

Select Oversight Committee on Corrections

January 2002

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John G. Morgan
Comptroller

January 29, 2002

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the report on the Select Oversight Committee on Corrections. This report is submitted pursuant to the requirements of Section 3-15-109(d), *Tennessee Code Annotated*.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dlj
02-016

State of Tennessee

Report Highlights

Comptroller of the Treasury

Division of State Audit

Special Report
Select Oversight Committee on Corrections
January 2002

OBJECTIVES

The objectives of the report were to determine the authority and responsibility mandated to the committee, to determine the extent to which the committee has efficiently and effectively met its legislative mandate, and to comment on the continued need for the committee and on issues that may need further review by the committee.

CONCLUSION

Based on our review of the committee's activities and interviews with legislators and administration officials, the Select Oversight Committee on Corrections has apparently met its legislative mandate. In addition, it appears that there is a continued need for the committee. Given ongoing issues such as overcrowding, prison construction, and privatization, the General Assembly still needs a source of independent, bipartisan information and comment on correction activities and proposed legislation. The majority of those interviewed supported the committee and stated that the committee had been successful and had benefited the Department of Correction. Areas of concern cited by those interviewed included the need to improve the working relationship between the committee and the administration and problems with committee members' meeting attendance. Our review of attendance records from July 1999 to October 2001 confirmed attendance problems—for 6 of 33 meetings, the committee had insufficient attendance to meet the requirements for a quorum.

"Report Highlights" is a summary of the report. To obtain the complete report, which contains all findings, recommendations, and management comments, please contact

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Special Report
Select Oversight Committee on Corrections

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Purpose and Authority	1
Objectives	1
Scope and Methodology	1
Background, Organization, and Responsibilities	2
OBSERVATIONS AND COMMENTS	4
Major Activities of the Committee	4
Continued Need for the Committee	5
Role of the Private Consultant	6
Sources of the Committee's Information	6
Perceived Effectiveness of the Committee	6
Conclusion	7

Special Report

Select Oversight Committee on Corrections

INTRODUCTION

PURPOSE AND AUTHORITY

This report on the Select Oversight Committee on Corrections was conducted pursuant to Title 3, Chapter 15, *Tennessee Code Annotated*. Under Section 3-15-109(d), the Office of the Comptroller of the Treasury is to conduct a performance evaluation of the Select Oversight Committee on Corrections prior to its termination at the end of the legislative session convening in 2001. The General Assembly may continue the committee for two years by taking appropriate action during that legislative session.

OBJECTIVES

The objectives of the report on the Select Oversight Committee on Corrections were

1. to ascertain the authority and responsibility mandated to the committee by the General Assembly;
2. to determine the extent to which the committee has effectively and efficiently met its legislative mandate; and
3. to comment on the continued need for the committee and identify issues that may need further review by the committee.

SCOPE AND METHODOLOGY

The activities of the Select Oversight Committee on Corrections were reviewed for the period January 1, 1998, through October 2001. The information presented in this report was obtained through the following:

1. review of applicable legislation;
2. examination of the committee's reports, minutes, and agendas; the committee's comments on proposed legislation and capital projects; and reports and data from the Department of Correction and the Board of Probation and Parole; and

3. interviews with committee members and staff, chairmen and staff of other legislative committees, representatives of advocacy groups, and management of the Department of Correction, the Board of Probation and Parole, and the Department of Finance and Administration's Division of Capital Projects.

BACKGROUND, ORGANIZATION, AND RESPONSIBILITIES

The Select Oversight Committee on Corrections was created during the 1985 First Extraordinary Session by Chapter 5 of the Public Acts, codified as Section 3-15-101 et seq., *Tennessee Code Annotated*. Pursuant to Section 3-15-109(a), the committee is to continue only until the operations of the Department of Correction have improved substantially so that oversight is no longer needed. In 1990, 1994, and again in 1997, the legislature continued the committee. The 1994 legislation also added the requirement that the Office of the Comptroller of the Treasury conduct a performance evaluation of the committee prior to its termination.

The committee evolved from the state's response to the crisis in the prison system during the 1970s and early 1980s. In a 1982 ruling on the *Grubbs* lawsuit, then U.S. District Judge L. Clure Morton declared parts of Tennessee's prison system unconstitutional and placed the system under the control of a Special Master, who was responsible for ensuring that the terms of the court order were met. In 1985, the General Assembly created a study committee to establish the agenda for a special legislative session convened to address correction problems. In 1986, as a result of the special session, the study committee became the Select Oversight Committee on Corrections.

