

SUBJECT: Continuing the Texas Department of Criminal Justice

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Haggerty, Staples, Culberson, Ellis, Farrar, Gray, Lengefeld, Longoria

0 nays

1 absent — Allen

SENATE VOTE: On final passage, April 19 — voice vote

WITNESSES: (*On House companion bill, HB 1705:*)

For — None

Against — James Morgan

On — Joey Longley and Joe Walraven, Sunset Commission; Rick Levy, Texas AFL-CIO; Ted Melina Raab, Texas State Employees Union

BACKGROUND: The Texas Department of Criminal Justice (TDCJ) was created in 1989 by consolidating three state agencies that supervised adult criminal offenders – the Texas Department of Corrections, the Texas Adult Probation Commission, and the Board of Pardons and Paroles. TDCJ is overseen by the Texas Board of Criminal Justice, a nine-member board appointed by the governor for six-year terms. The board appoints an executive director who oversees the department.

The Government Code establishes five TDCJ divisions:

- ! the institutional division, responsible for the confinement of first, second and third-degree felons;
- ! the pardons and paroles division, which processes offenders for release on parole or mandatory supervision and supervises them if they are released;
- ! the community justice assistance (probation) division which distributes funds to local probation departments and oversees local services;
- ! the state jail division, which oversees state jail felons;

- ! the internal audit division; and
- ! the programs and services division, responsible for centralized administration and management of offender programs and services.

The TDCJ board also has statutory authority to establish additional divisions and has created divisions to oversee health services, victims services, internal affairs, executive functions, and financial services.

Decisions about releasing offenders on parole are made by the Board of Pardons and Paroles, an entity independent from TDCJ.

TDCJ oversees about 145,300 incarcerated felons and supervises about 77,000 parolees. Another approximately 431,000 persons are on community supervision (probation), supervised by local probation departments overseen by TDCJ's CJAD division.

For fiscal 1997-98, TDCJ was appropriated a total of \$4.2 billion.

TDCJ is subject to the Sunset Act and underwent Sunset Advisory Commission review during the past interim. The agency will be abolished September 1, 1999, unless continued by the Legislature.

DIGEST:

CSSB 365 would continue the Texas Department of Criminal Justice until September 1, 2011. The bill also would remove restrictions on agency organization, revise funding mechanisms for local community supervision and corrections departments, revise inmate work programs, make changes in the private sector prison industries program, and revise the statutes governing the administration of the Council on Offenders with Mental Impairments. In addition, the mission of the agency would be amended to include assisting crime victims.

Restrictions on agency organization. The executive director, with board approval, could create divisions in addition to those that are statutorily required, eliminate any statutory or created divisions, and reorganize division powers and duties. Any action that could have an impact on local community corrections programs run by probation departments could not be taken unless the executive director had requested and considered comments from the judicial advisory council to CJAD and the TDCJ board.

Revise funding for local community supervision and corrections departments. TDCJ could reduce funding to a local community supervision and corrections department (CSCD) that had in reserve at the end of a biennium funds amounting to more than six months' basic supervision operating costs. In the next biennium TDCJ could reduce these departments per capita and formula funding. TDCJ could adopt policies allowing local CSCDs to maintain reserves larger than the cap if necessary to cover things such as emergency costs or implement new programs. TDCJ could distribute unallocated per capita or formula funds to provide supplemental funds to CSCDs. At any time, CSCDs could transfer unencumbered funds to TDCJ, which in turn could distribute them as supplemental funds to CSCDs.

CSSB 365 would eliminate a requirement for presentence investigation reports prescribed by the department. If a report is prepared it would continue to have to be sent to the department. The bill would make optional a current requirement that a post-sentence investigation report be filed in felony cases in which a presentence report was not filed.

Revise inmate work program and Texas Correctional Industries. The seven goals of the Texas Correctional Industries would be consolidated into only two: to provide participants with marketable job skills to help reduce recidivism through a coordinated program of job skills training, documented work history, and access to job finding resources and to reduce TDCJ's costs by providing products and articles for the department, or, on a for-profit basis, to the public, state agencies, or political subdivisions.

TDCJ would have to extend its job training program for each inmate job, establish a record of job training participation, and establish a permanent work record for each offender. Records would have to include information on types of work, job performance, and attendance. Offenders would be given a copy of their record when released from custody or supervision. TDCJ would have to consider an inmate's classification and availability for work when making job training assignments and would have to give priority to inmates closest to release when making assignments to jobs that provided the most marketable skills.

TDCJ would have to require persons in prisons, state jails and secure parole facilities to work to the extent that were physically and mentally capable.

