

## **BILL ANALYSIS**

Senate Research Center  
76R7171 GWK-D

S.B. 365  
By: Brown  
Criminal Justice  
3/29/1999  
As Filed

### **DIGEST**

Currently, the Texas Department of Criminal Justice (department) is subject to the Sunset Act and will be abolished on September 1, 1999 unless continued by the legislature. The Board of Pardons and Paroles is subject to review by the Sunset Advisory Commission in the same time frame as the department. As a result of its review of the department, the Sunset Advisory Commission recommended continuation and several statutory modifications. This bill would continue the department for a 12-year period and make statutory modifications recommended by the Sunset Advisory Commission.

### **PURPOSE**

As proposed, S.B. 365 authorizes the continuation and the functions of the Texas Department of Criminal Justice, the administration of the Private Sector Prison Industries Oversight Authority, and the administration of the Texas Council on Offenders with Mental Impairments.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to Texas Board of Criminal Justice and the Board of Pardons and Paroles Policy Board in SECTION 1.07 (Section 492.0131, Government Code) and to the Private Sector Prison Industries Oversight Authority in SECTIONS 2.02 and 3.05 (Sections 497.0525, 497.0526, Government Code, and Section 614.0101, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1

SECTION 1.01. Amends Section 492.003, Government Code, to define a "Texas trade association." Provides that an officer, employee, paid consultant, or spouse of previously mentioned, of a Texas trade association in the field of criminal justice may not be a Texas Department of Criminal Justice (department) employee in a "bona fide executive, administrative, or professional capacity." Provides that a person registered as a lobbyist under Chapter 305 may not serve as a member or counsel to the Texas Board of Criminal Justice (board) or the department. Requires appointments to be made without regard to disability, rather than handicap. Provides that a ground for removal exists if at the time of taking office, rather than appointment, a person does not meet the required qualifications or is ineligible under Subsection (c) or (d). Sets forth procedures for the notification of potential grounds for removal. Deletes a provision regarding ineligibility criteria for board membership. Makes conforming changes.

SECTION 1.02. Amends Chapter 492, Government Code, by adding Section 492.0031, as follows.

Sec. 492.0031. TRAINING PROGRAM FOR MEMBERS. Provides that an appointed person may not participate as a member in attendance until a training program compliant with this section is completed. Requires the training program to include certain information. Entitles a person to reimbursement for travel expenses incurred in attending the training program.

SECTION 1.03. Amends Section 492.004, Government Code, to require the executive director, rather than the board, to provide the board and agency employees with information regarding office or employment requirements and standards of conduct for state employees. Deletes a provision regarding qualifications for office. Makes conforming changes.

SECTION 1.04. Amends Section 492.006, Government Code, to require the board to meet once a quarter of the calendar year and authorizes the board to meet at other times at the call of the chairman. Requires

the board to allow the presiding officer of the Board of Pardons and Paroles to present any item relating to the operation of the parole system. Deletes a provision requiring the chairman to provide meeting notification to the chairman of the Legislative Criminal Justice Board.

SECTION 1.05. Amends Section 492.012, Government Code, to set forth the continuation and functions of the Texas Board of Criminal Justice and the Texas Department of Criminal Justice and makes statutory modifications recommended by the Sunset Advisory Commission. Provides that the board and department are to be abolished September 1, 2011, rather than 1999, unless provided by that chapter.

SECTION 1.06. Amends Section 492.013, Government Code, to require the board to clearly separate the policymaking, rather than define the respective, responsibilities of the board and the management responsibilities of the executive director and the staff of the department. Deletes a provision requiring the board to provide certain information to employees. Makes conforming changes.

SECTION 1.07. Amends Chapter 492, Government Code, by adding Section 492.0131, as follows:

Sec. 492.0131. PAROLE RULES, POLICIES, PROCEDURES. Requires the board and the Board of Pardons and Paroles Policy Board (policy board) to review rules, policies, and procedures related to the operation of the parole process. Requires the board and the policy board to identify areas of inconsistency between the department and the Board of Pardons and Paroles and to amend rules or policies for consistent operation.