The purpose of the committee is to improve planning for facilities and programs, to create a better environment for management, and to ensure implementation of proposed improvements in the correctional system. The committee, which is required to meet at least quarterly, has the authority to elect a chair, vice chair, and other officers; create related subcommittees; request that standing committees of the General Assembly, the fiscal review committee, and other agencies study certain aspects of the correction system and report to the committee; conduct hearings; employ staff; and enter into contracts for technical or professional services. The committee is required to report on its activities to each member of the General Assembly.

The legislative intent was that plans for the Department of Correction "be made carefully and be reviewed thoroughly to help ensure that new programs will achieve their intended purposes, to help ensure that new facilities are needed and are designed properly, and to help ensure that the general assembly and the public can have confidence that the state will deliver a correctional system which is effective and efficient." To accomplish this, the committee is required by law to review (1) any proposed expenditure of funds to implement new programs or expand existing programs, (2) any administrative or management changes requiring additional expenditures, or (3) any proposed expenditures to expand or otherwise change the operation of any facility or begin the operation of any new facility. The committee may make comments to the Commissioner of Finance and Administration

on any proposal. The committee is also required to review all proposed plans for capital expenditures for maintenance or renovations of existing facilities, construction of new facilities, or purchase of equipment to be used in such facilities, and make comments, as needed, to the State Building Commission.

In addition, the committee is required to review all bills introduced in the General Assembly that will or may affect any area within the committee's scope of review. The purpose of this review is to assist the appropriate standing committee (in most cases the Judiciary or State and Local Government Committee) in its consideration of correction-related legislation by providing appropriate background information on the bill or information concerning the impact of the bill on the correction system. The committee may attach comments to a bill prior to the bill's consideration by the appropriate standing committee. However, the committee cannot make recommendations concerning the passage of a bill and does not have the authority to prevent a standing committee from considering a bill.

Finally, the committee is required to review regularly the following programs, functions, and activities of the Department of Correction:

- classification and reclassification of inmates;
- capacity of institutions and other programs;
- industrial, agriculture, or other programs designed to provide activity for inmates;
- inmate education and training programs;
- release programs, including eligibility conditions and effects;
- alternative sentencing programs;
- local jails;
- provision of services, facilities, or programs by private contractors;
- staffing of the Department of Correction;
- management-related issues;
- other relevant matters.

The committee consists of 14 members: 7 are appointed by the Speaker of the Senate, and 7 are appointed by the Speaker of the House of Representatives.

Committee staff consists of a director, an administrative assistant, and a contracted consultant. Committee expenditures totaled \$204,900 for fiscal year 2000, and \$210,700 for fiscal year 2001.

OBSERVATIONS AND COMMENTS

MAJOR ACTIVITIES OF THE COMMITTEE

Based on our review of its activities, the committee has apparently met its legislative mandate. Below is a description of the committee's major activities.

Capital Projects Review

The committee regularly reviews and comments on proposed capital projects pertaining to correctional issues as required by Section 3-15-105, *Tennessee Code Annotated*. Examples of the committee's efforts include its review of a number of capital maintenance projects submitted by the Department of Correction in fiscal year 2001. Projects reviewed include a fire alarm system and an energy management system upgrade at the West Tennessee State Penitentiary; the repair of water tanks at the West Tennessee State Penitentiary, the Northwest Correctional Complex, and the Wayne County Boot Camp; and the repair of the kitchen at the Turney Center Industrial Prison.

Review of Legislation

The committee reviews bills on correctional issues introduced in the General Assembly, as required by Section 3-15-108, *Tennessee Code Annotated*. The committee's comments have appropriately focused on the proposed legislation's impact (including the fiscal effect) on the correctional system.

Review of Department of Correction Activities

The committee has complied with Section 3-15-107, *Tennessee Code Annotated*, by regularly reviewing the department's programs, functions, and activities. Reviews performed by the committee during the scope of this audit include reviewing plans for the expansion of the Tennessee Prison for Women, reviewing the impact of the U.S. Supreme Court decision regarding inmate rights under the American Disabilities Act, reviewing inmate population projections, and reviewing the possibility of using volunteers to help monitor parolees. Moreover, examples of activities conducted by the committee include

- Initiating methods to address potential prison overcrowding. According to representatives of the Board of Probation and Parole, the committee emphasized the need for the Board of Probation and Parole to establish intermediate sanctions to reduce the number of parolees who are sent back to prison for committing technical violations. Further, the committee asked the Board of Probation and Parole to seek additional funding in its Fiscal Year 2001 budget request for community corrections. However, despite its request, the Board of Probation and Parole was unsuccessful in its efforts to obtain additional funding.

- Participating with the Department of Correction on the development of a performance evaluation mechanism used to measure the operations of the privately managed South Central Correctional Facility. The instrument provides the private management firm criteria used to measure its performance. Criteria include such factors as cost to operate the prison and the number of escapes, hostage situations, and suicides during a specified time. In the event that established criteria are not met, it is possible that the firm's contract with the state would not be renewed.

