SUBJECT: Prison, parole and probation revisions

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Hightower, Gray, Allen, Culberson, Farrar, Longoria, Pitts, Telford

0 nays

1 absent — Serna

WITNESSES: For — None

Against — None

On — Carl Reynolds, Texas Board of Criminal Justice; Melinda Hoyle Bozarth, Texas Department of Criminal Justice.

BACKGROUND: The Texas Department of Criminal Justice (TDCJ) has four divisions: institutional (prisons and transfer facilities), state jail, community justice assistance (probation) and parole (includes mandatory supervision).

Institutional division capacity in April 1995 is about 106,600 and is projected to be approximately 130,900 in August 1996, according to the Criminal Justice Policy Council.

Prison capacity is about 83,700 as of April 1995 and is projected to be 94,800 by August 1996. The institutional division also has custody of persons awaiting transfer to state prisons and houses them in transfer facilities, state jails and substance abuse felony punishment facilities. The "transfer" population as of April 1995 is estimated at 13,200 in transfer facilities, about 6,300 in state jails and about 3,300 in substance abuse felony punishment facilities. The population in state jails, offenders convicted of state jail felonies, is about 400 at present and is expected to rise to about 1,000 in August 1995 and approximately 5,000 in August 1996.

The backlog of persons in county jails awaiting transfer to state facilities is estimated to be approximately 17,600 in April 1995.

POINT-BY-POINT ANALYSIS:

CSHB 2162 would give primary authority for all state jails to the TDCJ state jail division, allow inmates to be housed in transfer facilities for up to two years, remove a prohibition on using state jails as transfer facilities after September 1, 1997, and replace a requirement that TDCJ provide 12,000 substance abuse felony punishment beds with a duty to provide sufficient beds. The bill also would authorize TDCJ to require conditions of parole or mandatory supervision that are mandated by law and give the parole division authority to impose new parole conditions once a person is on parole.

The bill would move the Sunset Act review date for TDCJ, change the residency requirements for the members of the TDCJ board, change the prison admissions formula and change the funding formula for local probation departments, among numerous other changes. Most provisions of CSHB 2162 would take effect September 1, 1995.

Supporters say the bill would help ensure efficient operation of the criminal justice system by fine-tuning the state jail statutes enacted in 1993 and make other changes that would allow the state to meet its duty to accept from county jails inmates sentenced to TDCJ within 45 days of the completion of processing paperwork. In addition, the bill would revise the responsibilities of the parole division and the parole board so the system can operate more efficiently, create a fairer system of state aid for local probation departments and allow more flexibility in the substance abuse program for probationers.

Opponents say the bill would move the state jail system further from its goal of being a community-based corrections system for low-level nonviolent offenders. It would also unwisely shift authority from the parole board to TDCJ and give TDCJ too much leeway in developing the substance abuse program for probationers.

Authority over state jails

CSHB 2162 would give authority for state jail oversight to the state jail division instead of having the authority shared by the state jail division and the community justice assistance division (CJAD). The bill would give the state jail division, instead of CJAD, authority to contract with community supervision and correction departments to construct and operate state jails and would require the state jail division to consult with CJAD before contracting with a department. The state jail division and CJAD would have to consult with each other, as well as the Windham School District and community supervision and corrections departments, when developing work, rehabilitation, education and recreation programs for the jails.

The bill would remove a requirement that state jail programs operate on a 90-day cycle, eliminate state jails from the list of what is considered a community corrections facility and authorize the state jail division to develop visitation policies for state jails.

Supporters say CSHB 2162 would give clear authority for all state jails and their programs to one entity, the state jail division. When the state jail system was established in 1993 it was unclear how to best build the facilities and develop the programs. Since then it has become clear that one entity needs clear authority to contract and establish programs for state jails. Policies and standards should be consistent for all the facilities. The state jail division, with its single focus, would be the best place for this responsibility. Clarifying authority over state jails is especially important because the statute requiring the state jail division to provide for at least 70 percent of the facilities and allowing CJAD to provide for other facilities will expire September 1, 1995. The state jail division has met, and would continue to meet, requirements that it coordinate and consult with local communities and has developed programs for the jails that are significantly different from those operated by prisons. This bill would ensure local involvement and the involvement of CJAD in the state jails by requiring interaction among the state jail division, CJAD and local entities.

