

**HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE**

**JUAN J. HINOJOSA
CHAIRMAN**

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Committee On
Criminal Jurisprudence

February 18, 2003

Juan J. Hinojosa
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

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

Respectfully submitted,

Juan J. Hinojosa, Chairman

Jim Dunam, Vice Chairman
Terry Keel
Rick Green
Robert Talton

Domingo Garcia
Ann Kitchen
John Shields
Trey Martinez-Fisher

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INTRODUCTION

At the beginning of the 77th Legislative Session, the Honorable James “Pete” Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Criminal Jurisprudence. The committee membership included the following:

Juan J. Hinojosa, Chairman
Jim Dunnam, Vice Chairman
Robert Talton
Terry Keel
John Shields
Domingo Garcia
Rick Green
Ann Kitchen
Trey Martinez Fischer

During the interim, the committee was assigned five charges by the Speaker. Chairman Hinojosa decided not to appoint subcommittees and instead decided to hear all the charges as a whole. Among the charges to the committee were: (1) to review changes in federal law enforcement procedures, as well as recommendations from state national agencies charged with homeland protection, to assess the need for changes in state criminal laws to protect life and property and to detect, interdict and respond to acts of terrorism; (2) to consider ways to cooperate with Mexican states to reduce international drug trafficking; (3) to review the statutory law governing the use of devices known as “eight-liners” and suggest ways to eliminate ambiguity about the legality of their possession and use; (4) to study trends and methods involved in identity theft in Texas, and suggest ways to reduce this type of crime; and (5) to consider the manner in which sexual assaults are reported in Texas, and specifically address the wide discrepancy between statistics reported in the Uniform Crime Report and estimates of other groups, such as the National Crime Victim Research and Treatment Center.

Two effective hearings on these charges were held in Corpus Christi (June, 2002) and Austin (August, 2002). The Committee wishes to express appreciation to the committee staff, Gabriel G. Cardenas, Rachael L. Schreiber, and Araceli A. Perez, for their work preparing the report; to the agencies and individuals that assisted the committee; and all the groups and citizens who testified at the hearings for their time and efforts on behalf of the committee.

HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE

INTERIM STUDY CHARGES

CHARGE 1

Review changes in federal law enforcement procedures, as well as recommendations from state and national agencies charged with homeland protection, to assess the need for changes in state criminal laws to protect life and property and to detect, interdict and respond to acts of terrorism.

CHARGE 2

Consider ways to cooperate with Mexican states to reduce international drug trafficking.

CHARGE 3

Review the statutory law governing the use of devices known as “eight-liners” and suggest ways to eliminate ambiguity about the legality of their possession and use.

CHARGE 4

Study trends and methods involved in identity theft in Texas and suggest ways to reduce this type of crime.

CHARGE 5

Consider the manner in which sexual assaults are reported in Texas, and specifically address the wide discrepancy between statistics reported in the Uniform Crime Report and estimates of other groups, such as the National Crime Victim Research and Treatment Center.

HOMELAND PROTECTION

HOMELAND PROTECTION REPORT

The House Committee on Criminal Jurisprudence was charged by the Speaker to:

Review changes in federal laws and law enforcement procedures, as well as recommendations from state and national agencies charged with homeland protection, to assess the need for changes in state criminal laws to protect life and property and to detect, interdict and respond to acts of terrorism.

COMMITTEE BRIEFING

The tragic events that occurred on September 11, 2001 have prompted awareness in every American citizen. Although the local emergency management systems responded promptly to the aftermath, efforts to prevent or defend against the attacks were either nonexistent or ineffective (Brinkerhoff, 2001). Many have speculated and asserted that the nation's intelligence agencies failed to alert the public. On June 2002, NEWSWEEK reported that the CIA investigated two al-Qaeda¹ members, but failed to capture them before their participation in the terrorist attack on 9/11 (Isikoff and Klaidman, 2002). Others blame the Bush Administration for withholding intelligence information previously provided to them (Elliot, 2002). Since the attacks, the FBI, CIA and NSA have stated plans to reorganize their agencies. The question, however, is whether U.S. intelligence and government can prevent another 9/11 from occurring. Many recommendations and methods on how to improve prevention and detection have been offered. They include increasing surveillance, improving emergency management, and providing the U.S. Office of Homeland Security with increased oversight and authority.

Although previous research articles and reports have been written on homeland security, many of them focus on the narrow aspect rather than the larger problem (Loy and Ross, 2001). The Hart-Rudman Commission report examined the broad aspect of homeland security. Its message, which is said to have been ignored by the U.S. Department of Defense (Loy and Ross, 2001), stated that, "the security of American homeland from the threats of the new century should be *the* primary national security mission of the U.S. government..." The report also stated that the United States is increasingly vulnerable to hostile attack. It requested for the President "[to] develop a comprehensive strategy to heighten America's ability to prevent and protect against all forms of attacks on the homeland, and to respond to such attacks if prevention and protection fail" (Hart-Rudman Commission, 2001). Further, in 2000, the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (also known as the Gilmore Commission), established by Public Law 105-261, reported that "the organization of the Federal government's programs for combating terrorism is fragmented, uncoordinated, and politically unaccountable."

¹ Al Qaeda is an international terrorist group founded by Osama bin Laden and Muhammad Atef. Al Qaeda had ties to other "terrorist organizations that operated under its umbrella," including: the al Jihad group based in Egypt, the Islamic Group, formerly led by Sheik Omar Abdel Rahman, and other jihad groups in other countries. "Al Qaeda also forged alliances with the National Islamic Front in Sudan and with representatives of the government of Iran, and its associated terrorist group Hezbollah, for the purpose of working together against their perceived common enemies in the West, particularly the United States" (PBS.org).

Homeland Security And Emergency Management

Shortly after the attack, President George W. Bush authorized the Office of Homeland Security and the Homeland Security Council to develop and coordinate a comprehensive national strategy to strengthen protection against terrorist threats or attacks (White House, 2001). The Office of Homeland Security (OHS) focuses on detecting threats, preparing for and mitigating the consequences of threats, preventing terrorist acts, protecting citizens and infrastructure, and promoting recovery from terrorist attacks (White House, 2001). Further, OHS is responsible for “plugging holes in the bureaucracy and coordinating some 70 federal agencies and thousands of local government organizations” (Ratnesar, et al., 2002).

Its been stated that the first line of defense starts at the local level. Like many other states, Governor Rick Perry created the Task Force on Homeland Security in direct cooperation with the federal efforts to combat terrorism. Similar to the OHS, the task force was charged with: assuring Texans of state and local preparedness to respond to threats; assessing the ability of state and local government agencies to respond to threats and to effectively provide victims assistance; aiding coordination among federal, state and local efforts; and developing recommendations on how to improve Texas’ ability to detect, deter and coordinate response to any terrorist events. Emergency management, however, has always existed in the local, state, and federal sector.

In 1975, the Texas Disaster Act created and authorized the governor to oversee the state emergency management council and the division of emergency management.² Texas’ emergency management mirrors the framework of the Federal Emergency Management Agency (FEMA). Therefore, the state’s emergency management system relies on a **comprehensive management system**³ (CEM), which entails four functional areas of modern disaster management: **mitigation, preparedness, response, and recovery**. Although functional, CEM has proven to be a challenge to government because of the extraordinary demands events impose on the decision-making and service delivery systems of the affected communities (Donohue and Joyce, 2001).

In effect, McEntire, et al. (2002) argues that CEM is “incomplete, reactive, and does not address or include all the variables or disciplines related to disaster.” Donohue and Joyce (2001) have suggested for FEMA to “shift their emphasis from response and recovery to mitigation [since] response and recovery are the functional domain of local government, with coordinating assistance from the states and fiscal assistance from the national level.” Thus, the federal government should only be responsible for preventing disasters, while the local government should focus on response and recovery. McEntire, et al. (2002) proposes a new concept that enhances CEM known as **comprehensive vulnerability management (CVM)**. This improvement has “direct relevance to the many triggering agents, functional areas, actors⁴,

² TEX.GOV. Sect. 418.041.

³ Also known as the integrated emergency management system.

⁴ Actors include those involved in disaster reduction such as the public, private and nonprofit organizations. McEntire, et. al (2002).

variables⁵, and disciplines related to disaster.” McEntire, et al. (2002) states that if CVM is “indeed a more clear and appropriate concept, it may simplify recommendations for practitioners who are concerned about reducing disaster.” Further, this method can be applied at all levels of government.

Prevention And Preparedness

Terrorist attacks are unpredictable and unbounded. President George W. Bush, Vice President Dick Cheney, and Defense Secretary Donald Rumsfeld have all indicated that future terrorist attacks are possible. In addition, the number and range of potential tools, and the number of means of attack is limitless (Loy and Ross, 2001).

On January 2002, the Governor’s Task Force on Homeland Security (GTFHS) identified potential targets that are vulnerable to terrorist attacks. Such potential targets include, but are not limited to: government buildings, transportation, electric power and oil and gas storage, water supply, information and communications, banking and finance, public health, emergency services, recreational facilities (i.e. football stadiums), institutions (i.e. universities), and commercial/industrial facilities (GTFHS, 2002).

Many fear the U.S. infrastructure and network systems are increasingly vulnerable to terrorist attacks (Lacombe and Keyes, 2000). According to a recent CIA National Intelligence Council report, during the next 15 years terrorists will utilize the Internet to launch attacks intended to disrupt American capitalism (Verton, 2001). Recently, a survey by the Business Software Alliance (BSA) and Ipsos Public Affairs found that 49 percent of 395 information technology professionals foresee a major cyberattack on the U.S. government in the next 12 months (BSA Cyber Security Survey, 2002).

The country’s gas and oil pipelines are also potential targets. Oil and gas corporations have raised concerns regarding the safety of the two million miles of oil and gas pipelines. According to some sources, pipeline valves are vulnerable to sabotage (Oil and Gas Journal, 2001). The location of these pipelines and their proximity to schools, churches, businesses, playgrounds, and houses creates an additional security concern (Nesmith and Haurwitz, 2001).

Further, the U.S. Coastline and international borders are so expansive that there are numerous methods of smuggling narcotics, currency, explosives, and weapons of mass

⁵ Variables include physical (accurate assessment of potential disasters and infrastructures), and social (demographics, educating the public about disasters, and improving the provision of health care). McEntire, et. al (2002).

destruction. The area is so vast that law enforcement is unable to catch every perpetrator (Walker, 2001). Ratnesar (2002) recently reported that the U.S. Coast Guard inspects only 2% of incoming seaborne cargo. This creates opportunities for terrorists who wish to smuggle in weapons of mass destruction.

Cyberattacks on the Radar

In a June survey conducted by the Business Software Alliance (BSA) and Ipsos Public Affairs, nearly half of 395 information technology professionals said they foresee a major cyberattack on the U.S. government within the next year. More than half said the likelihood of such an attack has increased since September 11.

Percentage of IT professionals who:

Foresee a major cyberattack on the U.S. government in the next 12 months	49%
Feel the risk of such an attack has increased since September 11	55%
Feel there is a gap between the threat of a major cyberattack and the government's preparedness	72%

Source: BSA Cyber Security Survey, June 2002

Questionable Solutions

One journal article states that America's lack of awareness to terrorist attacks prior to September 11th was an operational failure rather than an intelligence failure. Normally, decision makers have had sufficient warning of attacks to act on the information, but the response has been inadequate.⁶ These operational failures are primarily caused by decision makers' fear of making the wrong decision, by poor planning, and by complacency. In order to avoid these failures, homeland security should consider the relationship between warning and response⁷ (Brinkerhoff, 2001).

However, along with the increase of security and awareness, it is argued that civil rights and civil liberties have suffered. These concerns surfaced largely as a reaction to the anti-terrorism Patriot Act of 2001. Civil rights groups criticize the act for allowing unreasonable, excessive, and unchecked expansions of police powers including search and surveillance limits (Longley, 2001).

The practice of "passenger profiling" has also sparked controversy. Similar to law enforcement's racial profiling, passenger profiling⁸ targets people perceived as most likely to be a security risk. Proponents of this practice argue that this inconvenience and harsh treatment⁹ leads to a safer society (Ward, 2001). Several Arab descendants who consider themselves

⁶ "In truth and in hindsight, there was plenty of warning about the 11 September attacks and about the subsequent anthrax attack. The failure was in not acting properly in response to the warning." Brinkerhoff, 2001.

⁷ "It is evident that before 11 September 2001 there were numerous indicators of an impending terrorist attack. The Intelligence Community and the FBI knew a lot about the terrorists, for within a few days after the attack they were able to public their photographs in the newspaper and provide a list in the "most wanted" category of another 22 terrorists alleged to have supported the attack." Brinkerhoff, 2001.

⁸ With passenger profiling, computers have been used since 1997 to dictate which passengers or pieces of luggage should be subjected to higher levels of scrutiny. This determination is based upon information pertaining to flight history. Ward, 2001.

⁹ The U.S. Supreme Court decision on *Schenck v. United States* (1919) suggested that the rights to certain types of freedoms may be suspended if they present a clear and present danger to society or to the nation.

victims of “passenger profiling” have filed suit against airline companies. After being forced off an aircraft at Austin-Bergstrom Airport, Mohamed Ali Ahmed filed a lawsuit against American Airlines for racial profiling (Stauffer, 2002).

In addition, many airports have resorted to the random screening of individuals. Critics, however, argue that “terrorists like a system that treats everyone the same” (Ratnesar, 2002). Nonetheless, the Hart-Rudman Commission warns that “guaranteeing that homeland security is achieved within a framework of law that protects the civil liberties and privacy of United States citizens is essential.” The United States Government must improve national security without compromising established constitutional principles. Therefore, when developing policies to address these issues, government should be cautious of various elements. Civil rights, liberties, and privacy should be considered when designing new public policy.

Definition Of Terrorism In Texas And Other States

Prior to September 11, 2001, the majority of state criminal penalties for terrorism were less than a third degree felony of 10 years in prison. Since then, however, many states, such as Florida and New Jersey, have enhanced their penalties for an act of terrorism to life in prison or death.

In **Texas**, a person commits a **Class B misdemeanor** (jail confinement of no more than 180 days and/or \$2,000 fine) offense if the person causes an official or volunteer agency to react to the threat, or place any person in fear of imminent serious bodily injury. If a person *prevents* or *interrupts* the occupation or use of a building, room, place of assembly (i.e. church), place to which the public has access (i.e. shopping center), place of employment or occupation, aircraft, automobile, or other public place, then that person faces a **Class A misdemeanor** (jail confinement of no more than 1 year and/or \$4,000 fine). A **third degree felony** (2 to 10 years prison confinement and/or a fine no more than \$10,000) is applied if a person causes impairment or interruption of public communications, public transportation, public water, gas, power supply or other public service (TEX.PEN. Sect. 22.07).

