

HOUSE

RESEARCH

ORGANIZATION bill analysis

2/17/87

SB 215

McFarland (Hightower)

CSSB 215 by Hightower

SUBJECT: Emergency reductions in prison population

COMMITTEE: Corrections: committee substitute recommended

VOTE: 8 ayes--Hightower, Carter, Ceverha, Burnett, Melton,
Repp, Telford, Valigura

0 nays

1 absent--Granoff

SENATE VOTE: 25 ayes, 3 nays (Brown, Green, Lyon)

WITNESSES: For--None

Against--None

On--Ruben Torres, John Byrd, Wendell Odom, Board of Pardons and Paroles; Don Stiles, Adult Probation Commission; F. Scott McCown, assistant attorney general; James Collins, Texas Department of Corrections

BACKGROUND: The Prison Management Act, enacted in 1983 and amended in 1986, requires the director of the Texas Department of Corrections (TDC) to grant 30 days of good-conduct time to class-I or trusty inmates (those inmates with the lowest risk rating) when the inmate population remains at 95 percent or more of TDC's capacity for five consecutive days or reaches 95 percent of capacity on a total of 20 days in a 30-day period. Ineligible for such good-time grants are those serving time for capital murder, aggravated kidnapping, aggravated sexual assault or aggravated robbery, and those who used or exhibited a deadly weapon in connection with a felony.

When the overcrowding threshold is reached, the governor must certify that an overcrowding emergency exists and notify the Board of Pardons and Paroles (BPP). The BPP must immediately advance the parole-eligibility date of the eligible inmates by 30 days. If the emergency continues 60 days after the BPP is notified, the BPP must advance the same inmates' parole-eligibility dates by another 30 days.

If the emergency continues 120 days after the BPP is notified, the governor must order the TDC director to award another 30 days of good time to the same inmates and, if necessary, may order the BPP to advance these inmates' parole-eligibility dates by another 30 days.

Before 1977 inmates whose calendar time served, plus good-conduct time earned, equaled their sentence were automatically released from prison without further supervision. In 1977 the Legislature enacted a mandatory-supervision law that requires those inmates to be automatically released but to be supervised by the BPP for the remainder of their sentence, as if they were on parole. The Legislature also enacted an early mandatory-supervision law that allows the BPP to release to mandatory supervision any inmate who has 180 calendar days or less remaining on a sentence and is not yet eligible for regular mandatory-supervision release.

For most offenses, the BPP considers inmates for release on parole after their calendar time served, plus their good-conduct time earned, equals one-third of their sentence. Based on a review of their record and other factors, the board may either release these inmates on parole or keep them in prison.

For most offenses, judges may suspend the sentence of anyone whose sentence does not exceed 10 years and instead place them on probation under the supervision of the Adult Probation Commission (APC).

DIGEST:

CSSB 215 would amend the Texas Prison Management Act by changing the trigger mechanisms for considering inmates for early release and further restricting the types of eligible inmates.

When the inmate population at TDC reached 95 percent of capacity, the director would be required to notify the attorney general, as well as the governor, of the overcrowding crisis. Upon certification from the attorney general, the TDC director would be required to credit up to 90 days of good-conduct time to eligible inmates. If the crisis continued, the governor would be required to authorize the TDC director to credit to eligible inmates additional good-conduct time of up to 120 days per calendar month and/or authorize the BPP to advance by 120 days the parole-eligibility date of eligible inmates.

The governor could further direct the BPP to consider for parole all inmates classified as trusty who eventually would be eligible for parole but had not accrued enough time to be paroled. The governor could impose additional eligibility criteria for inmates released under this provision. AT least 20 days before the BPP planned to parole any of these inmates, it would be required to notify the governor of their proposed release. The governor would then have 20 days to veto the release of any of these inmates. Any inmate released early under this provision would be placed under intensive-supervision parole, requiring the highest level of BPP supervision. The case load for parole officers would be capped at not more than 40 parolees.

The governor would have the authority to act under this bill until the attorney general certified that the overcrowding crisis had been resolved.