Opponents say relegating CJAD to an advisory role in the state jail system would lessen the emphasis on community corrections and local control of state jails. The split of responsibility between the state jail division and

CJAD was meant to ensure that CJAD, with its experience in local corrections, would be responsible for some of the facilities. As the system has developed, the facilities built and operated by the state jail division have developed a closer link to prisons and the ones developed by CJAD have forged a closer connection with communities. CSHB 2162 would remove the influence when CJAD has over at least part of the state jail system. CJAD's lead role in part of the state jail system is especially important to keep an emphasis on community corrections.

Transfer facilities

CSHB 2162 would change the maximum time inmates can be confined in transfer facilities (lock ups for persons awaiting transfer to state prisons for whom all processing has been completed) from 12 months to the maximum term that can be served by state jail felons (currently 24 months).

The bill would remove the prohibition in current law against using state jails as transfer facilities after September 1, 1997.

Supporters say allowing offenders to stay in transfer facilities longer than one year is necessary for the state to meet its statutory duty to accept from county jails inmates sentenced to TDCJ within 45 days of the completion of processing paperwork. Even under CSHB 2162 transfer facilities would be short-term lockups. The facilities would continue to hold the lower-risk offenders because TDCJ sends the most violent offenders directly to prisons.

To meet the "duty to accept" it is also necessary to remove the prohibition against using state jails as transfer facilities after September 1997. The bill would allow the efficient use of state jail beds, which currently are not being filled with state jail felons. The transfer facility population in state jails could be included in the state jail programs, giving this population access to education, training and treatment. State jails are secure facilities capable of holding the screened population that is not sent directly to prison. Keeping the two populations in the same facility presents no problems. These offenders are kept together in county jails and often have committed similar offenses. The Government Code would continue to ensure that state jail felons have priority in state jails by prohibiting the use

of state jail beds for transfer facility inmates if it would deny a place in a state jail to a state jail felon.

Opponents say extending the maximum length of stay in transfer facilities would move the facilities one step closer to being prisons. If the offenders in the transfer facilities are destined for prisons, the state should not try to house them in other facilities. These facilities were not designed to be long-term lock ups and lack many of the programs and work industries in prisons. CSHB 2162 would increase the chance that offenders could spend their whole prison terms in a transfer facility and receive little in the way of rehabilitation.

State jails should not be allowed to be used as transfer facilities after the current deadline of September 1, 1997. The public was promised that state jails would hold nonviolent offenders and that they would not be used as transfer facilities after 1997, and it would be a breach of faith with communities to continue to house violent prisoners in their midst. Persons in transfer facilities are destined for prison and have committed serious crimes and should not be held in state jails designed to hold low-level, non-violent property and drug offenders. No statutory requirement or meaningful guarantee assures the public that transfer facilities and state jails will house the less violent offenders, who constitute a shrinking pool.

State jails need to be reserved for state jail felons, especially if the mandatory probation aspect of the state jail felony is repealed and state jail felons are required to serve time in the facilities. If state jails fill up with transfer facility inmates, the facilities could become little more than mini prisons. If the state needs additional transfer facility beds it should look into contracting with counties that have available space.

Mixing populations in work programs

CSHB 2162 would allow state jail felons to work on institutional division work or community service projects, and allow institutional division inmates to work on state jail division work or community service projects.

Supporters say in some cases it may be feasible and desirable to use state jail felons on an institutional division work program or vise versa. CSHB

2162 would give TDCJ flexibility to efficiently use offenders for the most appropriate work programs. For example, a state jail could be located close to an institutional division work project in a state park, and it would make more sense to use state jail felons to help with the project. The co-mingling of the two populations does not present problems. These offenders are kept together in county jails, often for similar offenses.

