

SUBJECT: Revising special needs parole

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Haggerty, Farrar, Allen, Hodge, Ellis, Hopson, Ritter

0 nays

2 absent — Gray, Isett

WITNESSES: For — *Registered, but did not testify*: Scott Henson, American Civil Liberties Union of Texas; William Harrell, American Civil Liberties Union of Texas, National Association for the Advancement of Colored People of Texas; Amy Mizcles, National Alliance for the Mentally Ill

Against — Dana Green, Restful Acres Care Center

On — Dee Kifowit, Texas Council on Offenders with Mental Impairments; *Registered, but did not testify*: Linda Yarbrough, Mary Lou Gibson, Office of the Comptroller

BACKGROUND: Government Code, sec. 508.146 allows certain nonviolent felony offenders to be released from prison on special needs parole if:

- ! the Institutional Division of the Texas Department of Criminal Justice (TDCJ) determines that they are elderly, physically handicapped, mentally ill, terminally ill, or mentally retarded;
- ! the parole panel determines that they do not constitute a threat to public safety or a threat to commit an offense; and
- ! the Parole Division has prepared a special needs parole plan that ensures appropriate supervision, service provision, and placement.

If inmates are diagnosed as mentally ill or mentally retarded, they may be released on special needs parole only upon approval of the Texas Council on Offenders with Mental Impairments (TCOMI). Under these conditions, offenders may be released from prison sooner than they would be eligible for regular parole under sec. 508.145(f), which specifies that an inmate is

eligible for parole when his or her actual calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less.

The Texas Department of Human Services (DHS) administers Texas' only secure nursing home for elderly offenders released on special needs parole – Restful Acres Care Center in Karnes County. As of December 2000, the facility housed 46 special needs parolees and had space for an additional 14. A parole officer is assigned to oversee releasees in the facility.

DIGEST: CSHB 772 would amend Government Code, sec. 508.146 to revise special needs parole and expand the pool of eligible inmates.

CSHB 772 would rename special needs parole as “medically recommended intensive supervision.” TCOMI and the Correctional Managed Health Care Committee (CMHCC) would identify eligible inmates. The bill would remove the requirement that an eligible inmate not constitute a threat to commit an offense and would expand the pool of eligibles to include inmates with a condition requiring long-term care. Paroled inmates would be required to wear an electronic monitoring device, be on super-intensive supervision, or be under otherwise appropriate supervision.

CSHB 772 would require a parole panel to mandate that the parolee be under the care of a physician in a “medically suitable placement.” TCOMI would be required to report to the board quarterly on the inmate’s medical and placement status. On the basis of that report, the parole panel could modify the conditions of release, including requiring the parolee to reside in a halfway house or community residential facility.

CSHB 772 would require TCOMI and DHS to request proposals from public or private vendors to provide contract services for inmates released on medically recommended intensive supervision. The request for proposal could require that services be provided in a medical care facility in an urban area.

CSHB 772 would take effect on September 1, 2001.

SUPPORTERS
SAY:

CSHB 772 would save taxpayer dollars by increasing the pool of offenders eligible for special needs parole. The Comptroller's Office estimates that the average daily cost of caring for a special needs inmate inside the prison system is \$53.50. The cost of treating just over 2,500 HIV-positive inmates consumed 44 percent of TDCJ's prescription drug budget in fiscal 2000. Incarcerated offenders are not eligible for Medicaid or other federal programs. The cost of nursing home care for a paroled offender would be covered under Medicaid, and the state's portion would average only about \$19.71 per day. The net savings to the state would be \$7,194 per year, per offender. TDCJ estimates that more than 600 inmates would be eligible for release under CSHB 772. The LBB projects that if 150 were released over the fiscal 2002-03 biennium and the number of releasees increased by 50 each year starting in 2004, the state would save more than \$7 million by 2006.

By moving special needs offenders out of prisons, CSHB 772 would free up more prison beds for younger, more violent offenders. The LBB estimates that if CSHB 772 were enacted, 300 additional correctional beds would be available by 2006.

CSHB 772 would enhance supervision of inmates released on medically recommended intensive supervision. Currently, if terminally-ill offenders who were released on special needs parole recover, they can be released from the nursing facility and returned to their homes. The Board of Pardons and Paroles cannot revoke parole for these offenders. CSHB 772 would allow the board to adjust conditions of a releasee's parole based on TCOMI's quarterly status report and would allow the board to revoke parole if necessary. In addition, the bill would permit the board to use electronic monitoring and super-intensive supervision to make sure that the parolee was being watched closely by the state.

CSHB 772 would allow the Board of Pardons and Paroles more discretion in choosing which inmates to release by removing the requirement that an inmate not be a threat to commit an offense. It can be difficult to make this determination for mental health offenders, so this group historically has been excluded from special needs parole even though they are statutorily eligible. If CSHB 772 were enacted, violent offenders still would not be eligible for release, regardless of their physical or mental status. The board could

require intensive supervision and revoke a releasee's parole if the need arose.

CSHB 772 would allow a much-needed expansion of services in urban areas. Currently, some eligible offenders are refusing special needs parole because they do not want to be moved to a rural facility far from their families. Also, Karnes County, where the contracted facility is located, does not have sophisticated medical facilities for terminally ill inmates. If they were moved to an alternative facility in an urban area, ailing prisoners could be closer to their families.

OPPONENTS
SAY:

Offenders in prison were convicted of felonies and sentenced to prison time. The state should be careful about undermining a judge or jury's decision and releasing an offender from prison early. Currently, special needs parole is granted only to inmates who are terminally ill. By expanding the net of eligibility, CSHB 772 would allow the parole board to grant special early release to offenders who still could live many years and be capable of committing future crimes.

Until the state fully utilizes the special needs facility it already contracts with, there is no need to expand services to an urban area. The one nursing facility under contract has almost a quarter of its beds empty.

HB 772 should not remove the requirement that the Board of Pardons and Paroles determine whether an offender is a threat to commit an offense. The recidivism rate for mentally ill offenders is higher than for other offenders. In addition, it would be unfair for the board to give an early release to someone who had a chronic medical condition yet may be likely to commit a new, nonviolent offense like illegal drug use, but not to release an offender who was healthy but not eligible for regular parole, yet who likely would not commit a new crime and who had served an equal portion of an equal sentence.

NOTES:

HB 772 as filed would have expanded eligibility for special needs parole to offenders who were "significantly ill with a chronic disease" and would have required TCOMI and DHS jointly to request proposals from public or private vendors for contract services to be provided in a nursing home in an urban area.

The fiscal note for CSHB 772 estimates it would have a positive net impact of \$1.6 million on general-revenue-related funds through August 31, 2003. The cost savings would increase each year, for a total probable savings of \$7 million through 2006.

The Criminal Justice Policy Impact Statement assumes that 150 offenders would be released to medically recommended intensive supervision during fiscal 2002-03 and 50 additional offenders per year would be released from fiscal 2004 forward. The decrease in demand for prison capacity would be 300 beds by fiscal 2006.