In **Arizona**, terrorism is any unlawful act, including any completed or preparatory offense, involving the use of a deadly weapon or dangerous instrument, or the intentional or knowing infliction of physical injury or criminal damage to property committed for political or financial gain. The perpetrator faces a penalty of five years in prison (ARIZ.CODE Art. 13-2308-01).

In **California**, the punishment for a person who willfully threatens to commit a crime that would result in death or great injury can face a confinement sentence in a county jail or state institution of no more than one year. Similarly, **Colorado’s** “civil disorder” is punishable of one to three years in prison and one year of parole (COLO.STAT. 18-1-105).

In **Florida**, an "act of terrorism" involves a violent act or an act dangerous to human life. If a person is found guilty of committing both a terrorist act and murder, he or she faces a first-

degree felony charge punishable by life in prison or death (FLOR.STAT. 782.04, 2001). **New Jersey** is another state that has redefined terrorism and enhanced the criminal penalty. A person is guilty of terrorism if the person commits or attempts, conspires or threatens to commit any crime that terrorizes five or more people or affect the conduct of government. Further, terrorism is classified as a first-degree felony punishable by 30 years in prison without possibility of parole. If a death results from the terrorist act, the person faces life imprisonment (NJ.S. 2586, 2001).

Texas Definition of Terrorism

Source: Office of House Bill Analysis, March 2002

Texas does not have a comprehensive definition of terrorism. However, there are statutory provisions which define a terroristic threat. These statutes contain minor provisions concerning international terrorism as defined by 18 U.S.C. 2331 and the use of the word terrorism in obscure concepts such as force majeure (acts of God). Current law provides for the prosecution of hoaxes, although the law may not be sufficient to address the particular types of terroristic threats or anthrax hoaxes that have recently occurred. A terroristic threat must be an offense involving violence to any person or property. If one accepts this definition, a nonviolent act, such as mailing anthrax is not a violent act per se, and one could escape prosecution of this offense. Courts in Texas define terrorism in case law "as the exertion of any physical force so as to injure, damage, or abuse." Terrorism can also be inherent, as evident in certain felonies such as arson, robbery, and assault. A terroristic threat is a very fact-intensive offense and successful prosecution depends on the nature of the threat. The alternative to prosecution under a terroristic threat is prosecution under Section 42.06, Penal Code (False Alarm or Report). Another option for prosecution of an anthrax hoax would be assault by threat: to intentionally or knowingly threaten another with imminent bodily injury.

ENDNOTES

TEX.CRIM.PRO. Art. 56.32(a)(11)(C)(i); TEX.UTL. Sect. 39.055(c); TEX.NAT.RES. Sect. 40.204.

"Hoax Anthrax Threats – Discussions on Prosecution." Texas District and County Attorney's Association. October 19, 2001).

http://www.tdcaa.com/dynam_iprosec.asp?iid=1.

TEX.PEN. Sect. 22.01 – 22.07

Brimberry v. State, 774 S.W.2d 773 (Tex. App. – Tyler 1989, no pet.)

Scott v. State, 676 S.W.2d 893, 895 (Tex. Crim. App. 1978).

How Other States Are Responding

Since 9/11, state governments have introduced and created laws to address the issue of port of entry security, bioterrorism, wiretapping, identity theft, and Internet terrorism. Many states have enhanced criminal penalties for criminal behaviors that were once considered Class A or B misdemeanors.

To address the lack of port security, **California's** port officials created a new sea marshall corps designed to preclude terrorists from converting commercial vessels and cruise-liners into weapons of mass destruction (Sahagun, 2001). The sea marshall intercepts, boards, and inspects every ship entering the port area. During a committee hearing, Ruben Bonilla, Chairman of the Port of Corpus Christi, described how his port authority inspects vessels prior to

entering the port area. These entering vessels are screened by the U.S. Coast Guard, U.S. Customs, and INS.

Bioterrorism, most notably the anthrax scare, has become a great concern for many government agencies. Consequently, many states have introduced legislation to create punishment for bioterrorism and update public health care laws. The **New York** Assembly created a criminal penalty of life without parole or death for a person convicted of biological terrorism (NY.PEN.LAW S490.40). Many other states have updated their criminal and civil penalties, such as in **Michigan**, where a person who knowingly contaminates a food or water supply with a poisonous substance can face 15 years to life in prison (MICH.PEN.CODE Sect. 436, 2001). In **Minnesota**, the Model State Emergency Health Powers Act gives the governor power to authorize a quarantine and destroy contaminated property. See Appendix B for the full CDC model act.

In **North Carolina**, the State Department of Health and Human Services is required to establish a biological agent registry and impose civil penalties for violations (NC.GEN.STAT. Sect. 130A-149, 2001).¹⁰ **Connecticut** also introduced legislation that would create a biological agent registry that requires a person who possesses biological agents to register with the state (HB 5288, 2001). **Michigan** amended their Motor Carrier Safety Act of 1963 to provide a criminal penalty of imprisonment for any individual transporting hazardous materials (SB 943, 2001). In **Tennessee**, the legislature created laws that expanded the crime of terrorism to include possession or manufacture of a biological or chemical warfare agent. Legislation also increased the penalties for the crime of terrorism (HB 3232, SB 3192).

Several states have introduced legislation to address wiretapping and surveillance. For example, **New Jersey** introduced legislation that requested the interception of wire, electronic, or oral communications in relations to terrorism (SB 2586, 2001). The bill died in Senate Committee. In **Florida**, however, a similar bill was approved to allow a judge to authorize the interception of any oral communication within the state (FLOR.STAT. Sect. 934.07, 2001).

Many of the hijackers obtained false identification cards while in the United States. This has become a great concern to many federal and state legislators. In **Florida**, a person who sells, manufactures, or delivers fraudulent driver's licenses now faces a third degree felony to a second degree felony charge (FLOR.STAT. Sect. 322.212, 2002). Residents who reside in **Michigan** are now required to obtain a state issued identification card with a four-year expiration date (MCL 28.291, 2001). Further, all flight schools in **Michigan** are now required to conduct criminal background checks on all applicants (MCL 259.85, 2001).

Many states, such as **Minnesota**, have introduced legislation that would close public meetings in which security issues are discussed. The new law seeks to protect discussion of evacuation plans, emergency response plans, security measures or emergency health procedures

¹⁰ The Governor's Task force on Homeland Security recommended for the Governor to coordinate with the federal OHS to create a biological agent registry for the state of Texas.

in case of a terrorist attack. Further, architectural blueprints of city buildings and infrastructures, including utility plants, bridges, waterlines, sewer lines, and transportation lines are exempted from public access (MINN. HF 2746). In **Michigan**, SB 933 (2001) restricted access to structural diagrams and emergency response plans. **Illinois'** Assembly recently enacted a law that closes full or partial meetings, upon a majority vote of a quorum, on issues relating to homeland security (5 ILCS 120/2a, HB 3098, 2002).

As the trend in criminal activities extends to the realm of the Internet, some states have introduced legislation to enhance or create new penalties for cyber-crimes. For example, a person in **Michigan** can face 20 years in prison or a fine of \$100,000 for the use of the Internet or other telecommunications to disrupt governmental operations (MCL 750.1–750.568). In **New Jersey**, legislation was created to remove Web pages that may be utilized by terrorists to plan attacks (Hasten, 2002).

How Texas Is Responding

Shortly after 9/11, Governor Rick Perry created a task force on homeland security. On January 24, 2002, the task force issued recommendations, which include: developing additional labs for speeding testing of chemical attack response team and creation of a State Office of Epidemiology; increasing the use of the National Guard for airport security and protection of private and government facilities during periods of high alert; training public school personnel on terrorist attacks; increased funding for intelligence gathering; development of mass vaccinations plans; requiring those licensed by the state to complete one hour of training each year "on reporting of medical events and responding to the consequences of...terrorism;" expanding real-time monitoring of drinking water supplies by TNRCC; petitioning the FCC to require cellular phone companies to maintain portable towers for emergencies; setting up a toll-free phone line and email address for reporting suspicious persons to TxDPS; and creating a system for warning state agencies and schools of credible terrorist threats (Kuempel, 2002).

Other recommendations included a request for the federal OHS to review federal funding decisions associated with border protection along the Texas – Mexico border. Further, the task force recommended that companies and agencies that work closely with hazardous materials have the ability to request a federal or state agency to research the background of prospective employees (GTFHS, 2002).

The governor's task force also requested assessments of several state agencies. The Texas Emergency Management Council conducted an evaluation of the state's readiness level. After assessing 18 areas¹¹, the state of Texas scored high and was found to demonstrate

¹¹ Command and Control, Critical Infrastructure Assessment, Continuity of Operations/Continuity of Government (COOP/COG) Plans, Emergency Operating Plan, Credible Threat Information, Operational Coordination, Communications, Protective Action Recommendations, Mutual Aid Plan, Public Information, Training, Exercises, and Law and Authorities, Health and Medical, Facilities and Logistics, Critical Infrastructure Mitigation, Personnel Resources, and Equipment and Supplies (GTFHS, 2002).

capabilities in all areas. Another assessment was conducted by the Texas Department of Health (TDH) to determine whether the state and local health surveillance and epidemiological systems are able to adequately respond to terrorism. After the assessment, TDH submitted a request of \$12 million to fund additional staff, laboratory supplies, and training improvement.¹²

WITNESS RECOMMENDATIONS

Academia

Dr. Neville P. Clark, Director for the **Institute for Countermeasures Against Agricultural Bioterrorism at Texas A&M University**, offered several recommendations the state may consider when address bioterrorism. One recommendation was to invest in a regulatory system, similiar to that in Long Island, New York, that can diagnose and respond quickly to an outbreak. He also recommended improving the administration of vaccines, rather than slaughtering animals, to control diseases. Further, the state should implement a better method for carcass disposal after a cleanup campaign. Finally, he discussed some recommendations that surfaced after a biosecurity exercise was implemented, such as: restricting the movement of animals, products and people when a exotic disease is diagnosed; establishing and maintaining quarantines; depopulating certain livestock, poultry, wildlife; obtaining authorization to enter or overfly private property; settling damage claims; ensuring appropriate deed recordation after burial or carcasses; shutting down market operations and international trade; suspending or terminating public events; limiting ingress and egress of individuals and equipment; appropriate response levels to protestors and producer issues; suspending hunting permits; curtaining mail operations and delivery services; and crime compensation.

Admiral Bobby R. Inman, a professor at the **University of Texas**, stressed the need for heightened state involvement in national security issues. As chair of the State Infrastructure Protection Advisory Committee, Inman has assessed the state's ability to protect its infrastructure. The committee found that the only way to provide adequate warning to citizens would be to acquire instantaneous information from the federal government, law enforcement, and private industries. Inman, however, asserted that the federal government and other intelligence agencies will not provide information to the State of Texas without certainty that their information, sources, and methods will not be compromised. Further, industries will not provide information about their vulnerabilities for fear that they will later be exploited by competitors. He recommended that the Legislature further examine the Open Records Act.

Civil Rights and Liberties Organizations

¹² "The Legislative Budget Board authorized the transfer of \$6.1 million to TDH to improve the state's bioterrorism defense including \$4 million to increase its epidemiological staff and upgrade its Health Alert Network to allow it to better track the outbreak of diseases such as anthrax or small pox that terrorists could spread; \$2 million is to be used to improve local and state laboratories, and \$100,000 is allocated to improve training of local and regional staff." (The Dallas Morning News (Dec. 4, 2001) as cited by House Bill Analysis, 2002).

Sonali Metha, speaking on behalf of the **American Civil Liberties Union of Texas**, **League of United Latin American Citizens**, and the **Muslim Legal Defense Fund**, offered recommendations on how to protect citizens' rights. She suggested consolidating wiretapping authority at DPS to facilitate more efficient information sharing between local, state, and federal law enforcement agencies. Currently, there is no centralized authority for active wiretaps and no legal requirements for reporting local wiretaps to the state. Therefore, recentralizing would provide more control and prevent potential abuses of power. She also recommended reinstating a requirement that would mandate DPS officer presence during government wiretapping. Under the current law, non-law enforcement personnel may install wiretaps in Texas. Metha also recommended that the committee take action to limit information sharing.

Sahar Aziz testified on behalf of the **American Civil Liberties Union of Texas**, **League of United Latin American Citizens**, and the **Muslim Legal Defense Fund**. She urged the committee to reject attempts to involve state and local law enforcement in undercover anti-terrorism operations that do not include a reasonable belief that a serious crime has been planned or committed by a specific individual or group. She also expressed concern over the erosion of judicial oversight. She recommended the committee reject any laws that jeopardize judicial oversight and the judiciary branch's role in monitoring the executive branch, Attorney General, and law enforcement.

Industry

Ruben Bonilla, Chairman of the **Port of Corpus Christi**, recommended several security enhancements needed by port authorities. One recommendation included increasing the funding of the Texas Mobility Fund and Texas Port Transportation and Economic Development Fund. This would allow Texas port authorities to apply for grants that could be used to fund security enhancements. Another recommendation was to authorize funding for the enhancement of railroad security at their intermodal connection points. Further, he recommended requiring the Texas Department of Transportation to protect key named bridges over navigable waters at port entries by using sophisticated radar systems and other uniform guidelines.

Law Enforcement Agencies and Local Emergency Offices

Thomas Ward, Assistant Chief of the **Dallas Police Department**, offered the committee several recommendations to strengthen the state's homeland security. He suggested updating the Open Records Act to prevent sensitive information relating to homeland security from being obtained. In addition, he recommended revising the Texas Open Meetings Act to exempt meetings on sensitive homeland security issues from being open to the public. Another recommendation offered was to specify and expand how threat is communicated via the Internet and other telecommunication devices. Finally, Ward advised against creating a new homeland

security bureaucracy. Instead, he suggested allocating additional state resources to existing government agencies.

Juan A. Sendejar, **Corpus Christi and Nueces County Local Emergency Planning Committee** Administrator, recommended providing local emergency responders with increased funding for personnel, equipment, and training.

