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ANNUAL REPORT

FROM THE INTERAGENCY COUNCIL ON MENTALLY RETARDED, DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDERS

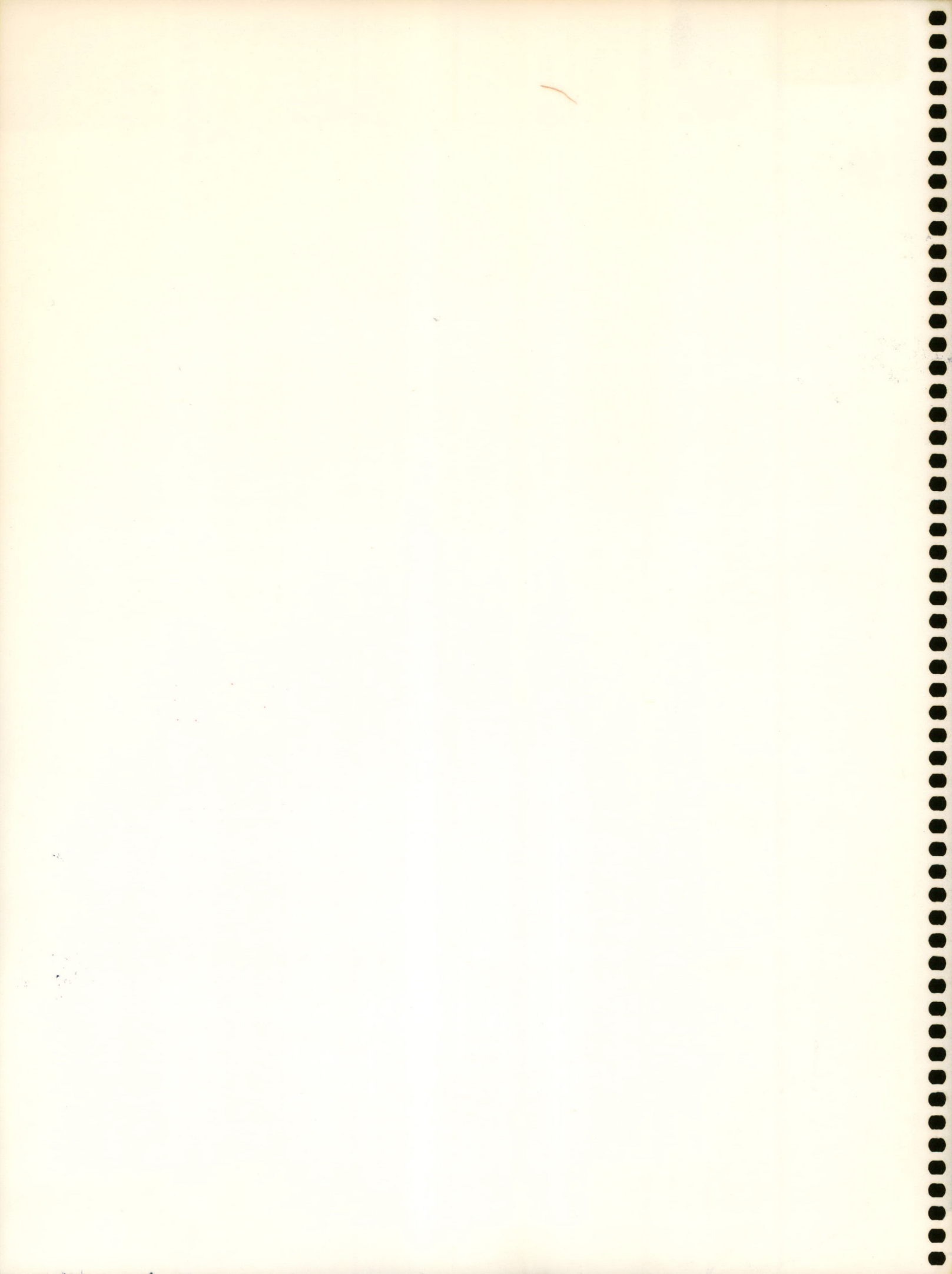


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ANNUAL REPORT

INTERAGENCY COUNCIL ON MENTALLY RETARDED, DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDERS

Submitted to the Governor, Lieutenant Governor, Speaker of
the House and the Seventy-First Texas Legislature

1988-1989

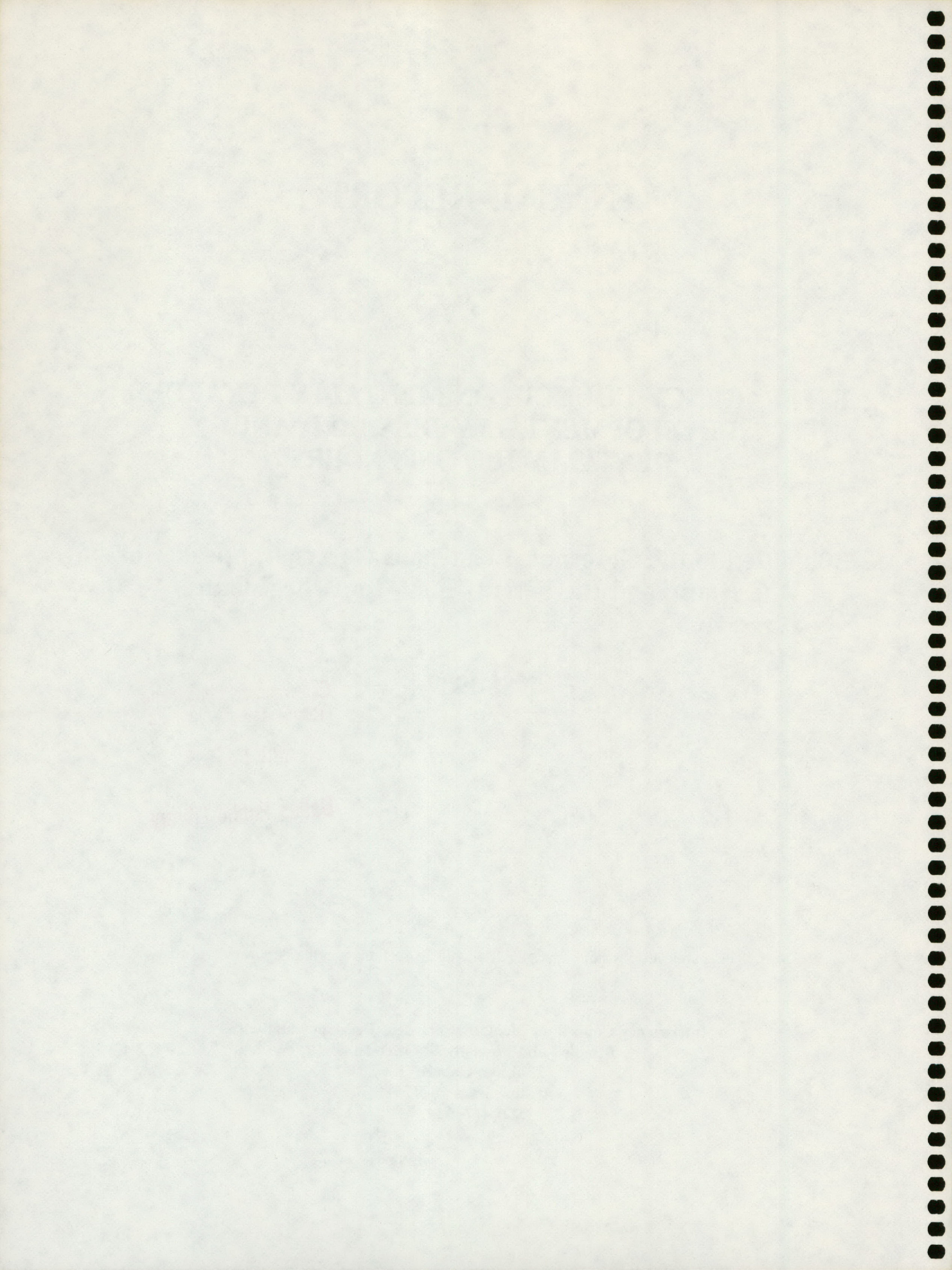
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Interagency Council on Mentally Retarded, Developmentally
Disabled and Mentally Ill Offenders
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Interagency Council for Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders

February 1989

To the Honorable Governor of Texas, Lieutenant Governor, Speaker of the House and 71st Legislature:

The Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders is pleased to provide the first Annual Report on implementation of Senate Bill 719 passed by the 70th Texas Legislature. This Annual Report covers activities of the Council, an overview of the status of a mandated pilot project for mentally retarded/developmentally disabled offenders and recommendations to the 71st Legislature.

The Interagency Council represents an unprecedented legislative charge to criminal and juvenile justice, social service and education agencies, advocacy organizations and policy councils to collaborate on developing community-based sentencing alternatives for offenders with mental impairments.

The Recommendations of the Council result from a review of current strategies regarding offenders with mental impairments implemented by the criminal and juvenile justice, education and social service systems in Texas.

The Annual Report of the Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders is submitted in response to the SB 719 mandate that the Council report by February 1 annually to the Legislature.

Respectfully submitted,

Marilynn Dierschke

Marilynn Dierschke, Chairperson
Interagency Council on Mentally Retarded,
Developmentally Disabled and Mentally Ill Offenders

MD/pah

Enclosure

**Interagency Council on Mentally Retarded, Developmentally
Disabled and Mentally Ill Offenders**

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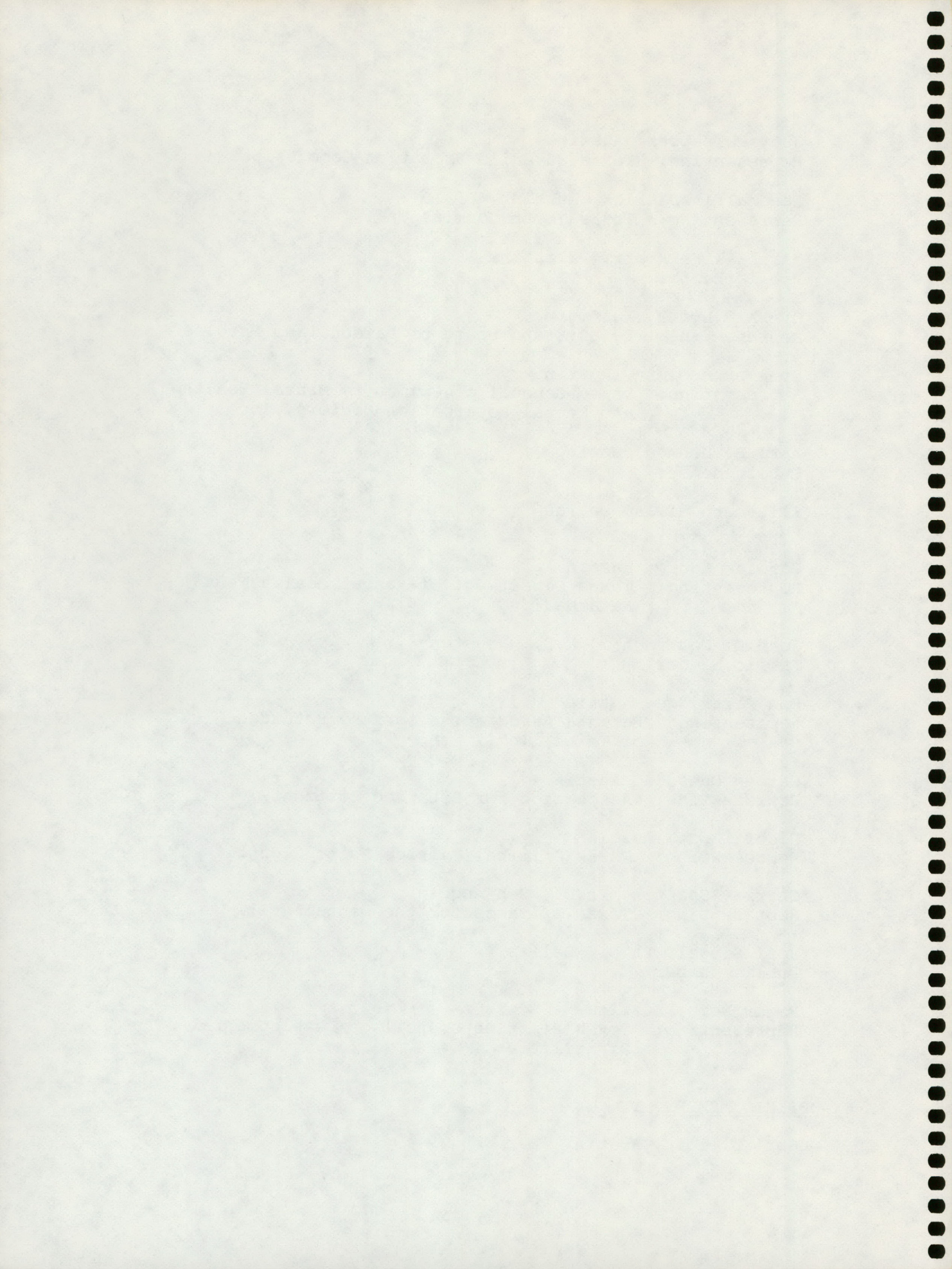


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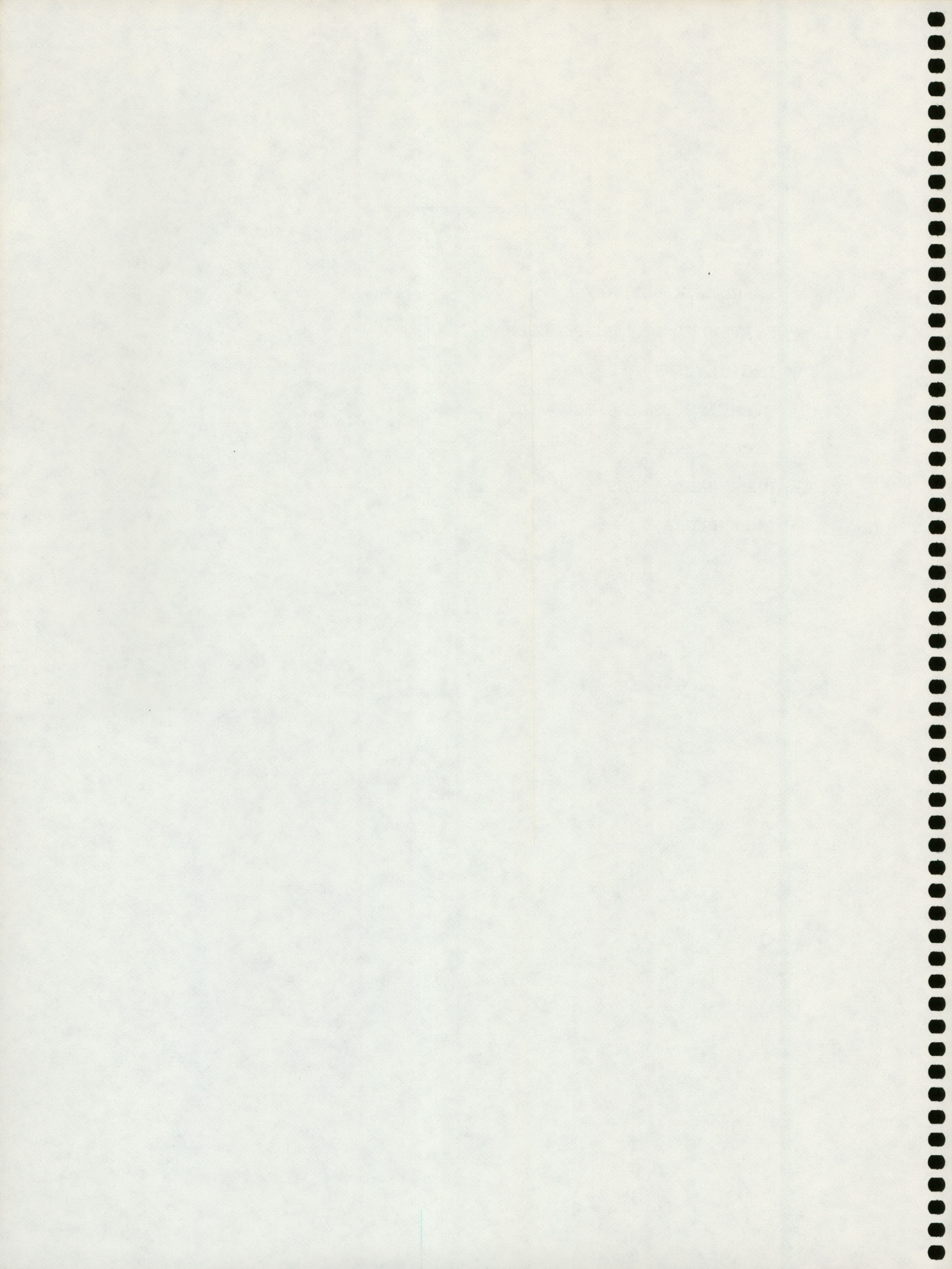
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EXECUTIVE SUMMARY

Texas has made significant progress in addressing the complex problems presented to the criminal justice, education and human service systems by offenders who also have mental retardation, mental illness or a developmental disability.

The problem is often one of inadequate identification of offenders with mental and developmental disabilities. Even when adequate identification occurs, there is a lack of appropriate community resources to address the needs of offenders with mental impairments. Inappropriate identification or the lack of alternatives may result in the incarceration of the offender with mental impairments. For the same reasons, the offender with mental impairments often is unable to benefit from the corrections experience.

Developing policy direction to address these concerns has been hampered in Texas by an inadequate infrastructure of basic health and human services and a prison and jail system that is stretched beyond capacity.

The executive and legislative leadership of Texas has demonstrated an aggressive response to this problem. This is evidenced by the enactment of the 70th Legislature of SB 719, which established the Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders. By law, the Council is comprised of eighteen agencies, councils and associations, and nine gubernatorial appointments.

Significant among the directives to the Council were:

- to determine the status of offenders with mental retardation, developmental disabilities and mental illness,
- to identify the services needed by these offenders and to develop a plan to implement community-based alternatives to incarceration, and
- to implement a pilot project to demonstrate strategies to implement community alternatives.

