

## BILL ANALYSIS

Senate Research Center  
79R700 MFC-F

H.B. 1326  
By: Hope (Whitmire)  
Criminal Justice  
5/2/2005  
Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Recent decisions in state and federal courts have increased the concern of district and county court at law judges regarding liability for incidents or activities involving community supervision and corrections departments (department).

In *Hardin County Supervision and Corrections Department v. Sullivan and Broughton*, decided by the Austin-based Third Court of Appeals on March 20, 2003, the court held that in an age discrimination suit brought by several probation officers under Chapter 21, Labor Code, the district judges and not the director of the department constituted the employer of the plaintiffs and were thus the proper defendants in the lawsuit.

In *Alexander et al. v. Tarrant County et al.*, decided in the United States District Court, for the Northern District of Texas, on August 23, 2003, the court ruled in a case involving the death of a prisoner in the custody of a department that the defendant judges were not entitled to immunity for the performance of their administrative tasks pertaining to the department.

The United States Supreme Court has distinguished acts of judges as administrative or judicial in nature and has held that a judge cannot claim judicial immunity for acts deemed administrative, as in *Forrester v. White*, 108 U.S. 538 (1988).

H.B. 1326 removes the district and county court at law judges from the management and operation of these departments. All operation and management decisions become the responsibility of the director of each department.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 76.002(a), Government Code, to require the district judge or district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district to establish a community supervision and corrections department (department) and approve the department's budget and community justice plan, rather than employ district personnel as necessary to perform specific functions.

SECTION 2. Amends Section 76.003(a), Government Code, to require a community justice council to be established by the judges described by Section 76.002, rather than the district judge or judges, in each jurisdiction served by a department, with certain exceptions.

SECTION 3. Amends Section 76.004, Government Code, as follows:

(a) Makes a conforming change.

(a-1) Requires the department director to perform or delegate the responsibility for performing specific duties.

(b) Requires the department director to employ a sufficient number of officers and other employees to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities, rather than to perform the professional and clerical work of the department. Provides that a person employed under this subsection is an employee of the department and not of the judges or judicial districts.

(c) - (g) Makes conforming changes.

SECTION 4. Amends Chapter 76, Government Code, by adding Section 76.0045, as follows:

Sec. 76.0045. JUDICIAL RESPONSIBILITIES; IMMUNITY. Provides that the responsibility of a judge described by Section 76.002 for personnel decisions is limited to the appointment of a department director and a fiscal officer. Sets forth specific limitations in the responsibility of a judge described by Section 76.002 for budgetary decisions. Provides that a judge described by Section 76.002 has judicial immunity in a suit arising from the performance of a duty described by Section 76.002(a) or the appointment of a department director or a fiscal officer or an act or failure to act by a department employee or by a department director or fiscal officer.

SECTION 5. Amends Section 76.0051, Government Code, to authorize an officer to carry a weapon while engaged in the actual discharge of the officer's duties only if the officer possesses a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 1701.257, Occupations Code, rather than Section 415.038, and the director of the department agrees, rather than the director of the department and the judges participating in the management of the department agrees, to the authorization.

SECTION 6. Amends Section 76.006, Government Code, by amending Subsections (a) and (h) and adding Subsection (j), as follows:

(a) and (h) Makes conforming changes.

(j) Requires the attorney general to defend a statutory county court judge in an action in state or federal court if the cause of action is the result of the judge performing a duty described by Section 76.002, 76.003, or 76.004, and the judge requests the attorney general's assistance in the defense.

SECTION 7. Amends Section 76.009(a), Government Code, to make conforming changes.

SECTION 8. Amends Section 76.010(c), Government Code, to authorize the department, rather than the district judge or judges, to authorize certain expenditures.

SECTION 9. Amends Section 509.007, Government Code, to delete existing text requiring the community justice assistance division (division) to require as a condition of eligibility for payment of costs under Section 499.124 that a community justice plan be submitted for the department. Makes conforming changes.

SECTION 10. Repealer: Section 76.002(b) (Establishment of Departments), Government Code.

SECTION 11. Makes application of the change in law made by Section 76.0045, Government Code, as added by this Act, prospective.

SECTION 12. Effective date: upon passage or September 1, 2005.