Carlos Leon, Chief of the **El Paso Police Department**, recommended implementing legislation that would "crumble the barriers that prevent federal, state, and local law enforcement agencies from sharing intelligence information." Existing restrictions delay or prevent the exchange of information from federal law enforcement. Leon stressed that at the very minimum, law enforcement agencies should have guaranteed access to intelligence information that includes known terrorist elements operating within one hundred miles of the agency's jurisdiction. In addition, he maintained that a nationwide and/or statewide database of terrorist information is needed to monitor and apprehend terrorists.

Leon also proposed updating existing Texas Penal Laws to better address the threat of terrorism. He stated that Penal Code Section 46.09, Components of Explosives, should be revised to reflect that mere possession of components in a significant quantity to build a bomb or partially construct a bomb is illegal. Law enforcement experiences difficulty in prosecuting individuals found in possession of these components because of the existing wording of the law, which includes a requirement to prove the actor intended to assemble the components into an explosive weapon. Leon suggested eliminating the requirement to prove that the actor intended to combine the components. In addition, he stated that the revision should also include individuals who possess components with the intent to provide them to others who might use the components to construct an explosive weapon.

Furthermore, Leon proposed revising Section 46.08, Hoax Bombs, to increase the penalty for violating this statute to a third-degree felony. He stated that Section 22.07, Terroristic Threats, should also be revised to include a felony provision that would make it a felony offense to mail, deliver, or leave a letter, package, or substance at a location with the intent to cause another to believe or fear that they have been exposed to hazardous material.

Leon recommended enhancing the penalty for trespassing upon property of a public utility, water treatment plant or pumping station, public communications carrier, railroad, or public transportation facility. This could be accomplished by revising Section 30.05, Criminal Trespass. He suggested the current statute also be revised to include a provision making it a violation to enter a sterile area of an airport terminal building without fully processing through the screening procedures. This would help augment federal law and provide local law enforcement with the ability to address individuals who violate security measures.

State Agencies and Commissions

Jim Dozier, Executive Director of the **Texas Commission on Law Enforcement Officers Standards and Education** (TCLEOSE), discussed the importance of police officers in homeland security. He argued that the 1992 Attorney General's Opinion #105, which prohibited the requirement for police officers to be U.S. Citizens, makes it difficult for law enforcement to access background information on applicants. It is especially problematic if the applicant is from a nation with inadequate record keeping. Obtaining background information is crucial, especially if that police applicant is to handle delicate emergency planning information. Dozier recommended following other state laws that require police officers to be citizens of the United States.

CONCLUSION

Undoubtedly, the tragic events of 9/11 were a wake-up call to the United States security. Nevertheless, law enforcement is now more aware and becoming better prepared to prevent and respond to future terrorist attacks. However, in order to continue this effort, law enforcement and emergency management needs additional equipment, manpower, and technology.

When designing public policy, whether introducing or enhancing criminal and civil penalties, policymakers should remember not to compromise established constitutional principles. Civil liberties and civil rights should be taken into consideration.

Further, a truly comprehensive homeland security program should extend beyond the federal government. It should involve not only the military, but also the state and local government, and the private sector of critical infrastructure (i.e. computer networks, oil corporations, private plane owners, nuclear facilities, etc.).

Homeland security, at the local level, must be prepared for unexpected attacks. In order to do so, “flexibility and adaptation [must] be at a premium for organizational functioning” (Wise, 2002). Information should be shared among the agencies in order to produce effective intelligence. Finally, clear tasking, well-defined priorities and adequate resources are essential (Loy and Ross, 2001).

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COMMITTEE RECOMMENDATIONS

The committee carefully reviewed the issue of homeland protection and suggested the following:

1. Avoid creating a new homeland security agency or commission. Instead, provide more state resources to already established local government agencies.

2. Consider the Center for Disease Control and Prevention's Model State Emergency Health Powers Act. This Act provides state officials with the power to prevent, detect, manage, and contain emergency health threats. In addition, adopt clear definitions for "public health emergency," "epidemic disease," "pandemic disease," and "natural disaster." Further, civil rights and liberties should not be compromised when implementing quarantines, vaccinations, examinations, or other public health emergency management. (See Appendix A for the CDC's Act)
3. Increase funding to the Texas Mobility Fund. Enhance intermodal security as a project funded under Texas Port Transportation and Economic Fund.
Currently the Texas Port Transportation and Economic Development fund can only fund port transportation, facility projects, or port studies. It prohibits the funding of a port transportation or facility project unless an amount at least equal to the amount provided by the department is invested in a project by a port authority or navigation district (SB 1282, SJR 16; 2001).
4. Authorize funding for railroad security enhancement at Port intermodal points and authorize access control of rail on intermodal yards.
The majority of Port Authorities have access control for vehicular traffic on roads and vessels on waterways. However, many do not have access control of rail at intermodal yards. By providing access control, Port Authorities can better screen cargo entering and leaving the port.
5. Amend the Texas Penal Code Section 22.07 to specify and expand how threat can be communicated. Create penalties for terroristic threats via the Internet or other telecommunication devices with the intent to disrupt government operations or public service.
6. Require citizenship of individuals who wish to become a police officer.
Prior to 1992, in Texas the individual had to be a U.S. citizen in order to become a peace officer. According to a 1992 Attorney General's Opinion, however, TCLEOSE can no longer require citizenship.
7. Provide more funding for the Texas Commission on Private Security to continue assisting the state in conducting background checks, preventing identity theft, and increasing homeland security.
8. Establish a biological agent registry and impose civil penalties for violations.
9. Invest into a multi-layer regulatory system to protect the Texas food industry.

10. Provide a criminal penalty of imprisonment for any individual transporting hazardous materials without a license.
11. Provide an enhanced criminal penalty for a person who sells, manufactures, or delivers fraudulent driver's licenses.
12. Create criminal penalties for various terrorist acts, including contamination of agricultural crops and livestock through biological or chemical agents.
13. Provide a civil and criminal penalty for a person who knowingly contaminates a food or water supply with a poisonous substance.
14. Create legislation that would expand the crime of terrorism to include the possession or manufacture of a biological or chemical warfare agent.
15. Create legislation to increase the penalties for acts of terrorism.
16. Revise the Texas Open Meetings Act to exempt meetings on sensitive homeland security issues from being open to the public.
17. Exempt architectural blueprints of city buildings and infrastructures, including utility plants, bridges, waterlines, sewer lines, and transportation lines from public access.

WITNESS LIST

Sahar Aziz

Ms. Aziz is a student at the University of Texas School of Law. She represents the American Civil Liberties Union of Texas, League of United Latin American Citizens, and the Muslim Legal Fund of America.

Ruben Bonilla

Mr. Bonilla is the Chairman of the Port Commission of Corpus Christi

Dr. Neville P. Clark

Dr. Clark is the Director of the Institute for Countermeasures Against Agricultural Bioterrorism. This organization unites five different parts of the Texas A&M University System — the College of Agriculture and Life Sciences, the College of Veterinary Medicine, the Texas Agricultural Experiment Station, Texas Cooperative Extension and the Texas Veterinary Medical Diagnostic Laboratory — to address the threat of agricultural bioterrorism.

Dr. Jim Dozier

Dr. Dozier is the Executive Director of the Texas Commission on Law Enforcement Officer Standards and Education.

Will Harrell

Mr. Harrell is the Executive Director of the American Civil Liberties Union of Texas. He also represents the League of United Latin American Citizens and the Muslim Legal Fund of America.

Admiral Bobby R. Inman (USN, Ret.)

Admiral Inman served in the U.S. Navy from November 1951 to July 1982, when he retired with the permanent rank of Admiral. While on active duty he served as Director of the National Security Agency and Deputy Director of Central Intelligence. After retirement from the Navy, he was Chairman and Chief Executive Officer of the Microelectronics and Computer Technology Corporation (MCC) in Austin, Texas, for four years and Chairman, President, and Chief Executive Officer of Westmark Systems, Inc., a privately owned electronics industry holding company, for three years. Admiral Inman also served as Chairman of the Federal Reserve Bank of Dallas from 1987 through 1990

Chief Carlos Leon

Mr. Leon is Chief of the El Paso Police Department.

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Ms. Metha is a student at the University of Texas School of Law. She represents the American Civil Liberties Union of Texas, League of United Latin American Citizens, and the Muslim Legal Fund of America.

Juan A. Sendejar

Mr. Sendejar is an administrator for the Local Emergency Planning Committee for Nueces County and Corpus Christi. This agency addresses issues of emergency planning, preparation, and response.

Don Shawver*

Mr. Shawver is the owner of Shawver and Associates, a licensed Investigative Agency. He is also a member of the Texas Commission on Private Security.

Chief Thomas Ward

Mr. Ward is the Assistant Chief of the Dallas Police Department.

Full transcript of public hearings is available at the committee office upon request.

* Don Shawver's testimony also included recommendations in addressing identity theft.

INTERNATIONAL DRUG TRAFFICKING

INTERNATIONAL DRUG TRAFFICKING REPORT

Consider ways to cooperate with Mexican states to reduce international drug trafficking.

COMMITTEE BRIEFING

Drugs continue to plague American society. In a recent federal report, drugs were commonly perceived as the cause of violence and crime (Office of National Drug Control Policy, 1998). Furthermore, according to Donnie Marshall (1999) of the U.S. Drug Enforcement Administration, drug trafficking infiltrates communities of all types and sizes. More than just an urban problem, suburban and rural communities are also affected.

However, the correlation of drugs and crime is increasingly complex. Consequently, drug policies induce a pushdown-pop-up effect. This means that if a policy has a successful effect in reducing illegal drug use, it is expected to have a similar effect on crime reduction to the same degree (Walker, 2001). Walker states that crimes related to drug crimes might be reduced, but the impact on crimes associated with deviant lifestyles, such as burglaries and robberies, would be limited.

There has been progress, however, in the enforcement of anti-drug policies. In 1997, the Office of National Drug Control Policy (ONDCP) estimated an increase in drug seizures since the 1980s. Further, the Falfurrias checkpoint is reported to have seized more drugs than any other checkpoints in the United States (Schwartz, 2001). The Texas Department of Public Safety has reported successful seizures of drugs such as marijuana, cocaine, and methamphetamines during the year 2000. (See Table 1.)

Despite these successes, there are growing concerns regarding the legitimacy of law enforcement. For example, San Antonio law enforcement officers were recently convicted of protecting shipments of cocaine (Badger, 2002). Further, others question whether Mexico is actually helping to eliminate drug trafficking or if the U.S.'s "war on drugs" remains more of a unilateral effort.

This report examines U.S. policies on the "war on drugs," as well as the anti-drug policies of Mexico. Further, bilateral cooperative policies between the United States and Mexico and their limitations are examined and discussed.

The U.S.'s "War On Drugs"

Rigorous drug policies began with the 1914 Harrison Act (Prohibition) in the United States. Prohibition criminalized many drugs, but also contributed to the rise of organized crime. During prohibition, mobsters and gangsters such as Al "Scarface" Capone and George "Bugs" Moran trafficked drugs, alcohol, and guns which were outlawed. Mob related violence plagued America's streets, while drug use continued to rise.

The Reagan Administration introduced a concept known as America's "war on drugs." By relying on the military, the U.S. was able to combat cultivation and trafficking in Columbia and other Latin American countries. Further, a new phase in the "war on drugs" emerged on the home front. School based programs such as "Just Say No" and D.A.R.E. began teaching children of the dangers of drugs¹.

¹ Recent research has found that school-based programs such as D.A.R.E. are ineffective in steering children away from drugs and considered counterproductive (Tolber and Stratton, 1997; Lynam, Milich and Clayton, 1999; and Hallfors, et. al., 2000).

During the early 1990's, the U.S. government implemented the interdiction of drugs into the country. Interdicting the flow of illegal narcotics into the United States became a "top national security" priority (Bennett, DiIulio, Walters, 1996).

According to a 1997 report by the Office of National Drug Control Policy (ONDCP), federal agencies seized 108 metric tons of cocaine, 1,362 kilos of heroin², and 696 metric tons of cannabis. Major drug seizures by federal and local officials are considered evidence that law enforcement is reducing the flow of illegal drugs (Walker, 2001) For example, after a successful raid, the South Texas Specialized Crimes and Narcotics Task Force seized over 10,000 pounds of drugs that were hidden in an unsuspected neighborhood home (Schwartz (2001) as cited by Cárdenas, 2002). As reported by Marshall (1999), DEA discovered a working laboratory that was capable of producing 180 pounds of methamphetamine near a junior high school. Further, a 2001 report stated that the Texas Department of Public Safety (TxDPS) state troopers intercepted illegal drugs valued at \$169.4 million³ (Chaparral, 2002). But Schwartz (as cited by Cárdenas, 2002) argues that these numbers represent only a fraction of the amount of drugs that remain undetected. Walker estimates that successful seizures only account for about 10 to 15 percent of total supply.⁴

The 1,254 miles of Texas-Mexico border provides numerous opportunities for drug smuggling over several routes, land or water. Further, Texas seaports are convenient locations for trafficking narcotics (TxDPS, 2002). Nevertheless, the U.S. Coast Guard, U.S. Border Patrol, INS, and port authorities are frequently searching vessels prior to their entering Texas' ports (Bonilla, 2002).

In the United States, a large number of criminal indictments have occurred along the 455-mile Rio Grande (DOJ, 2001). Moreover, Schwartz (2001) reported that in 2000, the Falfurrias checkpoint on U.S. Highway 281 seized more cocaine and marijuana than all the checkpoints in Arizona and California combined.

Strategic plans to combat drug trafficking have been outlined by the U.S. Attorney's Office for the Southern District of Texas. These plans include: supporting regional strategies within the district that focus multi-agency investigations to identify, disrupt and dismantle major drug organizations along all points of the production, transportation, and distribution chain; and encouraging multi-district, national and international investigative and prosecutorial efforts that affect drug trafficking activities in the district.

Therefore, the U.S. has been extremely active in combating drug trafficking by implementing new strategies—locally, statewide, and nationally—and program goals. After several decades of battling corruption, it has been argued that Mexico has also begun developing new programs and goals to address drug crimes.

² Fourteen percent of heroin seized in the United States originated in Mexico (DEA Heroin Signature Program, 1997).

³ Texas Law Enforcement Division statistics, 2001.

⁴ Walker (2001) considers interdiction policy a failure. He argues that the 20,000 mile U.S. Mexico border leaves room for numerous methods to smuggle drugs. He notes that the total worldwide production of drugs has increased significantly between 1987 and 1991.

Mexico's "War On Drugs"

Since the American prohibition of opium, Mexico has been plagued by drug trafficking and government corruption. Many governors have used their position of authority to allow the trafficking of drugs, despite publicly discouraging and prohibiting the trade (Astorga, 2001).

