

SUBJECT: Regulating out-of-state inmates in Texas correctional facilities

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Hightower, Allen, Gray, Hupp, Serna
0 nays
4 absent — Alexander, Edwards, Farrar, Marchant

WITNESSES: For — None
Against — None
On — Jack E. Crump, Texas Commission on Jail Standards; Carl Reynolds, Texas Board of Criminal Justice

BACKGROUND : The Texas Commission on Jail Standards (TCJS) regulates and oversees county jails in Texas and city jails operated by private companies. In an effort to fill empty jail beds local correctional facilities began contracting in late 1995 with other states to house their inmates. Texas jails now house about 5,000 out-of-state inmates.

DIGEST: CSHB 3254 would establish regulations for the housing of out-of-state inmates in correctional facilities in Texas.

CSHB 3254 would prohibit any entity except the state, counties, cities and private companies operating a facility under a contract with a county or city from housing out-of-state inmates. Private entities not associated with a city or county could not contract with another state to house out-of-state inmates.

Counties and cities could enter into contracts to house out-of-state inmates only if: (1) the county or city gave the TCJS a statement of the type and availability of capacity that would be used to house the inmates and a written plan explaining procedures to deal with riots, rebellions, escapes or other emergency situations; and (2) TCJS inspected the facility, reviewed the written plan, and determined that the facility was proper for housing the inmates.

City and county contracts to house out-of-state inmates would have to meet the following criteria:

- require facilities to meet TCJS minimum standards;
- require inmates to be released from custody in the state that sent them; and
- require the facility to review the out-of-state inmate's records for compliance with TCJS standards concerning the sending state's classification of the inmates, the inmate's conduct while confined in the sending state and medical information, including certification of tuberculosis screening or treatment.

The custody level for out-of-state inmates would have to be determined by the facility receiving the inmates in accordance with TCJS rules. Facilities housing out-of-state inmates would be entitled to terminate at will a contract if it gave the sending state 90 days notice.

Texas facilities could not accept inmates with a record of institutional violence involving the use of a deadly weapon or a pattern of violence while in custody in the sending state or a record of escape or attempted escape.

TCJS would be authorized to require a state sending inmates to Texas or an entity housing out-of-state inmates to reimburse Texas for costs incurred in responding to a riot, escape or other emergency at the facility.

Counties, cities, or private vendors would have to:

- send the commission a copy of their contract to house out-of-state inmates;
- require all employees to be certified as required by the Commission on Law Enforcement Officer Standards and Education;
- submit to inspections by TCJS; and
- immediately notify TCJS of any riot, rebellion, escape or other emergency situation.

TCJS would be authorized to adopt rules regulating the number of federal prisoners and prisoners from jurisdictions other than Texas who are housed in county or city jails or a private facility operated under contract with a city or county. TCJS would be authorized to adopt rules regulating these

facilities as necessary to protect the health and safety of out-of-state prisoners, Texas prisoners, jail personnel and the public.

CSHB 3254 would not apply to facilities, other than county jails, that house only federal prisoners under a contract between the federal government and a county, city or private vendor. If a county, city or private vendor contracted to house or began to house state, county, or city prisoners or prisoners from another state, it would be required to report to TCJS before putting the inmates in a facility housing only federal prisoners.

CSHB 3254 would repeal a current provision authorizing the Texas Department of Criminal Justice to adopt rules regulating the number of federal prisoners and prisoners from other jurisdictions other than Texas in a county jails.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 3254 would close a loophole in state law that allowed some private correctional facilities to escape regulatory oversight and would allow only the state, cities, counties or private vendors operating under the authority of a city or county to contract to house out-of-state inmates. The bill also would clearly state TCJS's authority to oversee facilities housing out-of-state inmates. In addition the bill would conform the law to an attorney general's opinion concerning private jail facilities, establish uniform requirements for contracts to house out-of-state inmates and codify many current policies of Texas Commission on Jail Standards concerning those contracts.

