

BILL ANALYSIS

Senate Research Center
80R13965 E

C.S.S.B. 909
By: Whitmire
Government Organization
4/10/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Criminal Justice (TDCJ) and the Correctional Managed Health Care Committee are subject to the Sunset Act and will be abolished unless continued by the legislature. The Board of Pardons and Paroles is not subject to abolishment, but is subject to a sunset review at the same time as TDCJ. As a result of its review of TDCJ, the Correctional Managed Health Care Committee, and the Board of Pardons and Paroles, the Sunset Advisory Commission recommended continuation of the agencies and several statutory modifications.

C.S.S.B. 909 provides for modifications, as recommended by the Sunset Advisory Commission, relating to information provided to policymakers regarding the criminal justice system, provisions for better parole decision making, increased consideration of early termination of parole and probation, and oversight and transparency relating to correctional healthcare.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the board of the Texas Department of Criminal Justice is modified in SECTION 25 (Section 509.011, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 15, Article 42.12, Code of Criminal Procedure, by adding Subsections (i), (j), and (k), as follows:

- (i) Authorizes a judge sentencing a defendant convicted of a state jail felony to release the defendant to a medically suitable placement if the judge determines that the defendant does not constitute a threat to public safety and the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation and coordination with certain entities, undertakes certain actions.
- (j) Requires the Texas Correctional Office on Offenders with Medical or Mental Impairments to submit a quarterly status report concerning a defendant's medical and treatment status to the judge who releases the defendant to an appropriate medical care facility under Subsection (i).
- (k) Authorizes a judge to dispose of the matter as provided by Subsections (e) and (f)(1) if a defendant released to a medically suitable placement under Subsection (i) violates the terms of that release.

SECTION 2. Amends Chapter 76, Government Code, by adding Section 76.019, as follows:

Sec. 76.019. RECOMMENDATIONS CONCERNING TERMINATION OF COMMUNITY SUPERVISION. (a) Defines "routine offender assessment."

- (b) Requires a community supervision and corrections department established under this chapter, supervising a defendant, to make certain determinations and recommendations during the first routine offender assessment conducted after the date on which the defendant completes one-third of the original community supervision period or two years of community supervision, whichever is earlier.

(c) Prohibits the community supervision and corrections department supervising a defendant from refusing to recommend that the defendant's period of community supervision be reduced or that community supervision be terminated and the defendant be discharged solely on the grounds that the defendant has not paid any fees, fines, court costs, or restitution that the defendant was ordered to pay as a condition of community supervision if the court that placed a defendant on community supervision at any time determines that the defendant is indigent.

SECTION 3. Amends the heading to Subtitle C, Title 3, Government Code, to read as follows:

SUBTITLE C. LEGISLATIVE AGENCIES AND OVERSIGHT COMMITTEES

SECTION 4. Amends Subtitle C, Title 3, Government Code, by adding Chapter 328, as follows:

CHAPTER 328. CRIMINAL JUSTICE LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 328.001. DEFINITION. Defines "committee."

Sec. 328.002. ESTABLISHMENT; COMPOSITION. (a) Establishes the Criminal Justice Legislative Oversight Committee (committee) to provide objective research, analysis, and recommendations to help guide state criminal justice policies.

(b) Sets forth the composition of the six-member committee.

(c) Requires the lieutenant governor or the speaker of the house of representatives, as applicable, to give first consideration to members of the senate or the house of representatives who are members of the Senate Finance Committee or the House Appropriations Committee in making appointments under Subsection (b)(3) or (4).

(d) Provides that an appointed member of the committee serves at the pleasure of the appointing official.

Sec. 328.003. PRESIDING OFFICER; TERM. (a) Requires the lieutenant governor and the speaker of the house of representatives to appoint the presiding officer of the committee on an alternating basis.

(b) Provides that the presiding officer of the committee serves a two-year term that expires February 1 of each odd-numbered year.

Sec. 328.004. POWERS AND DUTIES. (a) Requires the committee to perform certain tasks.

(b) Provides that the committee has all other powers and duties provided to a special committee by certain statutes, rules, and policies.

Sec. 328.005. MEETINGS. Requires the committee to meet at the call of the presiding officer.