In 1947, President Miguel Alemán and a counterpart of the CIA developed the Federal Security Directorate (DFS) to mediate and implement anti-drug policies.⁵ A structural link, however, was designed to connect the DFS and the ruling party with drug traffickers. Astorga (2001) defines this linkage as being two-fold: to ensure that part of the profits were levied in exchange for protection; and to serve as a mechanism for containing violence and political temptations among traffickers to prevent a revolt against the government.

By the 1980's, the U.S. government intensified the prohibition policy by declaring a "war on drugs." The U.S. government began pressuring Mexico to cooperate in the anti-drug mission. The U.S. solution, however, of employing a military strategy created tension within the Mexican government (Astorga, 2001).

The DFS's corruption was soon revealed with the assassination of DEA agent Enrique Camarena in 1985. In effect, President De la Madrid dismantled the DFS, but failed to eliminate another key agency, an arm of the DFS that had a long history of organized crime (Astorga, 2001).

In the late 1980's, President Carlos Salinas received praise from the international community for opening up the economic system and privatizing state-owned enterprises (Shelley, 2001). However, investigative reporters found that President Salinas' brother, Raul, had close ties with drug kingpin García Abrego (Astorga, 2001). In effect, Raul Salinas' indictment indicated that the linkage between drug traffickers and government officials remained intact.

Violence connected with drug trafficking intensified in the 1990's along the Border States. Many attributed this to the changing government and increased awareness of corruption (Shelley, 2001; Astorga, 2001).⁶ In spite of this, Mexico has made progress in addressing low level corruption. Oversight institutions and watchdog organizations have been established to address major cases of low level corruption (Shelley, 2001).

In 2000, the election of President Vicente Fox ended 70 years of PRI (Institutionalized Revolutionary Party) control (Shelley, 2001). During his election, Fox presented several measures to eliminate the historical corruption between drug traffickers and politicians. Such measures proposed included plans to: regard drug trafficking as a matter of public order, as a moral turpitude, rather than national security; withdraw the military from fighting drug crimes;

⁵ The founder of the DFS, Colonel Carlos Serrano, was disclosed as having ties with drug traffickers (Astorga, 2001).

⁶ As reported by Shelley (2001), "Many Mexicans passively observed the rise of drug trafficking organizations; they saw the drug problem as external to Mexico. They did not understand that the rise of the drug trade would weaken the fabric of Mexican society through increased drug use and violence and promote the acceptance of a criminal culture."

to abolish the PGR and establish the Attorney-General of the Nation and the Office of the Secretary for Security Services and Justice; and concentrate the police and the intelligence services on drug crimes and directly communicate with the Attorney General (Astorga, 2001).

As reported by Shelley (2001), political corruption and organized crime have negatively impacted bilateral relations with the United States. Further, the drug war has become one of the major sources of tension between the two countries (del Alizal, 1991; Villegas, 1991). Mexico faces many challenges when eliminating political corruption. Mexico's institutions of security and justice need qualitative reform. Independence from the executive branch and ruling political party is necessary to ensure accountability. Further, the United States government needs to respect the sovereign freedom of Mexico in determining their anti-drug policy (Astorga, 2001).

Since President Fox's inauguration, many actions have been initiated to dismantle the relationship between politicians and drug traffickers. President Fox's initial proposal to withdraw the Mexican military was altered when U.S. drug czar Barry McCaffrey stressed the need for military dependency (Astorga, 2001).⁷ Since then, the Mexican army has made progress in arresting drug traffickers and kingpins such as Albino Quintero Meraz, a major drug trafficker aligned with the Juárez cartel (Kraul, 2002). These bilateral efforts prove progressive in addressing drug kingpins, revealing drug smuggling tunnels, and interdicting the flow of narcotics into the United States.

Nevertheless, reports continue to surface describing Mexican police officers who are missing or killed because of their involvement in investigating drug crimes. Many have resigned in hopes of protecting their lives and families from becoming future targets (Rodriguez, 2002; Garza Flores, 2002).

Cooperative Efforts

Despite the misconceptions that Mexico is failing to stop the proliferation of drug trafficking and political corruption, their anti-drug policies and programs are increasingly tackling criminal activities. In addition, Mexico has actively participated in several bilateral programs.⁸

Recently, the Government of Mexico announced an initiative to strengthen their Drug Control General Strategy (Refuerzo a la Estrategia General para el Control de Drogas). Since 1996, the Mexican and United States Governments have developed effective bilateral cooperative policies to deal with drug trafficking. This bilateral cooperation facilitates long-term policy planning, communication, and coordination, and helps both governments effectively combat drug production and trafficking (U.S. Embassy, 2001).

Other strategic bilateral projects include: the High-Level Contact Group on Drug Control

⁷ Astorga (2001) reports, "The tendency towards militarization of the security machinery in Mexico, as elsewhere in Latin America, seems to be of greater interest to the United States Government..."

⁸ Mexico is a world leader in the eradication of illicit crops. As a result of the agreement of efforts between the Office of the Attorney General in Mexico (Procuraduria General de la Republica – PGR) and the Secretariat of National Defense (Secretaria de Defensa Nacional – SEDENA), Secretariat of Navy (SEMAR) from 1995 to 1999, Mexico has eradicated over 150,000 hectares of marijuana and over 80,500 hectares of poppy (U.S. Embassy, 2001).

(HLCG), an agency that shares strategic initiatives to tackle drug trafficking; the Mexico-U.S. Senior Law Enforcement Plenary Group, which plans bilateral operations in fields such as extradition and deportation of fugitives and fighting major crime organizations; and the U.S./Mexico Border Center for the Application of Prevention Technology (CAPT), which was created to serve the 60-mile region that includes California, Arizona, New Mexico, and Texas.

There have been several successes in the bi-national cooperation between Mexico and the United States. For example, in May 2002, U.S. Customs, U.S. Border Patrol, DEA, and Mexican authorities uncovered several underground border tunnels used to transport narcotics into the United States (Watson, 2002).⁹

Nevertheless, several barriers to bilateral cooperation remain. For example, many Americans blame Mexico for corrupting the U.S. law enforcement system.¹⁰ Many local law enforcement officers have participated in pipelining narcotics from Mexico into the United States (Shelley, 2001; Badger, 2002).

Further, it is difficult to combat drug trafficking when children along the border area are continually exposed to *narco-corridos*¹¹, which are traditional border songs that praise drug dealers (Edberg, 2001). Edberg (2001) states that the proliferation of narco-corridos have created a value-based image of drug traffickers as saints¹² or heroes. Conversely, these songs portray law enforcement and “gringos” as evil. In effect, border towns, such as Tijuana, Mexico, have asked radio stations to stop playing narco-corridos (Borchardt, 2001).

For the most part, these types of barriers have not prohibited or deterred the bi-national cooperation between the United States and Mexico. Along with the new Mexican administration and a strong bilateral cooperative agenda, drug trafficking should begin to dissipate.

WITNESS RECOMMENDATIONS

Civil Rights and Liberties Organizations

Scott Henson, who testified on behalf of the **American Civil Liberties Union of Texas** and the **League of United Latin American Citizens**, recommended abolishing narcotics task forces. He suggested applying the Byrne grant money toward other activities, such as combating sexual assault or establishing police-community reconciliation efforts

Law Enforcement Agencies

⁹ Since 9/11, many of these tunnels were highly trafficked with drug smugglers and illegal immigrants (Watson, 2002).

¹⁰ “Americans blame Mexicans for corrupting the American system without acknowledging that American conditions—our demand for drugs—helped give rise to the drug trade. Corruption of American law enforcement on our borders facilitates both the trade in drugs and human trafficking. Furthermore, American financial institutions play a key role in the Mexican drug trade by helping launder money.” Shelley, 2001.

¹¹ As defined by Elijah Wald (2001), narco-corridos are ballads in the classic Medieval style that are an anachronistic link between the earliest European poetic traditions and the world of crack cocaine and gangsta rap.

¹² El Narcosanto is considered a drug trafficking saint in Sinaloa.

Jaime Garza, Commander of the **South Texas Specialized Crimes and Narcotics Task Force**, recommended several solutions to increase cooperation with Mexican states and decrease drug trafficking. Such solutions included promoting joint cooperation by facilitating operational plans between Border States to increase the efficiency of law enforcement. Joint cooperation with Mexico can help law enforcement to target drug organization assets and remove the profitability from the illegal drug market. Further, Garza recommended eliminating political corruption and avoiding political and bureaucratic micro-management. An oversight committee with strict guidelines should be developed, such as the TxDPS's oversight over the multijurisdictional drug task force funded by the Criminal Justice Division.

Sergeant Alberto Sanchez, of the **Laredo Police Department**, recommended helping Mexican law enforcement agencies indirectly by continuing to interdict drugs entering the United States. He suggested increasing the focus on interdicting money and assets entering Mexico. He stated that stopping the proceeds from going into Mexico will help fight drug trafficking on their side.

Armando Rodriguez, Commander of the **Laredo Narcotics Task Force**, recommended for the development of a bilateral training program to create a comparable law enforcement program.

James Brubaker, Deputy Commander of **Narcotics Service for the Texas Department of Public Safety**, described efforts to build amicable relationships with Mexican law enforcement. His department has provided Mexican officers with used equipment, such as ballistic vests, as a means of establishing rapport with the officers. He has also sent officers to Mexico to participate in pistol competitions. Brubaker recommended expanding these efforts to include limited training of Mexican law enforcement.

CONCLUSION

The “war on drugs” might be the most costly battle that has shown little, if any, progress. While countless solutions have been offered to improve the mission, bilateral cooperation between the bordering states seem to be the most promising.

As stated by the U.S. Embassy in Mexico, “neither the United States nor Mexico can combat the drug problems alone, so it is imperative that cooperative mechanisms continue to exist and be strengthened in the years ahead.” Nonetheless, the United States should respect the sovereignty of Mexico when implementing anti-drug policies. By implementing a consensual and cooperative bilateral program, both countries can combat drug trafficking.

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COMMITTEE RECOMMENDATIONS

1. Continue the interdiction of drugs while increasing focus on the money and assets entering Mexico.
2. Create a border drug crime commission with experienced local, state, and federal narcotic law enforcement officers and district attorneys. This commission should establish, evaluate, and monitor bilateral cooperation with Mexican bordering states. In addition, Texas should implement a bilateral training program with Mexican counterparts to create a comparable law enforcement program.

This commission would coordinate with Mexican and American law enforcement agencies in facilitating operational plans to fight drug trafficking. Further, the commission would have oversight on the management and operations of local law enforcement agencies of both sides of the border when investigating drug trafficking. In addition, the commission would coordinate with bordering law enforcement agencies to establish a bilateral training program. Finally, tight communication with the bordering law enforcement agencies and the commission can help eliminate drug trafficking, and improve the United States' interdiction

program.

WITNESS LIST

Deputy Commander James Brubaker

Deputy Commander Brubaker heads the Narcotics Service for the Texas Department of Public Safety.

Commander Jaime Garza

Commander Garza is an officer with the South Texas Specialized Crimes and Narcotics Task Force in Kingsville, Texas.

Scott Henson

Mr. Henson is the director of the Police Accountability Project for the American Civil Liberties Union of Texas.

Commander Armando Rodriguez

Commander Rodriguez is an officer with the Laredo Narcotics Task Force with experience in working with Mexican law enforcement to combat drug trafficking.

Sergeant Alberto Sanchez

Sgt. Sanchez is an officer with the Laredo Police Department with experience in working with Mexican law enforcement to combat drug trafficking.

Full transcript of public hearings is available at the committee office upon request.

EIGHT-LINERS

EIGHT-LINERS

Review the statutory law governing the use of devices known as “eight-liners” and suggest ways to eliminate ambiguity about the legality of their possession and use.

COMMITTEE BRIEFING

Eight-liners are once again at the forefront of debate. Ambiguity still exists when determining if an eight-liner qualifies as a gambling device. The amusement industry insists that eight-liners are solely amusement machines and should not be interpreted as gambling machines. They also maintain that eight-liners are devices of skill and not of chance. Controversy also surrounds the meaning of "non-cash merchandise," "cash-merchandise," and "single-play." These items, as stressed by many, are not clearly defined in the Texas statute.

Owners and operators of eight-liners continue to argue that state law allows them to legally operate these devices. Nevertheless, law enforcement continues to raid establishments, arrest, and prosecute owners and operators of eight-liner devices.

According to a 1998 Attorney General Opinion (DM-466), former Attorney General Dan Morales considered eight-liners gambling devices.¹ Eight-liners were determined illegal on the

¹ It is considered a Class A misdemeanor offense punishable by a \$4,000 fine and or one year in jail for the ownership and or possession of a gambling device. (TEX.PEN. Code Sec. 47.06).

basis that they operate on chance, require payment of consideration to play, and offer prizes for winnings (House Research Organization, 1999). The Amusement and Music Operators of Texas (AMOT) disagree. Fenoglio (2002) stated that eight-liners do not constitute gambling devices if they possess the three features defined in TEX.PEN.CODE 47.01(4)(B): it is a bona fide amusement device; it rewards a player with non cash merchandise; and it follows the prize limitations.²

The purpose of this research is to explain what eight-liners are and address the ambiguity that exists within the state law. Further, previous opinions and court rulings in Texas and other states are discussed. Finally, the report will review recommendations shared by witnesses at the committee public hearings.

What Are Eight-liners?

Since 1995, when the State allowed the operation of novelty games that do not pay cash, the popularity of eight-liners have flourished (HRO, 1999; Pasztor, 2002). Eight-liners are video amusement machines that display a 3 x 3 matrix. There are eight possible lines on which a player can win—three down, three across, and two diagonal. Physically resembling slot machines, they are commonly

found in truck stops, convenience stores, shopping malls, and bars. Many times these machines are found along with other machines, such as video poker or blackjack, and often found in secluded areas, also known as “backrooms.” Other times, eight-liner establishments display banner signs that read "VIDEO POKER" or "PARADISE SLOTS."³ The machines accept currency up to 100 dollars (AMOT, 1999; HRO, 1999; GTFIG, 1998; OAG DM-466, 1998). When the player wins, coupons, tickets or tokens are rewarded in lieu of cash. As reported by the HRO (1999), players will often trade their “play-money” for an inexpensive prize and receive the balance in cash. Fenoglio, who represents AMOT (2002), however, stresses that this practice is illegal and those establishments who practice this should be prosecuted.

