offenders, was implemented), FY92 and FY93. **In almost every comparison (17 out of 24), offenders had lower recidivism rates where state funded pilot programs were available, than similar offenders in counties where state funded services were not available.** The study notes that differences in the geographic locations might provide an alternative explanation for differences in recidivism rates. However, the data support the influence of program availability rather than geographic location in impacting

recidivism rates. For instance, mentally retarded offenders in Dallas county, where Project Challenge was available had lower revocation rates for MR offenders than Harris county, where no MR project was available. Conversely, however, MI offenders in Harris county, where Project Action is available, had lower revocation rates that MI offenders in Dallas where no state funded program for MI offenders was available.

The study notes the "...primary limitation of the present study is that it examines the impact on recidivism of making therapeutic and support services available to mentally impaired releasees on specialized MR/MI caseloads. Determining the relative effectiveness of the different types of treatment programs and support services the mentally impaired releasees in this study may have actually participated in or received is beyond the scope of this study.."

While it is not possible to prove that the availability of the services resulted in lower revocation rates for mentally impaired offenders, the study is very supportive of this conclusion. The study concludes that the results demonstrate the effectiveness of these pilot programs in reducing recidivism among mentally impaired offenders on parole or mandatory supervision.

III. CONTINUITY OF CARE FOR OFFENDERS WITH SPECIAL NEEDS

Senate Bill 252, passed in the 73rd Legislative Session, requires the establishment of a continuity of care system for offenders with special needs. The legislation describes adult offenders with special needs as meeting the following categories: mental illness, mental retardation, elderly, terminally ill, and physically handicapped.

The legislation also directs the Texas Department of Criminal Justice and a number of state and local health and human service agencies to enter into memoranda of understanding for the purpose of establishing agencies' responsibilities toward the development of a continuity of care system. The memoranda of understanding are to establish methods for:

(1) identifying offenders with special needs in the criminal justice system;

(2) developing interagency rules, policies, and procedures for the coordination of care and exchange of information on offenders with special needs by local and state criminal justice and health and human service agencies; and

(3) identifying the services needed by offenders with special needs to re-enter the community successfully.

To ensure development and implementation of the memoranda of understanding, the Legislature directed the Texas Council on Offenders with Mental Impairments (the Council) to coordinate and monitor the status of these activities. The Council is further charged to report back to the Legislature on the establishment of a continuity of care system, including changes in rules, policies and procedures, and any recommendations for legislation.

In order to design a continuity of care system that is responsive at every stage of the criminal justice continuum from point of arrest, intake/booking, pre-trial release or detention in local jails, sentencing, community supervision, incarceration in state jails or prisons, to release on parole, broad-based input was critical. The Council, in cooperation with a number of agencies and associations, conducted a number of information gathering and sharing activities. Those activities include the following:

- Co-sponsored a statewide continuity of care conference in June 1993 for local and state criminal justice and health and human service agencies.

- Conducted a statewide informational survey to obtain input on programmatic policy or legislative recommendations from local service providers.

- Co-hosted a work-session of invited agency or association heads to obtain administrative input and support on the development of a continuity of care system.

Despite the diversity of the professionals and organizations who participated in these above-referenced activities, common themes emerged that guided the Council's discussion and the ultimate recommendations found within this report. Those common themes included the following:

- The statutory or procedural rules for the exchange of client information continues to be one of, if not the most, significant and unnecessary barriers to a continuity of care system.
- Lack of clarity among criminal justice and health and human service agencies, regarding: overall roles, responsibilities, and eligibility criteria.
- There is inconsistent coordination and communication among criminal justice and health and human service agencies, regarding: services for individual clients.
- There exists no standardized or systematic method for diagnosis or assessment of offenders with special needs.
- Programs that appear to be innovative and effective include flexible funding and eligibility guidelines, immediate accessibility to an array of treatment services, and are individualized.
- A system whereby a single accountable individual serves as a case manager throughout each stage of the offenders' involvement in the criminal justice system is lacking.

Taking these and other themes into account, the Texas Council on Offenders with Mental Impairments proposes the following recommendations for the development of a comprehensive and responsive continuity of care system for offenders with special needs.

IDENTIFICATION/ASSESSMENT

A critical component of the proposed continuity of care system involves accurate and timely identification of offenders with special needs. With the exception of the State's prison system, there is no systematic mechanism for screening and assessing offenders with special needs at each phase of their involvement in the criminal justice system. As a result, an offender's medical or mental condition may remain undiagnosed or untreated up until their incarceration within the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID).

Another important issue pertaining to identification and assessment is early intervention. Early identification is fundamental to the **appropriate** diversion of some persons with special needs from further progression in the criminal justice system. This is particularly true for persons with mental illnesses whose arrest and incarceration rates are significantly higher than other offender populations (Teplin 1984, 1985). Finally, accurate identification is critical in establishing statewide and local prevalence and incidence rates. Without reliable data, it is difficult, if not impossible, to design a continuity of care system that is adequate in scope and services.