Sec. 328.006. STAFF; AUTHORITY TO CONTRACT. Authorizes the committee to hire staff or to contract with universities or other suitable entities to assist the committee in carrying out the committee's duties. Requires funding to support the operation of the committee to be provided from funds appropriated to the Texas Legislative Council.

Sec. 328.007. REPORT. Requires the committee to submit a report to the legislature that contains the recommendations described by Section 328.004(a)(2) not later than January 1 of each odd-numbered year.

SECTION 5. Amends Section 492.012, Government Code, as follows:

Sec. 492.012. SUNSET PROVISION. Provides that the Texas Board of Criminal Justice (board) and the Texas Department of Criminal Justice (TDCJ), unless continued in existence as provided by Chapter 325 (Sunset Act), Government Code, are abolished on September 1, 2011, rather than September 1, 2007.

SECTION 6. Amends Chapter 492, Government Code, by adding Sections 492.0125, 492.015, and 492.016, as follows:

Sec. 492.0125. COMPLIANCE WITH SUNSET RECOMMENDATIONS. Requires TDCJ to comply with and implement the management action recommendations regarding TDCJ adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of TDCJ, and report to the Sunset Advisory Commission the information the Sunset Advisory Commission requires regarding TDCJ's implementation of the recommendations not later than November 1, 2008. Provides that this section expires June 1, 2009.

Sec. 492.015. USE OF TECHNOLOGY. Requires the board to implement a policy requiring TDCJ to use appropriate technological solutions to improve the TDCJ's ability to perform its functions. Requires the policy to ensure that the public is able to interact with TDCJ on the Internet.

Sec. 492.016. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the board to develop and implement a policy to encourage the use of certain procedures.

(b) Requires TDCJ's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to perform certain tasks.

SECTION 7. Amends Subchapter B, Chapter 501, Government Code, by adding Sections 501.059 and 501.064, as follows:

Sec. 501.059. SCREENING FOR AND EDUCATION CONCERNING FETAL ALCOHOL EXPOSURE DURING PREGNANCY. (a) Requires TDCJ to establish a screening program to identify female inmates who are between the ages of 18 and 44, sentenced to a term of confinement not to exceed two years, and at risk for having a pregnancy with alcohol-related complications, including giving birth to a child with alcohol-related birth defects.

(b) Requires the screening process under Subsection (a) to perform certain tasks and occur at a certain time.

(c) Requires TDCJ to provide certain assistance and education to certain females.

Sec. 501.064. AVAILABILITY OF CORRECTIONAL HEALTH CARE INFORMATION TO INMATES. Requires TDCJ to ensure that certain health care information is available to any inmate confined in a facility operated by or under contract with TDCJ.

SECTION 8. Amends Section 501.132, Government Code, as follows:

Sec. 501.132. APPLICATION OF SUNSET ACT. Provides that the Correctional Managed Health Care Committee (CMHCC) is subject to review under Chapter 325 (Texas Sunset Act) regarding CMHCC's role and responsibilities. Requires CMHCC to be reviewed during the period in which the TDCJ is reviewed. Deletes existing text providing that CMHCC is abolished and this subchapter expires September 1, 2007, unless continued in existence as provided by that chapter.

SECTION 9. Amends Subchapter E, Chapter 501, Government Code, by adding Section 501.1325, as follows:

Sec. 501.1325. COMPLIANCE WITH SUNSET RECOMMENDATIONS. Requires the Correctional Managed Health Care Committee (CMHCC), The University of Texas Medical Branch at Galveston, and the Texas Tech University Health Sciences Center to comply with and implement the management action recommendations regarding those entities adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of those entities, and report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the implementation of the recommendations. Provides that this section expires June 1, 2009.

SECTION 10. Amends Section 501.137, Government Code, to require the governor to designate a public member of CMHCC, rather than a physician member, who is licensed to practice medicine in this state as presiding officer.

SECTION 11. Amends Section 501.148(a), Government Code, to set forth amended requirements of CMHCC relating to correctional healthcare.

SECTION 12. Amends Section 501.150, Government Code, as follows:

Sec. 501.150. QUALITY OF CARE MONITORING BY TDCJ AND HEALTH CARE PROVIDERS. (a) Requires TDCJ to monitor the quality of care delivered by the health care providers, including investigating medical grievances, ensuring access to medical care, and conducting periodic operational reviews of medical care provided at its units under the procedure. Deletes existing text limiting TDCJ's monitoring activities.