Texas Penal Code Sec. 47.01(4)(A)(B)

(4) “Gambling devices” means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and
(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

² AMOT’s Code of Ethics denounces casino gambling and opposes “locations whose sole and only income is derived from video amusement or eight-liner machines.” (AMOT Revised Ethics Code, 1998).

³ Photographs provided to the Committee on Criminal Jurisprudence during a public hearing on April, 1999.

The Ambiguity

The ambiguity surrounds the question of whether eight-liners are machines of “chance” played solely for “amusement” purposes. Owners and operators believe the “Fuzzy Animal Act of 1993” exempts eight-liners from being classified as gambling machines since they are electromechanical, primarily used for bona fide amusement, and provide noncash items as winnings. Others, however, argue that the legislative intent of the Act was only to allow those devices commonly used by children, like “toy cranes,” to be legal.

During the Governor’s Task Force on Illegal Gambling in Texas (1998), a witness stated that eight-liners are a game of skill rather than of chance, since the player has to push a button to complete a play of the game (HRO, 1999). Further, during a 1999 Criminal Jurisprudence hearing⁴, one individual discussed the anatomy of the eight-liner machine and concluded that the machines are *electromechanical* and require skill. Finally, supporters of eight-liners state that these machines are played for *bona fide amusement purposes* only and not as a means of gambling. The Office of the Attorney General disagreed with both prior statements (DM-466, 1998).

Further, another issue that has surfaced surrounds the undefined meaning of "single-play," "non-cash merchandise," and "cash-merchandise" in the Texas Statute. During the June 28, 2002 committee hearing, Steven Fenoglio interpreted "cash-merchandise" as being money that a person possesses in the form of paper currency or stamped metal. He defined "non-cash merchandise" as being a merchant's ordinary wares. The District Attorney of Randall County interpreted "non-cash merchandise" as merchandise an individual cannot purchase with money.

Chief McFadden of the Lewisville Police Department stated that ambiguity also exists on the meaning of "single-play." According to McFadden, the existing eight-liner machines in Texas could not operate legally under Nevada gaming laws. Nevada defines "single play" as the pull of the handle or push of the play button.⁵ Fenoglio, however, defines "single-play" as the money a player inserts into an eight-liner device, regardless of the denomination. He uses the analogy of a pinball game in which the player receives several balls in exchange for cash.



Eight-liner and video machines.
Great Lakes Amusement Website.

The Ambiguity

⁴ Texas House Committee on Criminal Jurisprudence hearing on HB 1690 by Representative Terry Keel. April 13, 1999. 76th Legislative Session.

⁵Nevada Gaming Control Board. Conservation. August 13, 2002.

Further discrepancies have arisen over whether the State of Texas may legally prohibit casino gambling on lands owned by Native American tribes. The majority of the nation's 200 tribes currently operating casinos do so under protection of sovereignty recognized by the federal government. However, the state maintains that both the Alabama-Coushatta and the Tigua Indians signed the Restoration Act of 1987 as a means of restoring their trust relationship with the federal government. The act contains a passage which states: "All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on the lands of the tribe." Texas Attorney General John Cornyn has successfully argued that by signing this act, the tribes accepted all state laws regarding gambling. In exchange, the state agreed not to oppose federal recognition of their tribe.

In 1999, Cornyn filed suit in federal district court alleging that the Speaking Rock Casino and Entertainment Center, owned and operated by the Tiguas, violated the Restoration Act. After the Tiguas questioned whether the attorney general possessed the authority to sue the tribe on behalf of the state, Cornyn amended the lawsuit. The amended suit sought to have the casino declared a common nuisance in violation of the Penal Code. Civil Practices and Remedies Code, section 125.002 authorizes the attorney general to bring suit to enjoin and abate a common nuisance. Despite accusations from the Tiguas that the state is misusing the nuisance statute, the federal district court in January 2000 ruled that the attorney general had the necessary authority to file a nuisance suit.

Tigua Governor Albert Alvidrez testified that federally recognized Indian tribes should be exempted with respect to gaming activities on federal reservation lands. Tribes also argue that the State Lottery Act, enacted in 1991, legalizes casino games with random number generators, such as slot machines. They also consider poker legal because some scratch-off lottery games are variations of poker; bingo and keno are legal because the state already allows charity bingo. The tribe also feels that they should be able to engage in off-track betting because such betting is already authorized by the state's parimutuel racing act.

In addition, the Indian tribes emphasize their economic dependence on their gambling operations. Approximately 200,000 players visited the casino each month, generating revenues of \$50 million to \$60 million each year. These profits are used to fund education, housing, and medical services for tribe members. The Tigua casino also provided employment for 800 individuals, 50 of whom were tribe members, and boasts a \$14 million payroll. In December 2001, Comptroller Carole Keeton Rylander reported that closing the Tigua casino would result in a loss of almost 2,200 jobs and \$55 million in personal income for the El Paso area. The tribe estimates that their casino generates hundreds of millions of dollars for the regional economy.

Opinions and Court Rulings

The Office of the Attorney General referred to *State v. Mendel*, 871 S.W.2d 906 (App. 14, Dist. 1994), where the court recognized eight-liners as gambling devices, when determining their opinion. In *State v. Hancock*, 35 S.W.3d 199 (App.10 Dist. 2000) the court ruled that the eight-liner devices are indeed gambling machines. Last year, an Ector County jury found a man guilty

of five Class A misdemeanor violations including promotion of gambling, keeping a gambling place, and gambling paraphernalia and devices (OAG, 2001).

Other court cases have reached different conclusions. One such example is the decision in *Owens v. State*, 19 S.W.3d 480 (App. 7 Dist. 2000). The ruling found that the statutory section, which excluded particular types of gaming devices from the definition of gambling device, was not unconstitutional as applied to defendants in prosecution for possession of gambling devices (Vernon, 2002; 155). Recently, U.S. District Judge Garnett Thomas Eisele ordered the Tigua Indians to stop operating gambling devices, but accepted the continuation of eight-liners (Scharrer, 2002).

Furthermore, the Texas Supreme Court will consider two cases that deal with the interpretation of the legality eight-liners (Pasztor, 2002). The Court will decide whether a claimant has the burden of proof or persuasion in establishing that seized property is legal under TEX.PEN.CODE. Ch. 47 and whether or not a Wal-Mart gift certificate is a permissible prize under the statute (*Hardy v. State*). The Court will also decide if seized eight-liners are subject to forfeiture despite the owner being found not guilty by a jury (*State v. One Super Cherry Master Video 8-Liner Machine, et al.*).



Texas is not the only state to have grappled with the eight-liner dilemma. Several states have chosen to define their gambling laws to include eight-liners. Others have worked alongside the amusement associations to tailor gambling laws which are acceptable to both parties.

Other State Laws

Alaska, Arizona, Kentucky, Minnesota, Ohio, and West Virginia are among the states which allow the operation of eight-liners. In Georgia, coin-operated amusement machines, such as eight-liners, are legal if used only for bona fide amusement purposes (GEO.STAT. Code Title 48, Chapter 17). Furthermore, a sales tax is applied to all amusement machines.

North Carolina is one of the few states that clearly prohibit the operation of eight-liners. The State defines any electrical, mechanical, or computer games, such as eight-liners, as being illegal unless used for personal purposes (N.C.GEN.STAT. Section 14-306.1(c)).

In Mississippi, amusement companies recently filed a lawsuit challenging Mississippi's laws banning gambling. Several Mississippi Supreme Court decisions have ruled that any amusement machine that dispenses something of value upon inserting a coin is considered an illegal slot machines. This includes eight-liners (Elliott, 2002). Massachusetts' law enforcement officer have raided AmVets and Veterans of Foreign Wars (VFW) halls to seize video gambling machines.

Control Credit Payout Percentage device.
Source: members.ebay.com/aboutme/genao.com

A Spectrum of Concerns

Both the citizens and the media have reported that individuals, especially the elderly, are spending their pay checks and Social Security checks on eight-liners. The committee recently received a letter from a constituent expressing concern over their 72-year-old mother, who had spent \$400—a large portion of her Social Security check—at an eight-liner establishment (Anonymous email⁶, 2002).

Another concern surfaces over whether eight-liner devices can be manipulated to yield a lower percentage payout to players. For example, the Massachusetts Eagle Tribune reported that people were spending entire paychecks on rigged machines. These devices yielded a payout of less than 50 percent—compared to the 90 percent payout found in Las Vegas (Eagle Tribune, 2000). Devices to control the credit payout percentage can be purchased on Ebay for a low bid of \$24.00.

Parents and teachers have raised concerns that many of these establishments are found in close proximity to public schools. In 2001, Wichita Falls ISD filed a complaint over the location of these establishments. Consequently, the city council voted to revoke the establishment's permit (KFDX, 2001).

Citizens have also been victimized by unclear laws and enforcement. Many owners and operators are unaware that their eight-liner activities could be considered illegal. For example, Berta Smires, a widow and grandmother from Henderson, Texas, described to the committee how she was arrested for contributing in organized crime and gaming. Law enforcement has also seized and forfeited eight-liner devices from VFW halls. The VFW have stressed that their gaming operations are solely for charitable purposes.⁷ In an Express-News article, Glen Gardner, State Adjutant/Quartermaster of the Texas VFW stated that the halls already adhere to the law and provide an estimated \$3 million to community service projects (San Antonio Express-News, 2001).

Law enforcement has encountered financial problems when prosecuting and seizing eight-liners. Chief McFadden, of the Lewisville Police Department, stated that investigating eight-liners are costly in both time and monetary resources. Officers require training and equipment, and departments are required to pay all storage costs for confiscated eight-liner devices.⁸

WITNESS RECCOMENDATIONS

Previous recommendations have included amending the Texas Penal Code to define eight-liners as “gambling devices.” Further, in 1998 the Governor’s Task Force recommended eliminating subsection B. This would render eight-liners, as well as crane machines, illegal. Proponents of eight-liners, however, would prefer for subsection B to clearly exempt eight-liners from prosecution.

⁶ Because of fear, this individual asked the committee office to keep her identity confidential.

⁷ It is called charitable gambling because it is run by an organization that donates a percentage of the net profit to a charitable cause (Stottrop, 2000)

⁸ Chief McFadden estimated that his department has spent approximately \$20,000 to prosecute a single case.

CONCLUSION

The ambiguity of eight-liners is burdensome not only to owners and operators, but also to law enforcement, county and district attorneys, and constituents. As stated by Pasztor (2002), the fate of eight-liners now lies with the Texas Supreme Court. Nonetheless, the State legislature can clarify the legislative intent of the Fuzzy Animal Act of 1993 and put an end to this debate.

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22, 2001.

COMMITTEE RECOMMENDATIONS

1. Avoid altering the existing gambling law.
2. Define "single-play" as being a pull of the device's handle or push of the device's play button.
The play is independent from the amount of money that is inserted into the eight-liner device.
3. Define "cash merchandise" as being merchandise that can be purchased with money in the form of paper currency and stamped metal certified by the U.S. Treasury Department.
4. Define "non-cash merchandise" as being merchandise or products, such as gift-certificates, toys, and novelties, that cannot be normally purchased with money in the form of paper currency and stamped metal certified by the U.S. Treasury Department. Non-cash merchandise cannot be redeemed for money in the form of paper currency and stamped metal certified by the U.S. Treasury Department.

WITNESS LIST

Testifying Against Eight-liners

Scott Brumley

Mr. Brumley is Chief of the Civil Division in the Potter County Attorney's Office

Richard Graves

Mr. Graves is a board member of Texans Who Care, an organization who opposes eight-liners and pari-mutuel gambling.

Sonya Letson

Ms. Letson is the County Attorney for Potter County.

Weston Ware

Mr. Ware is a retired consultant for the Texas Baptist Christian Life Commission and Texans Against Gambling.

Testifying For Eight-liners

Gary Denson

Mr. Denson is the owner of an eight-liner establishment in Seagoville.

David Deshazo

Mr. Deshazo is President of the Texas Amusement Association.

Rick Merritt

Mr. Merritt represents Citizens for Fair Amusement.

Michael Warner

Mr. Warner represents the Texas Amusement Association.

Testifying Neutrally

Governor Albert Alvidrez

Governor Alvidrez is the leader of the Tigua Indians, who occupy approximately twenty-six acres of land in the El Paso community.

Steve Bresnen

Mr. Bresnen is an Austin-based attorney and lobbyist.

James Farren

Mr. Farren is the District Attorney of Randall County.

Steven Fenoglio

Mr. Fenoglio represents numerous organizations who support and operate eight-liners, including the Amusement and Music Operators of Texas.

Adolena Garcia

Ms. Garcia is an Assistant Attorney General for the Texas Attorney General's Office. She is also serving as lead counsel in two Texas Supreme Court cases involving state seizure of eight-liner devices.

William F. Lewis

Mr. Lewis is Criminal Section Chief for the Special Crimes Division of the Office of the Attorney General.

Chief Steve McFadden

Chief McFadden is an officer of the Louisville Police Department with experience in investigating and seizing eight-liner devices.

Berta Smires

Ms. Smires, of Henderson, Texas, was charged with four counts of organized crime because of her involvement with eight-liners.

Full transcript of public hearings is available at the committee office upon request.

IDENTITY THEFT

IDENTITY THEFT REPORT

Study trends and methods involved in identity theft in Texas.

Suggest ways to reduce this type of crime.

COMMITTEE BRIEFING

Affecting between 500,000 to 700,000 people annually, identity theft is considered the fastest growing crime in the United States (Bryce, 2001). In Texas, the Federal Trade Commission's Identity Theft Data Clearinghouse identified over 4,000 complaints filed between November 1999 and June 2001. Further, in a study of the number of complaints per city, Houston ranks fourth in the nation.

This report evaluates the current trends and methods of identity theft. It also discusses the concerns and barriers encountered when addressing identity theft. Furthermore, the report examines recommendations on how policymakers and law enforcement can improve their ability to prevent the crime and arrest the perpetrators.

What is Identity Theft?

Identity theft occurs when an individual uses another person's name, address, Social Security number, or other identifying information to commit fraud (Hemphill, 2001). According to a GAO report (2002), identity theft is considered to be a component of one or more other white collar or financial crimes. There are a variety of methods of identity theft, the most common being credit card fraud. 50 percent of victims reported having their credit card used by someone other than themselves. 25 percent of the victims reported unauthorized phone or utility services. The remainder of crimes include bank fraud, fraudulent loans, and the use of government documents by someone other than themselves (FTC, 2000).