These and other factors have resulted in the following recommendations on identification and assessment:

- **The Commission on Jail Standards must develop mental health screening standards that are more comprehensive and reliable.**

- **The Council should actively examine screening and assessment instruments utilized by in-state or out-of-state jails that have proven to be effective in identifying offenders with special needs.**

- **County jails and MH/MR authorities should develop procedures for screening MI/MR inmates. These procedures should include:**

    - **County jails should provide inmate rosters to the local MH/MR authorities for cross-referencing inmates against a client database; and**

    - **Providing space within the jail (eg. at booking, intake, pretrial) for MH/MR, or other service providers to conduct screening and assessment for inmates suspected of having a mental impairment or significant medical conditions.**

- **The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) should revise training standards for basic law enforcement and re-certification as it relates to identifying persons with mental illness and other mental disabilities. Curriculum and standards should be revised to address the following:**

    - **Basic law enforcement training should, at a minimum, include eight (8) hours of training, including classroom and practical experience on identifying and dealing with persons with mental illness and other disabilities.**

    - **The core re-certification training for law enforcement personnel should be expanded to include mandatory training on mental health issues.**

- **Counties should be required to have specialized mental health deputy programs (see page 17 for description.) Counties with sparse populations should collaborate with other counties to develop specialized mental health deputies within a regional response area.**

- **Basic corrections officer training should, at a minimum, include four (4) hours of classroom training on identifying and dealing with persons with mental illness and other disabilities.**

- **Local law enforcement and MH/MR staff should establish procedures that would allow MH/MR staff to accompany law enforcement personnel on crisis calls involving persons with mental illness or mental retardation. These procedures should allow for, at a minimum, coverage during peak incident periods such as week-ends.**

- **TDMH/MR should clarify in their contracts with the local authorities and/or centers that state funding can include screening and assessment within the local jails. This clarification should be so noted in Commissioner Rules and the proposed M.O.U. between TDCJ.**

- **For example, institutions of Higher Education should be encouraged to collaborate with the Council in conducting a statewide needs assessment of offenders with special needs. The School of Social Work at the University of Texas at Austin has demonstrated significant support and cooperation in the Council's examination of continuity of care issues, and should continue to be an active participant.**

EXCHANGE OF INFORMATION

State and federal statutes on confidentiality were intended to safeguard the privacy and rights of the individual. It is doubtful that the intent of these laws was to exclude persons from receiving timely interventions or treatment if they were arrested or incarcerated. Yet that is exactly what has occurred.

The inability to exchange client information, whether at time of arrest or any other point in the criminal justice system, is perhaps the single most significant barrier to establishing a continuity of care system. As the offender with special needs progresses through the system, information referencing his/her medical or psychiatric status should be allowed to progress without interruption. Not only would this improve the treatment of the offender in the criminal justice system, it could potentially result in significant cost savings. Instead of conducting a new and different assessment at each point of the offender's travel through the criminal justice system, the most current assessment could be accessed by the appropriate entities.

The appropriate and timely exchange of information of offenders with special needs is a fundamental component of a continuity of care system. The Council proposes the following statutory, procedural, or regulatory recommendations:

- **Develop a standardized release of information form that can be utilized by state and local criminal justice and health & human service agencies.**

- **Include the Texas Department of Criminal Justice in current and future initiatives undertaken by the Health & Human Service Commission (HHSC) for sharing client information among the agencies under the HHSC umbrella.**

- **Require agencies noted in SB 252 to direct their respective staff attorneys to examine current statutory provisions that require changes in order to facilitate exchange of information including a review of the Government Code.**

- **Obtain an Attorney General's opinion regarding: the legality of interagency agreements or memorandums of understanding among state agencies that stipulate and allow for the exchange of client information.**

COORDINATION/COMMUNICATION

In the Council's review and discussion on a continuity of care system for offenders with special needs, another important issue emerged. No one (1) single state or local agency has the sole responsibility or resources for addressing the needs of each offender with special needs. The multifaceted needs presented by this offender population requires and demands a multi-agency response. This in turn requires significant coordination and communication among the relevant state and local service delivery systems.

One particular issue impacting the effective coordination and communication among systems is the different missions and roles of each agency. The Criminal Justice system's mission is to protect and ensure public safety through a continuum of sanctions. The health and human service system is designed to help others help themselves. These divergent philosophies create significant barriers and impediments to communication between the systems. The philosophical differences particularly come into play when developing a joint treatment plan. Conditions of pre-trial release, community supervision (formerly probation) or parole dictate compliance to certain rules of conduct that, if violated, may result in a subsequent loss of freedom. Treatment plans developed by health and human service agencies focus on consumer choice and the right to refuse treatment if so desired. If a condition of Probation is for an offender to participate in Mental Health/Mental Retardation (MH/MR) services, and the MH/MR staff informs the client that his treatment is voluntary, the systems will and do engage in serious conflict.