This document is the first biennium Legislative report of the Council. Please see Section IV of this document for a more detailed explanation of the Council's accomplishments which include:

- initiation of 5 studies including a needs assessment, a review of systems of management of violent behavior and an analysis of sex offenses committed by offenders with mental impairments,
- establishment of a resource library,

- development of a pilot demonstration project for the service management of non-violent offenders with mental retardation/developmental disabilities,
- a resolution regarding mental retardation as a mitigating factor in sentencing in capital cases.

Section V of the report contains recommendations of the Council. Among these recommendations are several for which action by the Legislature is requested:

Identification:

- Requiring mandatory pre-sentence investigations on all convicted felons suspected of being mentally impaired.
- Requiring pre-trial service reports on all offenders incarcerated in county jails who are identified as being potentially mentally impaired for use by the prosecutor's office in determining eligibility for pre-trial diversion from the criminal justice system.

Treatment and (Re)Habilitation Resources:

- Funding pilot project independent casemanagement services in Travis, Dallas and Harris Counties to manage offenders with mental impairments in the community, including those who may be transferred or released from Texas Department of Corrections or Texas Youth Commission to parole.
- Funding of Texas Education Agency, Texas Rehabilitation Commission, Texas Department of Mental Health and Mental Retardation and Texas Commission on Alcohol and Drug Abuse to provide treatment and (re)habilitation services to offenders with mental impairments.
- Expand the Medicaid Plan to include rehabilitation and service options not currently provided.

Specialized Correctional Supervision

- Fund Texas Adult Probation Commission and Board of Pardons and Paroles to provide specialized caseload supervision to offenders with mental impairments.
- Fund Texas Adult Probation Commission to provide pre-trial diversion services.

Definition of Terms

- Change the name of the Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders to Texas Council on Offenders with Mental Impairments.

- Include in the statutes, a charge to the Council to develop a statutory scheme resolving the differences between legal and clinical determination of mental impairment.

I. STATEMENT OF THE PROBLEM

Throughout the nation, state and local governments are grappling with the complex problems presented to the criminal justice, education and human service systems by offenders who also have mental retardation, mental illness or a developmental disability. These individuals (hereafter referred to as offenders with mental impairments) often face incorrect classification, inappropriate treatment and violation of civil rights. Major aspects of this problem are:

Inappropriate Identification

Historically, law enforcement, prosecutorial, judicial, and corrections officials have not had adequate information about the signs and symptoms of mental retardation, mental illness and developmental disabilities; about appropriate methods of effectively dealing with signs and symptoms; or about the needs of individuals with these conditions and illnesses. Consequently, offenders with mental impairments are often prosecuted, sentenced and incarcerated without consideration of their special needs.

Lack of Alternatives

Even when appropriate identification of an offender with mental impairments occurs, a proper response is often hampered by the lack of available community resources that address his/her education, treatment and habilitation/rehabilitation and basic survival needs. Social services, residential services and low-cost housing options, transportation and crisis services are often not available. This special population, with their complex needs, the compounded stigma of disability or illness and their status as offenders, face barriers to services that are greater than those faced by others who seek them. Even when some services are available, the lack of collaboration among providers and the lack of a single, accountable means of service coordination make fragmentation an additional barrier.

Inability to Respond to Corrections

Inappropriate identification or the lack of alternatives results in the incarceration of offenders with mental impairments. For the same reasons, the offender with mental impairments often is unable to benefit from the corrections experience. Offenders with mental impairments are often preyed upon and manipulated by other inmates. Offenders with mental impairments are frequently impressionable and often follow the inappropriate examples set by other inmates. Their disabilities often impair their abilities to comply with prison rules and routine.

Offenders with mental impairments on probation or parole are more likely than others to have that probation or parole revoked. The lack of available services promotes a revolving prison door. Previous studies by the Texas Adult Probation Commission and the Texas Board of Pardons and Paroles suggest that of the known adult offenders who have mental impairments, this population experiences recidivism at a higher rate than that of other offenders. This high recidivism causes an endless cycle of release and re-arrest, a cycle which is both expensive to government and non-productive for the individual and society.

Texas shares with the rest of the nation the problems of inappropriate identification, lack of alternatives and inadequate treatment of offenders with mental impairments. In this state, the problem is compounded by a variety of additional factors. These identified factors include:

An Inadequate Infrastructure of Basic Health and Human Services

Compared to other states Texas ranks almost last in every measure of per capita funding of mental health, mental retardation and overall human services.

A Prison and Jail System Stretched Beyond Capacity

The Texas Department of Corrections has repeatedly found it necessary to close the doors to new admissions. To avoid violation of federal court orders involving capacity, and without change to the current incarceration rate, Texas Department of Corrections projections demonstrate the immediate need for 10,000 -12,000 new prison beds. The backlog in county jails, of felons awaiting incarceration in Texas Department of Corrections, has resulted in a critical overcrowding situation in many local Texas communities.

Federal Court Order to Improve Texas' Corrections and Mental Health and Mental Retardation Services

The substantial unmet needs of all persons served by these systems have resulted in competing demands for resources and attention. This problem is compounded by evidence that the numbers of offenders with mental impairments are increasing. This increase has been attributed to improved identification, inadequate educational services, deinstitutionalization within the mental health and mental retardation system, the general increase in crime and the erosion of the health and human services system. Whatever the cause, the increase underscores the urgency of the need to fund new alternatives that are both effective and economical.

II. LEGISLATIVE RESPONSE

The executive and legislative leadership of Texas have demonstrated a heightened awareness and an increasingly aggressive response to the myriad social and economic problems of the juvenile and criminal justice systems. The 68th Legislature's Senate Committee on Criminal Justice recommended that more appropriate service alternatives be developed for offenders with mental impairments.

The 69th Legislature enacted Senate Concurrent Resolution 128 in direct response to the recommendations of the Legislative Oversight Committee on Mental Health and Mental Retardation and the Senate Committee on Criminal Justice. This resolution directed the Texas Department of Mental Health and Mental Retardation and the Texas Department of Corrections to "collaborate on the development of proactive community-based alternatives for mentally retarded offenders," and to report their findings and recommendations to the 70th Legislature.

Recognizing that the development of community-based alternative programs involved many agencies and that the population of offenders with mental impairments included both minors and adults, the organizers of the SCR 128 Task Force requested participation by all agencies with identified responsibilities for this population. The SCR 128 Task Force submitted its report to the 70th Legislature in February, 1987. The report recommended the establishment of an interagency council on persons with mental retardation, developmental disability and mental illness who are offenders and the implementation of a community-based pilot demonstration project.

As a result of this report, the 70th Legislature enacted Senate Bill 719. This action is a clear indication of the Legislature's recognition of the potential human service and long-range economic benefits of coordinated, community-based alternatives for the offender with mental impairments.

The Act established and designated the membership of the Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders and directed the Council to:

- "(1) determine the status of mentally retarded, developmentally disabled, and mentally ill offenders in the state criminal justice system;
- (2) identify needed services for mentally retarded, developmentally disabled, and mentally ill offenders;
- (3) develop a plan for meeting the treatment, rehabilitation, and educational needs of mentally retarded, developmentally disabled, and mentally ill offenders, including a casemanagement system and the development of community-based alternatives to incarceration;
- (4) cooperate in coordinating procedures of represented agencies for the smooth and orderly provision of services for

mentally retarded, developmentally disabled and mentally ill offenders;

(5) evaluate various in-state and out-of-state programs for mentally retarded, developmentally disabled, and mentally ill offenders and recommend to the directors of current state programs methods of improving those programs;

(6) collect and disseminate information about available programs to judicial officers, probation and parole officers, and the general public;

(7) distribute money appropriated by the legislature to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of programs for mentally retarded, developmentally disabled, or mentally ill offenders;

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

(9) develop and implement a pilot project to demonstrate a cooperative program that identifies, evaluates, and manages outside of incarceration, non-violent mentally retarded, developmentally disabled, and mentally ill offenders."

To ensure that funds were available to support the implementation of SB 719 in Fiscal Years 1988 and 1989, the Legislature appropriated by rider specified biennium funding for each of the following agencies:

* Texas Department of Mental Health and Mental Retardation	\$452,206
* Central Education Agency	\$350,800
* Texas Department of Corrections	\$350,000
* Board of Pardons and Paroles	\$152,206
* Texas Adult Probation Commission	\$152,206
* Texas Juvenile Probation Commission	\$152,206
* Texas Youth Commission	\$152,206
* Texas Rehabilitation Commission	\$152,206
* Texas Commission on Alcohol and Drug Abuse	\$ 50,000

III. OVERVIEW OF THE COUNCIL

THE COUNCIL STRUCTURE

The Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders was enacted into law on September 1, 1987. Pending the nine gubernatorial appointments, the SCR 128 Task Force continued to meet during the interim, from September 1, 1987 through May, 1988. The first full meeting of the Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders was held on June 3, 1988. The Council is composed of twenty-seven members, nine of whom are appointed by the Governor and serve staggered six year terms. In addition, the Executive Director, or a designated representative of each of the following agencies, associations and councils is a member of the Council:

1. Texas Department of Corrections
2. Texas Department of Mental Health and Mental Retardation
3. Board of Pardons and Paroles
4. Texas Adult Probation Commission
5. Texas Juvenile Probation Commission
6. Texas Youth Commission
7. Texas Rehabilitation Commission
8. Central Education Agency
9. Criminal Justice Policy Council
10. Mental Health Association in Texas
11. Texas Commission on Alcohol and Drug Abuse
12. Commission on Law Enforcement Officer Standards and Education
13. Texas Council of Community Mental Health and Mental Retardation Centers
14. Commission on Jail Standards
15. Texas Planning Council for Developmental Disabilities
16. Texas Association for Retarded Citizens
17. Texas Alliance for the Mentally Ill
18. Parent Association for the Retarded of Texas, Inc.

COUNCIL ORGANIZATION

In order to expedite its efforts, the Council has adopted the following internal committee structure: Executive Committee, Committee on Legislative Issues, Committee on Mentally Ill Offenders, Committee on Mentally Retarded Offenders and Adolescent Prevention and Intervention Committee. These committees have assumed the primary responsibility for developing legislative and regulatory policy recommendations and providing programmatic direction. These changes are in keeping with the Council's Legislative mandate to identify and create a more responsive community-based sentencing alternative for offenders with mental impairments.

IV. ACCOMPLISHMENTS OF THE COUNCIL

In establishing the Council, the Legislature directed it to:

- * determine the status of offenders with mental impairments,
- * identify needed services for offenders with mental impairments,
- * initiate a pilot project to demonstrate an innovative approach to addressing these needs, and
- * to report to the 71st Legislature on its activities.

The following are the major accomplishments of the Council in addressing this directive.

Council Studies The Council identified five areas of concern in assessing the status of offenders with mental impairments and their service needs. These include:

1. An in-depth assessment of the status of offenders with mental impairments in the Texas criminal justice system.
2. An evaluation design, instrumentation, analysis, methodology and report format for determining the effectiveness and efficacy of the pilot project.
3. A comprehensive state plan to set policy direction for the Legislature, state agency Boards and Commissions, in addressing the needs of the offender with mental impairments.
4. A review of systems of management of this population in regard to violent behavior of offenders with mental impairments.
5. A study of the nature of sex offenses committed by offenders with mental impairments.

The evaluation design for the pilot project, the review of systems of management of violent behavior and a research design for the study of sex offenses appear as Appendices 1, 2 and 3 of this report. The assessment and state plan are now being developed and will be completed in FY 89.

Council Committees The four standing committees of the Council have identified several issues related to the Council's mandate. The results of their deliberations appear in many of the recommendations, which follow as Section V of this report.

1. The Adolescent Prevention and Intervention Committee addressed:
 - * Policies and procedures for ensuring that juvenile offenders with mental impairments and their families, receive appropriate treatment.
 - * Methods to reduce duplication of effort in diagnostic testing.
 - * Service needs of juvenile offenders who are mentally impaired.
2. The Committee on Mentally Retarded Offenders addressed:
 - * Access to records and confidentiality issues.
 - * Service needs of offenders with mental retardation.
 - * The problems of definition inherent in the terms "mentally retarded" and "developmentally disabled".
 - * The need for a continuum of residential services.
 - * Pre-trial diversion of offenders with mental retardation.
 - * Procedures for early identification of offenders with mental retardation.
3. The Committee on the Mentally Ill Offender addressed:
 - * The development of a model for providing community-based alternatives to incarceration for offenders with mental illness.
 - * Recommendations of the Texas Department of Mental Health and Mental Retardation for statutory changes to the Code of Criminal Procedure for consistency with the Mental Health Code.
 - * The Texas Department of Correction's draft report on transferring Special Needs Offenders to Community-Based Options, identifying areas of mutual concern.
 - * State agency program and policy changes to improve services for offenders with mental illness.
 - * Appropriations needed to implement these services.
4. The Legislative Issues Committee addressed:
 - * The organizational structure and staffing of the Council.
 - * Issues related to legal procedures concerning sentencing of offenders with mental retardation, including pre-sentence

investigations and mental retardation status as a mitigating factor.

- * Development of a long range state policy for offenders with mental impairments to guide the appropriations process.

Death Penalty Resolution The Council passed a resolution regarding the introduction of mental retardation as a mitigating factor at the time of sentencing in capital cases. The text of this resolution appears in this report as Appendix 4.

Library The Council has established a library of resource materials on the topic of the offender with mental impairments. These materials are available to the public at the Council's offices at 2818 San Gabriel, Austin, Texas.

Development of a Pilot Project In order to develop new knowledge on effective alternatives to incarceration, the Council contracted with the Association for Retarded Citizens-Austin to implement a pilot project for offenders with mental retardation and developmental disabilities in Travis County.

The primary purpose of this project is to assist criminal justice and social service systems in developing new, more effective ways of treating this type of offender. Project CHANCE casemanagers assist offenders with mental retardation/developmental disabilities to obtain services they need. Interactions between these casemanagers and representatives of the criminal justice and social service systems produce a more effective treatment approach.

The pilot project has been in operation for six months. The following are highlights of its accomplishments:

- * 5 casemanagers have been employed.
- * 74 referrals have been made to the program.
- * State agencies represented on the Council have provided training, funding, technical assistance and policy direction to their local counterparts, resulting in their active participation in the project.
- * Establishment of a Local Coordinating Council charged with identifying barriers to services and making recommendations to the Council.

A brief profile of offenders in the pilot project appears as Appendix 5. Although the tenure of the pilot project has been brief, these statistics highlight several issues:

- * 82.7% of the offenders were receiving no services at the time of arrest. Offenders with mental retardation/developmental disabilities are often unable to access social services. The independent casemanager is critical in

identifying and obtaining services required by the offender.

- * The average offender had completed 9.1 years of education. Most offenders were or are involved in special education and therefore entitled to educational services through their 21st birthday. This suggests that the focus of education should be on the development of retention and drop-out prevention strategies. The Council's Adolescent Prevention and Intervention Committee will continue to examine this problem in order to develop policy recommendations to the Texas Education Agency.
- * The program has a significantly higher number of adult participants than juveniles. This reflects the existence for at least five years of specialized probation and parole services for adult offenders with mental retardation/developmental disabilities in Travis County. Comparable services for juveniles have been in effect for less than one year. Specialized parole and probation caseloads clearly have an impact on successful identification of offenders with mental impairments.

V. RECOMMENDATIONS

Recommendations Requiring Funding

1. Full funding for the pilot project in Travis County for offenders with mental retardation/developmental disabilities.

Rationale: A pre-trial diversion program for offenders with mental retardation is being developed jointly by the Travis County Adult Probation Department, the District Attorney's Office and the Travis County Sheriff's Office. The program will serve additional clients determined to meet the criteria for pre-trial diversion developed by the three agencies. As non-violent offenders with mental retardation continue to be identified at time of arrest, in the jail, during the trial phase, on probation, in the Texas Department of Corrections and on parole, they will be referred to the project for services.

2. Expansion of pilot projects to provide casemanagement services in Dallas and Harris Counties for offenders with mental impairments.

Rationale: The draft report to the Legislature, Transferring Special Needs Offenders to Community-Based Programs, prepared in September, 1988 by the Texas Department of Corrections in response to Senate Bill 245, Section 45, projects transfers to Dallas and Harris Counties of substantial numbers of offenders with mental retardation and mental illness. Should this recommendation be enacted by the 71st Legislature, a mechanism to provide services to these inmates must be developed. At the same time, there are offenders with mental retardation and mental illness currently on Juvenile or Adult Probation or Parole who do not have access to services that could preclude their further involvement with the juvenile or the adult criminal justice system. Expansion of pilot projects into Dallas and Harris counties, at the level requested by the Council, is recommended to meet the service needs of these offenders.

3. Full funding of State Agency Appropriations Requests to provide support services for the continuation of the pilot project for offenders with mental retardation in Travis County and expansion of casemanagement services to Dallas and Harris Counties for offenders with mental retardation and mental illness.

Rationale: As is noted above casemanagement services are vitally important to offenders with mental impairments. The corrections and service agencies on the Council have included in their Legislative budget requests sufficient funds to support the Council's pilot projects. If the 71st

Legislature chooses to fund part or all of the proposed pilot projects, the corresponding share of the budgets within each of the State Agency requests must also be funded. Casemanagement services alone will not prevent the inappropriate involvement of offenders with mental impairments in the juvenile or adult criminal justice system.

4. Funding to the Council to contract for intensive residential placements for adult offenders with mental retardation and mental illness who are on pre-trial diversion, probation or parole and who require stabilization for their behavior in a community-based residential setting.

Rationale: At the present time, there are limited resources for residential placement of offenders with mental impairments. Living "on the street" is a counter-productive living arrangement for offenders with mental impairments. The constraints on service eligibility in the Texas Department of Corrections and the Texas Department of Mental Health and Mental Retardation often disqualify these agencies from being the most suitable providers of services to offenders with mental impairments. These services are very important to those offenders with mental impairments who need short term, intensive residential treatment and/or supervision to remain in a community-based setting. The Council, free of barriers to providing services, has the ability to contract for short-term, intensive residential services to meet this critical need and, in doing so, avoids the more expensive and less appropriate option of institutionalization.

5. Provide funding to the Council for the purchase of substance abuse, sex abuse and dual diagnoses treatment services for offenders with mental impairments in pilot projects.