There are several methods used to commit identity theft. Perpetrators can engage in "shoulder surfing" where they watch the victim from a distance as he or she enters credit card numbers. They may also eavesdrop on conversations over the telephone, at a hotel, or rental car company. Thieves can also obtain a person's identification through "dumpster diving." The perpetrator can obtain disposed phone records, bank statements or other financial documentation to gain control over accounts (U.S. DOJ, website).

A new method, known as "skimming," occurs when a credit card is swiped through an unauthorized handheld reader. This tactic poses a threat to credit cardholders and credit card companies (Claburn, 2001/2002). After skimming, the perpetrator can easily obtain information on the victim to be used or sold. Richtel (2002) reports that tens of thousands of stolen credit

card numbers are being sold each week on the Internet in membership-only cyber-bazaars.¹ Cyber-bazaars also obtain card numbers from computer hackers who break into the computer systems of online merchants (Richtel, 2002).

Currently, 10 percent of identity theft originates through the internet. However, it is expected that this figure will rise to almost 25 percent by 2005 (Lee, 2001). Analysts attribute this to the growing number of online information brokers. In exchange for a forty to fifty dollar fee, online brokers can supply consumers with virtually anyone's Social Security number and address. The purchased information is then used to engage in other fraudulent transactions via the Internet. Unlike traditional in-store fraud, the suspect does not have to drive between merchants, risk being identified by a sales clerk, provide signatures, or be videotaped by surveillance cameras. The "faceless" world of e-commerce provides little to no fraud prevention or limitation measures (Arnold, 2000).

The damage inflicted is exacerbated by the silent nature of the crime. An average of 12.5 months pass between the date the identity theft occurs and the date the victim notices. As a result, it typically takes two years for victims to remove an average of \$18,000 in fraudulent charges from their credit reports (Bryce, 2001). During this time, victims are often unable to obtain credit and financial services, telecommunication and utility services, and sometimes employment. In cases where the identity thief has created a criminal record in the victim's name, victims report having their driver's license revoked, failing background checks, and even being arrested and detained (FTC, 2000).

In Texas, the 77th Legislature passed a law to allow victims the right to expunction (TEX.CRIM.PRO. 55.01; SB 1047, 2001). Since the current rise of identity theft, many states are beginning to amend their laws to address this growing problem.

U.S. and State Laws Addressing ID Theft

The Identity Theft and Assumption Deterrence Act², enacted by the U.S. Congress in 1998, is the main federal law directed at curbing identity theft. The Act makes it a federal crime that carries a maximum sentence of 15 years imprisonment, a fine, and property forfeiture (Jane's, 2001; Hemphill, 2001). This pertains to those individuals who knowingly use an individual's means of identification without their permission. This can include a victim's name, Social Security Number (SSN), date of birth, driver's license or other governmental issued identification number, alien registration number, government passport number, employer or taxpayer identification number, biometric data, unique electronic identification number, address, or routing code (18 U.S.C. Section 1028(a)). The Act also recognizes individuals whose identity has been stolen as victims and allows them to seek restitution for expenses related to clearing their name (Davis, 1998).

¹ These cyber-bazaars are being operated overseas in countries like the former Soviet Union and Malaysia (Richtel, 2002).

² U.S. Public Law 105-318 (1998).

At least 22 states have passed laws aimed at creating increased penalties for identity theft. A handful of states, including **Arizona, California, Colorado, Georgia, Mississippi, West Virginia,** and **Wisconsin** have passed laws making identity theft a felony (Davis, 1998). In **Texas**, identity theft is classified as a state jail felony plus possible restitution to the victim (TEX.PEN. Code 32.51, 2001).

Numerous states have implemented additional legislation in an attempt to tackle this growing problem. **Virginia** developed a broader definition of what is considered “personal information,” expanding it to include bank account numbers, PIN numbers, and computer passwords. In 2000, **California** amended an existing law to direct the Department of Justice to maintain a database of identity theft victims. Victims submit their fingerprints, which are then shared with law enforcement agencies (Anderson, 2001). The **Florida** Department of Motor Vehicles and Transportation is developing a program that would provide residents with protective sleeves for driver’s licenses and identification cards. These sleeves place a protective slip over the cardholder’s address, concealing the information from potential offenders who might use the information to gain access to houses and mailboxes.

Although these recommendations and solutions seem innovative, victims still face several barriers when reporting, prosecuting, and erasing their misused stolen identity.

The Concerns and Barriers

Davis (1998) reports that it is often impossible to interest law enforcement agencies in an identity theft crime because it is the bank or business that takes the direct financial loss. In other words, the financial institution must report the crime for law enforcement to take interest. This is a major inconvenience to victims who are often unaware of the crime until months have passed. During the June and August committee hearing, Ronnie Wilson and Scott Brecher, victims of identity theft, discussed the difficulties they encountered trying to persuade law enforcement to investigate their identity theft.

A lack of resources, guidance, and authority often prevents law enforcement from investigating all cases of identity theft. Departments typically lack an adequate number of available investigators (GAO, 2002). In San Francisco, California, an average investigator has over 400 cases (Claburn, 2001/2002).

In addition, district attorneys often find it difficult to prosecute identity thieves. As stated in the GAO report (2002), law enforcement agencies tend to view identity theft as being “someone else’s problem” since cases often cross jurisdictional boundaries. For example, if a victim from Wichita Falls has their identity stolen and used by a person from Brownsville, the victim is uncertain where to file a report. Similarly, the prosecutor is often unsure where the thief should be prosecuted. Prosecuting an individual for crimes committed over the Internet is even more difficult, especially when the perpetrator resides overseas.

An individual's identity can be stolen regardless of the suspects' proximity to the victim. This has created an international component most notably seen in the recent September 11 tragedy. Five of the nineteen terrorists involved in the attacks obtained Social Security numbers by using false identities.

This has led many to recommend the creation of a new national identification system. Unlike driver's licenses, which can be obtained with fraudulent birth certificates, or Social Security cards, which contain no authenticating information, new cards *could* contain fingerprints, computer chips or other unique identifiers. Recent surveys indicate that the majority of Americans support national identification cards, although opponents have raised concerns about potential privacy issues (O'Harrow, Jr., 2002).

Solutions and Recommendations

Since the new trend in identity theft occurs via the Internet, state laws are insignificant in prosecuting criminals overseas. However, the law should address the issue of jurisdictional responsibility for those crimes occurring within the states.

From the business perspective, many merchants suggest that marketplace incentives may work just as well as new laws (Claburn, 2001/2002). They stress better law enforcement, better education for consumers on how to protect themselves, and better assistance to victims of identity theft.

Yet, many argue that companies that issue credit cards, sell merchandise, or provide services should be required to take simple precautions to identify their customers. However, retail credit issuers and credit reporting bureaus do not find the need to improve security practices. From their perspective, protecting personal identification from public consumption is initially the responsibility of the consumer (Hemphill, 2001).

Solutions for consumers include: shredding sensitive documents; obtaining regular copies of credit reports; avoiding pre-approved credit cards; avoiding telemarketing scams or E-scams; and alerting the post office to hold your mail when traveling (U.S. DOJ, website; Claburn, 2001/2002).

Solutions intended to address the Internet aspect of identity fraud center around the use of biometrics. This includes, but is not limited to, the use of fingerprint-recognition, voice authentication, and facial-recognition. These methods

GUARDING YOUR GOOD NAME

Buy a cross-cut paper shredder and use it for sensitive documents.

Get copies of your credit report once a year from Experian (www.experian.com), Equifax (www.equifax.com), and TransUnion (www.transunion.com). Review them for credit inquiries from companies from which you haven't sought credit.

Remove your name from marketing lists that offer preapproved credit by calling 888-5-OPTOUT.

Request an alternative driver's license number if your state uses your Social Security number on your license.

Educate yourself further by visiting www.privacyrights.org www.identitytheft.org.

Source: Smart Business Magazine Dec. 2001/Jan. 2002

store encrypted template files of the user's biometric information on a server or client PC. When the user logs on, the template is compared against the new, live information. Access is granted only if an exact match is made.

WITNESS RECOMMENDATIONS

Industry

Karen Neeley, general counsel for the **Independent Bankers Association of Texas**, recommended creating clearinghouses for both driver's license and social security numbers. This would assist law enforcement, as well as bankers and merchants, in discovering and preventing identity theft. She also recommended requiring thumb prints to appear on the center of driver's licenses.

John De la Garza, Senior Vice President of Public Policy with **Bank of America Cooperation**, recommended the creation of a central location where identity theft efforts can be coordinated statewide. He also recommended establishing a statewide task force that can help address problems and offer recommendations. De La Garza also stated that the state should develop an industry-government-fraud-prevention workgroup that might include experts from financial institutions, trade organizations, law enforcement (federal, state and local), state regulators, prosecutors, legislators, and the governor's staff.

Law Enforcement Agencies

Lieutenant Aaron Ard, a State Trooper with the **Texas Department of Public Safety**, recommended using fingerprints to authenticate state documents. DPS saves thumb prints and signatures, but lacks the ability to instantaneously match them to an individual. New technology would allow a person to place his thumb print down and automatically trigger an Automated Fingerprint Identification System (AFIS) check. The AFIS would instantly pull up the matching digital image. Ard reported that they would also like a system to verify Social Security numbers. He recommended a state and nationwide effort to standardize the type of documentation required for individuals to obtain driver's licenses. Ard pointed out that immigration already requires a thumb print on the face of their documents and this approach would also benefit the state.

Nonprofit Organizations

Scott Brecher, a victim and spokesperson for the **Identity Theft Resource Center**, offered the committee several recommendations to consider. The first recommendation is to require police departments to immediately file a police report, despite the jurisdiction in which the crime occurred. Another recommendation was to allow the victim of an identity theft to

obtain applications and transaction information on fraudulent accounts opened in the their name. Further, when the victim proves to the court that their identity has been stolen and fraudulently used, the court should issue a declaration of innocence. With a declaration of innocence, the victim can provide the document to employers who request a criminal background check.

Brecher also stressed that after a perpetrator has been arrested and before entering the criminal justice system, a system should be in place to acquire and input fingerprints of the perpetrator into the AFIS database. Brecher also recommended requiring consumer reporting agencies to send a confirmation of address change to an individual's old and new address. He stated that it would help stop many identity theft crimes early on in the process. Brecher recommended legislation that would require all credit reporting agencies to indicate a fraud alert to credit issuers.

Brecher also recommended that Texas provide all consumers with a free copy of all three credit reports per year upon request. Other recommendations included establishing a Victim's Rights Act and restricting companies from requesting Social Security numbers, driver's licenses, or birth dates for identifying information. Further, the state should consider protecting vulnerable information that can be easily obtained from a county courthouse, such as the DD-214 form. In addition, the state should establish a task force with cooperating law enforcement agencies that can help solve identity theft crimes that involve multiple jurisdictions. Finally, require consumers to opt-in when receiving pre-approved credit card applications.

Rob Schneider, a Senior Staff Attorney with the **Southwest Regional Office of Consumers Union**, stated that he believed Texas should follow states like Colorado, Georgia, Maryland, Massachusetts, New Jersey, and Vermont in providing one or more free credit reports each year to its citizens. He also stated that credit reporting agencies should demonstrate more responsibility in alerting victims and law enforcement of potential cases of identity theft.

Schneider also recommended increasing the control consumers have over the release of their personal financial information. Under Gramm-Leach-Bliley, the federal financial modernization bill, consumers can opt-out of certain kinds of information sharing. The decision to opt-out does not extend to information that is shared with affiliates. He reported that while his organization encourages people to opt-out, very few actually do so. Schneider suggested that the state alter the presumption so that instead of being an opt-out system, citizens must opt-in before financial institutions can share information with third parties. He stated that opt-in would be an important enhancement, both in terms of personal privacy protection and an additional step to deter identity theft.

State Agencies

Randall S. James, Banking Commissioner for the **Texas Department of Banking**, emphasized the need for increased law enforcement participation in addressing identity theft.

James also stated that improvements must be made in assisting victims. Individuals need access to their credit reports, as well as opportunities to correct false information. He recommended mandating that credit reporting agencies bear the responsibility for facilitating this access. Education and awareness programs can also be implemented to assist existing victims and prevent future incidents.

CONCLUSION

There are numerous ways for one's identity to be stolen. Such methods include dumpster diving, skimming, or shoulder surfing. Further, perpetrators are utilizing the Internet as means to acquire an individual's identity through cyber-bazaars. Although the U.S. has passed an Act that makes identity theft a felony, prosecutors are unable to prosecute those individuals who are overseas. Nevertheless, to avoid these crimes within our state, Texas should clarify which jurisdiction is responsible for prosecuting identity thefts.

If unaddressed, it is estimated that reported incidents of identity theft will reach 1.7 million people nationwide and cost financial institutions over \$8 billion in 2005(Lee, 2001).

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COMMITTEE RECOMMENDATIONS

1. Require law enforcement agencies to take a report from a victim of identity theft.

It has been argued that creditors will acknowledge a police report, instead of a FTC report. Further, it could prevent a victim of identity theft from being mistaken by law enforcement for thier criminal imposter.

2. Allow only those in managerial positions to accept and enter retail credit card applications.

It has been found that many identity thefts occur by store employees who have access to an individual's personal and financial information.

3. Create a criminal penalty and civil cause of action on credit reporting agencies who fail to disclose information on fraudulent accounts to identity theft victims.

4. Include "victim of identity theft" as a part of the definition of "victim" under TEX.CRIM.PRO. Chapter 56 Rights of Crime Victims.

By classifying a victim of identity theft under Chapter 56 of the Criminal Procedure Code, the victim then has the right to receive law enforcement protection, the right to be informed of proceedings, bail, investigation, and other general procedures. Further, the victim can receive information regarding victim's compensation, eligibility.

5. Create an identity theft task force consisting of law enforcement agencies, Secret Service, FBI, IRS, Social Security Administration, and U.S. Border Patrol agents to help investigate and prosecute identity theft.

6. Require TCLEOSE to train new and current peace officers on how to identify and investigate identity theft.

7. Permit a victim of identity theft the right to recover attorney's fees.

Currently, under TEX.PEN.CODE Sect. 32.51 (d), attorney's fees are not included in restitution.