Another issue involves the availability or accessibility of formalized mechanisms for coordination and communication among criminal justice and health and human service agencies. While significant progress has been made in this area at the State level due to the establishment of the Council, there appears to be inconsistent communication between the state agencies and their local counterparts. Where formal mechanisms exist as a result of statutory provisions, (ie. community justice councils/task forces) there is little evidence to suggest that these provisions for locally-based coordination and planning have been implemented statewide to the degree intended by the legislation.

In an attempt to improve the overall communication and coordination between state and local criminal justice and health & human service systems, the following recommendations are proposed:

- **Mandate cross-training of personnel (administrative/line staff) related to the missions and roles of various agencies, resource availability, and parameters of eligibility.**

- **Examine strengthening statutory provisions relating to community justice task forces and the participation of health and human service agencies as active members.**

- **Direct the Council to develop a statewide directory of services that includes the names of contact persons that respond to criminal justice questions, referrals and vice-versa for health & human service agencies.**

- **The State Bar of Texas should examine the feasibility of including training standards on mental health and other disability issues for court appointed attorneys representing indigent clients. Public and private law schools should examine similar educational training in their curriculum.**

- **Encourage local criminal justice and health & human service agencies to examine co-locating staff within the same office location to improve overall communication and coordination.**

- **Hold the Council accountable for ensuring communication among state agencies about offenders with special needs. This responsibility should include strategies for ensuring that information at the state level is communicated to local communities.**

- **Require the Council to serve as a statewide clearinghouse for the distribution of relevant policy, programmatic, legislative, research, and program evaluations affecting offenders with special needs.**

- **Encourage local and state criminal justice and health and human services agencies to conduct interdisciplinary team meetings to improve overall service response to offenders with special needs.**

- **Direct the Council to provide technical assistance to local community justice councils/task forces on developing community justice plans that address the needs of offenders with special needs.**

SERVICES/PROGRAMS

In the Council's review of what services were needed to develop a comprehensive continuity of care system, an interesting discovery was made. With few exceptions, the "types" of services needed by offenders with special needs were no different from those currently in place for comparable "non-offender" population groups. In other words, it does not make any difference whether or not the person with special needs is involved in the criminal justice system, the types and level of services would basically be the same depending on the individual's own specific needs.

However, there are a number of "guiding principles" that must be considered in relation to the delivery of those services to offenders with special needs which include:

- Services should be available and accessible regardless of where the offender with special needs may be within the criminal justice continuum.

- Public safety concerns dictate that services must be immediately available; thus "waiting lists" are not an option.

- Interagency or interdisciplinary treatment planning is critical toward improving multi-agency collaboration, communication, and accountability of service systems and their response to the offender with special needs.

- Least restrictive care that is most clinically and cost-effective should drive the continuity of care service delivery system.

Keeping these principles in mind, the Council identified several programs within Texas that incorporate several, if not all, of these basic tenets in their service response to offenders with special needs. The service components of these programs provide excellent examples of what a continuity of care service delivery system should possess. A summary of a few of these model programs are provided:

GALVESTON'S MENTAL HEALTH DEPUTY PROGRAM

The sheriff's department, county commissioners and the Community MHMR Center share responsibility for providing emergency mental health services. Each organization's role is established in writing. Nine specially trained mental health deputies work out of the sheriff's office. (The deputy program is funded by the Gulf Coast Regional MHMR Center with funds provided by the county.)

At least one specialized mental health deputy is available 24 hours a day. The mental health deputies have received specialized training related to emergency mental health services, evaluation and the services of the mental health center.

This collaboration not only facilitates coordination but has increased access to the mental health system, including alternatives to hospitalization. The efficiency of law enforcement has been increased, referrals are more appropriate, and inappropriate admissions to jails have been drastically reduced.

TARRANT COUNTY JAIL

The Forensic Psychiatric Services for Housed Inmates is a collaborative effort between Tarrant County Mental Health Mental Retardation Services and the Tarrant County Sheriff's Department to provide psychiatric services incarcerated offenders with mental illness in the Tarrant County Jail. Trained mental health professionals provide assessment services to individuals suspected of having psychiatric illness. Psychiatric evaluations and treatment are also provided to inmates suffering from mental illness. Identification of those inmates whose mental health status places them at high risk of physical harm, either to themselves or to others are placed in special housing areas in the jail. When appropriate, diversionary alternatives are explored by caseworkers in conjunction with the criminal justice system. Case monitoring to promote the timely channeling of inmates with mental illness inmates through the criminal justice system and aftercare services (such as referrals to community resources and scheduling outpatient clinic appointments) are also provided to released inmates.