(b) Authorizes TDCJ to require the health care providers to take corrective action if the care provided does not meet expectations as determined by quality of care monitoring.

(c) Requires TDCJ and the medical care providers to communicate the results of their monitoring activities, including a list of and the status of any corrective actions required of the health care providers, to CMHCC and the board.

SECTION 13. Amends Sections 501.151(a) and (b), Government Code, as follows:

(a) Requires CMHCC to maintain a file on each written complaint filed with CMHCC by a member of the general public.

(b) Requires CMHCC to make information available describing its procedures for complaint investigation and resolution. Deletes existing text to make a nonsubstantive change.

SECTION 14. Amends Subchapter E, Chapter 501, Government Code, by adding Sections 501.153, 501.154, and 501.155, as follows:

Sec. 501.153. ALTERNATIVE DISPUTE RESOLUTION. (a) Requires CMHCC to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the committee's jurisdiction.

(b) Requires CMHCC's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires CMHCC to designate a trained person to perform certain tasks.

Sec. 501.154. USE OF TECHNOLOGY. Requires CMHCC to implement a policy requiring CMHCC to use appropriate technological solutions to improve CMHCC's ability to perform its functions. Requires the policy to ensure that the public is able to interact with CMHCC on the Internet.

Sec. 501.155. AVAILABILITY OF CORRECTIONAL HEALTH CARE INFORMATION TO THE PUBLIC. (a) Requires CMHCC to ensure that certain information is available to the public.

(b) Requires CMHCC to make the information described by Subsection (a) available on CMHCC's website and, on request, in writing. Requires CMHCC to cooperate with TDCJ and the health care providers to ensure that CMHCC's website meets certain requirements relating to accessibility.

(c) Requires CMHCC to cooperate with TDCJ to ensure that public disclosure of the information would not pose a security threat to any individual or to the criminal justice system in determining the specific information to be made available under this section.

SECTION 15. Amends Subchapter B, Chapter 507, Government Code, by adding Section 507.028, as follows:

Sec. 507.028. SCREENING FOR AND EDUCATION CONCERNING FETAL ALCOHOL EXPOSURE DURING PREGNANCY. (a) Requires TDCJ to establish and use a screening program in state jail felony facilities that is substantially similar to the program established and used by TDCJ under Section 501.059.

(b) Requires TDCJ to provide to all female defendants confined in state jail felony facilities an educational brochure describing the risks and dangers of consuming alcohol during pregnancy.

SECTION 16. Amends Section 508.033, Government Code, by amending Subsections (a), (b), (c), and (d), and adding Subsection (f), as follows:

(a) Provides that a person is not eligible for appointment as a member of the Board of Pardons and Paroles (parole board) or for employment as a parole commissioner if the person or the person's spouse meets certain requirements.

(b) Makes a conforming change.

(c) Prohibits certain persons from serving as a parole commissioner.

(d) Prohibits a person who is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists) because of the person's activities for compensation in or on behalf of a profession related to the operation of the parole board from serving as a parole commissioner.

(f) Prohibits a person who is a current or former employee of TDCJ from serving as a parole commissioner before the second anniversary of the date the person's employment with TDCJ ceases.

SECTION 17. Amends Section 508.036(b), Government Code, to require the parole board to develop and implement policies that provide the public with a reasonable opportunity to appear before the parole board and to speak on any issue under the jurisdiction of the parole board, with the exception of an individual parole determination or clemency recommendation.

SECTION 18. Amends Subchapter B, Chapter 508, Government Code, by adding Sections 508.053, 508.054, and 508.055, as follows:

Sec. 508.053. USE OF TECHNOLOGY. Requires the parole board to implement a policy requiring the parole board to use appropriate technological solutions to improve

the parole board 's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the parole board on the Internet.

Sec. 508.054. RECORDS OF COMPLAINTS. (a) Requires the parole board to maintain a system to act on complaints filed with the board. Requires the parole board to maintain certain information relating to a complaint.

(b) Requires the parole board to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the parole board to periodically notify the complaint parties of the status of the complaint until final disposition.

