

BILL ANALYSIS

Senate Research Center
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H.B. 1545
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While state law charges local elected officials with funding and operating jails, the Texas Commission on Jail Standards (TCJS) sets and enforces minimum standards to help ensure these facilities are safe and secure, regardless of their varying sizes, operations, and available resources. TCJS is subject to abolishment under the Sunset Act on September 1, 2021, unless continued by the legislature.

The Sunset Advisory Commission (commission) found TCJS remains necessary and recommends continuing it for 12 years. However, the commission also identified areas in which TCJS has not kept pace with dynamic jail environments and recommends TCJS update its standards development process to clarify vague requirements and account for jails' different risks. The commission also recommends TCJS adjust inspection, enforcement, and complaint procedures to mitigate inconsistencies across jails and incentivize prompt, sustained compliance with state standards. Finally, the commission found TCJS needs to improve its data collection and analysis practices to increase efficiency for staff and transparency for taxpayers.

Major provisions in the introduced version of this Sunset legislation

- Continues TCJS for 12 years. (Page I, Line 10)
- Updates TCJS's standards development process to eliminate overly vague and stagnant minimum standards.
 - Requires TCJS to ensure minimum standards account for varying needs and levels of risk among jails of different types and sizes. (Page 13, Line 22 to Page 14, Line 16)
 - Clarifies TCJS has authority to revise, amend, and change rules as needed without specific legislative action or approval. (Page 8, Lines 14-15 and Page 13, Lines 15-18)
- Improves inspection and enforcement procedures to mitigate risks in jails more efficiently and effectively.
 - Eliminates the requirement for annual jail inspections, and instead requires TCJS to prioritize inspections based on each jail's relative risk level. (Page 6, Line 26 to Page 7, Line 24; Page 9, Lines 17-19; Page 9, Line 26 to Page 10, Line 2; and various conforming changes)
 - Requires TCJS to establish a certain percentage of noncompliant jails to be re-inspected for all minimum standards, not just previously violated standards. (Page 14, Line 17 to Page 15, Line 1)
 - Requires TCJS to create and publish a schedule of escalating actions the agency may take against jails that remain out of compliance for extended or recurring periods of time. (Page 15, Line 9 to Page 16, Line 3)

- Updates complaint processes to align with best practices.
 - Requires TCJS to maintain detailed categorization and documentation of each violation alleged in a complaint. (Page 4, Lines 18-21)
 - Requires TCJS to adopt rules and procedures ensuring jail inmates have access to information about the complaint process. (Page 3, Line 26; Page 5, Lines 6-11; and Page 17, Lines 4-10)
- Strengthens TCJS's use of data to improve jail operations and transparency.
 - Requires TCJS to regularly analyze data collected during inspections or reported by jails to identify trends in noncompliance, serious incidents, and other jail operations. (Page 15, Lines 2-6)
 - Requires TCJS to regularly analyze complaint trends and provide this analysis to commission members and the public. (Page 4, Line 25 to Page 5, Line 5)
- Clarifies law enforcement agencies, once appointed by TCJS, must conduct investigations of inmate deaths in jail custody, unless they can provide evidence of a conflict of interest that cannot be mitigated. (Page 16, Lines 15-25)

H.B. 1545 amends current law relating to the continuation and functions of the Commission on Jail Standards.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Jail Standards in SECTION 3 (Section 511.0071, Government Code), SECTION 5 (Section 511.0081, Government Code), SECTION 9 (Section 511.00902, Government Code), and SECTION 10 (Section 511.0145, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 511.003, Government Code, as follows:

Sec. 511.003. SUNSET PROVISION. Provides that the Texas Commission on Jail Standards (TCJS) is subject to Chapter 325 (Texas Sunset Act). Provides that TCJS, unless continued in existence as provided by that chapter, is abolished September 1, 2033, rather than TCJS is abolished and Chapter 511 (Commission on Jail Standards) expires September 1, 2021.

SECTION 2. Redesignates Sections 511.004(h), (i), and (j), Government Code, as Section 511.00405, Government Code, and amends it, as follows:

Sec. 511.00405. New heading: TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of TCJS from voting, deliberating, or being counted as a member in attendance at a meeting of TCJS until the person completes a training program that complies with this section. Makes conforming changes.

(b) Requires that the training program provide the person with information regarding:

- (1) the law governing TCJS operations;
- (2) makes no changes to this subdivision;
- (3) the scope of and limitations on the rulemaking authority of TCJS;
- (4) makes a nonsubstantive change;
- (5) the requirements of laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest,

and other laws applicable to members of a state policy-making body in performing their duties; and

(6) makes a nonsubstantive change.