CSHB 3254 would correct an undesirable situation in which correctional facilities that are purely private and not operating through any other governmental unit escape oversight authority. The TCJS oversees county jails operated by the counties or through private vendors. It also oversees municipal jails that contract with private vendors. The Texas Department of Criminal Justice has authority over private vendors with which it contacts, and private facilities that contract to hold federal prisoners are overseen by the federal government. However, there no entity charged with overseeing purely private facilities that contract with another states to hold out-of-state prisoners. CSHB 3254 would correct this situation by requiring that all

private correctional facilities, except those holding federal prisoners, operate through a contract with the state, counties or cities. While none of these purely private facilities exist currently, CSHB 3254 would ensure that they do not spring up in the future.

CSHB 3254 also would codify many current TCJS policies governing jails housing out-of-state inmates. These are reasonable, prudent policies that would help ensure the safety of Texans. For example, contracts to house out-of-state inmates would have to be sent to TCJS, and the facilities would have to submit to inspections by the commission. CSHB 3254 would require that contracts to house out-of-state inmates require inmates to be released in the state that sent them and that inmate health records be reviewed for compliance with state standards. In addition, facilities would have to develop plans to deal with emergencies and notify the state about an escape or other emergency situation. The commission would be able to charge the sending state or the facility for state assistance in an emergency situation. Although TCJS policies cover many of these areas, CSHB 3245 would strengthen them by making them law and ensure that they could be changed only by the Legislature.

CSHB 3254 would prohibit facilities from accepting out-of-state inmates with records of violence while incarcerated or escape. This would ensure that the state does not become a dumping ground for other state's undesirable inmates. Allowing this policy to be waived, as some have suggested, would thwart the goal of having a uniform, statewide policy against accepting these violent or dangerous inmates and could jeopardize public safety. Without this policy there is no guarantee violent inmates or those with a history of escape would not be sent to Texas. Even though other states may be willing to pay more for Texas facilities to house these, the money would not be worth jeopardizing public safety.

Private facilities that hold federal prisoners would remain under federal oversight, and those that house prisoners through a contract with the Texas Department of Criminal Justice would be subject to the department's regulation.

The bill would repeal a current provision that authorizes the Texas Department of Criminal Justice to adopt rules regulating the number of

federal prisoners and prisoners from other jurisdictions other than Texas in a county jails. This authority has never been used and is more properly vested with the TCJS.

OPPONENTS
SAY:

CSHB 3254 could go too far in codifying current policies and rules of the TCJS. The commission should retain the flexibility to govern contracts concerning out-of-state inmates without unnecessary statutory restrictions.

CSHB 3254 should include a process for waiving certain requirements. For example, if the TCJS determined that a facility could handle out-of-state inmates with records of violence, it should be able to waive the prohibition against accepting this type of inmate. To absolutely prohibit facilities from housing one type of inmates could infringe on local control of correctional facilities. These facilities housed all types of state felons during the jail overcrowding crises, and some were extremely secure facilities built to house violent inmates. Allowing these facilities to be used, instead of being moth balled, would help counties meet their financial obligations, especially since they could be paid a higher rate by other states to house this type of inmate. In addition, it is in the state's interest to keep these facilities operating so that they can be used for local or state prisoners if necessary.

OTHER
OPPONENTS
SAY:

CSHB 3254 should include a provision allowing TCJS to impose a fee on private vendors operating facilities housing out-of-state inmates to compensate the commission for the cost of regulating and providing technical assistance to the facility.

NOTES:

The committee substitute deleted a provision in the original version of the bill that would have allowed the TCJS to waive the requirement that facilities not accept inmates with records of institutional violence involving the use of a deadly weapon or a pattern of violence while in the sending state or a record of escape or escape attempts.

The companion bill, SB 1009 by Whitmire, has been referred to the Senate Criminal Justice Committee.