8. Add a "Presumption of Intent" clause for the unauthorized possession of an individual's identification.
9. Add an addendum that negates a charge of "Fraudulent Use or Possession of Identifying Information" for suspects arrested or cited for traffic violations. Instead, charge individuals with "Failure to Identify as a Witness" or "False Name on Traffic Stop."
10. Prohibit the issuance of an arrest warrant based solely on a driver's license number or false identification presented when a forged check is issued. Require a second identifier before a warrant is issued for non-sufficient funds or issuance of a bad check.
11. Create a central agency, accessible to all law enforcement agencies, that will have jurisdiction over identity theft offenses.
12. Encourage the adoption of a Driver's License system linked to the Automated Fingerprint Identification Systems (AFIS). This could immediately detect criminal absconders attempting to change their identity.
13. Require that any identifying document issued by anyone other than an official government agency be clearly marked to indicate that it is not an official government document.
14. Promote the implementation of the Thumb Print Signature (TPS) Program.
This program requires banks to request a thumb print of those customers seeking to withdraw funds who do not have an account in that particular bank.
15. Prevent correctional facilities from allowing convicts to enter sensitive identification information into databases.
16. Amend the Texas Debt Collection Practices Act. In situations where a consumer files a criminal complaint alleging identity theft, accompanied by a copy of a police report, the debt collector and/or lender must suspend collection efforts.

WITNESS LIST

Lieutenant Aaron Ard

Lt. Ard is a State Trooper with the Texas Department of Public Safety.

Scott Brecher

Mr. Brecher, a Houston resident, is an identity theft victim. He is also a spokesperson for the Identity Theft Resource Center.

Esther Chavez

Ms. Chavez is is an Assistant Attorney General in the Consumer Protection Division of the Texas Attorney General's office.

John de la Garza

Mr. de la Garza is Senior Vice President of Public Policy with Bank of America Corporation.

Jay Foley

Mr. Foley is the Director of Consumer and Victim Services for the Identity Theft Resource Center, a nonprofit victim advocacy and consumer education program located in San Diego, California.

Linda Foley

Mrs. Foley is the Executive Director of the Identity Theft Resource Center, a nonprofit victim advocacy and consumer education program located in San Diego, California. She has also been a victim of identity theft.

Assistant Chief Greg Gloria

Assistant Chief Gloria works for the Department of Public Safety's Driver's License Division Field Service in Austin, Texas.

Randall S. James

Mr. James is the Banking Commissioner for the Texas Department of Banking.

Sergeant Martin Landgraf

Sgt. Landgraf is an officer with the Financial Crimes-Forgery division of the San Antonio Police Department.

Lyndel Lucas

Mr. Lucas, a Lampasas resident, is an identity theft victim. He is also a spokesperson for the Identity Theft Resource Center.

Karen Neeley

Ms. Neeley serves as general counsel for the Independent Bankers Association of Texas.

Sergeant Ernest Pedreza

Sgt. Pedreza is an officer with the High-Tech Unit and Financial Crimes Unit of the Austin Police Department.

Leslie Pettijohn

Ms. Pettijohn is the Consumer Credit Commissioner of the State of Texas.

Lieutenant Tony Sanders

Lt. Sanders is an officer with the General Investigation division of the Dallas Police Department.

Rob Schneider

Mr. Schneider is a Senior Staff Attorney with the Southwest Regional Office of Consumers Union. He currently serves on the national board of the American Forum, and as board President for the Center for Economic Justice.

Captain Lisa Sheppard

Captain Sheppard is an officer with the Department of Public Safety's Special Crimes Services in Corpus Christi, Texas.

Jack Snow

Mr. Snow is an investigator for the Dallas County District Attorney's Office. He has also been a victim of identity theft.

Sandra Sullivan

Ms. Sullivan is a Senior Vice President in charge of Fraud Management for Frost National Bank.

Mary Swanson

Ms. Swanson, a resident of Austin, is an identity theft victim.

Ronnie Wilson

Ms. Wilson was a victim of identity theft after her identity was stolen by a Dallas cashier. She is also a spokesperson for the Identity Theft Resource Center.

Full transcript of public hearings is available at the committee office upon request.

SEXUAL ASSAULT

REPORTING PROCEDURES OF SEXUAL ASSAULTS

Consider the manner in which sexual assaults are reported in Texas, and specifically address the wide discrepancy between statistics reported in the Uniform Crime Report and estimates of other groups, such as the National Crime Victims Research and Treatment Center.

COMMITTEE BRIEFING

The most recent Uniform Crime Report (UCR), compiled by the Texas Department of Public Safety, indicated that there were an estimated 7,629 sexual assaults committed in Texas in 1999. This differs greatly from the findings of the National Crime Victimization Survey (NCVS), which accounted for 104,516 sexual assaults. The differing purposes and methods of the two programs accounts for the discrepancy between these numbers. Both programs are administered by the U.S. Department of Justice and intended to compliment each other. Together, they provide a more comprehensive view on the country's crime problem than either could produce alone.

The FBI's UCR Program, which began in 1929, measures the number of crimes reported to law enforcement agencies throughout the country. In Texas, information is gathered from 956 Texas sheriffs and chiefs of police (Elliot, 2001, 1). The URC includes statistics only on forcible rape; excluding statutory rape (without force) and other sex offenses. The primary objective is to provide a reliable set of criminal justice statistics for law enforcement administration, operation, and management, as well as to indicate fluctuations in the level of crime in America.

The Bureau of Justice Statistics' NCVS, which began in 1973, was created to provide previously unavailable information about victims, offenders, and crime (including crime not reported to police). The NCVS bases its numbers on national victimization surveys and 2000 Census data for Texas. These surveys are conducted by U.S. Bureau of the Census personnel, who interview all household members (age 12 and over) in a nationally representative sample of approximately 49,000 households. These households remain in the sample for three years and are interviewed at 6-month intervals. New households continuously rotate into the sample. Information is gathered on crimes suffered by individuals and households, regardless of whether or not those crimes were reported to law enforcement (UCR, 2000, 410). In addition, the report includes male and female rape victims, while the UCR includes only women.

Many consider the NCVS survey to be more accurate because it provides an anonymous voice for victims who chose not to contact authorities. Documenting this anonymity is especially important in cases of sexual assaults, as it is the crime least often reported to police. Rape Rate Estimates for the State of Texas indicate that only 7-18 percent of rapes or attempted rapes are ever reported to Texas authorities (Rape in Texas, 2002, 1). Since only a small percentage of rapes cases are ever reported, it is important to learn more about unreported cases and the victims who do not report them (NVAA, 2000, 5).

Texas, like California, faces unique problems in maintaining accurate statistics on sexual assaults committed against Hispanics. Cultural factors and language barriers may discourage many minorities from reporting sexual assaults to law enforcement officers. For Mexican immigrants, the fear of deportation makes them even more reluctant to contact authorities (Ruiz, 2001).

The nature of the community can also influence whether or not victims report their sexual assault. Rural communities suffer from under reporting, possibly due to the stigma attached to being a rape victim. Steinocher informed the committee that women who reside in rural areas are often a considerable distance away from the nearest law enforcement agency. Further, many times victims encounter uninterested law enforcement officers who are unwilling to file a report.

Low-income women are at a greater risk for sexual assault and are also less likely to report the crime to law enforcement. The Texas population includes these features that correspond with nonreporting, meaning that the problem could still be even greater than the NCVS report indicates (Rape Rates, 2001, 12).

Neither the NCVS nor the UCR program includes the number of attacks on children. The National Survey of Adolescents, which is the only study that addresses rape of children under age 12, reports that 226,438 children were raped in Texas last year (Rape Rates, 2002, 7).

Until recently, a statewide sexual assault prevalence study had never been conducted. Currently, the Texas Association Against Sexual Assault (TAASA) and the University of Texas are conducting a statewide study of victims of sexual assaults. The study uses both “Spanish and English translations of interview questions designed to maximize response rates of participants and to identify incidents of sexual assaults by using behaviorally specific and culturally sensitive questions” (Rape Rates, 2001, 12). The results, which are expected in December of 2002, will provide a more accurate estimate of the prevalence of rape in Texas. The findings will also provide insight on ways in which the state can increase victims’ reporting of rape.

In order to develop a better understanding of the reporting of sexual assaults, this research examines the operations, policies, and training of police officers in this field. For police officers to have knowledge in how to respond to and report sexual assaults, officers are encouraged to take an eight-hour credit course on the subject matter.

There are concerns, however, that police officers are not adequately trained on recognizing male rape and rape trauma syndrome³ (Owen, 2001). Further, the investigative procedures of sexual assaults are a concern to several individuals. Many maintain that police officers are not equipped with the proper tools to successfully conduct sexual assault investigations. Others speculate that some police department’s policies and procedures may deter victims from reporting a sex crime. With the proper training, tools, and policies, police officers can provide the victim with the assistance they need and obtain the information required to arrest and convict the sex offender.

³ Rape trauma syndrome refers “to the acute phase and long-term reorganization process that occurs as a result of forcible rape or attempted forcible rape. This syndrome of behavioral, somatic and psychological reactions is an acute stress reaction to a life-threatening situation.” Victims may express crying, sobbing, smiling, restlessness, tenseness, and joking within hours of the incident. Victims may also show a controlled emotion masking feelings behind a calm, composed, or subdued effect (MedAu Clinical, 2001).

INDEPENDENT STUDY

Conceptual Framework

The purpose of this research is tri-fold: first to describe the reporting procedures of sexual assaults in local police departments in Texas; second to examine the sample response using descriptive statistics; and to develop public policy implications and recommendations to improve the reporting procedures of sexual assaults in local police departments.

After reviewing previous literature on the subject of sexual assaults, the conceptual framework was designed to utilize descriptive categories. The three categories designed include: training procedures, investigative procedures, and policies and procedures.

The first category addressed in the description of the reporting procedures of sexual assault is training procedures. Under state law, the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) provides law enforcement officers with sexual assault training. Some of the training elements include: federal and state laws that addresses sexual assault and victim's rights, date rape drugs, marital rape, sexual abuse, family violence, and child sexual abuse (TCLEOSE, database; TEX.FAM. Code Chapter 57; TEX.OCC. Code Section 1701.253; TEX.ADMIN. Code Sect. 217.11(c)). Advocates and other researchers believe officers should also be trained in male rape and Rape Trauma Syndrome (NVAA, 2000; Ramos Lira, Koss, Russo, 1999; Owen, 2001); these items are listed within the TCLEOSE training manual.

The second category examines the investigative procedures of sexual assaults by local police departments. In order to provide sexual assault victims with the best service, there are several elements that are stressed and practiced by law enforcement. One practice encourages local law enforcement officers to request the victim not wash, douche, or destroy any physical evidence that can assist officers in the investigation (SART/SANE program, database; Lonsway, 2001; NVAA, 2000). Officers are also equipped with rape crises counseling information. An officer is assigned to accompany the victim to the hospital (SART/SANE program, database; NVAA, 2000; Lonsway, 2001; Epstein & Langenbahn, 1994).

In addition, law enforcement should be provided with the proper equipment and tools. Such tools include: a self-developing camera; a tape recorder; a video camera; number cardboard squares⁴; a nasal aspirator or handkerchief; powder-free gloves and; investigative checklist/forms (TEX.OCC. Code 1701.352(f); NVAA, 2000; TCLEOSE, database).

Policies and procedures constitute the third category of the conceptual framework. Law enforcement agencies are most successful when they participate in a sexual assault task force (V.T.C.S. Title 70 Art. 4413 (51), 2001; TEX.GOV. Code 420.001, 2001; SART/SANE

⁴ Small, luminous, numbered cardboard squares can be placed near small and easily-missed items of evidence to make sure that those items are not overlooked. Cross-referencing the cards to notebook entries reinforces what an officer wants the evidence technicians to catch. Cardboard squares can also be used to cover bite marks until the bite marks can be photographed and examined by an odontologist (TCLEOSE, database).

program, database; TxOAG SAPCS program, 2001). These programs are designed to provide victims of sexual assault with examinations, care, and treatment. Since its proliferation, these programs have helped many victims regain their lives and confidence.

Policies and procedures should also promote community awareness on sexual assault and encourage victims to report their assaults (TxOAG SAPCS program, 2001; NVAA, 2000, Epstein & Langenbahn, 1994). By encouraging these elements, victims will not doubt whether or not to report an assault. Further, police departments assure undocumented residents that their status will not be reported to immigration (TAASA, 2001; Ruiz, 2001; National Crime Victimization Survey, 1999; Ontario Women’s Directorate, Ramos Lira, Koss, Russo, 1999).

Methodology

The study consisted of a survey technique designed to collect data and information on the reporting procedures of sexual assaults of local police departments in Texas. The survey instrument consisted of a questionnaire that was developed using the conceptual framework and applied to a random sample of 100 local police departments with a population over 2,000⁵.

Table 1.1 Operationalization of the Conceptual Framework		
Concept	Source	Questionnaire Item(s)
TRAINING PROCEDURES		
Officers undergo training in the area of sexual assaults: marital rape, date rape, date rape drugs, male rape victims, and Rape Trauma Syndrome	Texas Occupations Code Section 1701.253; Texas Administration Code Section 217.11(c) (2); NVAA, 2000; Ramos Lira, Koss, Russo, 1999; Owen, 2001; Texas Family Code Chapter 57; TCLEOSE, database	Training Procedures, Questionnaire Items 1, 2, 3, 4, 5 & 6
INVESTIGATION PROCEDURES		
Officers request victims not to bathe, change clothes, clean area, drink, etc.	SART/SANE program, database; Lonsway, 2001; Epstein & Langenbahn, 1994; NVAA, 2000	Investigation Procedures Questionnaire Item 7
Officers are equipped to provide victims with rape crisis counseling information when requested	SART/SANE program, database; NVAA, 2000; Lonsway, 2001	Investigation Procedures Questionnaire Item 8 & 9
Officer accompanies victim to	NVAA, 2000; Epstein &	Investigation Procedures

⁵ Those towns with a population less than 2,000 usually resort to the sheriff’s department when reporting sexual assault crimes.

hospital	Langenbahn, 1994	Questionnaire Item 10
Victim assigned to a lead detective	NVAA, 2000; Epstein & Langenbahn, 1994	Investigation Procedures Questionnaire Item 11
Victim is offered a choice between male and female officers during a detailed interview	TCLEOSE, database	Investigation Procedures Questionnaire Item 12
Percentage of rape allegations turning out false	Kanin, 1994; Swirko, 2000; Roark, 2000; Education Wife Assault, 2001; Epstein & Langenbahn, 1994	Investigation Procedures Questionnaire Item 13
Tools provided to department investigators:	Texas Occupations Code 1701.352(f); NVAA, 2000; TCLEOSE, database	Investigation Procedures Questionnaire Item 14
POLICIES AND PROCEDURES		
Department is a member of a sexual assault task force	V.T.C.S. Title 70 Art. 4413 (51), 2001; Texas Govt. Code 420.001; SART/SANE program, database; TxOAG SAPCS program, 2001	Policies and Procedures Questionnaire Item 15
Statistics submitted to the FBI Uniform Crime Report	Queen, 2001; Ruiz, 2001; Ramos, 2001; Elliot, 2001; TAASA, 2001.	Policies and Procedures Questionnaire Item 16
Undocumented residents who report sexual assaults and its consequences	TAASA, 2001; National Crime Victimization Survey, 1999; Ontario Women's Directorate, 2000; Ramos Lira, Koss, Russo, 1999; Ruiz, 2001	Policies and Procedures Questionnaire Items 17 & 18
Policies and procedures promote community awareness of sexual assault; encourage victims to report their assaults; and protect victim confidentiality	TxOAG SAPCS program, 2001; NVAA, 2000; Epstein & Langenbahn, 1994	Policies and Procedures Questionnaire Items 19, 20 & 21

General Characteristics

Forty-four out of 100 responded to the survey; therefore, the sample results are considered scientific. The majority of the respondents represent cities with a population between 2,000 and 14,999 (61.4%). About a quarter of the respondents represented those cities with a population between 15,000 and 49,999. Fifteen of those police departments who responded to the survey are respectively within the metropolitan area of McAllen, Houston, Fort Worth or Dallas.