Rationale: This recommendation addresses gaps in services identified by the Council.

6. Full funding of the Legislative Appropriations Request for contractual staffing for the Council.

Rationale: Council activities require staff resources to conduct the day-to-day business operations of the Council, to monitor the Council funded casemanagement services of the pilot project(s) and to provide other services on behalf of the Council.

7. Funding for evaluation of the mentally impaired pilot projects over the next biennium.

Rationale: The effectiveness of the pilot projects should be measured, and the process by which systems change to

impact positively the offender with mental impairments should be examined. Critical to the success of the pilot projects is the removal of barriers to services, whether in the form of policies, procedures or funding.

8. Fund the Texas Youth Commission and the Texas Department of Mental Health and Mental Retardation to develop jointly a specialized residential treatment program for the juvenile offender with mental illness who exhibits aggressive or excessive acting-out behavior.

Rationale: Space and security limitations prohibit existing specialized programs and state hospitals from housing aggressive youth with more vulnerable patients. Specialized programming and housing are needed to provide adequately for the violent youth with mental impairments.

9. Fund the Texas Adult Probation Commission to conduct both mandatory pre-sentence investigations on all convicted felons and pre-trial services reports on offenders suspected of being mentally impaired.

Rationale: At the present time, there is no systematic process to identify offenders with mental impairments. It is for this reason that diversion programs can not be utilized appropriately. The person with borderline intelligence is especially difficult to identify. Code of Criminal Procedure, Article 42.12, Section 4.(b) states "The court is not required to direct a probation officer to prepare a report if: (1) the defendant requests that a report not be made and the court agrees to the request; or (2) the court finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion and the court explains this finding on the record." At this time there are insufficient staff resources to provide this information to the court on all felons. If the 71st Legislature amends the statutes to require mandatory pre-sentence investigations on all felons, then funds must be appropriated for this new activity. This action would result in several cost-saving measures including expediting the Texas Department of Corrections diagnostic process. Pre-trial services reports would allow early identification of persons with mental impairments, for purposes of pre-trial diversion. The pre-trial services report could also serve as a pre-sentence report, should the case go to trial.

10. Fund the Texas Department of Mental Health and Mental Retardation to implement diagnosis and evaluation programs in local community mental health and mental retardation centers for juveniles referred by school districts and juvenile authorities. This should enable community mental health, mental retardation centers to implement individualized service plans within 60 days.

11. Fund the Texas Board of Pardons and Paroles and the Texas Adult Probation Commission to expand their Specialized Caseload Programs for offenders with mental impairments.
12. Fund the Texas Board of Pardons and Paroles and the Texas Adult Probation Commission at requested levels for contract services for offenders with special needs, including those with mental impairment who are not participants in the pilot projects.
13. Fund the Texas Adult Probation Commission to provide pre-trial diversion programs for offenders with mental impairments.

Rationale: The preceding recommendations all address gaps in services identified by the Council.

14. Fund the Texas Juvenile Probation Commission to expand its Challenge Grant projects from 9 to 18 in FY '90 and to 24 in FY '91.

Rationale: These projects serve juvenile offenders who are also abused, neglected, mentally ill or mentally retarded. These juveniles are difficult to place and invariably, without treatment, continue to be a burden to the juvenile, criminal, mental health and social services systems.

15. Fund the Texas Education Agency, the Texas Department of Mental Health and Mental Retardation and the Texas Rehabilitation Commission to develop programs of community integrated employment targeted for offenders with mental impairments.

Recommendations Requiring Statutory Changes

1. Amend Vernon's Annotated Civil Statutes Article 4413 (49a) Section 1, changing the name of the Council to "Texas Council on Offenders With Mental Impairments."

Rationale: This would simplify reference to the Council and more clearly define the offender population the Council is to address.

2. Amend Article 4413 (49a) Section 3 to add the Texas Department of Human Services to the membership of the Council.

Rationale: The Department of Human Services provides significant support to offenders with mental impairments through the Aid for Dependent Children Program, the Medicaid Program, Community Care for the Aged and Disabled and Child Protective Services.

3. Consider removing the term "non-violent" from Article 4413 (49a) Section 8.

Rationale: For purposes of developing community-based alternatives to incarceration and pilot projects, equal recognition should be given to the clinical determinants for defining violent behavior as to legal determinants of committing certain acts defined as "violent crimes". A person may commit a "non-violent crime" and be clinically determined habitually violent. In order to consider the most appropriate course of action for each individual offender with mental impairments, the pilot projects should not be restricted to either a clinical or a legal definition of violent behavior. Conversely, a person with mental impairments may commit a single "violent crime" and may not be habitually violent. Offenders with mental impairments currently on probation or parole or who may be transferred to community-based corrections programs in the future who have committed a violent offense are not eligible for the pilot project. Consequently, these persons will not have access to services available only through the pilot project, which would reduce the possibility of continued involvement in the criminal justice system.

4. Submit an annual report to the Legislature by June 1st of every even year.

5. Amend Texas Family Code Section 53.03, Intake Conference and Adjustment, to add new subsection (f):

"If the informal adjustment arranged under this section results in the child being placed out of this home and results in the child attending a school in a district other than the district he/she attended while living at home the parent must sign a release to enable the probation department to obtain the child's school records."

6. Amend Texas Family Code Section 54.04, Disposition Hearing, to add new subsection (i):

"If the court places the child on probation outside his home or commits the child to the Texas Youth Commission, the court shall order the school district in which the child has been enrolled most recently, to release the child's school records to the juvenile probation department for transfer to the child's new school district without delay."

7. Amend Texas Code of Criminal Procedure Article 42.12, Section 4 to allow for mandatory pre-sentence investigations on all convicted felons. Assessments on any defendant suspected of having a mental impairment should be allowed.

8. Amend the statutes to allow, upon request from an adult or juvenile probation department authority (accompanied by a

signed release of information form by the defendant or a parent or designated guardian) for purposes of preparing a court administered assessment report (including the pre-sentence investigation), immediate issuance of copies of records documenting an official diagnosis of current mental illness and/or mental retardation, including borderline mental retardation, from educational, rehabilitation or treatment agencies.

Rationale for Recommendations 4 - 8: (1) To provide for early identification of offenders with mental impairments in the criminal justice system, (2) To access information for critical decisions such as a jail release that could reduce the burden of single cell requirements for offenders with mental impairments, (3) To make a decision to place the defendant on a probation program designed as an alternative to incarceration to the Texas Department of Corrections, (4) To provide a source for identifying and preparing comprehensive reports on offenders with mental impairments so that they can be forwarded to any other receiving corrections agency.

9. Amend Articles 46.02 and 46.03 of the Texas Code of Criminal Procedure to delete Code of Criminal Procedure references to the "maximum security unit of Rusk State Hospital" retaining current language allowing courts to commit defendants determined incompetent to stand trial or not guilty by reason of insanity to the maximum security unit of any facility designated by the Texas Department of Mental Health and Mental Retardation.
10. Eliminate the Code of Criminal Procedure's 60-day minimum length of stay for criminal court commitments to the maximum security unit.
11. Specify that people charged with misdemeanors and found incompetent to stand trial with a substantial probability of attaining competency in the foreseeable future will be committed to their catchment area hospitals rather than to the maximum security unit at Vernon State Hospital. Defendants charged with felonies would still be committed to Vernon State Hospital's maximum security unit.
12. Change the indefinite commitments in the Code of Criminal Procedures to one-year extended commitments.
13. Amend the code of Criminal Procedure to allow persons with mental retardation or mental illness committed to Vernon State Hospital's maximum security unit to be placed either directly in community programs or in state facilities if they are not manifestly dangerous.

Rationale for Recommendations 9 - 13: These changes, proposed by Texas Department of Mental Health and Mental

Retardation, would make the Code of Criminal Procedure consistent with the Mental Health Code.

14. Amend Vernon's Annotated Civil Statutes Article 4413 (49a) Section 7 to specify that the Council develop a statutory scheme for differentiating between legal and clinical determination of offenders with retardation and mental illness.
15. Amend the Penal Code to mandate the alternative placement of persons with severe, profound and moderate mental retardation as defined by the American Association on Mental Retardation standards.

Rationale: It is recommended that for the small number of offenders with mental impairments that would meet this diagnostic criteria, alternative placement in an appropriate treatment setting should be pursued.

Endorsement of State Agency Appropriations Requests and Recommendations which Pertain to Offenders with Mental Impairments.

1. Fund and direct the Texas Department of Mental Health and Mental Retardation to expand their services in such a way that offenders with mental retardation and mental illness be given continued services in the community after parole and probation. This funding scheme should not displace any funds which are ordinarily appropriated for currently designated service populations, but rather be in addition to existing funds.
2. Full funding of Contracted Community Mental Health Services and State Hospitals' and State Schools' Community Services' line items in the budget of the Texas Department of Mental Health and Mental Retardation.

Rationale for Recommendation 1 and 2: These actions are necessary for the development of an effective continuum of care for offenders with mental illness.

3. The Council supports the following recommendations of the Texas Department of Corrections Transferring Special Needs Offenders to Community-Based Options draft report:
 - * Mandatory pre-sentence investigations for all convicted felons.
 - * Establishment of regional Interagency Human Service Councils.
 - * Funding for community services.
 - * Special Needs Parole.
 - * Funding for Texas Rehabilitation Commission services.

- * Prohibit the incarceration of moderate, severely and profoundly retarded offenders.
- * Community facilities for the mentally retarded.
- * Community facilities for the mentally ill.
- * Specialized parole caseloads.
- * Specialized probation caseloads.
- * Mental Health and Mental Retardation service priorities with wording changes.

Program/Policy Recommendations

1. The Medicaid Plan should be expanded to include rehabilitation and casemanagement service options for offenders with mental impairments.

Rationale: The State's resources should be supplemented whenever possible.

2. Juveniles referred to school districts by juvenile authorities shall receive the following consideration by school districts:
 - (1) for special education services within all applicable time-frames as specified by federal regulation, state law and State Board of Education rule, or
 - (2) as at risk for dropping out of school.

Rationale: School districts do not consistently recognize that students involved in the juvenile justice system are at high risk for needing special education or drop-out prevention services.

3. Urge the creation of specialized trained mental health law enforcement units to respond to crisis situations and have access to appropriate crisis intervention resources.

Rationale: Innovative programs, such as the mental health units in Travis and Galveston Counties, have a proven record for ensuring an appropriate response to persons who are mentally ill and their families in crisis.

4. Development of a training program through the Texas Commission on Law Enforcement Officer Standards and Education on ways to effectively respond to persons suspected of having mental illnesses and on resources for meeting their needs and related issues.

Rationale: Officers on the street may prevent escalation

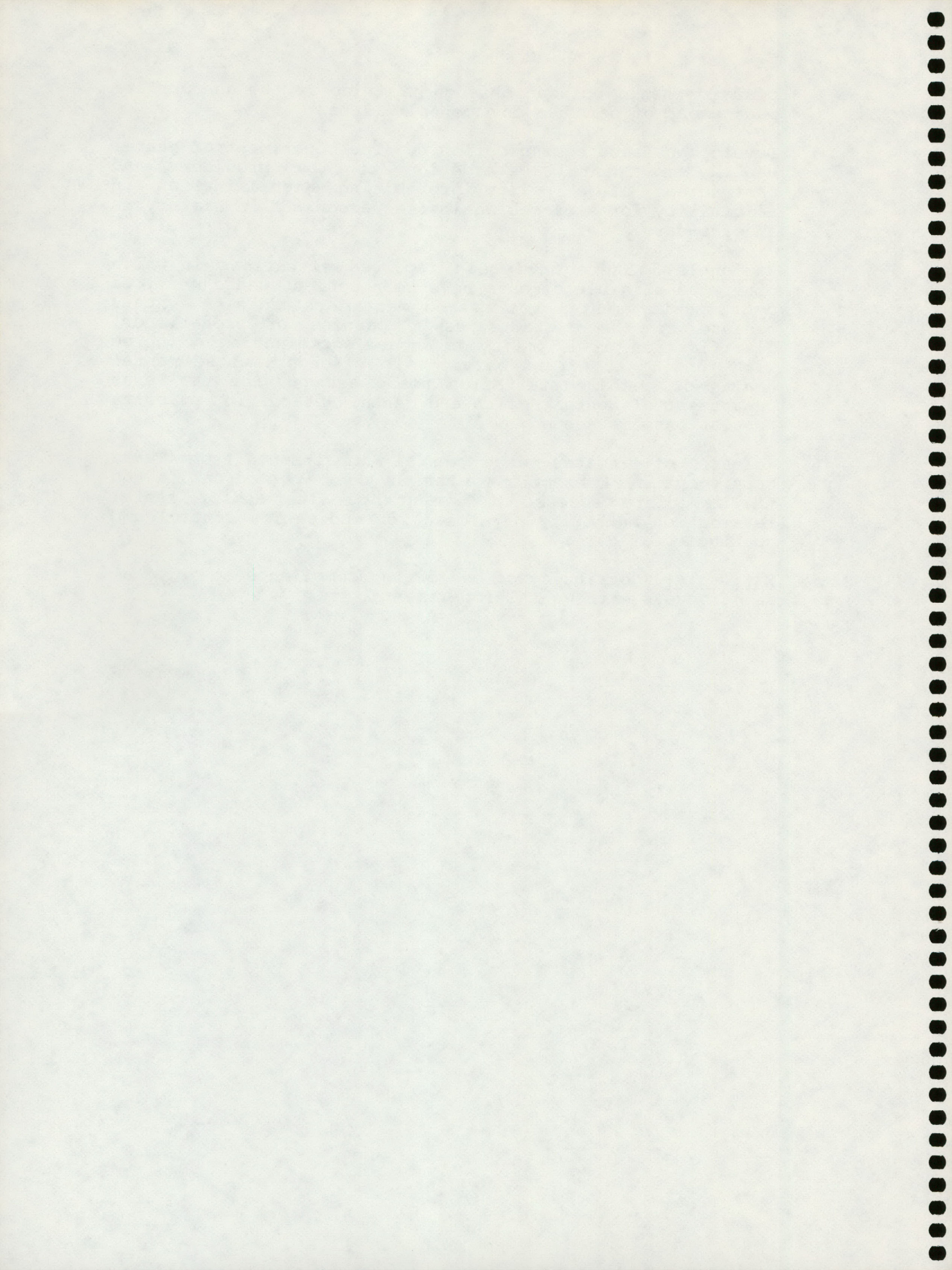
of a psychotic episode through training in the appropriate management of persons with mental illness.

5. Development and communication by The Department of Mental Health and Mental Retardation to its providers and contractees of a policy prohibiting discrimination in eligibility for services against a person with a history as an offender.

Rationale: There have been reported situations in which otherwise eligible clients have been denied needed services by community mental health and mental retardation centers because of their status as a parolee or probationer. Clarification of a policy of non-discrimination, coupled with funding to expand services to offenders whose mental health or mental retardation needs are outside the Texas Department of Mental Health and Mental Retardation priority populations, is needed.

6. Release of inmates with mental impairments from Texas Department of Corrections with 30 days of medication and the immediate access to a mental health and/or mental retardation authority physician for medication control and continuity of care.

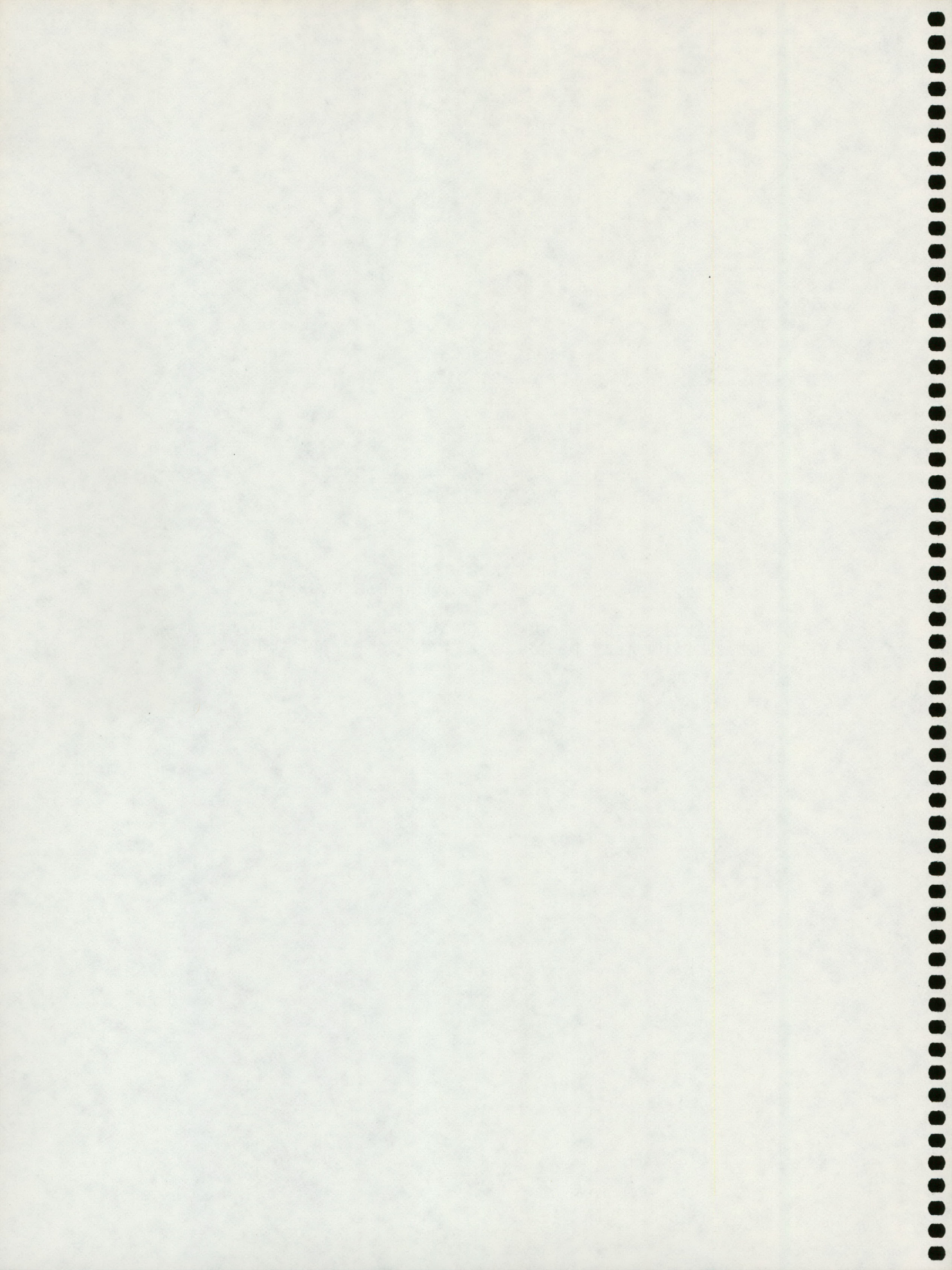
Rationale: Continuity of medication compliance is critical to offenders with mental impairments.