TDCJ could waive this requirement to maintain security or to permit persons to participate in rehabilitative programs.

Funding mechanisms for TCI would be revised to eliminate the industrial revolving account and to deposit receipts from sales of industry products in the general revenue fund. TCI could use money appropriated to it in amounts corresponding to receipts from its sales.

CSSB 365 would replace references to “inmates” in the prison industries and Private Sector Prison Industries work programs with “work program participants” which would include persons in state jails and parole facilities as well as those in prison.

CSSB 365 would raise from 250 to 500 the cap on the number of participants allowed to work under contracts that TDCJ can enter with private businesses, provided federal guidelines were met. Prisoners working under these contracts no longer would be excluded from workers’ compensation coverage requirements.

Private sector prison industries program. CSSB 365 would change the makeup of the board that oversees the state’s program allowing private industries to employ state felons, subject to federal guidelines to pay prevailing wages and other restrictions. The Private Sector Prisons Industries Oversight Authority would have four public members, instead of the current three, and the requirement that one of the public members be an employer in the program would be eliminated.

The governor would be required to appoint an employer liaison to the authority. The liaison would have to be an employer in the Private Sector Prison Industries Enhancement (PIE) Program and would not be entitled to vote on issues considered by the authority.

CSSB 365 would specify how prevailing wages would be determined if the employer did not have others performing similar work in the same location as the prison industry. In this situation, the prevailing wage would be determined by occupation data on openings and wages collected by the labor market information department of the Texas Workforce Commission. In making the determination, the location in which the work was performed

would be changed from the council of government region to the local workforce development area.

CSSB 365 would raise from 1,500 to 2,000 the cap on the number of inmates who could be employed by private industries. The authority would be given a new responsibility to adopt rules to determine whether a private sector industries program would cause the loss of existing jobs in Texas by an employer using the program.

CSSB 365 also would apply standard Sunset Advisory Commission recommendations to the Private Sector Prison Industries Oversight Authority on grounds for removal of board members, standards of conduct, board member training, separation of board and staff functions, public testimony, and complaint files.

Council on Offenders with Mental Impairments. CSSB 365 would list the agencies authorized to receive and disclose information about offenders with mental impairments. The definition of those whose information could be shared, called special needs offender, would be changed from convicted felons and persons placed on probation after a grant of deferred adjudication to individuals who are in custody or under any form of criminal justice supervision after being convicted or adjudicated.

CSSB 365 also would make a technical correction in the number of persons on the council so that the statute would accurately reflect the current 30 members.

The council would be required to conduct a study on strategies for reducing the use of county jails to provide mental health treatment to persons with mental illness. The study would have to be filed with the Legislature by February 1, 2001.

CSSB 365 would apply to the council standard Sunset Advisory Commission recommendations on public members, conflicts of interest, non-discriminatory appointments, grounds for removal, standards of conduct, council member training, governor-appointed chair, separation of council and staff functions, equal employment opportunity policy, public testimony, and complaint files.

Other provisions. CSSB 365 would make other changes, including:

! requiring the TDCJ board and the policy board of the Board of Pardons and Paroles jointly to review the department's and board's rules, policies, and procedures relating to parole. The boards would have to make any necessary amendments so that the rules, policies, and procedures would result in consistent operation of the parole process;

! requiring TDCJ's board to allow at each of its regularly scheduled meetings that items be raised by the chairman of the Board of Pardons and Paroles and the chairman of the judicial advisory council to the Community Justice Assistance Division;

! requiring probationers to pay a fee, set by the judge, for residential aftercare required as part of a sentence to a substance abuse felony punishment (SAFP) facility. When setting the fee, which would go to the general revenue account, judges would have to consider fines, fees, and other necessary expenses. The fees could not be greater than 25 percent of the defendant's gross income and could only be required while the person was both employed and in aftercare;

! requiring TDCJ's Community Justice Assistance Division to conduct a study to determine whether documentation that a criminal justice council is required to provide as part of its community justice plan is excessive or redundant and to suggest a streamlined process to reduce council's duplication of efforts.

! allowing good conduct time to be awarded for participation in treatment programs and repealing a provision that allows TDCJ to use a separate classification system and award good conduct time based on inmate's participation in treatment; and

! allowing the Windham School District, which operates the prison system's schools, to offer services to persons who are high school graduates, to the extent that space allows.