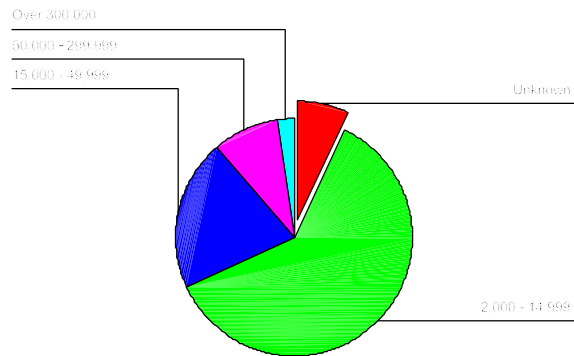
According to the 2000 U.S. Census, Texas is still **Figure 1.1**

predominately rural. The average Texas city population is 11,558.¹ Therefore, the sample response is a fair representation of all municipal police departments in the state of Texas.

Data Analysis and Results

When asked what elements are addressed during police training, the results indicated that date rape and date rape drugs were significantly addressed. There were, however, inconsistencies on what police training addresses in the areas of marital rape, male rape victimization, and rape trauma syndrome (Table 1.2). It is significant that some departments do not receive training in these areas because all are addressed in the TCLEOSE training manual.

Population by Respondents



	Marital Rape	Date Rape	Date Rape Drugs	Male Rape Victims	Rape Trauma Syndrome
Yes	52.3%	75%	61.4%	47.7%	52.3%
No	47.7%	25%	38.6%	52.3%	47.7%
Total	100%	100%	100%	100%	100%

Results also found that victims sometimes request contact information for rape crisis counseling facilities (56.8%). Only 13.6 percent of the respondents indicated that their victims never request contact information for a rape crisis counseling facility (Table 1.3). Further, 93.2 percent of the respondents indicated that an officer accompanies the victim to the hospital. The majority of the respondents (54.5%) indicated that the initial responder immediately transfers the victim to an assigned lead detective. Others stated that this transfer takes place either at the hospital, a day (or more) later, or depending on the circumstances. Only four departments stated that there are no investigators available in their department.

	Frequency	Percent

¹ The U.S. Census 2000. Formula: Texas Total Population (20,851,820) divided by the number of Texas cities (1,804).

very often	6	13.6%
often	7	15.9%
sometimes	25	56.8%
never	6	13.6%
total	44	100%

Table 1.4 indicated that the majority (54.5%) of respondents offer victims a choice between a male or female officer. The majority of the respondents who did not offer this choice resided in rural towns that lacked female officers.

Table 1.4 Are victims offered a choice between male and female officers		
	Frequency	Percent
Yes	24	54.5%
No	19	43.2%
Missing	1	2.3%
Total	44	100%

False rape allegations have proven to be a concern for many individuals in law enforcement. When asked to estimate what percentage of rape cases turned out to be false, respondents reported figures as high as 85%. However, the FBI indicates that for the past decade, unfounded forcible rapes have accounted for less than 9% of all reported cases. In addition, the FBI has no statistics to indicate that false reports for rape are higher than any other crimes included in the UCR.

The inflated estimates of false sexual assault allegations from law enforcement may stem from the ambiguity regarding the definition of "unfounded." Federal reporting requirements mandate that sexual assault cases are considered "unfounded" only if they are determined to be false or baseless. It is not uncommon for law enforcement to erroneously unfound cases because the victim, recants, cannot be located, alters his/her account of the rape, or is uncooperative. Many departments "unfound" cases when they should actually be using administrative clearance. In cases where the offender is identified, but cannot be charged or the victim refuses to cooperate, "exceptional clearance" should be used. When reporting procedures were reformed in several large law enforcement departments, including NYCPD, unfounded cases dropped from 15% to 2% (TAASA, 2002).

Figure 1.2

Percentage of Rape Allegations Turning Out False

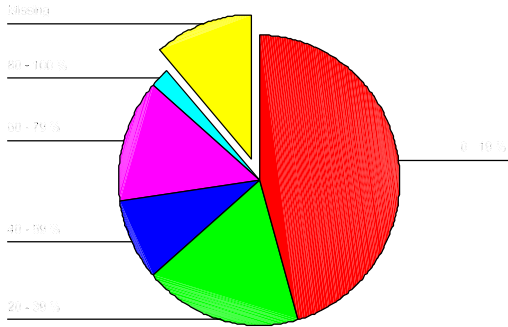


Table 1.5 shows what tools are provided to the investigators of sexual assaults. The majority of the respondents indicated that a self-developing camera, tape recorder, video camera, powder free gloves, and a checklist are provided to investigators. Numbered cardboard squares¹ or nasal aspirators/ handkerchiefs are not typically provided to investigators.

	Self-developing Camera	Tape Recorder	Video Camera	Numbered Cardboard Squares	Nasal Aspirator or Handkerchief	Powder-free gloves	Investigative Checklist/Forms
Yes	93.2%	86.4	81.8	31.8	15.9	95.5	63.6
No	4.5	11.4	15.9	54.5	72.7	4.5	31.8
Missing	2.3	2.3	2.3	13.6	11.4		4.5
Total	100	100	100	100	100	100	100

Only 18.8% of the respondents indicated their departments are members of a sexual assault task force. When, however, asked whether they believed their agency would benefit from participating in a sexual assault task force, the majority indicated “yes” (47.7%). About 20 percent of the respondents did not respond, probably because they were unsure of the task force’s functions.

¹ A large number of respondents did not know what numbered cardboard squares were.

The majority of the respondents (93.2%) indicated that they regularly submit sexual assault statistics to the FBI Uniform Crime Report. Only a few, however, indicated that their police department separates the various types of sexual assaults (34.1%). According to the findings, the primary reason for not separating the various types of sexual assaults was due to limited resources available to their department (Table 1.6).

Table 1.6 Primary reasons for not separating the various types of sexual assaults				
	Political Reasons	Limited Resources	Lack of Time	No Interest
Yes	2.3%	34.1	13.6	9.1
No	38.6	15.9	27.3	43.2
Missing	59.1	50	59.1	47.7
Total	100	100	100	100

The majority of the respondents indicated that undocumented residents sometimes report sexual assaults (52.3%). Only 25 percent of the respondents indicated their department reports undocumented victims to immigration. The majority of police departments do not report undocumented victims to immigration.

Further, the majority of respondents indicated that their policies and procedures promote community awareness (77.3%), encourage victims to report their assault (90.9%), and protect victim’s confidentiality (95.5%).

One respondent indicated that a problem exists in collecting evidence needed to prosecute a sex offender, especially for those rural counties in West Texas. The respondent argues that West Texas counties are at a disadvantage because they lack the necessary proximity to the State Laboratory.

Recommendations

The purpose of this research was to develop a better understanding of the reporting procedures of sexual assaults. TCLEOSE is required by state law to train police officers in the areas of cultural diversity, family violence, child abuse, sex offender characteristics, and sexual assaults. According to the research, however, there was significant disagreement on what police officers are actually trained in. Training should emphasize marital rape, male rape, and rape trauma syndrome to law enforcement officers. By emphasizing these elements, officers can be better prepared to define, distinguish, and investigate a particular sex crime.

There are discrepancies between the numbers reported by the UCR and NCVS. Many have stated that the UCR was designed to compliment the various state definitions of sexual assaults. Nonetheless, several local police departments (34.1%) separate the various types of

sexual assaults. A percentage of those that do not distinguish the various types blame limited resources. Therefore, resources should be provided to local police departments in order to facilitate better reporting.

Although only 25 percent of the respondents indicated reporting undocumented victims to immigration, this is still considerably high. Police departments should guarantee the confidentiality of a victim even when the victim is undocumented. If law enforcement denounces reporting undocumented victims to immigration, then illegal residents will be more inclined to report their victimization. In effect, law enforcement can prevent offenders from committing further sex crimes.

WITNESS RECOMMENDATIONS

Community Organizations

Ellen Sanchez, director of Education and Training for **Safeplace**, recommended revising law enforcement training to include more guidance on how to interact with victims. The manner in which they approach the victim, tone of voice, and pace of questioning can facilitate or discourage reporting. Sanchez also recommended improving the response system by establishing Sexual Assault Response Teams. These teams coordinate the criminal justice system and the community to create a multi disciplinary response to sexual assault. Law enforcement, victims advocates, forensic exam nurses, hospitals, and prosecutors combine to improve the victim's recovery and ensure a more effective and sensitive investigation. A small number of communities, including Austin, have spent years attempting to develop these teams. However, a lack of available funding and resources have hindered the process. She asked legislators to assist local communities in building these teams.

State Agencies

Diane McGauley, director of **Sexual Assault Prevention and Crisis Services for the Office of the Attorney General**, emphasized the need for expanded services. Although the federal government provides fifty percent of program funding, McGauley said that the lack of accurate prevalence statistics makes it difficult for the state to receive adequate resources. Federal funding is allotted to sexual assault programs based on the UCR statistics, which do not fully account for the prevalence of sexual assaults. Currently, 58 counties in Texas lack any type of rape crisis program. She stated that several other counties possess only the bare minimum of necessary services. She discussed the need for continued state funding due to anticipated funding reductions from the federal government. Programs in the Dallas/Fort Worth area have already experienced 13-15% reductions. McGauley said she expects drastic cuts in services throughout the state.

CONCLUSION

There are obvious discrepancies in the number of sexual assaults reported by the UCR and NCVS. In order to remedy this disparity, Texas must examine the results of the upcoming sexual assault prevalence study. An accurate picture of sexual assault will assist advocates, law enforcement, and legislators in improving response and developing preventive strategies. The state should continue to improve officer training to ensure that victims receive proper assistance and care.

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COMMITTEE RECOMMENDATIONS

1. Provide additional resources to local police departments for proper investigation and reporting of sexual assaults.
2. Assist communities in establishing Sexual Assault Response Teams.
3. Require TCLEOSE to train new and current officers on how to recognize Rape Trauma Syndrome.
4. Provide counties lacking sexual assault programs with the necessary funding.

WITNESS LIST

Dr. Noel Busch

Dr. Busch is an Assistant Professor at the University of Texas School of Social Work. She is currently conducting a statewide survey to determine the prevalence of sexual assault in Texas.

Chris Lippincott

Mr. Lippincott is the Communications Director for the Texas Association Against Sexual Assault.

Diane McGauley

Ms. McGauley is the director of Sexual Assault Prevention and Crisis Services for the Office of the Attorney General.

Leona Mitchum

Ms. Mitchum, a resident of Pflugerville, is a sexual assault victim.

Ellen Sanchez

Ms. Sanchez is the director of Education and Training for Safeplace: Sexual Assault and Domestic Violence Survival Center.

Katrina Steinocher

Ms. Steinocher is the Executive Director of the Family Violence and Sexual Assault Prevention Center of South Texas.

Chief Rex Uberman

Mr. Uberman is the Chief of the Crime Victim Services Division of the Office of the Attorney General.

APPENDICES

APPENDIX A

APPENDIX B

Survey of Police Response to Sexual Assault

Surveys are kept confidential

TRAINING PROCEDURES

- 1. How much training do officers undergo in the area of sexual assault? _____
- 2. Do officers receive training that addresses marital rape? Yes No
- 3. Do officers receive training that addresses date rape? Yes No
- 4. Do officers receive training in recognizing the use of date rape drugs? Yes No
- 5. Do officers receive training that addresses male rape victims? Yes No
- 6. Do officers receive training in recognizing Rape Trauma Syndrome? Yes No

INVESTIGATION PROCEDURES

7. When speaking to victims about evidence, what do responding officers instruct victims not to do? _____

8. How often do victims ask to be provided with contact information for rape crisis counseling facilities? very often often sometimes never

- 9. Are officers equipped to provide this information? Yes No
- 10. Does an officer accompany the victim to the hospital? Yes No
- 11. At what point do the initial responders transfer the victim to an assigned lead detective?

12. When conducting a detailed interview, is the victim offered a choice between male and female officers? Yes No

13. Approximately what percentage of rape allegations turn out to be false? _____

- 14. Please indicate which of the following tools your department provides investigators with:
 - a. Self-developing camera Yes No
 - b. Tape recorder Yes No
 - c. Video camera Yes No
 - d. Numbered cardboard squares Yes No
 - e. Nasal Aspirator or Handkerchief Yes No
 - f. Powder-free gloves Yes No
 - g. Investigative checklist/forms Yes No

POLICIES AND PROCEDURES

15. Is your department a member of any sexual assault task forces?

If so, please indicate: _____

If not, do you feel your department would benefit from participation?

16. Does your department submit statistics to the FBI for use in their Uniform Crime Report?

Yes No

17. How often do undocumented residents report sexual assault?

very often often sometimes never

18. If an undocumented resident reported as assault, would they be reported to immigration authorities?

Yes No

19. Do your policies and procedures promote community awareness of sexual assault?

Yes No

20. Do your policies and procedures encourage victims to report their assault?

Yes No

21. Do your policies and procedures protect victim confidentiality?

Yes No

22. Additional information you would like to share:

Your name/title: _____

Telephone number: () _____

Thank you for your time. Return the completed survey in the enclosed envelope by May 10, 2002. If you have any questions, please call Gabriel G. Cardenas at (512) 463-0768.

Surveys are kept confidential