(c) Creates this subsection from existing text and makes conforming changes.

(d) Requires the executive director of TCJS (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of TCJS. Requires each member of TCJS to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3. Amends Section 511.0071, Government Code, by amending Subsections (a) and (a-1) and adding Subsections (g) and (h), as follows:

(a) Deletes existing text regarding TCJS complaint procedures.

(a-1) Requires TCJS to:

(1) makes no changes to this subdivision;

(2) keep an information file in accordance with Section 511.0072 regarding each complaint filed with TCJS regarding TCJS or a jail under TCJS jurisdiction;

(3) develop procedures for prioritizing complaints filed with TCJS and a reasonable time frame for responding to those complaints and appeals of those complaints;

(4) develop a procedure for tracking and analyzing all complaints filed with TCJS, rather than maintain a system for promptly and efficiently acting on complaints filed with TCJS, according to criteria that are required to include:

(A)-(C) makes no changes to these paragraphs;

(D) and (E) makes nonsubstantive changes to these paragraphs;

(F) the detailed categorization of each violation alleged in a complaint;

(G) the comprehensive documentation of each violation alleged in a complaint; and

(H) for a complaint for which TCJS took no action, the documentation of the reason the complaint was closed without action;

(5) regularly analyze complaints to identify trends, including trends with respect to jails with a higher than average number of complaints, to determine jails requiring additional inspections; and

(6) regularly prepare and distribute to members of TCJS and make available to the public a report containing a summary of the information compiled under Subdivisions (4) and (5).

(g) Requires TCJS to adopt rules requiring jail administrators to include in any inmate handbook and prominently display throughout the jail information regarding the procedure for complaint investigation and resolution.

(h) Requires TCJS to ensure that a jail complies with Subsection (g) during any inspection of the jail.

SECTION 4. Amends Chapter 511, Government Code, by adding Section 511.0072, as follows:

Sec. 511.0072. COMPLAINT INFORMATION. (a) Requires TCJS to maintain a system to promptly and efficiently act on complaints filed with TCJS. Requires TCJS to

maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

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

(c) Requires TCJS to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

SECTION 5. Amends Chapter 511, Government Code, by adding Section 511.0081, as follows:

Sec. 511.0081. **ADVISORY COMMITTEES.** (a) Authorizes TCJS by rule to establish advisory committees to make recommendations to TCJS on programs, rules, and policies administered by TCJS.

(b) Requires TCJS, in establishing an advisory committee under this section, to adopt rules, including rules regarding certain requirements for the committee.

SECTION 6. Amends Section 511.0085, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that the set of risk factors developed under Section 511.0085 (Risk Factors; Risk Assessment Plan) may include the number of months since TCJS's last inspection of the jail.

(c) Creates this subsection from existing text and makes a conforming change.

SECTION 7. Amends Chapter 511, Government Code, by adding Section 511.0086, as follows:

Sec. 511.0086. **RISK-BASED INSPECTIONS.** (a) Requires TCJS to adopt a policy prioritizing the inspection of jails under TCJS's jurisdiction based on the relative risk level of a jail. Requires that the policy require TCJS to use the risk assessment plan established under Section 511.0085 to:

(1) schedule announced and unannounced inspections of jails under TCJS's jurisdiction; and

(2) determine how frequently and intensively TCJS conducts risk-based inspections.

(b) Authorizes the policy to provide for TCJS to use alternative inspection methods for jails determined to be low-risk, including using abbreviated inspection procedures or other methods instead of conducting an in-person inspection.

SECTION 8. Amends Section 511.009, Government Code, by amending Subsections (a), (a-1), and (a-2) and adding Subsection (f), as follows:

(a) Requires TCJS to perform certain duties, including to regularly review TCJS's rules and procedures and revise, amend, or change the rules and procedures if necessary. Deletes existing text requiring TCJS to require that the chief jailer of each municipal lockup, the sheriff, and the commissioners court of each county submit to TCJS, on a form prescribed by TCJS, an annual report including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups. Deletes existing text requiring TCJS to at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter and schedule announced and unannounced inspections of jails, under TCJS jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process. Makes nonsubstantive changes.

(a-1) and (a-2) Makes conforming changes to these subsections.

(f) Provides that TCJS's compliance with the requirements of Section 511.009, particularly the requirements regarding the adoption of rules and procedures, is not contingent on the enactment and becoming law of any additional legislation.