APPENDIX 1

DESIGN FOR THE EVALUATION OF
PROJECT CHANCE

PREPARED BY THE
TEXAS COUNCIL ON CRIME AND DELINQUENCY
FOR THE
INTERAGENCY COUNCIL ON MENTALLY RETARDED,
DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDER



DESIGN FOR THE EVALUATION OF PROJECT CHANCE

PROJECT CHANCE is a pilot project funded by the State of Texas through the Interagency Council on the Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders. The project is designed to demonstrate the feasibility and effectiveness of establishing independent case management services for mentally retarded offenders that will assist them in functioning in a law abiding manner without being incarcerated.

EVALUATION GOALS

The main purpose of this evaluation is to assess the effectiveness of Project Chance in providing support services to eligible offenders during its first year of operation.

A secondary goal is to assist the Council in establishing uniform data requirements for agencies involved in serving the designated clients to expedite ongoing program monitoring and evaluation.

EVALUATION OBJECTIVES

1. to assess whether Project Chance is creating a viable alternative to incarceration for eligible offenders;
2. to determine if there are subgroups within the population served with whom Project Chance is most effective;
3. to assess the effectiveness of Project Chance in its Case Management functions, addressing the following questions:
 - a. were specific needs of each client clearly identified?
 - b. were the identified needs met?
 - c. what services did these clients receive while under the supervision of Project Chance casemanagers?
 - d. what services were provided to these clients specifically as a result of assistance from Project Chance Casemanagers?
 - e. what impact did the services provided have on these clients?
 - f. in what ways did the casemanagement services enhance or facilitate the interaction between the client and the service provider?
4. to determine the probable impact of pretrial diversion of clients as a tool for reducing incarceration of mentally retarded offenders;

5. to determine the probable impact of utilizing specialized caseloads in probation and parole (juvenile and adult) for supervision of mentally retarded clients as a tool for reducing incarceration of these offenders.
6. to determine the direct costs of providing Project Chance Casemanagement services and treatment in the community and compare these to the direct costs of incarceration of these clients.

SOURCES OF EVALUATION DATA

1. Case records of Project Chance applicants and clients.
2. Structured interviews with selected professionals representing referral sources, service providers and members of the local area coordinating council. The selection process will be designed to allow collection of information from a broad array of managers and direct treatment personnel.

ACTION PLAN

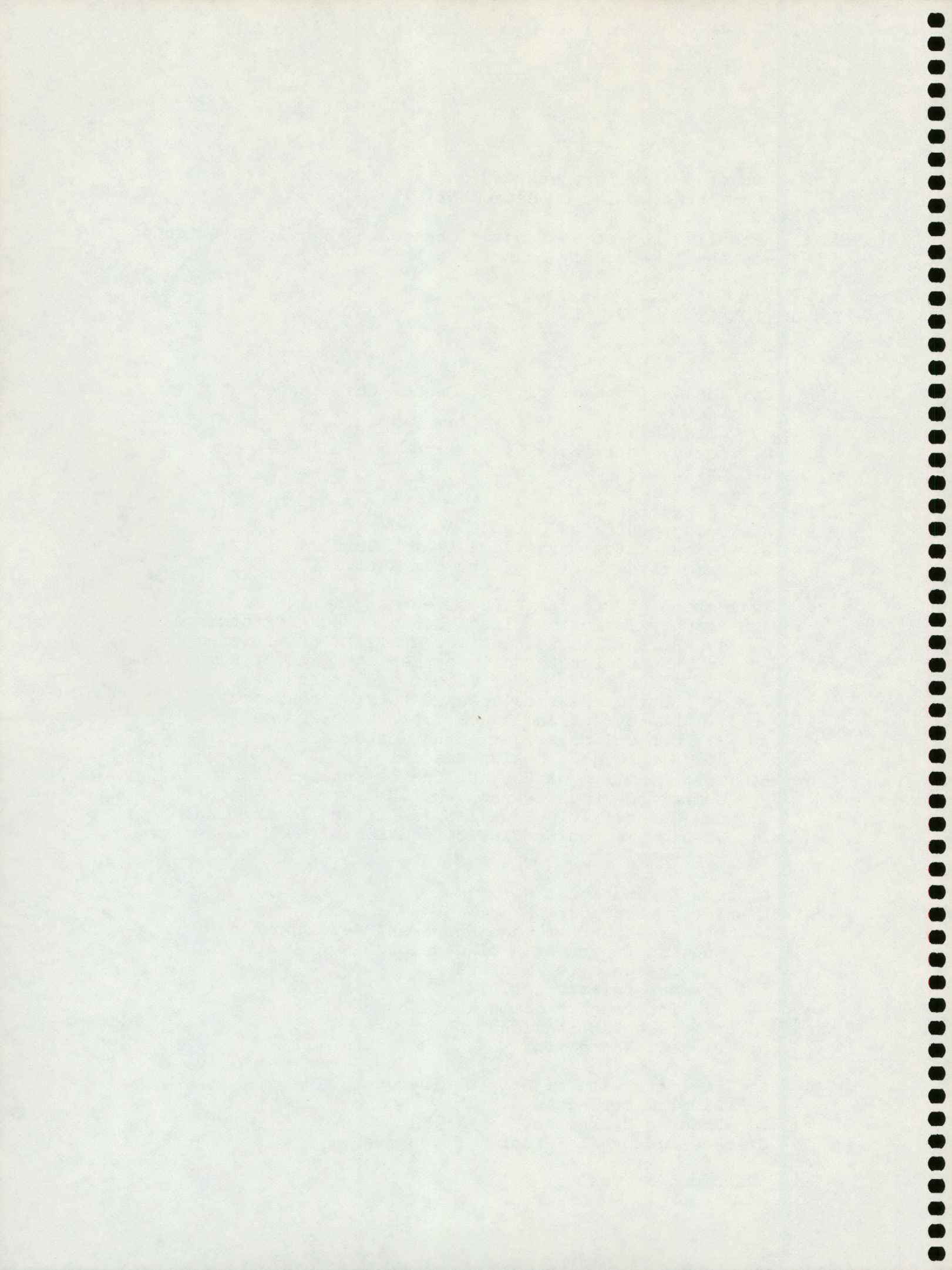
1. Review case records of all Project Chance applicants and clients at the beginning of the evaluation and thereafter on a quarterly basis. This review will include vital statistics on each person, contents of the Individual Justice Plan (IJP), client needs identified, service contacts made and services received, client performance and behavioral information, as well as notations of the casemanagers on their interaction with the clients. The reviews will be used as the basis for summary evaluation of the Project Chance Casemanagement process.
2. Conduct structured interviews with selected professionals in referral agencies as well as service providers. These interviews will focus on three dimensions:
 - a. their perceptions of the strengths and weaknesses of Project Chance and the Independent Casemanagement system as a vehicle for handling these offenders;
 - b. information which they have systematically collected on client functioning and client performance which may be useful in the evaluation of Project Chance;
 - c. those problems in the Criminal and Juvenile Justice systems which presented obstacles to the effective handling of Project Chance clientele and applicants.
3. Conduct periodic review of client files to include clients newly enrolled, developments in casemanagement and services provided, and ongoing updates on client performance and behaviors. This evaluation will cover Project Chance operations from January, 1989 to June,

1990.

4. Draft preliminary evaluation report for Executive Committee review by September, 1990.
5. Finalize report on Project Chance and submit this report to the Interagency Council.

REPORT FORMAT

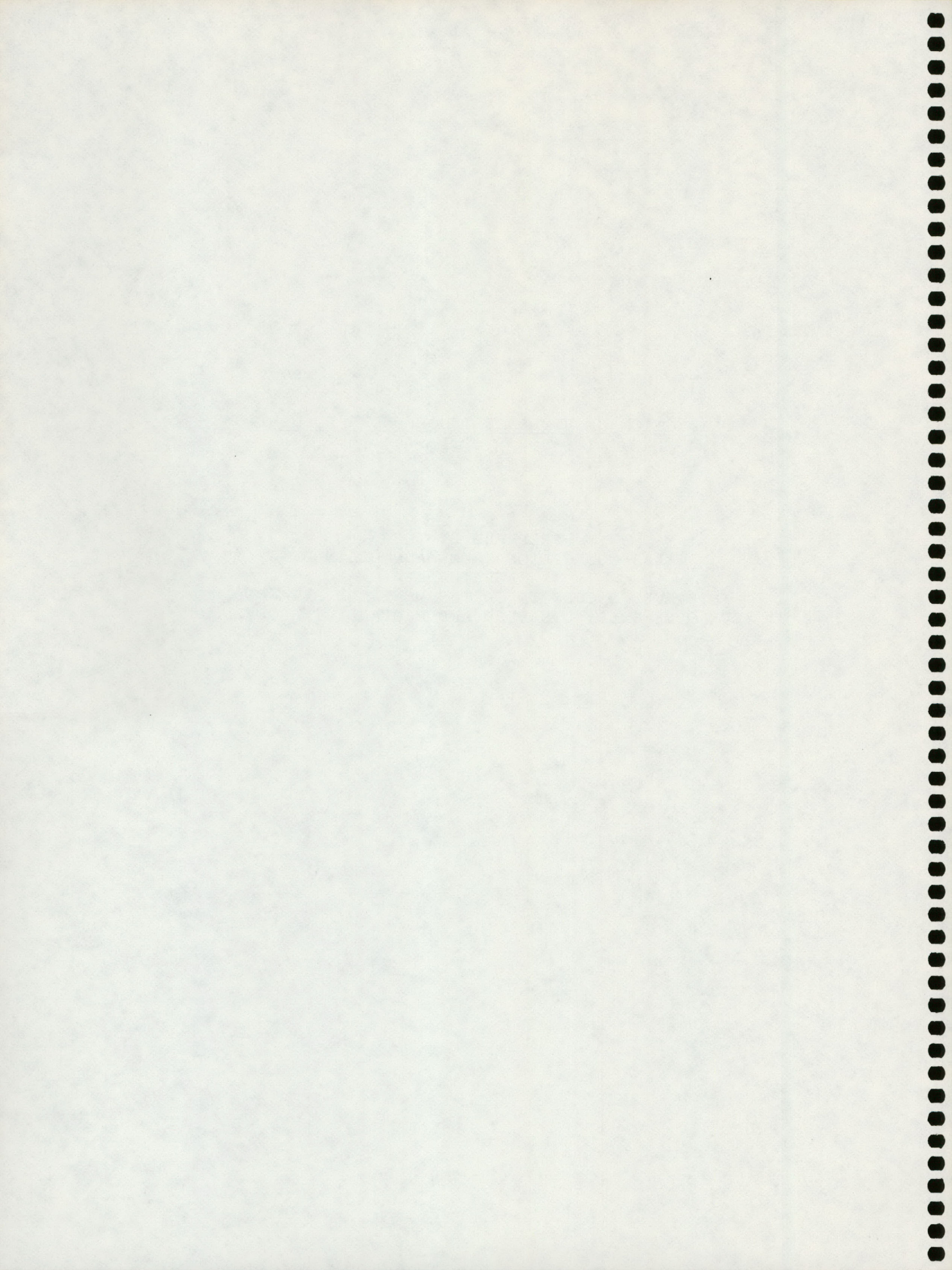
- I. Introduction
- II. Critical Aspects of Project Chance Casemanagement in Practice
 - A. Clientele
 - B. Agency Activities
 - C. Environmental Factors
- III. Data Summaries
 - A. Demographics on Clients Served
 - B. Demographics on Applicants for Service
 - C. Summarized tables of Program Activity
- IV. Evaluation of Program Effectiveness
 - A. Primary Impact on Client Behavior and Performance
 1. Recidivism Statistical Analyses of Differential Rates, Lengths of Treatment at Time of Recidivism, Identification of Client and Treatment Characteristics Related to Program Success
 2. Employment and Educational Experiences
 3. Other Significant Adjustments
 4. Single Cell Design Results
 - B. Cost Benefits of Project Chance Supervision in Comparison to Alternatives
 - C. Non Quantifiable Benefits Identified by Criminal Justice, Juvenile Justice and Social Service Systems Personnel
- V. Process Evaluation
 - A. Intake Procedures
 - B. Establishment of Casemanagement Relationship
 - C. Ongoing Supervision of Caseloads
 1. frequency of contact
 2. supervisory activities
 3. interagency communications
 4. case terminations
 - D. Project Management
- VI. Critical Analysis of Project Success
 - A. Program Strengths
 - B. Program Weaknesses
 - C. Key Factors in Program Expansion
- VII. Recommendations



APPENDIX 2

PREDICTION OF VIOLENCE IN OFFENDER POPULATIONS

PREPARED BY THE
TEXAS COUNCIL ON CRIME AND DELINQUENCY
FOR THE
INTERAGENCY COUNCIL ON THE MENTALLY RETARDED,
DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDER



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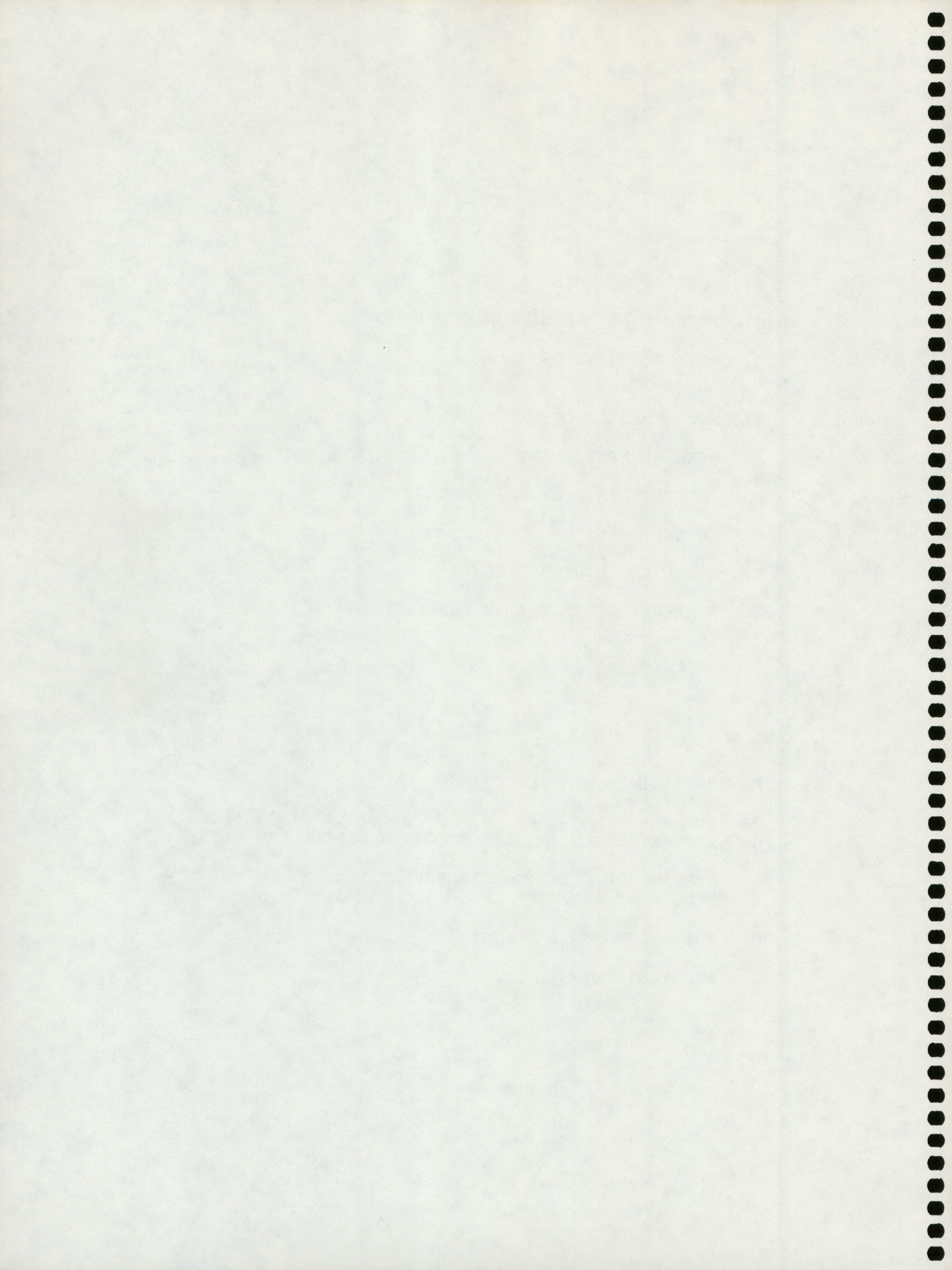
- I. INTRODUCTION
 - A. PURPOSE OF THIS REPORT
 - B. FUNCTIONAL DEFINITION OF VIOLENCE
 - C. RESEARCH METHODS

- II. VIOLENCE PREDICTION
 - A. GENERAL ASSESSMENT
 - B. CURRENT STATE OF ASSESSMENT
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- III. RECOMMENDATIONS

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- A. CRITICISMS OF PREDICTION
- B. SUMMARY TABLE OF A 1975 STUDY OF CRIMINAL AND VIOLENT BEHAVIORS AMONG FORMER MENTAL PATIENTS
- C. SUMMARY OF SELECTED CASES PERTINENT TO NEGLIGENT RELEASE
- D. ACKNOWLEDGMENTS
- E. BIBLIOGRAPHY



I. INTRODUCTION

A. PURPOSE OF THIS REPORT

As one facet of their work on the management of offender groups with special needs, the Interagency Council on the Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders commissioned a study on the prediction of violence in offender populations. This report is written as a summary of the best information available on the capacity of mental health and corrections systems professionals to predict violence in these populations. These systems have, as one of their key responsibilities, the protection of society from those who are deemed most likely to be a threat to the safety of others. There are a number of questions which evaluation studies, research and management information systems are asked to address by those who set policy. Among these are:

1. Which offenders (or mental health patients or wards of the state) are most in need of greatest restriction of movement and tightest supervision?
2. How can we assess which individuals are at least risk of committing violent behavior in community settings or in less secure institutional settings?
3. Given that a wide variety of variables may be statistically related to violent behavior, which variables are most likely to be accurately predictive of violence in the future?
4. What can those responsible for our corrections and mental health systems do to improve our capacity to predict and minimize the probability of violence in our service delivery systems?