SECTION 1.08. Amends Chapter 493, Government Code, by adding Section 493.0021, as follows:

Sec. 493.0021. ORGANIZATIONAL FLEXIBILITY. Authorizes the executive director with the approval of the board, to create, eliminate, or reassign duties of, divisions listed under Section 493.002 or created under this section, notwithstanding certain sections. Authorizes the executive director to reorganize the distribution of power granted to a division with the consideration of comments from the judicial advisory council.

SECTION 1.09. Amends Section 493.007, Government Code, to require the executive director's designee to maintain a written policy statement that implements a program of equal employment opportunity to ensure that all decisions, rather than transactions, are made without regard to disability. Requires the policy statement to include personnel policies related to selection, rather than appointment, of personnel, promotion of personnel that demonstrates the department's intent to avoid unlawful employment practices described by Chapter 21, Labor Code, analysis of personnel composition, and reasonable methods to comply with state and federal law. Requires a policy statement to be reviewed by the state Commission on Human Rights. Deletes a provision requiring division directors to hire for the division. Deletes a provision including the determination of underutilization of certain employees in the policy statement. Deletes a provision in the policy statement regarding significant utilization. Deletes a provision requiring a biennial report from the governor's office on information received from this section.

SECTION 1.10. Amends Section 493.016, Government Code, to add standard language developed by the Sunset Advisory Commission regarding information of public interest and complaints.

SECTION 1.11. Amends Section 497.001(b)(2), Government Code, to redefine "articles and products."

SECTION 1.12. Amends Section 497.001(b), Government Code, by adding Subdivision (3), to define "work program participant."

SECTION 1.13. Amends Section 497.002(a), Government Code, to provide that the purposes of the Texas Correctional Industries (office) are to provide work program participants with marketable job skills and reduce department costs by providing products and articles for the department or for sale on a for-profit basis to the public. Deletes certain provisions regarding the purposes of the office.

SECTION 1.14. Amends Section 497.003(c), Government Code, to make a conforming change.

SECTION 1.15. Amends Section 497.004, Government Code, to authorize the board to develop, by rule, and the department to administer by an incentive pay scale for work program participants, rather than inmates who participate in prison industries. Requires the department to apportion pay earned by a work program participant as required by Section 497.0581, rather than Section 497.051. Requires the

department to consider each participant's classification and availability to work in assigning positions in factories, rather than prison factories. Requires the department to give priority to participants closest to release in assigning training, rather than inmate's needs and projected release date. Deletes a provision regarding inmate labor use in prison industries. Makes conforming changes.

SECTION 1.16. Amends Section 497.005, Government Code, as follows:

Sec. 497.005. New heading: INDUSTRIAL RECEIPTS. Authorizes the office to use appropriated money in amounts corresponding to receipts from the sale of articles and products, rather than in the industrial revolving account.

SECTION 1.17. Amends Section 497.006, Government Code, to require the department to count the number of participants, rather than inmates, in a work program. Provides that no more than 250 work program participants may participate.

SECTION 1.18. Amends Section 497.007, Government Code, to make a conforming and nonsubstantive change.

SECTION 1.19. Amends Section 497.009, Government Code, to make conforming changes.

SECTION 1.20. Amends Section 497.025(a), Government Code, to require the General Services Commission (GSC) and the department to enter into an agreement to expedite the process by which agencies are required to requisition purchases of articles or products through GSC.

SECTION 1.21. Amends Section 497.058(a), Government Code, to require the Private Sector Prison Industries Oversight Authority (PSPIOA), by rule, to ensure employees of the program are paid a certain wage.

SECTION 1.22. Amends Section 497.0581, Government Code, as follows:

Sec. 497.0581. New heading: EMPLOYEE CONTRIBUTIONS. Makes conforming changes.

SECTION 1.23. Amends Section 497.060, Government Code, to make a conforming change.

SECTION 1.24. Amends Section 497.061, Government Code, to make a conforming change.

SECTION 1.25. Amends Section 497.062, Government Code, as follows:

Sec. 497.062. New heading: LIMITATION ON NUMBER OF EMPLOYEES. Provides that the PSPIOA may not permit more than 1,500 individuals to be employees of, rather than inmates to participant in, the program at one time.

SECTION 1.26. Amends Section 497.094(a), Government Code, to require the department to implement a job training program for each job performed by an inmate confined in a facility under contract with the department or a defendant or releasee housed in a facility operated under contract with the department. Requires the department to keep a permanent record describing the types of job training provided, which is required to be released to the inmate, defendant, or releasee upon release.