Across the board recommendations. CSSB 365 would include or update standard Sunset Advisory Commission recommendations for TDCJ on conflicts of interest, non-discriminatory appointments, grounds for removal,

board member training, standards of conduct, separation of board and staff functions, equal employment opportunity policy, and complaint files. The bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

TDCJ should be continued because it has effectively managed the state's adult criminal justice system during a period of rapid growth and expansion. CSSB 365 also would increase the department's management flexibility, improve the funding system for local probation departments, improve the inmate work program, and make needed changes to the private sector prison industries program and Council on Offenders with Mental Impairments.

Restrictions on agency organization. CSSB 365 would help TDCJ efficiently respond to its changing needs by allowing the executive director, with board approval, to organize the agency's divisions and their functions. Current statutory restrictions on TDCJ's divisions are unnecessary and require the agency to rely on time consuming and cumbersome legislative action when it needs structural changes. The original reason for the statutory divisions – to ensure that the responsibilities of former independent agencies were continued – have been met. The restrictions now prevent TDCJ from fully consolidating into a unified criminal justice agency and from merging programs and services when appropriate.

TDCJ and the Board of Pardons and Paroles, which makes decisions about releasing inmates on parole, would continue to be separate, independent entities with TDCJ having no say in who is released on parole. CSSB 365 would ensure that local probation departments have input into any proposed changes by prohibiting the TDCJ executive director from taking action with a potential impact on local probation programs without considering comments from the judicial advisory council to CJAD and the Texas Board of Criminal Justice. In addition, CSSB 365 would require standing opportunities at all regularly scheduled Board of Criminal Justice meetings for items to be brought up by both the judicial advisory council and the Board of Pardons and Paroles.

CSSB 365 would put TDCJ in line with other large agencies and result in a more effective agency administration that could make timely and efficient decisions about its organization. Events such as lawsuits, changes in population, funding changes, and state policy shifts could call for the agency to make swift changes in administration. The agency and the board would

continue to be accountable to the Legislature, including the detailed scrutiny of the appropriations process that holds TDCJ responsible for its performance.

Revise funding for local community supervision and corrections

departments. Capping the amount CSCDs could accumulate as reserves at six months of operating expenses would encourage departments to spend money on supervision programs and services and reduce current incentives for departments not to spend money. Currently, CSCDs must return to the state at the end of each biennium unspent state funds for basic supervision. Last biennium, about \$9.6 million in basic supervision funds was returned to the state. Since the state pays about 50 percent of the costs of basic supervision, this means that a department with \$10,000 left over must return \$5,000 to the state while keeping \$5,000. If a department wants to accumulate reserves for emergencies, capital costs, or other reasons, they must refrain from spending state funds to build the reserve. CSSB 365 would eliminate this incentive for the CSCDs not to spend funds on the supervision of probationers just so they can build a reserve.

Six months of reserves would be ample for local departments to handle routine budget fluctuations. Allowing CJAD to grant waivers to CSCDs so they could accumulate more than six months of reserves would give departments the necessary flexibility to handle extraordinary circumstances.

CSSB 365 would eliminate the current TDCJ requirement for presentence investigation reports prescribed by the department. These forms have become mere checklists that judges rarely use to provide information for sentencing as intended. Judges routinely require a more detailed narrative, and the bill would allow them to continue to prescribe the content and form of any report they wanted. CJAD could increase grants or other funding to local departments with the money previously used to pay for the reports.

Revise inmate work program. CSSB 365 would allow prison inmates to receive the full rehabilitative benefit of TDCJ's work programs and maximize the job training potential of the programs. CSSB 365 would clarify TCI's most important goals so the program could be more effective and focus on job training. For example, removing as a goal that TCI maximize inmate labor would allow inmates to be trained in modern production techniques that might be less labor intensive but more cost effective and marketable.

While TDCJ has developed some limited programs it designates as job training programs, CSSB 365 would formalize the training programs and require training for all jobs. The agency would have to keep work records on inmate training and provide the records to inmates. This could help inmates get free-world jobs by allowing potential employers to examine their training and performance. In turn, this could help reduce inmate's recidivism rates. Requiring inmates who are approaching their release dates to be placed in jobs with greater potential for the inmate to develop marketable skills could help the inmate find a job when released.

CSSB 365 would improve inmate vocational training by requiring coordination between the industry program and those who make transfer and assignment decisions. This could further the long-term skill development of inmates and prevent a loss of productivity due to the transfer of trained inmates.

CSSB 365 would simplify TCI's financial bookkeeping for the prison industries programs and allow better management controls by using only one account for receipts from sales.