Opponents say state jail felons and prison inmates should not be mixed. State jails were established for nonviolent offenders who should not work on the same projects as the more violent inmates who are sent to prisons. Keeping these populations separate was one impetus behind the state jail concept, and it should not be abandoned, especially since the state jail program has been operating for less than one year.

Substance Abuse Felony Punishment (SAFP) facility beds

(SAFP facilities provide a six- to 12-month substance abuse program for offenders placed in the facilities as a part of probation.) CSHB 2162 would eliminate the requirement that TDCJ provide *12,000* SAFP beds and replace it with a mandate to provide *sufficient* beds to operate the program.

The bill would allow SAFP beds to be used for inmates in the In-prison Therapeutic Community (IPTC) program (a nine-month, in-prison program for inmates needing substance abuse treatment). The bill would allow TDCJ to commingle participants in the SAFP and IPTC program.

Supporters say the state should not be tied to an arbitrarily designated number of SAFP beds. The original requirement to build 12,000 beds does not have any scientific or empirical basis. It is unclear what is the actual demand for these beds. Replacing the 12,000 mandated beds with authority to provide sufficient beds would allow TDCJ to respond to the actual need, instead of allowing capacity to determine demand. This would allow funds that would have been used to build SAFP beds to be used for types of facilities. Through the appropriations process, the Legislature would have authority over the funding of the beds.

Several concerns have been raised about building 12,000 SAFP beds including questions about whether there is enough trained, experienced

staff, the lack of a standardized screening and assessment for the program and whether there is an adequate post-release program for the offenders. There are about 10,600 SAFP beds under construction, and by August 1995 there will be 5,200 available beds. The Criminal Justice Policy Council has estimated a treatment need for only 7,200 SAFP beds for the fiscal 1996-97 biennium, and the House and Senate versions of the appropriations bill would provide for just 5,200 SAFP beds.

Allowing TDCJ to house inmates in the in-prison therapeutic community program in SAFP facilities would give TDCJ more flexibility to efficiently use bed space. Both sets of inmates are involved in programs for substance dependency, so it makes sense that TDCJ should be able to co-mingle the groups.

Opponents say replacing the requirement for 12,000 SAFP beds with a requirement that TDCJ provide a "sufficient" number of beds would give too much latitude to TDCJ to set the capacity of the program. The public signaled its support of the program when voters approved $1.1 billion in bonds for prison construction in 1991, some of which was earmarked for the 12,000 SAFP beds. The program could become lost among the numerous responsibilities of the department, and SAFP beds could easily be put at the bottom of the priority ladder when allotting beds. Reducing the number of SAFP beds could result in a backlog of persons waiting to get into the program. In turn judges could stop sentencing persons to SAFPs, making it look like the demand for the beds had lessened. The SAFP and IPTC programs are critical for Texas to begin to deal with the root causes of crime and to reduce recidivism and should not be left to the discretion of the department.

The two groups of offenders should not be co-mingled because persons in SAFP facilities are on probation, and persons in the IPTC program are in prison. The more serious, violent criminals from prisons should not mix with probationers.

Discretionary and mandatory parole conditions.

CSHB 2162 would consolidate Code of Criminal Procedure provisions dealing with discretionary and required conditions of parole into two sections and give TDCJ, rather than the Board of Pardons and Paroles, authority to apply conditions of parole or mandatory supervision that are mandated by law. The board would be authorized to impose discretionary conditions. The parole division would be given authority to enforce statutory parole conditions, regardless of whether the conditions had been imposed by a parole panel, and to impose new conditions authorized by Code of Criminal Procedure art. 42.18.

The bill would give TDCJ instead of parole panels the authority to order release and impose conditions for offenders released on mandatory supervision (release of a prisoner to the supervision of the parole division when calendar time served plus good time equals the offender's sentence).