SECTION 1.27. Amends Section 497.095, Government Code, to require the department, rather than institutional division, to establish a permanent record for inmates confined in facilities operated under contract with the department, rather than in the division, who participate in a department work, rather than an on-the-job training program, rather than the division. Requires the record to contain types of work performed by the inmate, defendant, or releasee during the times of supervision and evaluations of performance of and proficiency at assigned tasks. Requires the department, rather than the division, to provide the releasee a copy of the record, created under this section, upon release. Makes a conforming and nonsubstantive change.

SECTION 1.28. Amends Chapter 497E, Government Code, by adding Section 497.099, as follows:

Sec. 497.099. PARTICIPATION IN WORK PROGRAM REQUIRED. Requires the department to require each mentally and physically capable inmate, defendant, or releasee housed

in a facility operated by the department to work in a work program. Authorizes the department to waive the work requirement to maintain security or permit the inmate, defendant, or releasee to participate in rehabilitative programming.

SECTION 1.29. Amends Section 509.011, Government Code, by adding Subsections (g) and (h), to authorize the department to reduce a department's per capita and formula funding to ensure a department's reserves do not exceed two months' basic operating cost. Authorizes the department to adopt policies permitting a department to maintain reserves in amounts greater than otherwise permitted in this subsection to cover certain costs. Authorizes the department to distribute unallocated funds to individual departments to further the purposes of this chapter. Authorizes any a community supervision and corrections department to transfer to the department any unencumbered state funds held by the department. Authorizes the department to distribute funds transferred to the department to further the purposes of this chapter.

SECTION 1.30. Amends Section 2251.001(8), Government Code, to redefine "vendor."

SECTION 1.31. Amends Section 8(a), Article 42.09, Code of Criminal Procedure, to require a county transferring a defendant to the department to deliver a copy of a presentence or postsentence investigation report, if prepared.

SECTION 1.32. Amends Section 9(k), Article 42.12, Code of Criminal Procedure, to authorize a court to order a peace officer (officer) to prepare a postsentence report. Provides that on the condition a postsentence report is ordered, the officer is required to send the report to the clerk of the court who is to follow procedures described, rather than required, by Section 8(a), Article 42.09.

SECTION 1.33. Amends Section 14, Article 42.12, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (e), to require a defendant to participate in a drug or alcohol abuse continuum of care treatment plan and pay a fee in a certain amount. Requires a judge to consider fines, fees, and other necessary expenses for which the defendant is obligated in establishing the amount of the fee. Prohibits a judge from performing certain actions regarding the fee.

SECTION 1.34. Amends Section 171.651(2), Tax Code, to define "work program participant." Deletes the definition of "inmate."

SECTION 1.35. Amends Section 171.653, Tax Code, as follows:

Sec. 171.653. New heading: CREDIT FOR WAGES PAID TO WORK PROGRAM PARTICIPANT. Deletes a provision regarding the applicability of Section 497.004(b)(3), Government Code. Makes conforming changes.

SECTION 1.36. Amends Section 171.654, Tax Code, as follows:

Sec. 171.654. New heading: CREDIT FOR WAGES PAID TO EMPLOYEE WHO WAS WORK PROGRAM PARTICIPANT. Authorizes a corporation to claim credit for wages paid for an employee employed for more than one year after release from supervision. Makes conforming changes.

SECTION 1.37. Amends the heading of Chapter 171L, Tax Code, as follows:

SUBCHAPTER L. TAX CREDIT FOR WAGES PAID TO TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE OR FORMER PARTICIPANTS

SECTION 1.38. Repealer: Section 497.090, Government Code (Membership).

ARTICLE 2

SECTION 2.01. Amends Section 497.052, Government Code, by adding Subsections (c) and (d), to prohibit certain persons from being public members of PSPIOA. Requires appointments to PSPIOA to be made without regard to race, color, disability, sex, religion, age or national origin.

SECTION 2.02. Amends Chapter 497C, Government Code, by adding Sections 497.0521 - 497.0527,

as follows:

Sec. 497.0521. CONFLICTS OF INTEREST. Defines “Texas trade association.” Prohibits certain persons from being a member of PSPIOA and being a PSPIOA employee in a “bona fide executive, administrative, or professional capacity.” Prohibits registered lobbyists from being members or general counsel of PSPIOA.