CONTINUED NEED FOR THE COMMITTEE

Although the Department of Correction's operations have improved since the formation of the committee, as evidenced by the department being released from the federal court order in May 1993, a number of factors necessitate that the committee be continued. First, there is a need for the committee to continue to investigate different ways to address inmate population levels. The Department of Correction's June 2001 mid-year assessment, which takes into account already planned bed increases, projected a 28% increase in the prison population over the next 10 years, resulting in an increase from 22,669 to 29,122 inmates by fiscal year 2010. The report stated that by June 2006, there will be a shortage of 1,700 beds, and by June 2009, the unmet demand is projected to increase to 3,448 beds.

In addition, interviewees cited concerns about other important, ongoing correctional issues as a reason to continue the committee. For example, the committee has attempted to address the issue of privately owned and managed prisons bringing other states' inmates into Tennessee. Currently Tennessee does not have laws regulating such actions, and, thus far, the committee has been unsuccessful in its attempt to pass a bill regulating this activity. Interviewees expressed concern about the state's liability if a problem were to occur. For example, there is concern about the state being held responsible if an inmate from another state escapes and kills someone in Tennessee. Similarly, there is a question of who would pay for the search for an escaped inmate.

Interviewees also mentioned the need for the committee to continue to review and comment on legislation pertaining to correctional privatization issues. One area of particular interest, because of potential liability issues, is the Department of Correction's privatization of inmate health care.

Finally, interviewees cited the importance of the committee's oversight function. The committee's presence and actions reportedly help provide a process of checks and balances. For example, the committee's ability to look at correctional issues from different perspectives often helps identify alternative, and possibly more efficient, methods of accomplishing correctional functions.

ROLE OF THE PRIVATE CONSULTANT

Section 3-15-102(b)(5), *Tennessee Code Annotated*, authorizes the committee to contract with a consultant to provide technical and professional services. The committee has used the same consultant (whose background is in law enforcement and corrections) since its inception. The consultant's primary responsibilities are to review capital project proposals and work with the Department of Correction to modify the proposals, if necessary, before they are submitted to the State Building Commission; to provide guidance to the committee in the formulation of comments on legislative bills; and to assist the department with budget preparation. Generally, most of the individuals interviewed believed that the consultant was an invaluable asset to the committee. The consultant's vast knowledge of correctional issues was cited as a strength. Moreover, at least one individual reported that the consultant's value was enhanced since he had the ability to provide an independent, nonpartisan perspective.

SOURCES OF THE COMMITTEE'S INFORMATION

The committee primarily relies on its consultant and staff to provide the information and data needed to effectively comment on legislation, capital project proposals, and department activities. In addition, the Department of Correction provides the committee periodic reports on costs, prison and local jail occupancy rates, and occupancy projections. The committee also obtains information from a variety of other sources including the Board of Probation and Parole, the American Correctional Association, the National Council of State Legislatures, and other states.

PERCEIVED EFFECTIVENESS OF THE COMMITTEE

Auditors spoke with or received feedback from a number of committee members and staff, the chairpersons of the Senate Judiciary Committee and the House State and Local Government Committee, representatives from the Department of Correction and the Board of Probation and Parole, representatives from the Department of Finance and Administration's Division of Capital Projects, representatives from the State Fiscal Review Committee, and various advocacy groups. The majority of those individuals contacted praised the committee's efforts and indicated that it had been successful in meeting its statutory responsibilities. Moreover, the majority of individuals indicated that the committee was an asset and should be continued in its current capacity. Reasons cited include the committee's expertise on correctional issues, the consultant's knowledge and participation, the seniority and leadership roles of committee members, and the bipartisan nature of the committee.

However, despite the general positive comments regarding the committee, some individuals reported a need to improve the working relationship between the committee and the administration. In addition, several interviewees expressed concern about problems with committee members' meeting attendance. Our review of attendance records from July 1999 to October 2001 found that (for the 33 meetings held during that period) committee members averaged 10 absences, with the number of actual

absences per member ranging from 0 to 20. For 6 of the 33 meetings, the committee had insufficient attendance to meet the requirements for a quorum. One potential contributing factor is that several committee members are also members of the Senate and House leadership, and it appears that some of the absences may have resulted from conflicts between committee and House and Senate leadership meetings.

CONCLUSION

Based on our review of the committee's activities and interviews with legislators and administration officials, the Select Oversight Committee on Corrections appears to have met its legislative mandate. The majority of those interviewed supported the committee and stated that the committee had been successful and had been a benefit to the Department of Correction. The need to address ongoing issues such as potential prison overcrowding, the importation of other states' inmates into privately owned and managed prisons in Tennessee, and correctional privatization issues seems to necessitate that the committee be continued.