(d) Provides that this section does not apply to a complaint about an individual parole determination or clemency recommendation.

Sec. 508.055. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the parole board to develop and implement a policy to encourage the use of certain procedures relating to disputes resolution.

(b) Requires the parole board's procedures relating to alternative dispute resolution to conform to any model guidelines from the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the parole board to designate a trained person to perform certain tasks.

SECTION 19. Amends Section 508.117(g)(1), Government Code, to redefine "close relative of a deceased victim."

SECTION 20. Amends Section 508.144, Government Code, by amending Subsections (a) and (b), and adding Subsections (d), (e), and (f), as follows:

(a) Deletes existing text requiring the parole board to review certain guidelines periodically.

(b) Requires a parole board member or parole commissioner to produce a written statement, rather than a brief written statement, describing in detail the specific circumstances regarding the departure from the guidelines, and provide a copy of the statement to the inmate if a parole board member or parole commissioner deviates from the parole guidelines in voting on a parole decision.

(d) Requires the parole board to meet annually to review and discuss the parole guidelines developed under Subsection (a). Authorizes the parole board to consult outside experts to assist with the review. Requires the parole board to consider certain results of the parole guidelines.

(e) Authorizes the parole board to perform certain tasks relating to the guidelines based on the parole board 's review of the parole guidelines under Subsection (d).

(f) Provides that the parole board is not required to hold an open meeting to review the guidelines as required by Subsection (d), but requires that any modifications or updates to the guidelines made by the parole board under Subsection (e) occur in an open meeting.

SECTION 21. Amends Subchapter E, Chapter 508, Government Code, by adding Section 508.1445, as follows:

Sec. 508.1445. ANNUAL REPORT ON GUIDELINES REQUIRED. (a) Requires the parole board to annually submit a report to certain entities primarily responsible for

criminal justice regarding the board's application of the parole guidelines adopted under Section 508.144.

(b) Sets forth certain content requirements for the report.

SECTION 22. Amends Section 508.155(c), Government Code, as follows:

(c) Authorizes the pardons and paroles division (division) to allow a releasee to serve the remainder of the releasee's sentence without supervision and without being required to report if a parole supervisor at the regional level has approved the releasee's early release from supervision under Section 508.1555. Deletes existing text relating to certain requirements a releasee must meet to obtain an early release.

SECTION 23. Amends Subchapter E, Chapter 508, Government Code, by adding Section 508.1555, as follows:

Sec. 508.1555. PROCEDURE FOR THE EARLY RELEASE FROM SUPERVISION OF CERTAIN RELEASEES. (a) Requires a parole officer to annually identify the releasees under the parole officer's supervision who are eligible for early release from supervision under Section 508.155(c). Sets forth certain conditions a releasee is required to meet for early release.

(b) Requires the parole officer to review the eligible releasees, including any releasees the parole officer has previously declined to recommend for early release, to determine if a recommendation for early release from supervision is appropriate following identifying any releasees who are eligible for early release under Subsection (a). Requires the parole officer to consider certain criteria a releasee must meet in conducting the review and determining recommendations.

(c) Requires a parole officer to forward to the parole supervisor at the regional level any recommendations for early release the parole officer makes under Subsection (b). Requires the division to allow a releasee to serve the remainder of the releasee's sentence without supervision and without being required to report as authorized by Section 508.155 if the parole supervisor approves the recommendation.

SECTION 24. Amends Section 509.011, Government Code, by amending Subsections (a), (e), (f), and (g), and adding Subsection (f-1), as follows:

(a) Requires the community justice assistance division of TDCJ (CJAD) to prepare and submit to the comptroller vouchers for payment to TDCJ in an amount calculated using a funding formula adopted under Subsection (f). Deletes existing text regarding per diem payments and formula funding.

(e) Makes a conforming change.

(f) Requires CJAD to annually establish a funding formula, rather than compute for each community supervision and corrections department established under Chapter 76 (Community Supervisions and Corrections Department) for community corrections program formula funding, to determine the percentage of the total amount provided in the General Appropriations Act for payments to departments that each department is entitled to receive. Provides for a certain formula established under this subsection.