Only those inmates serving a 10-year sentence or less, who did not have a history of violent behavior, and who would not increase the likelihood of harm to the public if released would be eligible for extra good-conduct time or early-parole release. Also, inmates in TDC for any of the following crimes would be ineligible:

- murder;
- capital murder;
- voluntary manslaughter;
- involuntary manslaughter;
- criminally negligent homicide;
- kidnapping;
- aggravated kidnapping;
- sexual assault;
- aggravated sexual assault;
- deadly assault on a law-enforcement or corrections officer or court participant;
- injury to a child or elderly person;
- incest;
- first-degree arson;
- robbery;
- aggravated robbery;
- first-degree burglary;
- aggravated promotion of prostitution;
- compelling prostitution;
- sale, distribution, or display of harmful material to minors;
- sexual performance by a child;
- using a deadly weapon in a penal institution;

- aggravated manufacture or delivery of a controlled substance;
- aggravated possession of a controlled substance;
- first-degree delivery or aggravated delivery of marijuana;
- aggravated possession of marijuana;
- any felony in which a deadly weapon was used or exhibited;
- criminal attempt, criminal conspiracy, or criminal solicitation involving any of the above offenses.

The BPP could require that any inmate released under this bill work up to 10 hours per week in a community service program and submit to a more intensive-supervision program than is required of other releasees. The program could include intensive-supervision parole, specialized supervision, surveillance parole, home confinement and electronic monitoring. The Adult Probation Commission could apply similar conditions to probationers.

CSSB 215 also would expand the conditions of probation to require probationers to submit to intensive-supervision probation, drug testing, or drug-abuse counseling. In lieu of revoking a defendant's probation, a judge could extend the period of probation for up to one year for felony cases and up to 180 days for misdemeanors. The total probation period plus extensions could not exceed 10 years for a felony or two years for a misdemeanor.

The APC could transfer up to 10 percent from any of its budget program items to any other program item -- except basic per capita state aid and supplemental per capita aid -- to expand probationary programs or provide education courses on diversionary programs for judges and prosecutors.

CSSB 215 also would repeal early mandatory supervision, beginning Sept. 1, 1987. The remainder of CSSB 215 would become effective immediately.

SUPPORTERS:
SAY:

CSSB 215 would allow the state to demonstrate to the federal courts its good-faith adherence to its previous pledge to eliminate prison overcrowding. At the same time, it would assure the public that only the lowest-risk, nonviolent inmates would be released early during overcrowding emergencies.

Under current law, felons who have committed murder or sexual assault can be released early during overcrowding emergencies. CSSB 215 would stop such releases by creating a safer pool of inmates eligible for early release. It also would ensure that once they are released, the parole board could keep a closer eye on them. It would add 25 offenses to the list of crimes making inmates ineligible for early release, including murder and sexual assault. And only nonviolent inmates who pose no threat to the public could be released early. The BPP could then keep tabs on early releasees by attaching electronic-surveillance devices to them, confining them to their homes, or putting them under intensive supervision. The probation commission could use similar methods to supervise probationers.

The 1985 settlement in Ruiz v. Estelle, the long-standing prison-overcrowding case, prohibits the state from letting the TDC prison population exceed 95 percent of capacity. Under current law, however, the early release of inmates is not triggered until the inmate population has been at 95 percent capacity for five straight days or for 20 days in a 30-day period. By the time early release is triggered, the state has already violated that part of the Ruiz settlement. CSSB 215 would ensure state compliance with the settlement by triggering early release of inmates as soon as 95-percent capacity is reached.

The state also would have the flexibility to bring the prison population down quicker and for a longer stretch. Officials could grant lower-risk inmates up to 90 days good time, instead of 30 days, under first-tier emergency conditions, then up to 120 days of good time under second-tier conditions. This flexibility would allow better prison management without compromising the public welfare because a smaller, safer, but still adequate, pool of inmates would be eligible for release.