CSSB 365 would raise to 500 the cap on the number of participants who can work under a TDCJ contract with a private company. This change would allow TDCJ to have a large enough workforce force to attract employers. As under current law, these programs would have to meet federal requirements relating to the payment of wages and the impact on free-world labor. CSSB 365 would no longer exclude prisoners working under these contracts from having to be covered by workers' compensation because employers should have to bear this cost with prisoner employees just as they would with free-world employees.

TCI should continue to be overseen by the Board of Criminal Justice with assistance by the Prison Industries Advisory Committee rather than transfer oversight to another entity that has a different mission. The advisory committee is able to focus on the unique job of running a prison industries program while working as a part of TDCJ. It would be inappropriate for another body outside of TDCJ, such as the Private Sector Prison Industries Oversight Authority, to oversee the large-scale inmate work program.

Private sector prison industries programs. CSSB 365 would revise the Private Sector Prison Industries Oversight Authority, which oversees the private sector prison industries program, to remove an employer representative from the board, which would eliminate potential conflicts of interest. However, since the bill would require the governor to appoint an employer liaison, employers still would have input regarding authority decisions.

CSSB 365 would help ensure that inmates were paid a fair wage and that free-world labor was not taken advantage of by more precisely defining prevailing wage and by allowing the authority to adopt rules about whether the employment of inmates would cause a loss of jobs in Texas.

Raising the cap on the number of inmates who could be employed by private industries would allow more inmates to gain job experience and skills while maintaining the program at a reasonable level.

Texas Council on Offenders with Mental Impairments. CSSB 365 would clear up confusion by specifying the agencies that could share information about offenders with mental impairments. CSSB 365 would broaden the authority of TCOMI to include misdemeanants. This would help ensure that all offenders who with mental impairments can be served by the agency.

OPPONENTS
SAY:

Restrictions on agency organization. Statutory designations of TDCJ divisions should continue in order to ensure that the essential components of the criminal justice system are given adequate standing within the agency. Without the statutory designations it could be easy for smaller – but equally important – divisions such as parole or community supervision to be subsumed by the institutional division, which operates the prison system. The institutional division could inappropriately exercise undue influence over the other divisions.

Revise funding for local community supervision and corrections departments. Capping CSCDs reserves at any level would give the departments a disincentive to save and unfairly penalize them for doing a good job of collecting fees and being prudent about their spending. The departments could be reluctant to put forth much effort to collect probation fees because going over the cap could hurt their future state appropriations.

Establishing an arbitrary cap on reserves does not take into account the desires of some departments to have healthy reserves in case of emergencies, such as a lawsuit or to save funds for new programs.

Other measures could be taken to maximize the funds spent on community corrections and minimize funds returned to the state. For example, CSCDs could provide separate budgets for state and local funds specifying how each will be spent or budget adjustments could be made during a fiscal year.

Revise inmate work program. Oversight of TDCJ's inmate work programs would be best provided by expanding the role of the Private Sector Prison Industries Oversight Authority to cover Texas Correctional Industries. Allowing one entity to focus on all correctional work programs would provide more efficient and effective oversight than separate boards for the prison-run and privately-run programs. Past problems with TCI, identified by the State Auditor's Office and others, illustrate that oversight by the current prison industry advisory board and the Board of Criminal Justice has been inadequate.

TCI could benefit from the expertise of the oversight authority, which includes representatives of labor, employers, crime victims, inmate advocates, vocational rehabilitation providers, the public, and state agencies. This expertise could improve business practices, provide better job training to inmates, and allow TCI better to support itself through sales. Other states, including California and Florida, and the federal government oversee prison industries with autonomous boards.

Texas Council on Offenders with Mental Impairments. TCOMI should be given authority over not just convicted felons and misdemeanants but also those with charges pending against them. This would allow the commission to be involved when someone with mental impairments was first picked up by law enforcement authorities and could result in some persons being appropriately diverted from the criminal justice system.

OTHER
OPPONENTS
SAY:

Revise funding for local community supervision and corrections departments. CSSB 365 should cap local CSCDs reserves at two months. This would be adequate reserve funding for the departments and would allow

excess state dollars to be redistributed to departments that might have a greater need for the funds.

NOTES:

The committee substitute made several changes in the Senate-passed bill, including:

- ! changing the amount of reserves that local probation departments could retain from two months to six months;
- ! adding provisions dealing with the private sector prison industries program;
- ! raising the caps for the TDCJ program that can contract with private employers and the and private sector industries program;
- ! adding a requirement that TDCJ's Community Justice Assistance Division conduct a feasibility study on documentation required for community justice plans; and
- ! allow the Windham School District to provide services to inmates with high school diplomas.