SECTION 9. Amends Chapter 511, Government Code, by adding Sections 511.00901, 511.00902, and 511.00903, as follows:

Sec. 511.00901. DUTY REGARDING MINIMUM STANDARDS. (a) Requires TCJS to ensure that the minimum standards established under Section 511.009 take into consideration the needs and risks of the different types and sizes of jails under TCJS jurisdiction.

(b) Requires TCJS, on an ongoing basis, to review the minimum standards to identify any standards that do not account for the needs and risks of the different types and sizes of jails. Requires TCJS, in conducting the review, to solicit feedback from a diverse collection of jails, including those of different types and sizes.

(c) Requires TCJS to revise any standards identified under Subsection (b) as TCJS considers necessary. Requires TCJS, in revising a standard, to consider:

(1) establishing tiered or separate standards depending on the size, resources, or type of jail;

(2) clarifying or amending existing standards; and

(3) publishing guidance on TCJS rule interpretations.

(d) Prohibits TCJS from lowering any standard in effect on September 1, 2021, as a result of a review conducted under this section.

Sec. 511.00902. REINSPECTION. Requires TCJS to adopt rules and procedures for reinspecting a jail following a determination by TCJS that the jail is not in compliance with minimum standards. Requires that the rules and procedures require TCJS to:

(1) reinspect all jails not in compliance;

(2) establish a percentage of reinspections for which TCJS is required to assess the jail's compliance with all minimum standards, regardless of whether the jail was in compliance with a particular standard during the previous inspection; and

(3) randomly select the jails subject to a reinspection described by Subdivision (2).

Sec. 511.00903. INSPECTION TREND ANALYSIS. Requires TCJS to regularly analyze data collected during inspections or reported to TCJS under this chapter to identify trends in noncompliance, inspection outcomes, serious incidents, and any other related area of jail operations.

SECTION 10. Amends Chapter 511, Government Code, by adding Section 511.0145, as follows:

Sec. 511.0145. ENFORCEMENT ACTIONS. (a) Requires TCJS to adopt rules establishing a system of graduated, escalating enforcement actions TCJS is authorized under this chapter to take against jails under TCJS's jurisdiction that have not made timely progress correcting noncompliance issues, or have failed multiple inspections within a certain number of years as determined by TCJS.

(b) Requires that the rules establish time frames for TCJS to take certain graduated, escalating enforcement actions against jails.

(c) Requires TCJS to develop a schedule of actions to guide the enforcement actions TCJS is authorized to take under rules adopted under Subsection (a). Requires TCJS to make the schedule available on any publicly accessible Internet website maintained by TCJS. Requires that the schedule:

- (1) recommend the appropriate enforcement action based on the severity of the noncompliance; and
- (2) include consideration of any aggravating factors, including repeat violations and failing consecutive inspections, and mitigating factors.

SECTION 11. Amends Section 511.019(c), Government Code, to make a conforming change.

SECTION 12. Amends Section 511.021, Government Code, by amending Subsections (a) and (b) and adding Subsection (c), as follows:

- (a) Requires a law enforcement agency appointed by TCJS to conduct an investigation on the death of a prisoner in a county jail except as otherwise provided by Subsection (b).
- (b) Authorizes the law enforcement agency appointed under Subsection (a) to present evidence to TCJS that investigating the death would create a conflict of interest that cannot be mitigated by the law enforcement agency. Requires TCJS to appoint another law enforcement agency under Subsection (a) to investigate the death if TCJS determines that the conflict of interest cannot be mitigated.
- (c) Creates this subsection from existing text and makes no further changes.

SECTION 13. Repealer: Section 511.0071(e) (relating to the notification of the status of a written complaint to involved parties by TCJS), Government Code.

Repealer: Section 511.0071(f) (relating to TCJS collecting and maintaining information about each complaint received by TCJS regarding TCJS or a jail under TCJS jurisdiction), Government Code.

SECTION 14. Requires TCJS, not later than March 1, 2022, to develop the rules required by Section 511.0071(g), Government Code, as added by this Act. Requires each jail under the jurisdiction of TCJS, not later than April 1, 2022, to post the information and update the inmate handbooks as necessary to comply with TCJS's rules adopted under that section.

SECTION 15. (a) Provides that Section 511.00405, Government Code, as redesignated and amended by this Act, except as provided by Subsection (b) of this section, applies to a member of TCJS appointed before, on, or after the effective date of this Act.

- (b) Provides that a member of TCJS who, before the effective date of this Act, completed the training program required by Section 511.004, Government Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 511.00405 (Training), Government Code, as redesignated and amended by this Act. Prohibits a member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TCJS held on or after December 1, 2021, until the member completes the additional training.

SECTION 16. Effective date: September 1, 2021.