CSSB 215 would not grant the governor veto power over paroles, as some have argued. The BPP would still have exclusive authority over paroles. The governor merely would review the emergency release of inmates who -- if not for the crisis -- would not otherwise be eligible for parole. Under such circumstances, it only makes sense to review thoroughly the record of those eligible for early release.

Repealing early mandatory supervision on Sept. 1 would not necessarily increase the prison population. The parole board could still release these inmates on parole. If the board decided that these criminals were too dangerous to be paroled, they would be kept in prison, not automatically released.

OPPONENTS:
SAY:

Once again the Legislature proposes to use a Band-aid too small to stop the bleeding and would endanger the public in the process. The state still faces heavy contempt-of-court fines for other violations of its prior agreement to improve prison conditions -- this bill would not address those violations but is merely another stop-gap measure to ease the latest overcrowding crisis. CSSB 215 avoids the real problem: a constant flood of 3,000 new admissions per month that is expected to total 35,000 inmates in fiscal 1987 alone. The state must build enough prisons to meet minimum constitutional standards or reserve the prisons for the most violent offenders who cannot be dealt with any other way.

This bill would not ensure that only the "lowest-risk" inmates would be released early in the event of an overcrowding crisis. Many dangerous felons would be eligible for release because they pled guilty to lesser offenses in plea bargains -- the crime they are serving time for would not necessarily be the crime they committed. Thus this bill could result in early release of burglars, arsonists and dope dealers serving time for lesser offenses.

By eliminating early mandatory supervision as of Sept. 1, CSSB 215 would have the effect of increasing the prison population, exacerbating the very problem it is meant to solve. The parole board currently releases about 800 inmates per month under early mandatory supervision. Unless the BPP proved willing to parole an equal number of inmates every month, the prison population would rise. Moreover, early mandatory supervision and mandatory supervision are tools the TDC uses to maintain inmate discipline. Inmates know that their accumulated days of good behavior will eventually win them release on mandatory supervision even if they are not paroled. Taking away this incentive would increase prison violence -- something the federal courts would not look upon favorably.

Allowing the governor to veto early releases of inmates could violate the Texas Constitution. Texas voters

decided in 1983 to strip the governor of parole-revocation powers, making clear that they considered the BPP better qualified to make parole decisions. Any review of emergency inmate releases by the governor would be duplicative, unnecessary and open to political pressures -- as the previous experience with parole reviews by the governor has already demonstrated.

OTHER
OPPONENTS
SAY:

The list of crimes barring inmates from early release under CSSB 215 is too restrictive -- it would exclude about 70 percent of the inmate population. There are enough other safeguards in the bill so that neither the public welfare nor the corrections officials' flexibility would be compromised by shortening the ineligibility list. Inmates charged with voluntary manslaughter, for instance, could be low risks in some cases.

NOTES:

Trusties receive good-time credit of 30 to 45 days for each 30 days actually served, at the TDC director's discretion. Class-I inmates get 20 days of good-time credit for each 30 days served. Inmates may receive up to 15 additional days of good-time credit for taking educational courses.

The committee substitute for SB 215 added involuntary manslaughter and criminally negligent homicide to the list of offenses that would disqualify inmates for early release or extra good time. Also added were criminal conspiracy, solicitation and attempt, in connection with capital murder, aggravated kidnapping, aggravated sexual assault and aggravated robbery.

The committee substitute made intensive-supervision parole mandatory only for inmates released under third-tier conditions -- namely, those inmates considered for parole before they otherwise would be eligible.

Several amendments to CSSB 215 may be introduced on the House floor. Involuntary manslaughter and criminally negligent homicide (which is a misdemeanor and not punishable with confinement in TDC) would be removed from the list of disqualifiers under one amendment. Another would authorize the APC to transfer up to 10 percent of its funds from items 3a and 3b (per capita and supplemental per capita aid) to other programs.

On Feb. 16, the Senate passed HCR 52 by Ceverha, directing the BPP to accelerate spending of its current line-item appropriation for "special community services" (\$6,940,436) in order to provide as soon as possible an additional 500 openings in halfway houses for low-risk inmates with pending paroles. The House passed HCR 52 on Feb. 11.