The bill would allow the use of electronic monitoring as a condition of parole without the current requirement that it only be used if the offender would not be released otherwise. TDCJ, instead of a parole panel, would be allowed to choose community service programs if a parole panel requires participation in a program by a parolee.

CSHB 2162 would allow parole panels to parole persons confined in transfer facilities.

Supporters say TDCJ, not the parole board, should apply conditions of parole that are statutorily required. This would allow TDCJ to automate the process of requiring mandatory conditions for certain parolees, and relieve the board of the burden of keeping up with conditions that are not discretionary. CSHB 2162 would ensure that parole panels retain the authority to release persons to parole and to impose initial discretionary parole conditions.

The parole division should have authority to make changes in parole conditions without having to go before a parole panel so that when parole officers become aware of necessary changes they can be made quickly and efficiently. For example, if a parolee begins to abuse alcohol, the parole officer should be able to recommend that the division require treatment without having to take the case before a parole panel. Some parole panels

are faced with an average of 300 to 400 requests for changes each month. This authority would not differ from authority to impose and withdraw conditions that prior to July 1992 was delegated by the board to the division.

The authority to impose parole conditions would be with the *division*, not individual parole officers. Parole officers would make recommendations about changing parole conditions that would have to go through two levels of review to ensure there are no abuses by officers.

Releases on mandatory supervision do not need to be handled by the Board of Pardons and Paroles because they are not discretionary decisions and inmates must be released on a specified date.

Opponents say allowing state employees in TDCJ's parole division to impose parole conditions would be an unwise shift of responsibilities from parole board members who are accountable to the public and the governor that appoints them. This would shift critical decisions about parole conditions from a central decision-making entity of public servants to state employees. This transfer of authority could let the board avoid responsibility and hold no one accountable for parole conditions. The current process of reviewing division requests to alter parole conditions works adequately with some panels setting one day a week to consider requests for changes.

Withdrawal of arrest warrants

Warrants issued for the arrest of a person who is accused of violating parole ("blue" warrants) would not have to be withdrawn if a parole revocation hearing is not held within 121 days of the offender's arrest, as currently required under all circumstances, if the offender has been removed from a county jail and placed in a community residential facility, is in custody in another state or a federal correctional facility, requests a continuance or has current charges against them pending.

Supporters say CSHB 2162 would allow warrants to remain in effect for four limited circumstances when there are legitimate reasons to keep a procedure pending. This would help protect public safety by keeping a

potentially dangerous person off of the street if necessary and would help parolees by making sure their parole is not revoked because of the 121 day deadline.

Opponents say an exception to current law should not be created for persons requesting a continuance. This would allow the parolee — technically under state supervision — to occupy space in a county jail for an unlimited time without compensation for the county. In addition, it does little good for the parolee to sit in a county jail for an indefinite time; parolees should either have their parole revoked or they should be released.

Sunset date for TDCJ

CSHB 2162 would move the scheduled review of TDCJ under the Texas Sunset Act from 1997 to 1999.

Supporters say Sunset Act review was designed to ensure that state agencies undergo scrutiny at least every 12 years. Because TDCJ has been subject to numerous reviews in recent years, delaying the scheduled review by two years would allow the agency to implement many programs and allow agency staff, who can spend massive amounts of time working with the Sunset Advisory Commission, to concentrate on the daily mission of the agency. TDCJ has been thoroughly reviewed and audited numerous times in recent years by the comptroller and the state auditor. In addition, the agency was examined closely when it was reorganized in 1989 and in 1993 when the state jail division was created, and the state prison, probation and parole agencies that were consolidated in 1989 underwent individual Sunset review in 1987. CSHB 2162 would move the review date by only two years.

Opponents say TDCJ should not be given a reprieve on its Sunset Act review. The department has undergone the consolidation of the separate agencies, a massive building program and the addition of the state jail division in recent years, all needing outside review. The review process is necessary to examine specific items that may not have been scrutinized in previous audits and compare state agencies to uniform standards.