It is important to note that the charge of the Interagency Council covers a broad number of disciplines and interests. The Council is analyzing the best handling of mentally impaired, mentally retarded and developmentally disabled offenders, three groups which can overlap considerably. The Council is looking at the state of Texas corrections systems (jails, probation, prison, parole), mental health service delivery systems, and mental retardation services, community and institutional, adult and juvenile.

Shah (1978) has listed fifteen points in the legal process in which predictions of potential for violence may be critical:

1. Decisions concerning bail or release on personal recognizance, including the level of bail;
2. Decisions on the certification of juveniles to stand

- trial in criminal court;
3. Sentencing decisions, probation and conditions of probation;
 4. Work release and furlough decisions;
 5. Parole and conditional release decisions;
 6. Decisions pertaining to the commitment, treatment and release of those who straddle the mental health and corrections systems (i.e. sexual psychopaths, emotionally disturbed delinquents);
 7. Determinations of dangerousness of those found incompetent to stand trial;
 8. Decisions on the handling of disruptive prisoners;
 9. Commitment status of drug abusers;
 10. Decisions concerning involuntary commitment of mentally ill persons considered to be a "danger to self or others";
 11. Decisions concerning the release and conditions of release of those who have been involuntarily committed;
 12. Decisions concerning the placement of individuals acquitted by reason of insanity;
 13. Decisions regarding the placement of mental patients found to be too difficult or dangerous to be treated in the regular units;
 14. Decisions on the handling of "habitual" and "dangerous" offenders;
 15. Decisions related to the likelihood of continued dangerousness of persons convicted of capital crimes, as a basis for application of the death penalty.

The literature on the prediction of violence is concentrated primarily on adult populations of offenders and the mentally ill, and it is the prediction of violence in those groups which receive most attention in this report.

B. FUNCTIONAL DEFINITION OF VIOLENCE

A number of different definitions have been used by researchers and by professionals in the field. Each definition has its

assets and liabilities as a working tool. The Model Sentencing Act of 1973 defined two types of dangerous offenders: "(1) the offender who has committed a serious crime against a person and shows a behavior pattern of persistent assaultiveness based on serious mental disturbance and (2) the offender deeply involved in organized crime". This appears to omit that person who gets angry and stabs someone, or breaks the fingers of someone who owes him money, if the perpetrator shows no signs of serious mental disturbance and is not part of a criminal organization.

The National Commission on the Causes and Prevention of Violence (1969) adopted the definition of "overtly threatened or overtly accomplished application of force which results in the injury or destruction of persons or property or reputation, or the illegal appropriation of property." A number of groups have tried to apply the concept of dangerousness, to little avail. It appears to be simply too vague as a descriptor.

Megargee (1976) defined violent behaviors as: "acts characterized by the application of overt threat of force which is likely to result in injury to people". Megargee and other commentators have noted the importance of defining "injury" as "physical injury". This definition appears most useful and least misleading and is therefore our working definition.

We should also note that much violence in our institutions appears to be a function of interaction between characterological factors (some individuals are more prone toward violence than others while another group of individuals are more prone to be victims of violence) and situational factors. The light bulb which had burned out and not yet been replaced, the lack of a guard in a hallway, or the availability of weapon-like objects in the shop appear to have been instrumental in many occurrences of violence. If one of these factors had not been present, a specific act of violence probably would not have occurred.

While this report analyzes human characteristics and behaviors in the prediction of violence, actions intended to minimize commission of violence will need to include identification of primary opportunities for violence and deal with those opportunities as a systems problem. The systems approach would include three key questions:

Who is most at risk to be a predator?

Who is most at risk to be a victim?

What situational factors put these individuals at greatest risk in institutional or community settings?

C. RESEARCH METHODS

In the 1970s, the topic of prediction of violence became of

significant interest to research and policy analysts, as well as the correctional professionals and criminal sociologists who have been involved in this field of study for many years. The Interagency Council sought to take advantage of the work done by other reputable professionals in this field, especially the most recently generated studies, given the increased levels of violent crime in our society and the overpopulated state of our prisons and jails.

There are two primary sources of data which the Council tapped in preparing this report. The anecdotal comments of corrections and research professionals in Texas and across the country were the first source of information. Several of these people discussed their diagnostic and classification systems, the management of offenders in these special population groups and what they perceived as working best. The second source was the recent literature on the subject of violence prediction and treatment, some of which relates specifically to mental illness among inmate populations (Bolton, 1976; Roth and Ervin, 1971). Interestingly, the practicing professionals recommended the academic treatises as valuable sources of information on predictive systems.

Before proceeding to analysis of violence prediction in institutional settings, two key points in research methodology must be explained, the problems of false positives and false negatives and the statistical problems of predicting rare events.

False positives relate to the outcome of "yes-no" predictions. There are four possible outcomes in such prediction. Answers are either positive or negative. They are also either correct ("true") or incorrect ("false"). A true positive is a predicted event which actually occurs (Joe is predicted to steal a car and indeed steals a car). A true negative is when an event is predicted not to occur and it does not occur (Joe is predicted to not go to church and indeed does not go to church). Any system with risks is going to have a certain number of false positives, in which an event is expected but does not occur. The problem is that in correctional settings, and in some mental institutions, the identification of someone as highly prone to be violent could result in an individual being placed in a more restrictive setting, even in situations in which they would be much more likely to be involved in violent situations. When the consequences of one's decisions can have such impact on the lives of others, it may be necessary to limit the number of false positives as much as possible.

The corollary to this conclusion is that when decisions of lesser magnitude are involved, the system can be much more tolerant of false positives. For example, if the decision involved is length of confinement, then being marked as a false positive could be a terrible injustice. But when the decision involves whether a person will spend six months in cell blocks A, B, or C and there are minimal differences in the safety and daily routines of inmates in these three units, a false positive in this decision may be more tolerable.

False negatives, on the other hand, may have even more serious repercussions on a system. Correctional systems have as one of their functions the protection of society from dangerous individuals. The correctional systems also have some responsibility to protect inmates of the system from violence. In this context, a false negative would be a person who is predicted not to exhibit violent behaviors but actually does commit violent behaviors. If the decisions involving these persons allow them to be in a less restrictive setting and violent behaviors occur which endanger other inmates, staff or outsiders (in the case of visitors or as a result of escapes), then even a low rate of false negatives may be unacceptable. Actuarial tables, or any research tool, cannot dictate how many false positives the system will allow. That is a policy decision based upon risk and the consequences of errors in judgment, factors which are ultimately subjective.

Related to these issues is the problem of predicting events that occur very rarely. Statistically, whenever one is dealing with very low base rate events, like violent acts in society or murder in schools, the likelihood of false positives is very great. That is, you are going to incorrectly predict the occurrence rather often. Much of the difficulty in predicting violent behaviors in our society as a whole can be attributed to the very low occurrence of violence (statistically speaking). When research takes place in environments or population groups in which violence is more likely (i.e. prison systems), then the capacity to accurately predict violent behaviors is much more likely. The capability of behavioral scientists to predict violent behaviors has been enhanced significantly in recent years by conducting research in higher probability populations.

II. VIOLENCE PREDICTION

A. GENERAL ASSESSMENT

Clinical Prediction

Clinical prediction of violence is generally based upon three sources: (1) observed behaviors while in custody or under the care of intake staff, (2) critical events in personal histories (i.e. a pattern of assaults, or abuse as a child) and (3) "clinical measures", the results of psychological testing and structured interviews. It should be noted that in much of the research in this field, clinicians cannot be taken to mean degreed professionals in psychiatry, psychology or social work, but extends beyond these groups to include mental health and correctional intake staff as well, many of whom can rely upon extensive experience in making these decisions.

There have been two major studies of how clinicians make observational judgments of future violence. George Dix (1976), a University of Texas law professor, observed staff meetings at the

Atascadero State Hospital in California and found that eight factors had the greatest impact on staff predictions:

1. Acceptance of guilt and personal responsibility for offenses they had committed.
Those who refused to acknowledge guilt were perceived as much more likely to be "dangerous" in the near future.
2. Development of ability to articulate resolution of stress-producing situations.
Treatment philosophy in most correctional settings (and numerous state hospitals as well) holds that inmates (patients) must develop the capacity to reason and talk their way through critical situations rather than impulsively acting out in a manner which is socially unacceptable.
3. Content of expressed fantasies.
While expression of fantasies to staff was a relatively rare occurrence, it was subject to expansive interpretation when their fantasies involved commission of dangerous acts.
4. Behavior during hospitalization.
The main cues to which most staff attend are behavioral (i.e. those behaviors observed by staff and perceived as being overly aggressive or violent). There is acknowledgment that behavior in a hospital admissions ward may differ significantly from the behaviors the same individual might exhibit in the controlled atmosphere of a psychiatric ward or in the open interaction of a community mental health center, but most of staff continue to base their judgments on what they observe.
5. Duration of institutionalization.
There is perceived to be a relationship between how long a patient stays in an institution and the dangerousness of that patient.
6. Achievement of maximum benefit from hospitalization.
Those who appear to make the most progress in treatment are believed to be less likely to be violent than those who do not progress.
7. Change in community circumstances.
Staff have a strongly held impression that the environment in which the patient will be operating can have great influence on the likelihood of his/her committing future violent acts, affecting this probability both positively and negatively.
8. Seriousness of the anticipated conduct.
Staff judgments were affected by the perceived extent

of dangerousness or violence which might be expected from the patient (for example, two individuals might be equally likely to commit violence, but there is a difference between one who throws rocks at moving vehicles and another who shoots at these vehicles with a rifle).

The second set of research on factors considered in clinical judgment is the work of Edward Mulvey (Mulvey and Lidz, 1984). Mulvey reviewed the research on the factors actually considered by clinicians in making these determinations. His first observation is that mental patients' dangerousness is viewed by mental health professionals as a by-product of particular psychiatric disorders, not as a separate diagnosis. Under this approach, most mentally ill are not expected to be dangerous, but those who exhibit certain conditions have greater likelihood of being violent. Tomb (1981) lists paranoid schizophrenia, alcohol and drug abuse, organic brain syndromes, acute psychotic states, mental retardation, and attention deficit disorder with hyperactivity as diagnoses which are related to a higher likelihood of violent behaviors.

There appears to be a significant split between what clinicians say they should look for, and those factors which are given greatest weight in practice. Clinical orientation and training, the context of the decision (both where the decision takes place in the system and organizational pressures which may be present), the timing of the decision, class and cultural factors, personal preferences and the strength of belief in the reliability of the formal diagnostic system appear to exert the greatest influence on the decisions of clinicians.

Mulvey underscores one other very interesting situation. He found that the factors which decision makers believe to be influential in determining violence do not match up well with those factors which actually relate to the probability of future violence. History of violence, in particular, is seldom cited as believed to be important, when, in reality, Monahan, Klassen and others have identified this history as the single factor most likely to be an accurate predictor of future violent behaviors.

Actuarial Approaches

Actuarial science is based on the notion that there are relationships between occurrences which will exhibit consistent patterns over large samples and that these patterns can be used, with some degree of accuracy to predict the probability of these occurrences in the future. Actuarial approaches are, of course, the basis for most insurance rate structures, so they have some general acceptance as valid techniques in our society.

While clinical approaches assess the dynamics of behavior in certain individuals and seek patterns in the perceived existence of these dynamics, the data assessed in one individual may vary significantly from the data used to analyze the personality

problems or causes of violent behavior in one individual from that used in the analysis of another. Actuarial data rely on having the same set of data on each individual in the sample. This information is more likely to be observable and measurable, because actuarial approaches tend to rely on the quantitative statistical analyses which make actuarial tables useful.

Monahan concludes that "virtually all of the studies that have tried to compare clinicians and actuarial tables in predicting the same events, the actuarial tables have proven to be more accurate." It is true that all of these studies were based upon statistical comparisons of the two methods, but numerical proof tends to hold more attention in our culture than clinical judgment, no matter how much we may respect our clinicians judgment in other conflicts.

Actuarial studies will almost always perform better over time. Time and additional information allow the equation to account for increasing proportions of the variance in the predictions made. This makes sense logically and is also borne out by recent history in the prediction of violence. The early studies based on actuarial approaches did not fare much better than clinical approaches at that time (see Wenk, Robinson and Smith, 1972). Monahan cites a study of 2200 male inmates released on parole from the Michigan Department of Corrections which was compiled in 1978. Data on 350 variables on each individual was used in this study.

Table 1

Violent recidivism rate of Michigan assaultive risk categories

Risk Category	Recidivism Rate	Percent of sample
Very high risk	40.0%	4.7%
High risk	20.7	6.6
Middle risk	11.8	43.5
Low risk	6.3	23.5
Very low risk	2.0	19.7

Department of Corrections of the State of Michigan (1978).

These results show a significant relationship between predicted risk and recidivism. Monahan attributes the strength of these results to a few different factors. The base rate of violence in this population is 10.5%, which is higher than that which occurred in earlier studies. Secondly, use of arrest as the criterion for recidivism allowed clearer observation of the follow up behavior (although arrest records may overestimate or underestimate the actual occurrence of violence). Thirdly, he

found the Michigan record keeping and follow up to be "meticulous". Incidentally, the three strongest predictors in this study were the type of crime committed, the nature of inmate institutional behavior, and whether an arrest had occurred prior to the inmate's fifteenth birthday.

In summarizing research conducted prior to 1981, Monahan identifies the following variables as major actuarial correlates of violent behavior:

- * Past crime, particularly violent crime.
Numerous studies, in a variety of locations and with differing age groups, have found high correlations between past criminal activities and violent behavior.
- * Age
Youths are much more likely to commit violent acts than are older persons. Juvenile violence increased almost twice as fast as adult violence during the period from 1960 to 1975 (Wolfgang, 1978). The likelihood of these same youths committing violent crimes does decline as they get older.
- * Sex
FBI statistics from 1978 showed that 9 of 10 persons arrested for violent crime in this country were male. Indeed, males commit such a great portion of the violent crimes that there is little research or data on violent females.
- * Race
While there is some acceptance that our law enforcement systems may disproportionately arrest minority group members, the statistics leave little doubt that minority group members are more likely to commit violent acts than are whites. This finding is especially troublesome as it applies to actuarial systems, because most professionals are understandably uncomfortable operating a process which may tend to systematically discriminate against Mexican Americans and Blacks. It should also be noted that the presence of one predictor may reduce the statistical relevance of another. In a population of individuals with extensive records of violence, race is not an effective statistical indicator of which ones are more likely to be violent.
- * Opiate or alcohol abuse
This variable, especially among offenders involved with both alcohol and hard drugs, relates much more closely to overall commission of crime and to recidivism than it does to commission of violent acts.

Note that mental illness is not cited as a correlate of violence (see Cocozza, Melick and Steadman data in Appendix B).

Most recently, a statistically-based study by Klassen and O'Connor (1988) has received a great amount of attention from professionals in the diagnosis and classification field. They used 67 potential predictor variables to assess the likelihood of arrests for violent crimes and readmission to the community mental health center in 304 males referred to a center in Kansas City, Missouri. All participants had some previous history of violent behavior, thus counteracting the low base rate factor.

Their study combines information from clinical, demographic and personal history sources. The most prominent predictors (along with their discriminate correlation and level of statistical significance) were:

Table 2

Discriminate Factors in the Prediction of Violence

Factor	r	Sig.
1. Number of prior arrests for disturbing the peace	.42	.001
2. Expressed dissatisfaction with extended family	.39	.001
3. Never married	.29	.001
4. Injured by a sibling before age 15	.28	.001
5. Abstract reasoning (measured by the Shipley-Institute of Living Scale)	-.27	.001
6. Father died before age 15	.25	.001
7. Assault as part of presenting problem	.24	.001
8. Parents provided well for needs	-.23	.001
9. How often see mother	-.23	.001
10. Arrested for violent crimes in past year	.22	.001
11. Parent(s) had physical fights with others	.22	.001
12. How long ago last sexual intercourse	.22	.001
13. Dissatisfaction with siblings	.21	.001
14. Live with parents	-.21	.001
15. Suicide attempt in presenting problem	.20	.001
16. Number of violent incidents in past year	.20	.001

17. Age		-.19	.001
18. Assaultive when drinking or using drugs		.16	.01
19. How long ago last relationship with a woman		.16	.01

Note that the prime indicators of violence in this study are a mixture of personal history (i.e. arrests for disturbing the peace), demographic data (never married), situational measures (how often the client sees his mother), test data and family background.

Using this data as the basis for discriminate analysis yielded the following results in classification:

Table 3

Classification Results Applying the Discriminate Analysis

Actual Group	N	Predicted Group	
		Non-violent	Violent
Non-violent	193	93.9%	40.7%
Violent	46	6.1%	59.3%
Total correct classification:		85.3%	
False-positive rate:		40.7%	
False-negative rate:		6.1%	

Actuarial approaches are often useful in helping us understand our systems and how we can make our intervention systems more effective. They will not, however, even approach perfect accuracy. Gottfredson makes the useful analogy of weather forecasting (1978):

"Using an actuarial parole aid is a little like using a weather report that says there will be a sixty percent chance of rain. What the weather report actually means is that on similar days it has rained sixty percent of the time. It does not tell whether or not it will actually rain today. Nevertheless, such information can be useful in deciding whether or not to carry an umbrella."

