

SUBJECT: State jail felon release on medically recommended intensive supervision

COMMITTEE: Corrections — favorable without amendment

VOTE: 4 ayes — Madden, McReynolds, Haggerty, Jones
0 nays
3 absent — Hochberg, Dunnam, Oliveira

WITNESSES: For — Nicole Porter, American Civil Liberties Union of Texas;
(*Registered, but did not testify:* Erick Fajardo, Texas Criminal Justice Coalition)
Against — None
On — Dee Wilson, Texas Department of Criminal Justice, TCOOMMI

BACKGROUND: Government Code, sec. 508.146 allows the state's prison inmates, except those sentenced to death and life without parole and those who are required to register as sex offenders upon release, to be released from prison by the parole board on medically recommended intensive supervision (MRIS) before they would be eligible for regular parole if the following conditions are met:

- the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), in cooperation with the Correctional Managed Health Care Committee (CMHCC), identifies the inmate as being elderly, physically disabled, mentally ill, terminally ill, mentally retarded, or having a condition requiring long-term care;
- the parole panel determines that, based on the inmate's condition and a medical evaluation, the inmate does not constitute a threat to public safety; and
- TCOOMMI, has prepared a supervision plan that requires the inmate to submit to electronic monitoring, places the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate.

A parole panel must require as a condition of release that the offender remain under the care of a physician and in a medically suitable placement. Offenders convicted of certain serious and violent offenses can be considered for MRIS only if a medical condition of terminal illness or long-term care has been diagnosed.

DIGEST:

HB 431 would authorize judges to release certain state jail felons to medical care facilities. This would be allowed if:

- the Texas Correctional Office on Offenders with Medical or Mental Impairments identified the state jail offender as elderly, physically disabled, mentally ill, terminally ill, or mentally retarded or as having a condition requiring long-term care; and
- TCOOMMI prepared a medically recommended intensive supervision plan that ensured appropriate supervision of the offender and required the offender to remain under a physician's care at a medical facility.

If a defendant released under these conditions violated a term of the release, the judge would be authorized to impose sanctions on the defendant or to revoke the release.

TCOOMMI would be authorized to periodically identify state jail felony defendants suitable for release under HB 431.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

Because current law does not specifically allow state jail offenders to be released on medically recommended intensive supervision, judges often are reluctant to release these offenders early for medical reasons. This is despite the fact that in some cases medical release would be warranted and would save the state the costs of extraordinary medical care.

HB 431 would address this problem by specifically authorizing judges to release appropriate inmates on MRIS. The state created the MRIS program so that chronically ill and incapacitated inmates could be identified and considered for release from correctional facilities under supervision as long as public safety would not be compromised. There is no reason to deny this option for state jail offenders.

HB 431 would apply the same criteria to state jail offenders as is used to identify prison inmates for MRIS. This would ensure that any release from a state jail would be medically warranted. Any decision to release an offender would be up to the discretion of the judge, who would consider whether the offender was a threat to public safety and could revoke the release if the offender violated the terms of release. State jail felonies are low-level, non-violent offenses, so there is no need to exclude certain groups from MRIS eligibility or to write additional statutory restrictions for their release.

State jail felons are not eligible for parole, so HB 431 would place the authorization for MRIS for these offenders in another statute and give judges the authority to release them because the parole board does not consider these cases. This authority would be similar to the current authority of judges to send offenders to prison for shock probation and then release them. The Legislature has adjusted the requirements for state jail felons many times, and this change would be warranted given the medical reasons for release of some inmates.

**OPPONENTS
SAY:**

HB 431 should impose additional restrictions on which state jail offenders could be released on MRIS, especially those that would require a specific finding that the offender did not represent a danger to the public. This criteria is used when identifying prison inmates for release on MRIS and would be appropriate to apply to state jail offenders whose behavior in a state jail may have indicated that they were a danger even though they were convicted of a low-level offense.

By placing the authority for release on MRIS into the laws governing probation, HB 431 would set up a new, confusing way for state jail offenders to be released and could erode the principle that state jail offenders are not released on parole.