Board of Criminal Justice membership

CSHB 2162 would eliminate the prohibition on gubernatorial appointment of more than two members of the nine-member Board of Criminal Justice from any one of the state's nine administrative judicial regions.

Supporters say current law arbitrarily limits who can be appointed to the criminal justice board. The governor should be able to appoint the most qualified persons — regardless of where they live — to this important statewide board. Senate confirmation provides a sufficient check on the governor's choice of appointees. This provision was passed by the House in 1993, but died in the Senate.

Opponents say the requirement that criminal justice board members come from different administrative judicial regions ensures at least some regional balance on the board and that a broad range of regional viewpoints are represented. This requirement was placed in the 1989 criminal justice reorganization bill to help ensure that no region has a dominant voice on this important board.

Admissions policy

CSHB 2162 would repeal the current requirement that TDCJ admissions be governed by a policy that allocates admissions to counties based on the counties' past admissions, crime rates, arrests, population, unemployment and other factors. The TDCJ board would be required to adopt an admission policy that allows the institutional division to accept inmates within 45 days of the completion of processing paperwork. This section would take immediate effect.

Supporters say this change is necessary to ensure the state complies with the statutory duty to accept inmates. In 1991 the 72nd Legislature stated, in HB 93 by Hightower and Stiles, that by September 1, 1995, the state will accept from county jails inmates sentenced to TDCJ within 45 days of the completion of processing paperwork. Until that time, admissions to TDCJ were to be governed by a formula based devised by the TDCJ board.

Substantial increases in capacity will allow TDCJ to eliminate the county jail backlog and to begin to meet the 45 day duty-to-accept. CSHB 2162

would allow TDCJ to deviate from the current formula to eliminate the backlog that restricts the number of inmates accepted from different counties and would allow the department to devise a new formula to ensure inmates are accepted within 45 days.

State aid to local departments

CSHB 2162 would change the way state aid for local probation departments is calculated. The current seven-factor allocation formula would be replaced with a requirement that bases aid on the percent of the state's population in the counties served by a community supervision and corrections department and the department's portion of state felony probationers. The TDCJ board would be able to adopt rules limiting local departments' percent gain or loss due to the new formula.

Supporters say these changes in the way funds are distributed for local probation departments are necessary to replace an outdated, unstable method of determining state aid with a fair, dependable one that balances rural and urban interests. The current formula uses factors that can vary widely and have little to do with an area's probation workload.

The formula in CSHB 2162 would base state aid on the population in the counties served by a community supervision and corrections department and the department's portion of felony probationers. This would allow local departments to receive and plan for a relatively stable stream of state funding. In the first year of implementation, it is estimated that 102 local probation departments would gain funding, only 16 would lose funding and two would remain the same. TDCJ would be able to cushion the impact of the formula on a local department.

Private industry-prison work programs

(Work programs are private-industry run programs, generally on prison sites, that employ inmates, subject to wage and other restrictions.) CSHB 2162 would remove the requirement that work program facilities be limited to community residential facilities owned by cites or counties, but could be any secure facility operated under a contract with TDCJ. The facilities would no longer have to be certified by the American Correctional

Association as "community residential facilities," but would still require certification. CSHB 2162 would allow the parole division to adopt policies for the programs, instead of the TDCJ board adopting rules.

CSHB 2162 would change the requirements governing deductions from inmate wages to require that the deductions comply with federal rules for prison work programs. The bill would no longer require offenders to serve at least six months in a work facility. The bill would allow products produced by prisoners in federally certified prison work programs to be sold on the open market. CSHB 2162 also would make other changes in the administration of the work programs.