PROJECT ACTION AND PROJECT CHANCE

Project ACTION is a program focusing on offenders with mental illness in Harris County. Project ACTION accepts referrals of offenders that are in jail, pre-trial, probation or parole supervision. Cases eligible for the program are offenders diagnosed with Schizophrenia, Bipolar Disorder, Psychotic Disorders, Major Depression, and/or Acute Organic Disorder. Five case managers are responsible for client advocacy, referral and follow-up, and for insuring that a continuum of services is available to treat the offender.

Project CHANCE is a program in Travis County designed to provide intensive case management services for offenders with mental retardation and developmental disabilities in the criminal justice system. A clinical assessment, conducted after referral from courts, pre-trial, jail, probation, or parole is utilized to determine program eligibility. Five case managers are responsible for identifying client needs and developing and implementing an individualized plan to meet the needs of these offenders. Case managers perform functions similar to Project ACTION by establishing linkages to services needed by these clients, acting in an advocacy role, and assisting clients in receiving eligible services and assistance.

Critical elements of both projects are:

- Flexible and targeted funding ensures immediate service access.
- Specialized probation and parole officers assigned to the projects' clients are integral and active participants in all treatment and decision making planning.

- Community coordination and collaboration routinely occurs through formal mechanisms.

A 1993 study conducted by the Criminal Justice Policy Council on twelve month pre-and post-arrest rates, showed a 63% reduction among Project ACTION and CHANCE clients.

SPECIAL NEEDS PAROLE PROGRAM

The Texas Department of Human Services provides case management and placement services to inmates within jails or prisons who are eligible for early release from incarceration through the special needs parole process. Inmates with special needs includes the elderly, terminally ill or physically handicapped. Referrals for special needs parole are screened and processed by TCOMI, in cooperation with TDCJ-PPD, for consideration by the Texas Board of Pardons and Parole.

The intent of special needs parole is to reduce the state's cost associated with health care for inmates incarcerated in jail or prison. Since Federal entitlement programs, such as medicaid, are prohibited within institutional settings such as jail or prisons, the state must pay 100% of health related or psychiatric care for inmates. By releasing these types of inmates on special needs parole, the state's overall costs for care and treatment are significantly reduced by accessing federal dollars (i.e. medicaid) to cover health care costs.

Once released, the parolee with special needs remains in the program until death or discharge from parole. **As of October 1, 1994, one hundred forty (140) inmates have been approved for special needs parole.**

FUNDING

The success of the programs outlined in the previous section is in large part attributed to adequate funding. Whether the funding for these programs is derived from the state, county or a combination of governmental entities, the resources are sufficient enough to ensure a timely and therapeutically appropriate response to the offender with special needs.

There is no denial that the current level of funding, particularly in health and human services, is woefully inadequate to meet the treatment needs of all persons with medical or psychiatric conditions. As a result, many social service agencies have had to establish priority populations within their service parameters. Even having done this, there exists waiting lists among priority populations for services. However, even if increased funding were made available to health and human service agencies, there are no absolute guarantees that offenders with special needs would ultimately be served.

The Council proposes the following funding recommendations to support those programs and services for the continuity of care system:

- **Any new funds for offenders with special needs, particularly for felons, should be appropriated to the Texas Department of Criminal Justice (TDCJ). The TDCJ should contract directly with social service agencies to ensure availability and accessibility of treatment services.**

- **TDCJ's current strategic funding process includes a goal for continuity of care for offenders with special needs. Any new funding should be designated for expanding programs and services currently provided through that goal.**

- **TDMH/MR should request additional funds to develop front-end diversion programs to be matched with local/county dollars for offenders with mental illnesses or mental retardation who maybe inappropriately arrested and incarcerated.**

While increased funding will significantly enhance the development of a continuity of care system, the Council also recognizes a better job must be done to utilize existing resources. To accomplish this, the following recommendations are proposed to maximize current resources and decrease unnecessary duplication of services:

- **Review areas where duplication of services may exist involving multiple assessments, diagnostics, application for services and releases of information and make recommendations for streamlining the process.**

- **State and local health and human service agencies should be required to develop a list of contact staff to serve as liaisons to state and local criminal justice agencies.**

- **Designate specific health and human service staff to serve as liaisons or designated worker for offenders with special needs. For example, designate certain case managers to work solely with offenders and create specialized pre-trial, probation or parole officers. This should improve service delivery and communication.**

- **Co-locate criminal justice and social services staff in the same offices. Several counties are housing case managers and probation officers in the same location.**

- **Set-up a system whereby the county jail provides a list of inmates to the local MH/MR center for screening purposes. This could improve early detection and diversion of inmates with mental illness or mental retardation.**

- **Encouraging agencies to contribute to a "fund pool" to purchase services for offenders with special needs. This funding strategy may be more realistic than for one agency to assume the total cost.**