(f-1) Creates this subsection from existing text. Requires CJAD to use the most recent information available in making calculations, rather than computations, under Subsection (f), rather than this subsection. Authorizes the Texas Board of Criminal Justice, by rule, to adopt a policy limiting for all departments the percentage of benefit or loss that may be realized as a result of the operation of the funding formula.

(g) Deletes existing text authorizing the Texas Department of Criminal Justice in the succeeding biennium to reduce the amount of per capita and formula funding provided under Subsection (a). Makes conforming changes.

SECTION 25. Amends Section 614.0032(a), Health and Safety Code, to require the Texas Correctional Office on Offenders with Medical or Mental Impairments to perform duties in accordance to Section 15(i), Article 42.12, Code of Criminal Procedure.

SECTION 26. (a) Requires TDCJ to study the operation and maintenance of different types of electronic monitoring equipment. Requires the study conducted under this subsection to examine certain factors relating to monitoring equipment.

(b) Requires TDCJ to submit a report summarizing the findings of the study conducted under Subsection (a) of this section to certain entities not later than December 1, 2009.

SECTION 27. Provides that Section 76.019, Government Code, applies to a defendant on community supervision on or after the effective date of this act, regardless of the date on which the defendant was placed on community supervision.

SECTION 28. (a) Requires the speaker of the house of representatives and the lieutenant governor to appoint members to the Criminal Justice Legislative Oversight Committee under Chapter 328, Government Code, as added by this Act, not later than January 1, 2008.

(b) Requires the speaker of the house of representatives, not later than January 15, 2008, to appoint a presiding officer for the committee notwithstanding Section 328.003, Government Code, as added by this Act. Provides that the presiding officer appointed by the speaker of the house of representatives under this section serves a one-year term that begins on February 1, 2008, and ends on February 1, 2009.

SECTION 29. Requires the Texas Department of Criminal Justice to establish the screening programs concerning fetal alcohol exposure under Sections 501.059 and 507.028, Government Code, as added by this Act not later than March 1, 2008. Requires the Texas Department of Criminal Justice to begin screening all inmates or defendants confined in state jail felony facilities as required by those sections not later than September 1, 2008.

SECTION 30. Requires the Texas Department of Criminal Justice to ensure that information is made available to inmates as required by Section 501.064, Government Code, as added by this Act, not later than March 1, 2008.

SECTION 31. Requires the Correctional Managed Health Care Committee to ensure that information is made available to the public as required by Section 501.155, Government Code, as added by this Act, not later than January 1, 2008.

SECTION 32. Provides that Section 508.033, Government Code, as amended by this Act, applies only to a parole commissioner on or after the effective date of this act. Provides that a person hired as a parole commissioner before the effective date of this Act is covered by the law in effect on the date the person was hired, and the former law is continued in effect for that purpose.

SECTION 33. Makes application of Section 508.144(b), Government Code, as amended by this Act, prospective.

SECTION 34. Requires the Board of Pardons and Paroles to hold its first annual meeting to review the parole guidelines as required by Section 508.144(d), Government Code, as added by this Act, not later than September 1, 2008.

SECTION 35. Requires the Board of Pardons and Paroles to submit its first annual report on the parole guidelines as required by Section 508.1445, Government Code, as added by this Act not later than December 1, 2008.

SECTION 36. Provides that Section 508.155(c), Government Code, as amended by this Act, applies to a person who is a releasee on or after the effective date of this act, regardless of the date on which the person was originally released to parole or mandatory supervision.

SECTION 37. Requires each parole officer to complete the officer's first annual identification of releasees under the officer's supervision who are eligible for early release from supervision, as required by Section 508.1555, Government Code, as added by this Act, not later than September 1, 2008.

SECTION 38. (a) Requires the community justice assistance division of the Texas Department of Criminal Justice to establish the funding formula described by Section 509.011(f), Government Code, as amended by this Act, that is to be used for the state fiscal year that begins on September 1, 2008, not later than April 1, 2008.

(b) Provides that Sections 509.011(a), (e), (f), and (g), Government Code, as amended by this Act, and Section 509.011(f-1), Government Code, as added by this Act, apply to appropriations made for a fiscal year that begins on or after September 1, 2008.

SECTION 39. Effective date: upon passage or September 1, 2007.