Supporters say CSHB 2162 would fine-tune the work program statute and remove unnecessary restrictions on the work programs, but would not make changes in the basic intent of current law. The bill would require wage deductions for program participants to comply with federal rules and give the state flexibility to change deductions when federal law changes. Deductions would still be made for things required by federal law such as dependent support, and the state would retain authority to require other deductions such as restitution and the costs of supervision. Removing the minimum six-month stay requirement would open the programs to participants whose parole date may be within six months. By allowing the sale of products produced by prisoners in federally certified programs the bill would pave the way for future work programs that comply with federal rules.

Opponents say any expansion of the work programs or loosening of their restrictions could unfairly displace free-world labor. It is unfair for law-abiding citizens to have to compete with criminals for jobs.

Custody by Parole Division.

CSHB would allow the parole division to assume custody of prison inmates or persons in jails or other correctional institutions for transfer to a community residential facility (secure facilities currently called halfway houses) up to *one year*, instead of the current 180 days, before an inmate's parole date. The bill would also give the division new authority to accept persons up to one year before their release on mandatory supervision.

The parole division, instead of the Board of Pardons and Paroles, would be able to transfer pre-parolees who satisfactorily serve their terms in community residential facilities and to parole them when their board-approved parole date arrives. The bill would also change administration of pre-parole transfer facilities.

Supporters say TDCJ needs more flexibility to manage the population of inmates and jail prisoners that have been given parole dates by a parole panel. The bill would only authorize, not mandate, that the parole division transfer them to a community residential facility up to one year before their parole date to help ease their transition from prison.

The bill includes persons released on mandatory supervision because when these inmates are released as required by law with no discretion on the part of TDCJ they are often unprepared to enter the free world and could benefit from time in a community residential facility. Including them in the pre-parolee program would allow them to have some preparation for their release from prison.

Prison, state jail, community corrections furloughs

CSHB 2162 would eliminate TDCJ's authority to grant furloughs from prisons for reasons deemed appropriate. Furloughs would be renamed emergency absences and would require that the inmate be under physical guard. TDCJ would be able to grant furloughs only for medical diagnosis or treatment, treatment at a mental health or mental retardation facility, to attend a funeral or to visit a critically ill relative.

CSHB 2162 adds provisions allowing for furloughs from state jails. In addition to being able to receive the same type of furloughs as prison inmates, state jail felons could receive furloughs for other reasons deemed appropriate by the division. State jail felons would not have to be under physical guard while on furlough.

CSHB 2162 would also allow community corrections facilities directors, with court approval, to grant short-term, medical, family funeral or family illness furloughs.

Death of an inmate

CSHB 2162 would require notification to the TDCJ office of internal affairs, along with the current requirement to notify the nearest justice of the peace, when an inmate dies except that neither would have to be notified, and justices would not have to perform an inquest, when an inmate is lawfully executed or dies of natural causes while attended by a doctor and an autopsy will be performed.

The bill would move from the Government Code to the Penal Code language making it offense for an employee to fail to report a death and would add an offense for failing to conduct a required investigation or failing to include all facts in a death report.

Destruction of TDCJ property

CSHB 2162 would extend the current liability for property damage for inmates in prisons to all facilities operated by or for TDCJ. Inmates would have to meet a new requirement to exhaust all administrative remedies under the institutional division's established grievance procedures before appealing a final decision by petitioning for judicial review. Inmates would have 30 days, instead of the current 60 days, to seek judicial review.

Transfer of TDCJ facilities

The bill would allow TDCJ to transfer correctional facilities to other state agencies and allow other agencies to return facilities to TDCJ, with approval of the TDCJ board and the governing board of the other agency. This section would take immediate effect if the bill is approved by two thirds of the membership of each house. (These provisions were contained in HB 2278 by Hightower, which was approved by the House on April 11 and has been referred to the Senate Criminal Justice Committee.)

Sale of TDCJ property

CSHB 1262 would allow the TDCJ board to sell for fair market value property that is under its control. The General Land Office would handle the sale according to established procedures with the proceeds going to the

Texas capital trust fund. The board would be able to sell land at fair market value to local governments without using sealed bids if the land were to be used for a local correctional facility.