- **TDCJ, TDMHMR and the Council should continue their efforts to develop contractual guidelines pertaining to maximizing medicaid. To the extent possible, criminal justice funding that is contracted for treatment services for offenders with mental illness or mental retardation should be targeted exclusively with medicaid providers.**

- **TDCJ, TDMHMR, TDHS and the Council should conduct a fiscal analysis of federal funds generated as a result diversion programs developed as alternatives to incarceration.**

- **The statutory provisions for special needs parole should be amended to provide for similar capabilities at any point of the offenders with special needs involvement in the criminal justice system, pre-trial, community supervision, incarceration in county jails or TDCJ-state jails or SAFP's.**

IV. JUVENILE OFFENDERS WITH MENTAL IMPAIRMENTS

Juvenile offenders with mental impairments include children and youth, 10 to 17 years old, who if formally assessed, are diagnosed as having one or a combination of disabling conditions such as mental retardation, a major mental illness or emotional disturbance, or other cognitive disabilities (as defined by state statutes) and who have become involved in the juvenile justice system.

A majority of the juvenile offenders with mental impairments also fit the demographic profile of the "**typical**" juvenile offender. This profile includes such characteristics as minority male, history of abuse or neglect, poor academic performance, lengthy history of delinquent acts, lower socioeconomic status, poor impulse control, and a history of substance abuse. A combination of any of these typical characteristics presents challenges to the most seasoned professionals in developing an appropriate consequence and/or clinical response to the juvenile offender. The difficulties are compounded when one or more disabilities is added to the service delivery equation.

The problems of the juvenile offender with mental impairments are complex and multifaceted. These individuals do not fit into traditional programming for either the juvenile offender or children with mental impairments. The absence of an appropriate and accessible service delivery system oftentimes results in the perpetuation of their illegal acts or behavioral problems, which likely include more aggressive or violent acts and victimization of their family and community.

Limited statistical information is available on the juvenile offender with mental impairments throughout the juvenile justice continuum, from initial law enforcement contact, juvenile court referral, informal adjustment, probation, and commitment through parole. This statistical gap exists for a number of reasons. Currently, many city and county juvenile justice agencies do not routinely conduct assessments on all juvenile court referrals. For those assessments that are conducted, data is not systematically collected, reported or shared among the agencies serving the juvenile offender with mental impairments.

The availability of research information on effective intervention strategies for the juvenile offender with mental impairments is equally dismal. Without reliable prevalence rate information or empirical data on treatment/service outcomes, it is difficult to develop an appropriate or effective service delivery response to the juvenile offender with mental impairments. However, where data is available, the results are noteworthy.

Thirty percent (30%) of annual admissions to the Texas Youth Commission (TYC) have a serious emotional disturbance and twenty percent (20%) have an IQ of less than eighty (80). TYC studies further report that the juvenile offender with mental impairments who receives **no aftercare** treatment has one of the highest recidivism rates of <u>any</u> juvenile offender population group. **Coincidentally, these same studies showed a statistically significant difference in re-arrest and re-incarceration rates for those juvenile offenders with emotional disturbances who received treatment compared to those that did not (41% re-arrest vs. 53% at one (1) year and 56% vs. 65% after three (3) years post-release).**

Preliminary data from the Children's Mental Health Plan have also yielded positive treatment outcomes for the juvenile offender with mental illness/emotional disturbances. **In a study of three-hundred and thirteen (313) juveniles served at five (5) rural Children's Mental Health Plan sites, only forty-four percent (44%) of these juveniles showed significant problems in behavioral and emotional functioning after participating in Mental Health Authority programs as compared to seventy-two percent (72%) before treatment. In addition, thirty-three percent (33%) of the juvenile offenders with mental illness/emotional disturbances had been arrested or referred to juvenile court during assignment to these Mental Health programs.**

The positive impact of community treatment services on the recidivism rates of the offender with mental impairments is further reinforced by a 1993 study conducted by the Criminal Justice Policy Council (CJPC) on adult offenders with mental impairments. In the CJPC's study, the arrest rates of adult offenders with mental impairments was evaluated on a twelve (12) month pre and post program involvement. **The results showed a sixty-three percent (63%) reduction in arrest rates after twelve (12) months of community treatment involvement.**

When one considers the juvenile offender with mental impairments' likelihood of involvement with the adult criminal justice system, the fiscal implications of recidivism are stark. In a 1992 report by the Legislative Budget Board Medicaid Analysis Unit, a comparison of institutional costs vs. community costs for inmates with mental illness or mental retardation was conducted. Based upon their findings, the Legislative Budget Board reported that the **in-prison costs for inmates with mental illness was in some cases four (4) times that of community-based diversion programs for offenders with mental impairments.**