Sec. 497.0522. REMOVAL PROVISIONS. Sets forth grounds for removal of members. Provides that the validity of an action of PSPIOA is not affected by the fact that a ground for removal of a member exists. Sets forth procedures for notifying the governor and attorney general of an existence of a ground for removal of a member of PSPIOA.

Sec. 497.0523. INFORMATION: REQUIREMENTS FOR OFFICE OR EMPLOYMENT. Requires the executive director to provide to PSPIOA members and employees information regarding requirements for office and employment.

Sec. 497.0524. TRAINING PROGRAM. Prohibits PSPIOA members from performing duties until the completion of a training program which is required to provide certain information. Entitles a person appointed to PSPIOA to travel expenses incurred in attending the training program.

Sec. 497.0525. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Requires PSPIOA to develop and implement policies that separate the policymaking responsibilities of PSPIOA and the management responsibilities of PSPIOA staff.

Sec. 497.0526. PUBLIC ACCESS. Requires PSPIOA to develop and implement policies that allow for public comment on issues under PSPIOA jurisdiction.

Sec. 497.0527. COMPLAINTS. Requires PSPIOA to maintain a file, which must include certain information, on each written complaint filed with PSPIOA. Requires PSPIOA to provide affected parties a copy of PSPIOA policies and procedures relating to complaint investigation and resolution. Requires PSPIOA to notify affected parties of the status of an investigation unless such notice would jeopardize an undercover investigation.

### ARTICLE 3

SECTION 3.01. Amends Section 614.002, Health and Safety Code, to provide that the Texas Council on Offenders with Mental Impairments (TCOMI) is composed of 30, rather than 29, members. Prohibits certain persons from being at-large members of TCOMI. Prohibits a registered lobbyist from membership into TCOMI. Requires appointments to TCOMI to be made without regard to race, color, disability, sex, religion, age, or national origin. Sets forth grounds for removal of at-large members. Provides that the validity of an action of TCOMI is not affected by the fact that a ground for removal of a member of TCOMI exists. Sets forth procedures for the notification of the governor and attorney general of the existence of a ground for removal. Deletes text regarding grounds for removal. Makes conforming changes.

SECTION 3.02. Amends Chapter 614, Health and Safety Code, by adding Sections 614.003 and 614.0031, as follows:

Sec. 614.003. INFORMATION; REQUIREMENTS FOR OFFICE OR EMPLOYMENT. Requires the executive director of the department to inform TCOMI members and employees of requirements for office or employment.

Sec. 614.0031. TRAINING PROGRAM. Prohibits a TCOMI member from performing duties before the completion of a training program that is required to include certain information. Entitles a person appointed to TCOMI to reimbursement of travel expenses incurred in attending the training program.

SECTION 3.03. Amends Section 614.005(a), Health and Safety Code, to require the governor to appoint a TCOMI member as presiding officer.

SECTION 3.04. Amends Section 614.007, Health and Safety Code, to require TCOMI to develop and implement policies that separate the policymaking responsibilities of TCOMI and the management responsibilities of TCOMI staff. Makes a conforming change.

SECTION 3.05. Amends Chapter 614, Health and Safety Code, by adding Sections 614.010, 614.0101, and 614.0102, as follows:

Sec. 614.010. PERSONNEL. Requires the executive director of the department to prepare and maintain a written equal employment opportunity policy, which must include certain information and be updated annually, reviewed by the State Commission on Human Rights, and filed with the governor's office.

Sec. 614.0101. PUBLIC ACCESS. Requires TCOMI to develop and implement policies that allow for public comment on issues under TCOMI's jurisdiction.

Sec. 614.0102. COMPLAINTS. Requires TCOMI to maintain a file, which must include certain information, on each written complaint filed with TCOMI. Requires TCOMI to provide affected parties with a copy of TCOMI policies and procedures relating to complaint investigation and resolution. Requires TCOMI to notify affected persons of the status of an investigation unless the notice would jeopardize an undercover investigation.

#### ARTICLE 4

SECTION 4.01. Effective date: September 1, 1999.

SECTION 4.02. Emergency clause.