Good conduct time

The bill would require TDCJ to award county jail prisoners who are transferred to TDCJ good conduct time up to the amount they would earn at the *entry level* in TDCJ, instead of the current requirement that good conduct time be awarded as if the person were confined in TDCJ. Inmates in transfer facilities would earn good conduct time and be subject to good conduct time rules as if they were in the institutional division, instead of as if they were in a county jail awaiting transfer to prison. Inmates in transfer facilities would be added to the statutes covering forfeiture and restoration of good conduct time for prison inmates.

Institutional Division (prisons, transfer facilities)

Changes include extending TDCJ authority and many regulations from institutional division facilities (prisons) to facilities operated by or under contract with the department;

• mandating that TDCJ require inmates to work, to the extent they are physically capable;

• changing references to the adoption of "rules" to say "policies," which would not be governed by rulemaking requirements;

• adding to the factors that TDCJ must considering increasing capacity providing inmates with adequate assistance from someone trained in the law;

• stating that the rulemaking section (Subchapter B) of the Administrative Procedure Act (Government Code Chapter 2001), instead of the whole act, which includes rulemaking and contested case procedures, applies to the unit and system capacity expansion process;

• requiring until January 1, 1997, that TDCJ review its contracts with private prisons as they expire to determine if they are cost-effective and to submit the reviews to the Legislative Criminal Justice Board;

• moving language outlining the responsibilities of the office of internal audit, requirements for TDCJ to provide public information and to handle public complaints, provisions relating to a department seal from the Government Code chapter on the institutional division to the chapter on TDCJ organization;

• moving authorization for TDCJ to hire persons certified by the Commission on Law Enforcement Officer Standards and Education as peace officers (TDCJ internal affairs officers) from the Government Code chapter on the institutional division to the chapter on TDCJ organization and adding these officers to the Code of Criminal Procedure list of peace officers;

• authorizing TDCJ to use surplus agricultural property to produce products for nonprofit organizations and removing a provision requiring the disposal of surplus agricultural products to follow the provisions in the State Purchasing and General Services Act;

• making TDCJ liable for damages, injury or deaths caused by inmates and state jail felons driving motor-vehicles for departmental purposes; the liability would not apply to damage, injury or deaths sustained by an inmates or state jail felons;

• adding *attempted* sex crimes to the list of offenses (including sex crimes) that make offenders ineligible for placement in a Substance Abuse Felony Punishment Facility;

• allowing holds on funds in inmate trust accounts (accounts set up with the money that an inmate brings to TDCJ and that is sent to the inmate) for specified reasons such as insufficient funds to cover a withdrawal and to correct accounting errors;

• removing the requirement that TDCJ's classification of inmates consider the inmate's criminal history, making the classification dependent on the inmate's conduct, obedience and industry;

• giving TDCJ, instead of the institutional division, responsibilities and authority over medical facilities and programs;

• deleting the requirement that the Criminal Justice Policy Council annually give TDCJ a list of counties with populations over 100,000, and that the council monitor any TDCJ claims against a dead inmate's estate;

• replacing the list of TDCJ's responsibilities and the institutional division's responsibilities with mission statements;

• changing from February to September the expiration date for terms of the members of the TDCJ community justice assistance division's judicial advisory council; and

• repealing provisions for an urban pre-release program and a requirement that TDCJ set aside beds, to the extent available, for probation violators.

Parole

Changes include allowing the TDCJ to fulfill current paperwork requirements of the Board of Pardons and Paroles relating to extradition;

• establishing a parole restitution fund for payments made by parolees and for disbursement to victims;

• replacing current TDCJ authority to withdraw a "blue warrant" at any time before a parole revocation hearing is *set* with authority to withdraw the warrant before a hearing is *held*;

• amending prohibitions against who may serve on the Board of Pardons and Paroles to include in most cases persons employed by or doing business with both the board and TDCJ;

• allowing confidential information concerning parolees to be released to government agencies, organizations with TDCJ contracts or grants and organizations to which TDCJ refers inmates for specified purposes and require that the information remain confidential; and

• giving a parole panel the current authority that the Board of Pardons and Paroles or a majority of the board has to recommend to the governor that an offender be pardoned.

