

- SUBJECT:** Judicial immunity for community supervision department actions
- COMMITTEE:** Judiciary — committee substitute recommended
- VOTE:** 9 ayes — Hartnett, Hughes, Hopson, Alonzo, Gonzales, Keel, Solis, Straus, Van Arsdale
- 0 nays
- WITNESSES:** For — Mel Brown, District Judges & County Court-At-Law Judges of Montgomery County; Brent Carr; James E. Klager
- Against — None
- On — Ann Del Llano, ACLU of Texas; District Judge Mary Ann Bramblett; Robert W. Francis; David A. Harris, Office of Attorney General; Carl Reynolds, TDCJ; Marshall Shelsy, Harris County Criminal Courts at Law
- BACKGROUND:** Government Code, sec. 76.002(a) requires district judges who try criminal cases to establish community supervision and corrections departments (CSCDs). The CSCD's role is to supervise and rehabilitate offenders sentenced to community supervision by local courts. There are 121 community supervision and corrections departments across the state.
- The statute gives district judges broad responsibilities over several aspects of CSCD, including employing district personnel to conduct pre-sentence investigations, supervising and rehabilitating defendants placed on community supervision, enforcing conditions of community supervision, and staffing community corrections facilities. District judges also appoint department directors and fiscal officers meeting the qualifications established by statute, and they may participate in the management of the CSCD. Judges participating in department management also grant the required permission to officers to carry weapons in the performance of the officers' duties at CSCD.
- The statute also requires district judges to establish the community justice council in each jurisdiction served by CSCD unless one was in place before September 2, 1991. The council provides policy guidance for the

development of community justice plans and community correction facilities and programs.

Under sec. 76.004(b) a statutory county court at law judge also may participate in the management of the CSCD.

Sec. 76.006(c) requires the Office of Attorney General to defend employees of the department in certain lawsuits arising from their duties to CSCD.

In 1988, the U.S. Supreme Court in *Forrester v. White*, 108 U.S. 538, ruled that judges cannot claim judicial immunity for administrative acts. Since that time, at least two Texas courts have applied this ruling to district judges in the performance of duties related to the CSCD. As a result, district judges have been held liable for incidents arising from the operation of CSCD. There are now 20 lawsuits of this type in Texas.

DIGEST:

CSHB 1326 would amend Government Code, sec. 76.004 to give judges immunity from suits arising from their designated duties to CSCD and would grant certain duties to CSCD directors, rather than judges. Statutory county court judges would share CSCD duties with district court judges.

The department director of CSCD would perform or delegate the overseeing of the department's daily operations, budgeting, contract negotiations, development and establishment of policies and procedures, including personnel procedures, disciplinary proceedings, and employee grievance procedures.

The department director, rather than judges, also would oversee employees responsible for pre-sentence investigations, supervision and rehabilitation of defendants placed on community supervision, enforcement of conditions of community supervision, and staffing of community corrections facilities. The bill would specify that those employed to perform such responsibilities would be employees of the department director, not the judges. The department director would be solely responsible for authorizing an officer to carry a gun. The department, rather than the district judge, could authorize the expenditure of department funds for facilities.

The bill also would limit a district judge's duties in regard to CSCD and require that statutory county court judges share the CSCD responsibilities

of district judges. Neither district judges nor statutory county court judges would participate in the management of the department. District and statutory county court judges' duties would be limited to 1) establishing a CSCD, 2) approving the department's budget and community justice plan, and 3) appointing a director and fiscal officer. The bill would give judges immunity from suits arising from their designated duties to CSCDs.

The bill would require the attorney general to defend a statutory county court judge in a suit arising from CSCD duties or upon a request from the judge. It would add the state auditor to the list of government entities that could audit CSCDs.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 1326 would delineate the specific responsibilities of those involved in the community supervision and corrections department, clarifying the roles of all parties. It also would remove judicial liability for acts not within a judge's control.

Current law mandates judicial involvement in details of CSCDs when in most cases the director takes responsibilities for many of these decisions. The bill would codify current practice by putting the day-to-day management details in the hands of the director, while limiting a judge's role and responsibility to the set-up of CSCDs.

While current law requires statutory county courts to participate in CSCDs only if they choose, the reality is that many of these judges are involved with the department and could be held liable. HB 1326 would formalize the involvement of statutory county court judges while giving them the same immunity protections as district judges.

As the law currently stands, a judge could be held personally liable for acts related to CSCDs for which the judge is not responsible. Because the judge does not hire employees other than the director and fiscal officer, the judge should not be held liable for the acts of those employees. The bill would place liability on the proper parties, the director and fiscal officer, rather than the district judge or statutory county court judge. In doing so, it would reduce unnecessary lawsuits that discourage judges from participating in CSCDs.

Finally, by requiring the attorney general to defend statutory county courts, the bill would grant these judges protections equal to district judges.

It is unrealistic to claim that the legislature may choose not to fund CSCD to avoid paying court judgments to victims of a director's negligence. CSCD is a large program that houses many inmates, so the legislature must fund the department.

OPPONENTS  
SAY:

HB 1326 would absolve public officials from liability for negligent acts for which they are directly responsible, leaving no one accountable to the victims.

The bill would exempt judges from liability while still giving judges decision-making power. Even if the facts in a particular case showed that damage was caused by a judge's decision, the bill would hold the judge harmless. If there were any damage due to a judge's negligence in performing one of the tasks designated to the judge by HB 1326, the victim would be without recourse.

For example, CSHB 1326 still would authorize judges to approve the CSCD budget. It is possible that a judge could set a budget so low as to prevent providing constitutionally mandated services for offenders. For instance, in a Tarrant County case, the judges set the budget so low that funding for proper medical services was inadequate, resulting in the death of a boot camp resident.

Although the CSCD director could be held liable, victims still might not be able to recover. Because funding to the department director comes out of the state's general revenue, the state could simply choose not to appropriate money to the general revenue for the victims. In such a case, the victims would get nothing even though the facts showed the director made decisions resulting in damage.

NOTES:

The committee substitute revised the original bill to allow the department director to delegate some of his responsibilities. It removed a requirement that the department director hire employees to perform the professional and clerical work of the department. The substitute also added a sentence stating that those employed are employees of the director, not the judges. It added the requirement that the Office of Attorney General defend

statutory county court judges in lawsuits arising from their duties to CSCDs. It also clarified that the department, not judges, are to authorize the expenditure of funds.

The companion bill, SB 906 by Whitmire, has been referred to the Senate Criminal Justice Committee.