While the results of Klassen's study are very encouraging, this does not mean that corrections or mental health officials in Texas can adopt their regression formula and expect it to validly predict with such high accuracy. It does indicate that such actuarial techniques can make classification systems more accurate. It must be emphasized that behavior in an institutional setting may not reflect accurately that same person's behavior were they at home or in a community setting. By the same token, violence in a prison may be related to a

different set of predictors than violence in an open setting like the community mental health center.

Both clinical and actuarial approaches rely upon the critical circumstances not changing. If you change the population or the environment of your data base, the data will not predict as well after the change. "In this group of persons in this environment at this time..." could well be affixed to any prediction that would be made. This underscores the notion that we cannot base policy on studies conducted in Philadelphia in the 1950s or New Delhi, India in 1987 and expect those results to have relevant and clear policy implications.

Violence in Prisons

While Monahan's review of research includes studies of prison violence, it is worthwhile to note two studies cited by Roth which specifically addressed prediction of violence in prisons. The first is a report produced by the Federal Prison System (1982). These empirical investigations conclude that a "custody classification system" based upon known past institutional behavior is a better predictor of overall inmate adjustment than any set of psychometric measures.

The other study of note involved violence in San Quentin in 1960 (reported in Bennett, 1976). This study found that violent prisoners were more likely:

1. to be younger;
2. to come from non white ethnic groups;
3. to come from homes in which divorce or separation occurred prior to their sixteenth birthdays;
4. to have missing, alcoholic, criminal or abusive fathers;
5. to have had low educational achievement;
6. to have a prior history of institutional violence;
7. to have had four or more institutional disciplinary infractions;
8. to have had a prior institutional history of one prison commitment or two jail or juvenile commitments;
9. to have been age twelve or younger at the time of their first arrest;
10. to have had a first arrest for robbery or burglary;
11. to have had a history of epilepsy;

12. to have attempted suicide or self-mutilation.

In commenting on this research, Roth concludes that "Neither the offender's most serious offense in prison nor prior violent behavior outside prison...was found to be related to violent or aggressive behavior within the institution. It is thus often important to relate personal background variables to variables within the institution to explain inmate violence adequately." (p. 219).

Situational Correlates

Monahan and Klassen (1982) have identified six primary situational correlates of individual violence: family environment, peer environment, job environment, availability of victims, availability of weapons and availability of alcohol. Remember that these are correlations, reflecting parallel occurrence, not necessarily cause and effect.

Family behaviors give most children their initial norms of acceptable behaviors. Cohesive families, especially the existence of supportive relationships between fathers and sons, can be very important in assisting offenders in the community. While having family contact usually has a positive influence on offenders, some families may encourage criminal and violent behaviors and thereby increase their likelihood. Family members are very often the victims of violent behaviors. The quality of family relationships can be a source of stress or of support, but will certainly affect the probability of family members committing violent acts.

Peer relationships have been acknowledged as key factors in influencing adolescent behaviors for many years, with ample research verifying their importance. Peers are even more likely to be the victims of violence than family members. As in the family environment, the attitudes and behaviors of peers can influence the likelihood of violence both positively and negatively.

Being unemployed has been seen to correlate with persons committing crimes, with parole revocations and with the incidence and severity of family violence. Job stability seems to have a negative correlation with recidivism.

The availability of weapons not only increases the probability of violence, their presence also affects the severity and lethality of violent behavior. The consumption of alcohol has been seen to be associated with the occurrence of serious crime, in particular assaults.

As might be expected, the power of these situational factors in influencing violent behaviors is especially potent when two or more are combined (i.e. picture the unemployed individual not getting along with his family having too many beers with a loaded

gun in his possession).

B. CURRENT STATE OF ASSESSMENT

At the present time, many correctional agencies are seeking ways to improve their capacities to predict violence. Most use a combination of observed behaviors, criminal and institutional histories, and information gained in structured interviews during the reception process. Many will combine "pure" clinical measures (i.e. expression of hostility, appearance of paranoia) with "pure" actuarial data (i.e. age, reading level).

The Council has sought to identify those classification systems which are most effective in identifying individuals who are most prone toward violent behaviors. The single greatest difficulty in identifying systems which work is that corrections and mental health systems have very rarely undertaken evaluative research to see if the systems they have in place are actually working well or not. Anecdotally, most professionals interviewed felt that their systems worked well enough, but could cite no statistical data pro or con. Even if professionals are committed to evaluating the effectiveness of their systems, they run into the classic problem of doing action research. The process of intervention, in this case placing offenders in different settings, may affect their behaviors in ways difficult to predict. We never know what might have happened had we not intervened or if the offender had been placed in a different setting.

It is essential in any diagnostic system to identify what the clinician or intake worker is seeking to predict. "Dangerousness" is too vague a term to be useful in most settings. What does being "dangerous" mean? In some situations, the likelihood of violence while in custody (or treatment) is the critical factor of interest. In others (i.e. a parole board), the critical factor may be potential for violence in the open community.

C. TRENDS

There are a few apparent trends in diagnosis and prediction. Among academicians and other research professionals, there will be increasingly greater interest in actuarial approaches which, like the Klassen study, combine clinically generated data with information from institutional records, personal history and demographics. As brain measurement technology has developed in recent years, there has been some significant progress in application of these tools to violence prediction. At this point, it appears that physiological and neurological factors are related to violent behaviors in some individuals, but may not be important in the majority of those who enter mental health and

corrections systems. Much of this measurement technology is very expensive (in the purchase of capital equipment and in its use) and is not being broadly used in correctional settings. However, we can expect that more and more research will be conducted making use of technological advances. Corrections officials can be expected to endorse pilot projects using this technology in their classification systems.

A second trend already underway is the development of differential treatment programs for groups classified on the basis of the sources, or the concomitants, of their problem behaviors. Subgroups within the offender populations will be identified with greater specificity.

A third trend is the use of actuarial and other technologically obtained data as a complement to professional observation of behavior. Administrators have generally used personal history data, test results, and (when available) the diagnoses of mental health professionals in making placement decisions. Advances in actuarial techniques allow professionals to apply this information in a systematic manner. This movement has been greatly facilitated by the proliferation of personal computers and statistical software developed for personal computers. No longer does an actuarial system have to rely upon hours of time on a main frame computer with several employees putting data on punch cards.

Fourth is the increased interest in closer study of the interaction between individuals and situations which combine to make violence more likely. Bem and Funder (1978) have proposed a model based upon three key questions:

- 1) What characteristics describe the situations in which the person reacts violently?
- 2) What characteristics describe the situations the person will confront in the future (i.e. given placement in some specific setting)?
- 3) How similar are the situations the person will confront in the future to those which have elicited violence in the past?

It is likely that correctional professionals will attempt to set up tracking systems to help them address these questions in their environments.

D. LEGAL AND ETHICAL ISSUES

Most of the writing on prediction of violence is concerned with technique ("how do professionals make these predictions?"), or with effectiveness ("how can we improve our predictions to increase their accuracy?"), or with treatment considerations

("what is the best program for a person thus diagnosed?"). The predictions of how likely a person is to be violent have very critical implications when one considers that decisions involving involuntary or solitary confinement, placement in an institution rather than a community program, or even whether a prisoner should be released on parole may hinge on this judgment.

George Dix, the University of Texas School of Law professor cited earlier for his work observing staff in a state mental institution, has also conducted research and written articles on the ethical issues involved in the handling of violent behaviors since the mid-seventies. In Roth's 1987 collection of articles and monographs, *Clinical Treatment of the Violent Person*, Dix cites four areas of special concern in the professional judgment of potential for violence: 1) the professional's responsibility to protect potential victims; 2) the professional's responsibility to respond to court inquiries concerning the dangerousness of specific subjects; 3) questions revolving around compulsory treatment; and 4) the personal liability of mental health professionals.

Protection of Potential Victims

Dix cites a series of cases beginning with *Tarasoff v. Board of Regents* (1976) which have recognized a right of third parties injured by a violent patient to sue the patient's therapist. Dix's interpretation of the judgments in these cases is that the therapist "must exercise the care and skill of a reasonable professional in identifying those patients who pose a significant risk of physical harm to others." He also concludes that therapists have legal responsibility to exercise care in protecting others from physical harm at the hands of the patient. Therapists may perceive this as directly contradicting the therapists' duty of maintaining confidentiality about their patients.

Tarasoff is primarily applied to outpatient therapy, yet holds some useful rules which may apply to correctional and public mental health settings. Dix does have some practical suggestions. He recommends that professionals carefully document their procedure in assessing risk and their reasons for using this procedure. Secondly, consultation from other professionals should be obtained in questionable cases. Third, therapists must inform the client of their legal and ethical mandates in this regard.

Testimony

Dix feels that the mental health professional must avoid assuming responsibility for decisions which are properly those of the court. He recommends that therapists should limit themselves to placing patients in groups "of persons who pose a significantly higher than normal risk of violent conduct", taking special care to avoid giving the impression that some specifically stated pathology bears a direct relationship with a likelihood of

committing a violent act. If behavioral predictions are made, testimony should specify the behaviors expected, avoiding generalizations.

Compulsory Treatment

Issues surrounding compulsory treatment generally involve objectivity of decision making on the part of treatment providers, intrusiveness of different treatment programs, and demonstrated effectiveness of treatment interventions. The cases cited by Dix have held that prisoners have very limited due process rights in refusing treatment. Certainly therapists should do all that they can to see to it that those coerced into treatment of any form have as much understanding as possible of the process, content and reasons behind the treatment provided to them.

Personal Liability

Dix quotes the Texas Mental Health Code in its provision that any action taken "in good faith, reasonably and without negligence" pursuant to the examination, detention, treatment, or discharge of a person...is free from all civil or criminal liability". Nonetheless, he once again recommends scrupulous documentation.

Use of Predictive Judgments in Administrative Decision Making

Dr. Dix (1988) has stated that he cannot see judges or juries being very comfortable basing their decisions on actuarial data on likelihood of violence. This is certainly true. Expert testimony which relies exclusively on actuarial data has very limited application to legal proceedings. In the placement decisions made by administrators, actuarial data has tended to be of greater use, providing systematically collected information to be used along with the observational and personal impression data upon which such decisions have traditionally been made.

There is justifiable concern that race, even though it may correlate statistically with violence, would be inherently discriminatory in its use as criterion for placement. While race can be included in the predictive equation for program evaluation purposes, it should not be used as a basis for placement, treatment or release decisions. To do so would raise critical ethical and constitutional issues. The use of sex and age as criteria may be more defensible, but still could be problematic. These factors may be dropped from prediction formulas without destroying their predictive capacity.

E. SUMMARY OF EVALUATIVE RESEARCH

There has been much research critical of professional capacity to predict individual violence (see Appendix A). Much of this criticism is based upon studies conducted twenty to forty years

ago. Recent findings indicate that professionals making use of a variety of tools (including clinical and actuarial data) can predict violence in some settings.

Corrections and mental health service systems require judgments about who should go where, about readiness for release, about whom can we protect from whom. Hospital intake workers, correctional reception center officers, and mental health professionals from a variety of disciplines are called upon to make such decisions as part of their daily jobs. While the public may be keenly interested in whether a drunk driver who has committed manslaughter is adjudged as likely to commit further violence during his trial, few will pay much attention to exactly where this person is incarcerated during his sentence, the treatment program provided to him, or the extent of security in that unit. The processes which take place every day related to prediction of violence among prisoners and the mentally ill are not of as much interest to the general public and are beyond the task of the sentencing judge or jury. As a practical rule, people make these judgments, regardless of their capacities to make such judgments in a reliable or valid way.

These judgments must be made using the best tools available, which calls for a willingness to identify the tools in use and evaluate them. This evaluation will require time and money which could be spent on tighter security, more beds, better medical treatment and countless other needs, but is necessary to improve the classification systems.

In corrections and mental health settings, placement and differential treatment decisions can be made on the basis of observation, test data or actuarial information. Test data by itself has not proven to be a useful tool. Psychological testing may be too broad in its diagnoses, may be focused on factors which do not relate to violence, or may be impractical to administer in correctional intake systems. In observing individuals, intake workers are typically going to take individuals going through a crisis, or at least a very difficult period in their lives, and observe their behavior in a confined (and for many of them alien) space. From these observations, they are going to predict how the inmate will behave in a different setting, among different people, over a period of weeks, months or years. There are several potential sources of inaccuracy in these predictions. First, it is known that clinical judgments are subject to bias on the part of the observer. Some research indicates that these biases may run directly opposite to the actual relationships between characteristics and potential for violence. In addition, there are the differences between the settings in which the observation takes place and those in which the subjects will reside during the period to which the prediction applies. The capacity to generalize from behaviors in one setting to behaviors in another is limited. Actuarial data, at least as a component in the decision making process, seems to be the most promising tool.

The research also indicates that predictions are more likely to be accurate the more tightly they are framed. This means that the use of specific definitions in predictor variables, shorter term time frames and specificity in the behaviors being predicted will increase the accuracy of the predictive approaches.

III. RECOMMENDATIONS

These recommendations must be framed within the contexts of the settings in which the predictive diagnoses will be used. While the chart below may overly simplify information needs, it illustrates the differences among the three systems of greatest interest to the Council.

	<u>Institutional Needs</u>		
	Initial Diagnostic Tools	Minimal Environmental Expectations	Agency Response to Positive Assessment of Potential for Violence
<hr/>			
Settings			
Prison	Observation of behaviors; Criminal history	Capacity to obey rules of the system	Increased security; Solitary confinement
Mental Hospital	Observation of behaviors; Treatment history; Medical history	Adequate Inter-personal skills; Function in a nondelusional manner	Seclusion; Closer supervision; Differential treatment
M.R. Institution	Observation of behaviors; Educational history	Individual motivation to develop skills	Closer supervision, Differential treatment

1. Those state agencies providing statewide services to offenders and potentially violent clients should take steps to compile and organize data in a manner which could make actuarial prediction possible. Most of the social and family history information which has been useful in making prediction in other settings is available in our state agency data systems. Information which tracks individual inmates, wards and clients and their involvement in violence (while in custody, while under supervision, and while free in the community) should be made part of the agency client

management information system.

2. Because much institutional violence is highly situational, the state agencies should take measures to identify those situations in which violence is most likely to occur. Computer technology makes such systems feasible and this could be linked with the client management information systems mentioned in 1. above.
3. The identification of groups at greatest risk, as perpetrators and victims of violence, should be made a priority in client management. Predictions on these groups will be more short term in nature. This is appropriate as the involvement in violence while in institutions or other programs is the violence most amenable to intervention by state agencies. In addition, short term predictions tend to be more accurate than longer term.

APPENDICES:

A. CRITICISMS OF PREDICTION

The work of John Monahan, in particular his book Predicting Violent Behavior (1981), has been very influential among the scholars and professionals interested in the subject. Monahan is very supportive of making predictive systems more effective. He is frequently cited for having concluded that among professionals in the field, there were few who believed that even trained clinicians could successfully predict violence. Monahan points out that task forces of the American Psychiatric (1974) and American Psychological (1978) Associations rejected professional capacity to correctly predict. The latter concludes that:

"It does appear from reading the research that the validity of psychological predictions of dangerous behavior, at least in the sentencing and release situation we are considering, is extremely poor, so poor that one could oppose their use strictly on the grounds that psychologists are not professionally competent to make such judgments" (p.1110).

Monahan discusses at great length the factors which have contributed to the difficulties clinical predictive systems run into and those steps which can be taken to overcome these difficulties. His responses to the criticisms cited are less often noted by those who refer to his work as the best statement of where prediction technology was in 1981.

The three main criticisms of prediction cited by Monahan are: 1) the statement referred to above, "that it is empirically impossible to predict violent behavior; 2) that even if such activity could be forecast and averted, it would, as a matter of policy, violate the civil liberties of those being predicted; and 3) that even if accurate prediction were possible without violating civil liberties, psychiatrists and psychologists should decline to do it, since it is a social control activity at variance with their professional helping role."

Monahan responds to these criticisms in some detail. Monahan and Wexler (1978) propose that when a mental health professional predicts that a person will be "dangerous to others", the professional is actually stating that this person has characteristics associated with a probability of violent behavior. The observation of these characteristics and their relationship with probable violence are within the scope of qualified professional judgment. Having made the best estimate of what the probability is, it is then up to legislators, judges and juries to decide on appropriate intervention given these odds. The legislature is charged with setting such policy, judges with exercising their authority. To the last point, Monahan and others have responded that those in professional

helping roles are often called upon to act as agents of social control. Teachers must send students to the principle when cardinal rules are violated. Doctors must report certain diseases to health authorities. Should prisoners be denied access to psychological services so that psychologists can avoid potential conflict in the roles which they play?

B. SUMMARY TABLE OF A 1975 STUDY OF CRIMINAL AND VIOLENT BEHAVIORS AMONG FORMER MENTAL PATIENTS

One of the more prominent research names in the field of analysis of violent behaviors is Henry Steadman. In a series of studies of former mental patients, Steadman and his associates found that former patients, as a group, do have a higher arrest record for all types of crime than members of the general population. However, within that group, patients without an arrest record prior to going to the hospital actually have a lower arrest rate than the general population. The following table summarizes this data.

Annual arrest rates per 1000 for felonies for the general population, total patient sample, and patients with zero, one and two or more prior arrests, from a 1975 sample.

	General Population	Total Patient Sample	Patients with no Prior Arrest	Patients with 1 Prior Arrest	Patients with 2 or more prior Arrests
Sample Size	N=12,320,540	N=1938	N=1428	N=187	N=323
Total Arrests	32.51	98.50	22.06	138.00	413.50
Arrests for Violent Crime	3.62	12.03	2.21	3.37	60.46
Arrests for Potentially Violent Crimes	2.83	6.18	0.88	3.37	31.21
Arrests for Sex Crimes	0.45	2.60	0.44	6.74	9.75

from Coccozza, J.; Melick, M.; and Steadman, H. Trends in violent crime among ex-mental patients. *Criminology*, 1978, 16, 317-334.

Their conclusion is that the higher rate of violent crime committed by released mental patients can be completely attributed to those patients with a record, "particularly an extensive record", of criminal activity prior to their institutionalization.