In the Texas Council on Offenders with Mental Impairment's (TCOMI's) examination of the juvenile offender with mental impairments issue, several common problems emerged from informal surveys of local and statewide service providers that guided TCOMI's discussion and ultimate recommendations found within this report. Those common problems were:

- **More attention must be given to clarifying the legal, programmatic, administrative and policy framework that affects the juvenile offender with mental impairments if Texas is to adequately respond to their complex needs.**

- **Comprehensive information and research on the juvenile offender with mental impairments is virtually non-existent. This significantly impedes the development of an effective service delivery system.**

- **Assessments, service delivery, and the systems in which services are delivered tend to be insensitive to cultural and gender differences.**

- **Current mechanisms for identifying and evaluating the juvenile offender with mental impairments are non-standardized among state agencies, thus resulting in inconsistent diagnosis and treatment across the Texas service system.**

- **Programs that appear to be most effective are designed to include individualized care, flexible funding, family involvement and community-based services.**

- **A system of intensive case management must be established that is capable of responding to the juvenile offender with mental impairments at every point in the juvenile justice system.**

- **Decisions regarding the educational, treatment or juvenile justice systems' response to the juvenile offender with mental impairments must be interdisciplinary and interagency.**

Taking these themes into account, TCOMI proposes the following recommendations for the development of an effective service delivery system for the juvenile offender with mental impairments.

RESEARCH/STUDIES

From the informal surveys conducted by TCOMI, it was learned that in Texas, there is minimal information systematically or comprehensively collected on the juvenile offender with mental impairments. Reliable descriptions, service needs, prevalence or recidivism rates, and funding distribution is simply not attainable. Without adequate data, the state's service delivery response to the juvenile offender with mental impairments is and continues to be incomplete and mishappened.

- **The Legislature should require institutions of Higher Education to the collaborate with juvenile agencies and the public education system on conducting a statewide needs assessment of juveniles with mental impairments who exhibit delinquent behavior.**

- **Educational, juvenile justice and health and human service agencies should be required to collect and analyze data on the prevalence rates of the juvenile offender with mental impairments within the juvenile justice system.**

PREVENTION/EARLY INTERVENTION

TCOMI believes that prevention and early identification services are the key to keeping the children and youth of this state out of the juvenile justice system. By emphasizing prevention and early intervention, Texas may achieve the most effective cost-savings, both in terms of human and fiscal resources. While TCOMI's legislative directives limit this paper's focus to juveniles with mental impairments who are already involved in the juvenile justice system, we are committed to working with the leadership of Texas on promoting the development of statewide prevention and early intervention programs.

IDENTIFICATION/ASSESSMENT

If identified at the earliest opportunity, many juveniles with mental impairments could be appropriately diverted to community-based educational, treatment and/or habilitative services, rather than allowed to progress through the juvenile justice system. Furthermore, identification of juvenile offenders with mental impairments should come about as a result of consistent assessment and diagnostic procedures across all agencies. To facilitate this process, TCOMI recommends the following:

- **A uniform diagnostic and assessment process must be developed for use by all service agencies. This process should be culturally and gender sensitive to ensure appropriate responses at any stage of the juvenile justice system. This assessment process must also be interdisciplinary in order to address social, medical, psychiatric, educational, neurobiological, familial and substance abuse needs and to bring together <u>all</u> who are necessary to address the multifaceted service needs of the juvenile offender with mental impairments and the resources available to address those needs.**

- **The state should conduct a cost-benefit analysis of a collaborative agency assessment compared to the current system of independent assessments conducted by multiple agencies.**

- **State and federal statutes must be amended to allow for the timely exchange of client information among governmental entities who share joint responsibility for the juvenile offender with mental impairments.**

- **The Health and Human Services Commission's efforts to develop and implement a single release of information form, (which removes barriers to interagency communication while respecting client rights to confidentiality) should be aggressively supported.**

PROGRAM/SERVICES

With few, **but notable** exceptions, the juvenile offender with mental impairments requires the same types of services that any child or adolescent with mental impairments would need. Individualized education, vocational training, psychiatric or psychosocial interventions, habilitation and case management are just a few of the services that children with mental impairments need, whether they are involved in the juvenile justice system or not. Unfortunately, the availability of these services varies throughout the state. As a consequence the limited accessibility of services may result in juveniles with mental impairments entering the juvenile justice system simply because their maladaptive behaviors or disabling conditions have not been treated.

This limited service availability is further compounded by the **virtual non-existence** of specialized treatment, services, and support. Traditional educational and habilitative/treatment programs are designed to respond to children with a single disability. For the most part, the juvenile offender with mental impairments has multiple disabilities and consequently, because of categorical eligibility, is excluded from the current array of service options.