Probation

Changes include prohibiting offenders convicted of attempted indecency with a child, attempted sexual assault, or attempted aggravated sexual assault from being sentenced to a Substance Abuse Felony Program facility;

• removing a requirement that modifications of community supervision be governed by articles of the Code of Criminal Procedure that detail procedures to be followed and changes that can be made in community supervision terms when a probationer violates the terms and that outline the jurisdiction of courts over community supervision terms;

• repealing a provision that allows time served in county jails as a part of probation for intoxication offenses (including driving while intoxicated) to count toward a jail term later imposed if probation is revoked;

• requiring that the same procedures used for responding to presentence investigation reports be available for *post*sentence investigation reports. The reports would no longer have to be filed with the district clerk but would have to be sent to TDCJ;

• allowing TDCJ's community justice assistance division to not hold a hearing if it reduces or does not provide discretionary grants to a local community supervision and corrections department for noncompliance of requirements; and

• prohibiting the use of persons confined in jails as a condition of community supervision from county jail industries or manual labor programs.

Miscellaneous

Changes include putting in the definition of escape unauthorized departure from confinement in a secure correctional facility that is a condition of community supervision or parole;

• allowing money from the lease of TDCJ property and from a grant or lease of easements to be deposited in special accounts in the general revenue fund that remain dedicated to TDCJ, upon legislative appropriation, instead of depositing them in a special fund outside of the general revenue fund;

• removing the crime victims compensation fund, the crime victims compensation auxiliary fund and the sexual assault program fund from the requirement that funds be consolidated into the general revenue fund;

• no longer requiring approval of the governor and the attorney general when TDCJ grants or leases road or utility easements on department land and allowing TDCJ to grant environmental conservation easements;

• adding a representative from the TDCJ state jail division to the Texas Council on Offenders with Mental Impairments;

• allow agencies responsible for developing a continuity of care for offenders with mental impairments to exchange information about offenders;

• changing references to the divisions to the "department;"

• changing references to "probation" to "community supervision;" and

• deleting many references to inter-divisional reporting.

NOTES: The committee substitute made numerous changes in the original bill including adding the following provisions: transferring authority for all state jails to the state jail division and placing CJAD in an advisory role; allowing TDCJ to provide sufficient, instead of 12,000, Substance Abuse Felony Punishment facility beds, allowing SAFP beds to be used for

inmates in the In-prison Therapeutic Community program, and allowing the co-mingling of the two populations; authorizing TDCJ to release persons on mandatory supervision; and authorizing TDCJ to impose mandatory parole conditions and to alter parole conditions.

Other additions to the original bill include: allowing TDCJ to transfer facilities to other state agencies; allowing institutional division inmates to work on state jail work programs; allowing TDCJ to require each inmate to work; allowing the parole division to assume custody of pre-parolees one-year, instead of 180 days, before their parole date, and extending this authority to persons being released on mandatory supervision; specifying that prison inmates given furloughs must be under guard; provisions concerning holds on inmate trust accounts; and the provision concerning time served in county jails as a part of probation for intoxication offenses be credited to count toward a jail term.

The committee also deleted several provisions contained in the original bill including: making assault by or against a public servant a third-degree felony; relating to the forfeiture of good conduct time for inmates who file frivolous lawsuits; allowing the parole division to transfer pre-parolees from a community residential facility to electronic monitoring; and changes made in the statutes governing probation for driving while intoxicated offenses.

Some of the CSHB 2162 provisions giving TDCJ authority to sell property are contained in HB 1979, which has been set on the April 26 House calendar.