C. SUMMARY OF SELECTED CASES PERTINENT TO NEGLIGENT
RELEASE

DUTY TO WARN

Affirmed

Tarasoff v. Regents of University of California, 529 P. 2d 553
(1974)

McIntosh v. Milano, 403 A. 2d 500 (1979) [New Jersey]

Hedlund v. Superior Court of Orange County 669 P. 2d 41
[California]

Eiseman v. New York 489 N.Y.S. 957 (New York Appellate Division
1985)

Davis v. Lhim 335 N.W. 2d 481 (1983) [Michigan]

Rejected

Leedy v. Hartnett 510 F. Sopp. 1125 (1981) [Maryland]

Hasenei v. United States 541 F. Supp. 999 (1982)

Furr v. Spring Grove State Hospital 454 A. 2d 414 [Maryland]

Brady v. Hopper 751 F. 2d 329 (10th Circuit, 1984)

DUTY TO PROTECT/CONTROL

Affirmed

Tarasoff v. Regents of University of California, 551 P. 2d 334
(1976)

Lipari v. Sears, Roebuck & Co. 497 F. Supp. 185 (Nebraska, 1980)

Bradley Center, Inc. v. Wessner 296 S.E. 2d 693 (1982) [Georgia]

Peterson v. Washington 671 P. 2d 230 (Wash. Sup. Ct. 1983)

Rejected

Jacoby v. Louisiana 434 So. 2d 570 (La. Ct. App. 1983)

Sherrill v. Wilson 653 S.W. 2d 661 (1983) [Missouri]

DUTY TO PREDICT

Affirmed

Durflinger v. Artiles 673 P. 2d 86 (1983) [Kansas]

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E. BIBLIOGRAPHY

- Bach-Y-Rita, G.; & Veno, A. (1974) Habitual violence: a profile of 62 men. *American Journal of Psychiatry*. 131(9), 1015-1017.
- Bem, D., & Funder, D. (1974) Predicting more of the people more of the time: The search for cross-situational consistencies in behavior. *Psychological Review*. 85, 485-501
- Bennett, L.A.; (1976) The study of violence in California prisons: a review with policy implications. In Cohen, A.K.; Cole, G.F.; & Bailey, R.G. (Eds.) *Prison Violence*. Lexington, Mass.: D.C. Heath, 149-168.
- Cocozza, J.; Melick, M.; & Steadman, H. (1978) Trends in violent crime among ex-mental patients. *Criminology*. 16, 317-334.
- Cocozza, J.; & Steadman, H. (1974) Some refinements in the measurement and prediction of dangerous behavior. *American Journal of Psychiatry*. 131 (9), 1012-1014.
- Dix, G. (1976) "Civil" commitment of the mentally ill and the need for data on the prediction of dangerousness. *American Behavior Scientists* 19, 318-334.
- Dix, G. (1987) Legal and ethical issues in the treatment and handling of violent behavior. In Roth, L. *Clinical Treatment of the Violent Person*. New York: Guilford, 178-206.
- Dix, G. (1988) In private telephone conversation.
- Gottfredson, D.; Wilkins, L.; & Hoffman, P. (1978) *Guidelines for Parole and Sentencing*. Lexington Mass.: Lexington Books.
- Klassen, D.; & O'Connor, W. (1988) A prospective study of predictors of violence in adult male mental health admissions. *Law and Human Behavior*. 12(2), 143-157.
- Lewis, D.; Moy, E.; Jackson, L.; Aaronson, R.; Restifo, N.; Serra, S.; & Simos, S. (1985) Biopsychosocial characteristics of children who later murder: a prospective study. *American Journal of Psychiatry*. 142 (10), 1161-1167.
- Megargee, E.I. (1976) The prediction of dangerous behavior. *Criminal Justice and Behavior*. 3, 3-22.
- Meloy, J.R. (1987) The prediction of violence in outpatient psychotherapy. *American Journal of Psychotherapy*. 41(1), 38-45.
- Monahan, J. (1984) The prediction of violent behavior: toward a second generation of theory and policy. *American Journal of Psychiatry*. 141(1), 10-15.

Monahan, J. (1981) Predicting Violent Behavior: An Assessment of Clinical Techniques. Beverly Hills, Ca.: Sage.

Monahan, J. & Wexler, D. (1978) A definite maybe: proof and probability in civil commitment. Law and Human Behavior. 2, 37-42.

Mulvey, E.P.; Geller, J.L.; & Roth L.H. (1987) The promise and peril of involuntary outpatient commitment. American Psychologist. 42(6) 571-584.

Mulvey, E.P. & Lidz, C.W. (1984) Clinical considerations in the prediction of dangerousness in mental patients. Clinical Psychology Review. 4, 379-401.

Mulvey, E.P. & Lidz, C.W. (1985) A critical analysis of dangerousness research in a new legal environment. Law and Human Behavior. 9(2), 209-219.

Phillips, P. & Nasir, S. (1983) Seclusion and restraint and prediction of violence. American Journal of Psychiatry. 140(2), 229-232.

Roszkowski, M. (1984) Validity of the similarities ratio as a predictor of violent behavior: data from a mentally retarded sample. Personality and Individual Differences. 5(1), 117-118.

Roth, L.H. (1987) Clinical Treatment of the Violent Person. New York: Guilford Press.

Roth, L.H. & Ervin, F. (1971) Psychiatric care of federal prisoners. American Journal of Psychiatry. 128, 424-430.

Selby, M. J. (1984) Assessment of violence potential using measures of anger, hostility and social desirability. Journal of Personality Assessment. 48(5), 531-543.

Shah, S.A. (1978) Dangerousness: a paradigm for exploring some issues in law and psychology. American Psychologist. 33, 224-238.

Steadman, H.; Coccozza, J.; & Melick, M. (1978) Explaining the increased arrest rate among mental patients: the changing clientele of state hospitals. American Journal of Psychiatry. 135(7), 816-820.

Tarasoff v. Regents of the University of California. (1976) Supp. 131 California Reporter, 14.

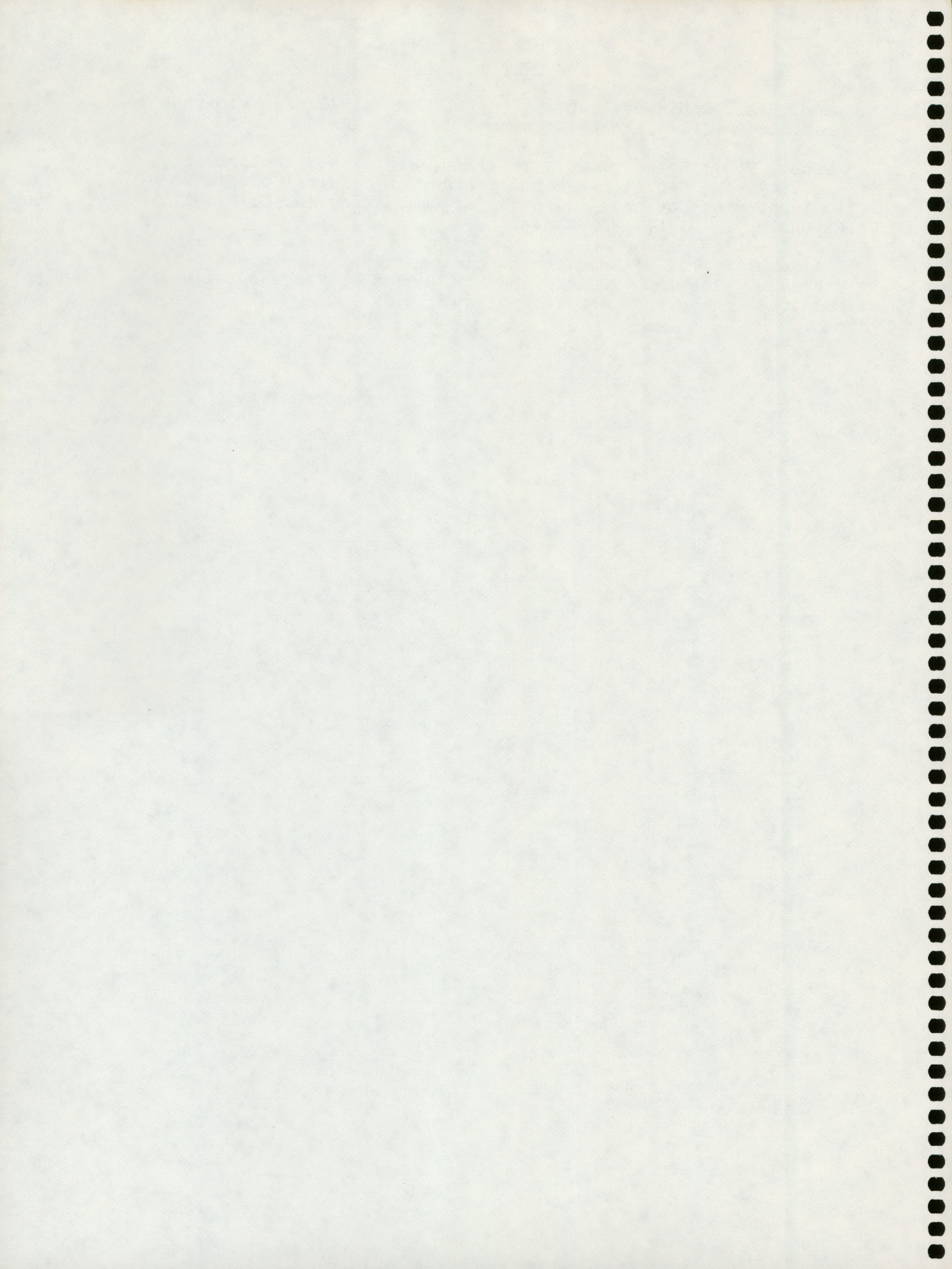
Tomb, A. (1981) Psychiatry for the House Officer. Baltimore, Md.: Williams and Wilkins.

Webster, C.D. & Menzies, R.J. (1987) The clinical prediction of dangerousness. In Weisstub, D. (Ed.) Law and Mental Health: International Perspectives. New York: Pergamon (158-208).

Wenk, E.A.; Robinson, J.D.; & Smith, G.W. (1972) Can violence be predicted? *Crime and Delinquency*. 18, 393-402.

Werner, P.D.; Rose, T.L.; & Yesavage, J.A. (1983) Reliability, accuracy, and decision-making strategy in clinical predictions of imminent dangerousness. *Journal of Consulting and Clinical Psychology*. 51(6), 815-825.

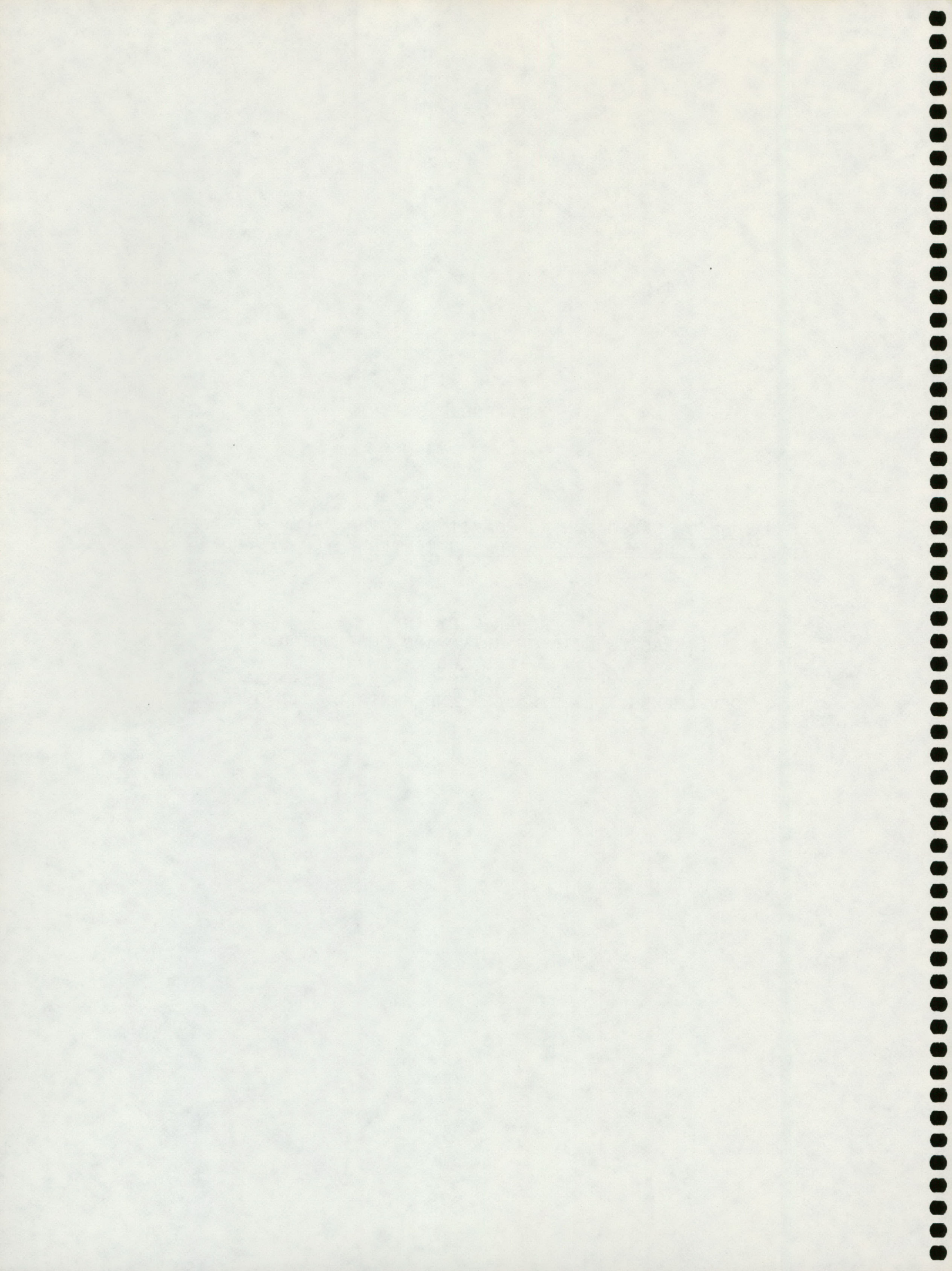
Wolfgang, M. (1978) An overview of research into violent behavior. Testimony before the U.S. House of Representatives Committee on Science and Technology.



APPENDIX 3

NATURE OF SEX OFFENSES COMMITTED BY MENTALLY RETARDED,
DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDERS

PREPARED BY THE
TEXAS COUNCIL ON CRIME AND DELINQUENCY
FOR THE
INTERAGENCY COUNCIL ON MENTALLY RETARDED,
DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDER



NATURE OF SEX OFFENSES COMMITTED BY MENTALLY RETARDED, DEVELOPMENTALLY DISABLED AND MENTALLY ILL OFFENDERS

RESEARCH GOALS

The primary purpose of this research project is to compile data on and document the extent and nature of sex offenses committed by mentally retarded, developmentally disabled and mentally ill offenders in the Texas criminal and juvenile justice systems.

The second goal is to analyze and document the risk of public safety posed by subgroups within this population when they are not incarcerated.

The third goal is to analyze the treatment alternatives available to these offenders within institutions and in the communities of the state.

RESEARCH OBJECTIVES

1. to review TDC and TYC data bases for summary information on the epidemiology of sex offenders and sex offenses in Texas criminal and juvenile justice systems;
2. to analyze sentences ordered by the courts and average lengths of incarceration for various sex offender populations;
3. to update listings of the treatment programs offered to sex offenders in Texas and collect information on treatment programs designed for these groups within institutions and in the community, in particular evaluative studies assessing the effectiveness of different modalities in modifying offender behaviors;
4. to review research on the relative risk of commission of further sex offenses or other criminal behaviors by subgroups of these offenders if placed in the community;
5. to assess the likelihood of utilization of community treatment alternatives by judicial and correctional officials in the management of different sex offender populations.

SOURCES OF DATA

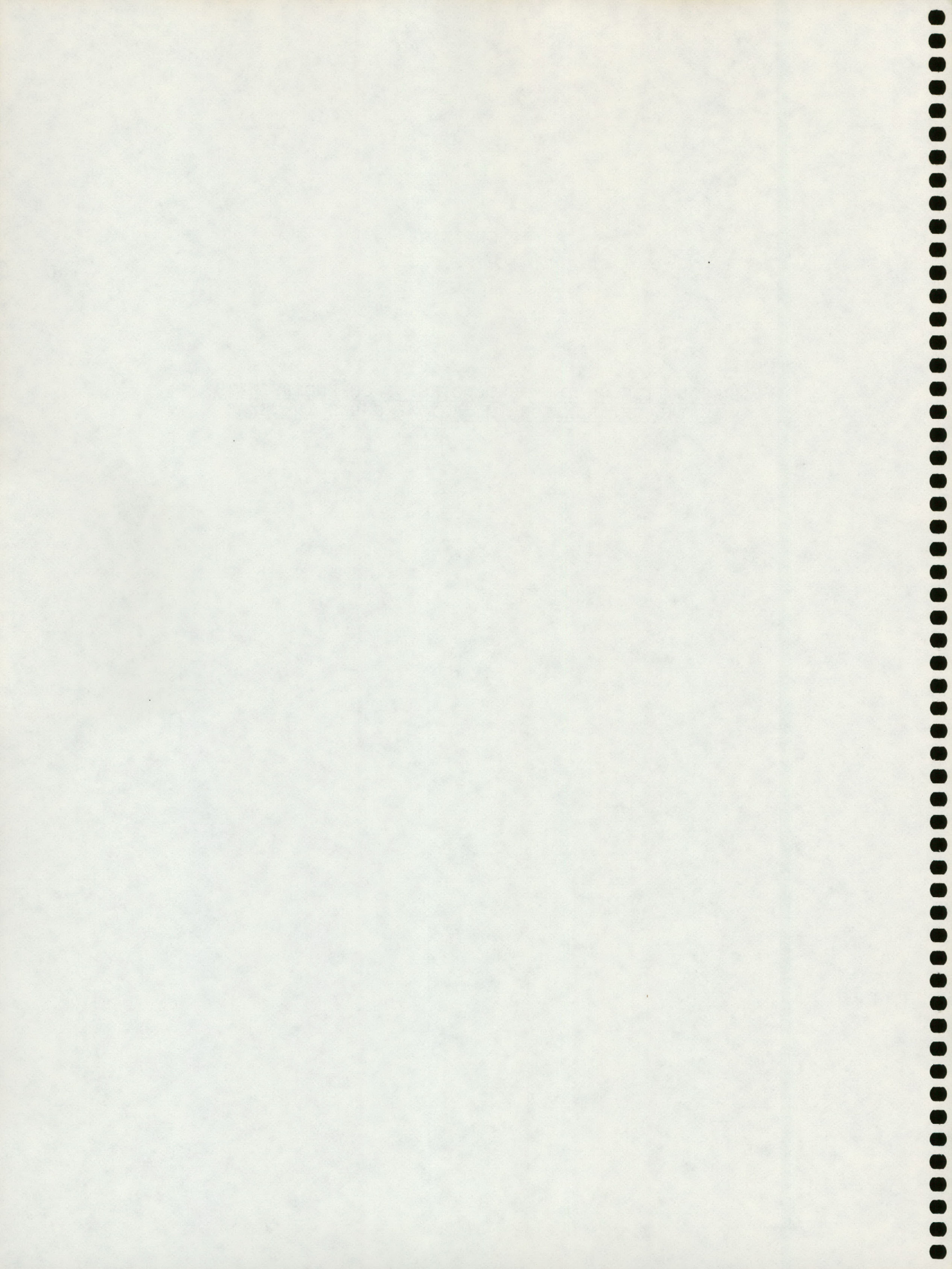
Primary sources of data will be TDC and TYC offender data bases. Secondary sources will be the literature in the fields of sex offenses, sexual abuse, and sex offender treatment programs. The research team will communicate with treatment program professionals in Texas on the programming, utilization and effectiveness of their programs. Lastly, the team will interview a stratified random sample of judges, probation and parole officials and others with discretion over placement of these offenders on current utilization and likelihood of future utilization of existing and potential treatment programs.