Based upon TCOMI's experience and information obtained from local and state service providers, the following specialized services are warranted:

- **Intensive case management that is available throughout the juvenile justice continuum, must be developed. This would provide a single-point of accountability for ensuring individualized services.**

- **Structured residential options must be developed that provide intensive therapeutic environments while addressing public safety concerns by restricting the movement in the community of the juvenile offender with mental impairments.**

- **Specialized treatment such as substance abuse or sex offender counseling that addresses the cognitive or behavioral functioning of the juvenile offender with mental impairments must be developed.**

- **Based upon the proven success of TCOMI and the Children's Mental Health Plan programs, the Legislature should appropriate funds for developing an array of services for the juvenile offender with mental impairments.**

FUNDING

TCOMI recognizes that the implementation of the above-referenced program initiatives will require additional funds. However, it is also recognized that every effort should be made to maximize existing state and local resources.

TCOMI suggests the following recommendations for a more cost effective and efficient service delivery system:

- **To whatever extent possible, treatment or services should be delivered by community-based Medicaid enrolled providers in order to maximize federal fund utilization.**

- **The "dollar follows the child" initiative undertaken by the Health and Human Services Commission should be examined to determine its effectiveness in cost containment.**

- **The TCOMI will continue to examine and report its findings on current programmatic, administrative, statutory, policy and funding guidelines of service delivery systems throughout the country that have proven cost effective in addressing the needs of the juvenile offender with mental impairments.**

COORDINATION AND COLLABORATION

No one agency has sole responsibility or resources for serving the juvenile offender with mental impairments. As multiple systems are involved in the care and treatment of the juvenile offender with mental impairments, it is reasonable to expect multi-agency coordination and collaboration. However, there currently exists no formal mechanism to **ensure** that coordination, collaboration, or even communication occurs among agencies. Agencies' staff must know each others resources and limitations in order to work together effectively and efficiently. While several of the previous recommendations would address this issue, it would be strengthened by adopting the following recommendations:

- **To coordinate funding at the state and local level for children and adolescents with emotional or mental health problems, the Legislature created the Children's Mental Health Plan (CMHP). This funding mechanism should be examined for possible expansion to include juveniles with mental retardation who are at-risk or are involved in the juvenile justice system.**

- **To coordinate individualized services at the local level for children and adolescents involved in multiple service systems, the Legislature established the Community Resource Coordination Groups (CRCGs). Due to the success of several CRCGs in coordinating multi-agency services, the Legislature should examine expanding their role to include serving as the "interdisciplinary" team for the juvenile offender with mental impairments. The Legislature should also ensure that CRCGs are implemented on a statewide basis.**

- **The Legislature should empower the CRCG's to develop appropriate educational,treatment, habilitative and juvenile justice recommendations for the juvenile offender with mental impairments. This would eliminate current practices of unilateral decisions without regard to the total needs of the juvenile offender with mental impairments (eg. school expulsion or court commitment to institutions).**

- **The Legislature should require agencies to enter into memoranda of understanding that describe the mechanism for interagency cross-training on their roles and responsibilities, parameters of service, and eligibility requirements.**

- **Agencies should examine adopting statewide, uniform and consistent eligibility criteria for services delivered to the juvenile offender with mental impairments.**

- **Advocacy representation should be ensured for children with mental impairments who are involved or at-risk for involvement in the juvenile justice system. Families or child advocates should be integral members of any collaborating or coordinating body.**

DUE PROCESS

The juvenile justice system is different from the adult criminal justice system for a variety of reasons. However, perhaps the most striking difference is that the juvenile justice system is civil in nature, whereas the adult system is criminal. Because of the civil nature of the juvenile justice system, attention must be given to due process, particularly as it relates to commitments. TCOMI proposes the following recommendations as due process safeguards:

- **The Family Code should be amended to allow for an appeal process, particularly for commitment issues.**

- **Commitments should not be made to an institutional setting without the completion of a comprehensive diagnosis and assessment as described within this report.**

- **Interventions should be based on a continuum of sanctions, services and support options that address the least restrictive alternative. Currently, interventions are more often an "either...or" proposition to institutionalize or not, with minimal consideration of less restrictive alternatives.**