ACTION PLAN

1. Request current information from TDC and TYC research professionals on sex offenders and the offenses of those presently incarcerated or in custody. Compile this data into summary formats for review by the Council.
2. Review and compile a summary of the most recent literature on institutional and community treatment alternatives for sex offenders.
3. Review and summarize studies of the effectiveness of different treatment models and treatment programs in assisting individual offenders in modifying patterns of behavior related to their previous commission of sex offenses. Identify those models which hold greatest promise for implementation in Texas systems.
4. Conduct structured interviews with judges, probation officers, and parole commissioners focused on the likelihood of utilization of community treatment programs in the management of sex offender groups.
5. Make recommendations on the most critical needs for development of correctional and treatment programs for sex offenders.

APPENDIX 4

RESOLUTION ON THE SENTENCING OF OFFENDERS WITH
MENTAL RETARDATION IN CAPITAL CASES IN TEXAS



INTERAGENCY COUNCIL ON MENTALLY RETARDED, DEVELOPMENTALLY
DISABLED AND MENTALLY ILL OFFENDERS

RESOLUTION ON THE SENTENCING OF MENTALLY RETARDED OFFENDERS IN
CAPITAL CASES IN TEXAS
December 2, 1988

WHEREAS, The Interagency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders (hereafter Council) is a duly constituted authority in Texas to determine the status of offenders with mental retardation in the state criminal justice system;

WHEREAS, The Council is charged with identifying needed services for offenders with mental retardation and preserving, developing and improving the just administration of services for offenders with mental retardation in the state criminal justice system;

WHEREAS, The Council is charged to develop recommendations which address the treatment needs of offenders with mental retardation;

WHEREAS, offenders with mental retardation have significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior;

WHEREAS, offenders with mental retardation may have substantial functional limitations such as a deficit in the development of social responsibility reasonably expected of the person's age and cultural group;

WHEREAS, the US Supreme Court has ruled that the 8th and 14th amendments of the US Constitution require that juries not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death;

WHEREAS, the US Supreme Court has ruled that the decision as to whether a defendant should be executed must always rest on the defendant's blameworthiness and personal responsibility and moral guilt;

WHEREAS, the death penalty is the most extreme sanction available to the Texas criminal justice system;

WHEREAS, the Council believes that a defendant found guilty of a capital offense in Texas must therefore have the highest degree of blameworthiness associated with an extraordinarily aggravated crime;

WHEREAS, the Council recognizes that although the effect of some mentally retarded offenders disabilities will not be sufficient to entitle them to an acquittal on the grounds of mental responsibility, significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior, constitutes a mitigating circumstance in determining whether an offender with mental retardation should be executed;

WHEREAS, the Texas death penalty statute does not explicitly address mitigating circumstances and permits the jury to consider mitigating evidence for the limited purpose of resolving three statutory prescribed questions: the defendant's intent to cause death, the continuing dangerousness of the defendant, and the existence of provocation by the victim;

WHEREAS, such a statutory scheme may limit a jury's freedom to consider the independent mitigating weight of mental retardation;

WHEREAS, the Council supports a scheme which allows Texas juries in capital cases to consider all factors relevant to sentencing rather than a scheme that because it may be too narrowly drawn may limit the jurors' opportunity to give full effect to relevant mitigating evidence;

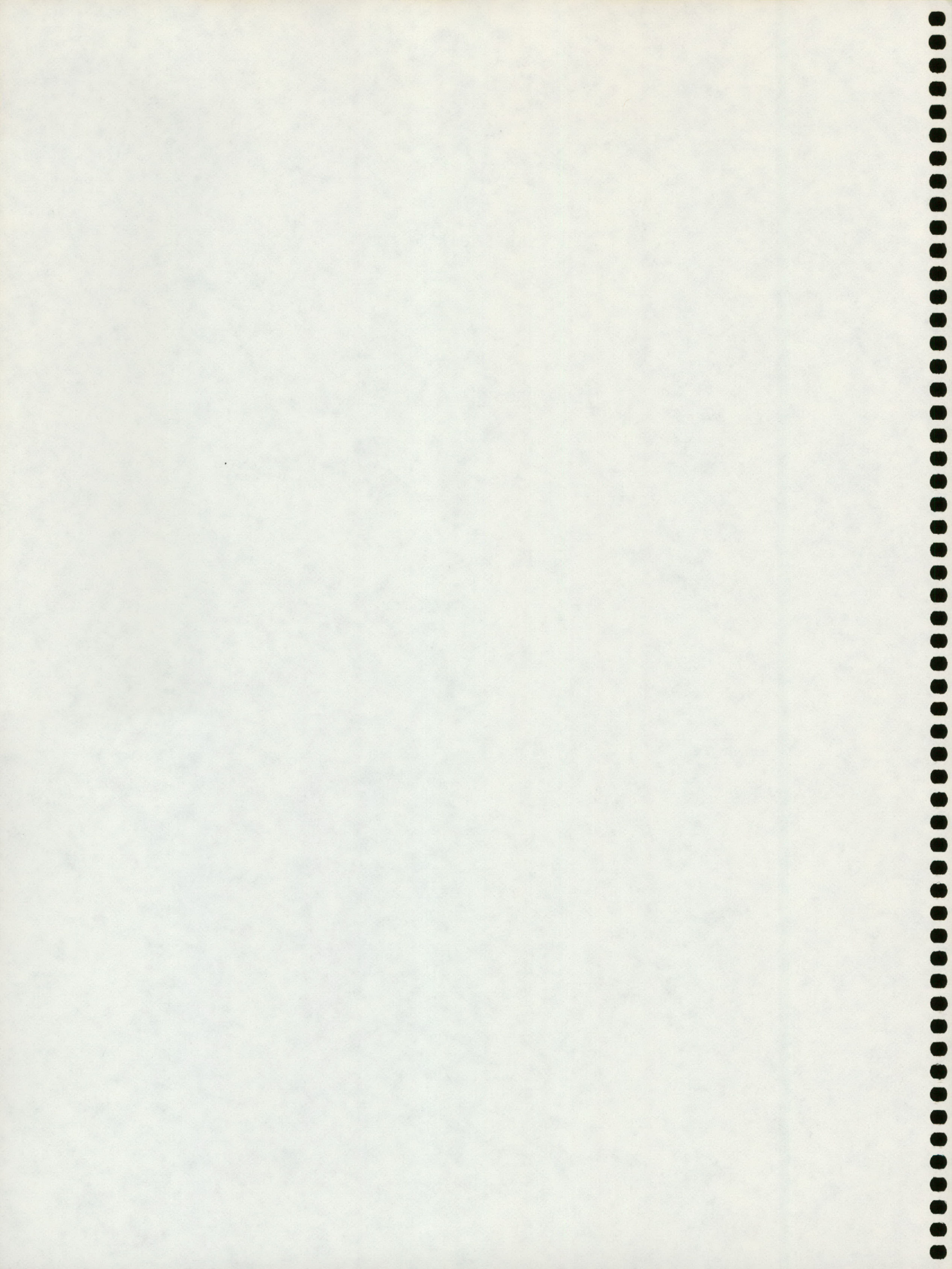
AND WHEREAS, the Council recommends that offenders with mental retardation charged with capital crimes be able to present all relevant mitigating evidence and that the jury in turn has the opportunity to fully consider such evidence if it desires free from any limitations imposed by statutory prescribed questions;

THEREFORE, the Council resolves that the Texas death penalty sentencing statute be amended in such a manner as to clarify that mental retardation may properly be considered as mitigating evidence by jurors in answering any statutory prescribed questions;

BE IT ALSO RESOLVED, that the Council takes no position on the constitutionality of Texas' current death penalty statute, but is firm in its resolve in urging the appropriate state officials to take whatever steps are necessary to remove any doubt that may currently exist with respect to the independent consideration of mental retardation as a relevant mitigating factor.

APPENDIX 5

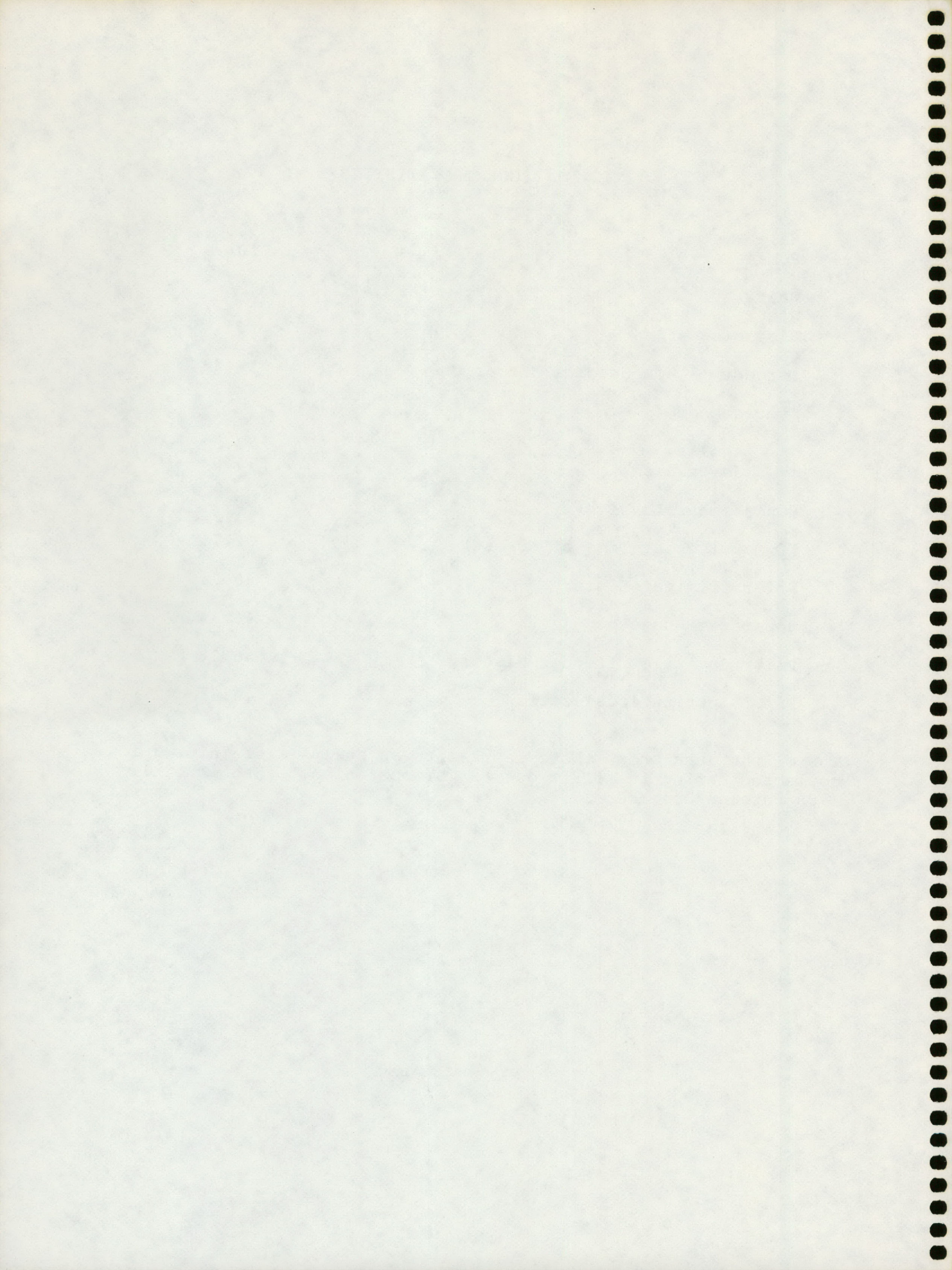
PILOT PROJECT STATISTICS

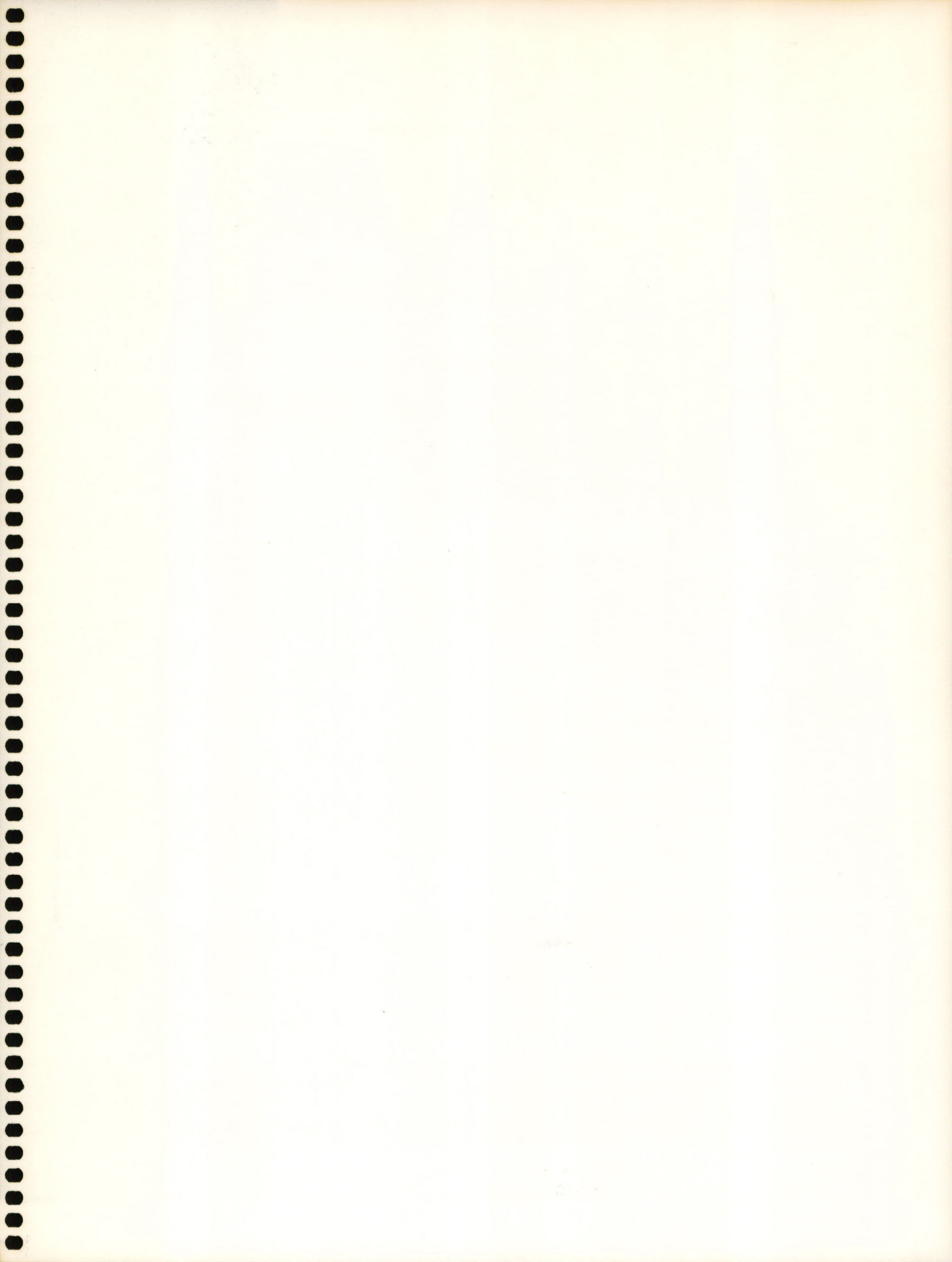


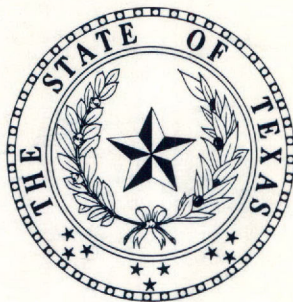
PILOT PROJECT STATISTICS

Male	90%
Female	10%
White	13%
Black	57%
Hispanic	30%
Percent (%) in Special Education	93.3%
Average Age	
Adults	27.5
Juveniles	16.0
Educational Level	9.1
<u>NO</u> Services at Time of Arrest	82.7%
Prior Criminal History	60.7%
Substance Abuse	46.6%
Prior Juvenile Offender History	30.0%
Prior Institutionalization	46.6%

The client data shown above represents an analysis of information collected during the first quarter of operation. (September 1, 1988 through December 1, 1988)







**Interagency Council on Mentally Retarded,
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