V.
FUTURE DIRECTIONS

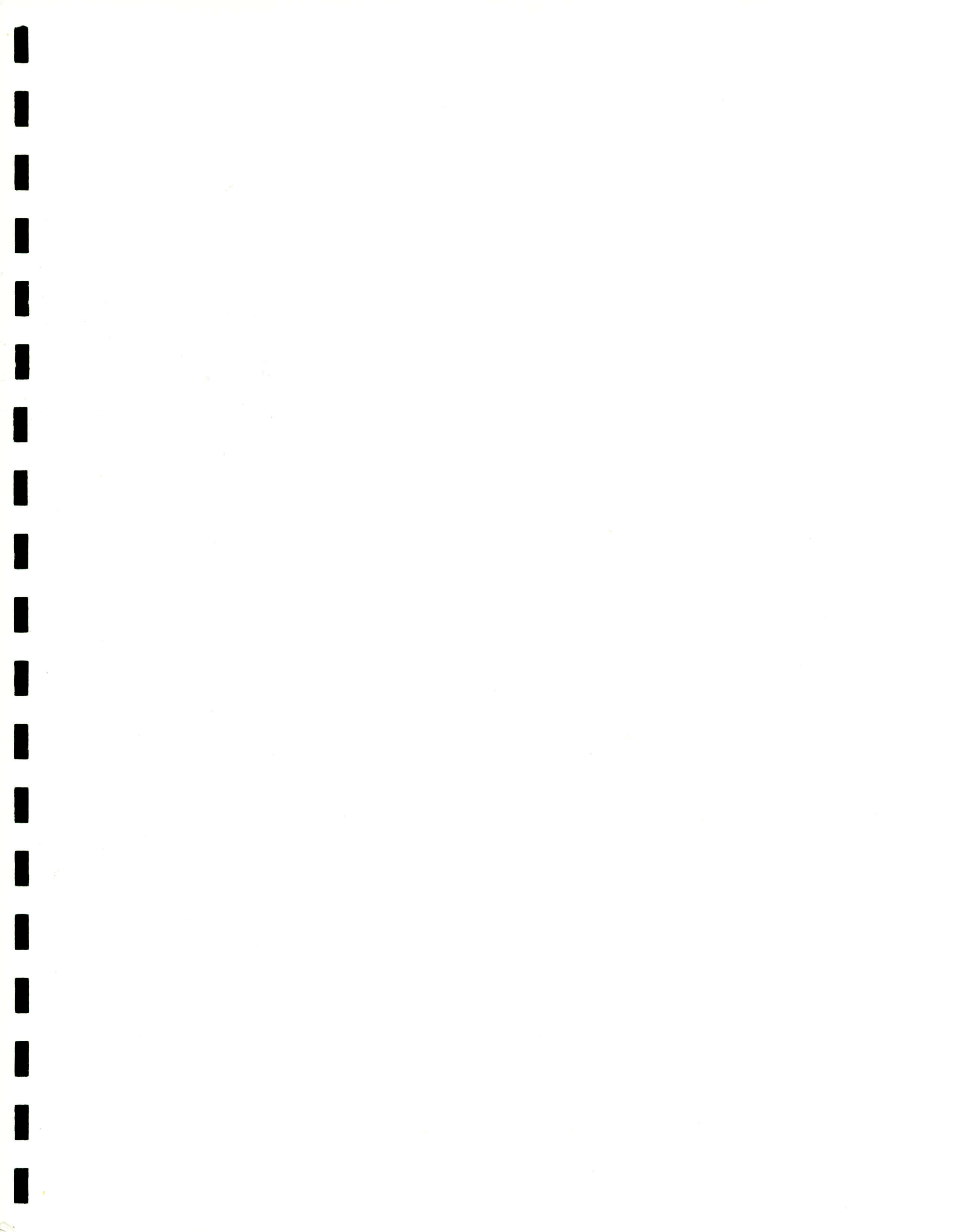
The Council is committed to finding solutions to the problems presented by offenders with special needs. The Council's composition represents a broad spectrum of criminal justice and human service expertise. It is precisely this unique mix of talents and concerns that has caused the Council to make significant advances during the past biennium. To build upon the advances already made, the Council looks forward to the implementation of the recommendations contained in this report.

During the 1996-97 biennium, the Council's activities will include:

- **Continuation and expansion of community based treatment programs for adult offenders with special needs;**
- **Coordinating, monitoring and assisting with the implementation of the M.O.U.'s between TDCJ, TDMHMR, and other state and local criminal justice and health and human service agencies.**
- **Conducting a fiscal analysis of federal entitlement funds generated from community based treatment programs;**
- **Continuation and expansion of the pre-release referral and planning program for inmates or confinees being released from incarceration to community supervision or parole; and**
- **Developing and implementing a responsive service delivery system for juvenile offenders with mental impairments through improved local and state collaboration.**
- **Monitoring and coordinating the implementation of the M.O.U. to be adopted by Texas Commission on Law Enforcement and Officer Standards and Education (TCLEOSE), Texas Commission on Jail Standards (TCJS), and Texas Council on Offenders with Mental Impairments (the Council).**
- **Pursuing improved assessment protocols/techniques and technical assistance to clinicians who are responsible for the assessment of both juvenile and adult offenders with mental illness/mental retardation.**

These and other council activities will enable this state to continue its progressive response to juvenile and adult offenders with special needs. By responding to the specialized treatment and supervision needs of this offender population, the first and foremost concerns for public safety are appropriately addressed.

The Council, and its membership, looks forward to working with the leadership of Texas in maintaining this state's role as a model for others to follow.



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