

SUBJECT: Medically recommended intensive supervision of inmates

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Allen, Hopson, Alonzo, Farrar, Haggerty, Mabry, Stick
0 nays

WITNESSES: For — (*Registered, but did not testify:*) Ann del Llano, A.C.L.U of Texas; Larry Jackson, No More Victims, Inc.; Elizabeth Joblin, Texas Inmate Families Association; Lisa Luna, Texas Inmate Families Association; Ana Yanez-Correa, League of United Latin American Citizens

Against — None

On — Dee Kifowit, Texas Council on Offenders with Mental Impairments

BACKGROUND: Government Code, sec. 508.146, allows certain inmates to be released from prison on medically recommended intensive supervision (MRIS) before they would be eligible for regular parole under sec. 508.145(f), if the following conditions are met:

- the Texas Council on Offenders with Mental Impairments (TCOMI), in cooperation with the Correctional Managed Health Care Committee (CMHCC), identifies the inmate as being elderly, physically handicapped, mentally ill, terminally ill, mentally retarded, or having a condition requiring long-term care;
- the parole panel determines that, based on the inmate's condition and a medical evaluation, the inmate does not constitute a threat to public safety; and
- TCOMI, in cooperation with the pardons and paroles division, has prepared a medically recommended intensive supervision plan that requires the inmate to submit to electronic monitoring, places the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate.

A parole panel must require as a condition of release that the offender remain under the care of a physician and in a medically suitable placement. At least once each quarter, TCOMI must report to the Board of Pardons and Paroles on the offender's medical and placement status. A parole panel can modify the conditions of release and impose any condition, including a condition that the offender reside in a halfway house or community residential facility, based on TCOMI's report.

Government Code, sec. 508.145(f) specifies that certain inmates are eligible for parole after 15 years, or when actual calendar time served plus good conduct time equals one-fourth of the sentence imposed, whichever is less. Only an inmate serving a sentence for which parole eligibility would be determined under sec. 508.145(f) is eligible for MRIS. This excludes any inmate:

- serving a sentence of death or a life sentence for a capital felony, aggravated assault, sexual assault, aggravated kidnaping with intent to sexually abuse the victim, or some instances of first-degree burglary;
- serving a sentence for murder, indecency with a child, aggravated kidnaping, aggravated sexual assault, or aggravated robbery; or
- convicted of using a deadly weapon during the commission of a felony, or convicted of aggravated drug offenses committed within a drug-free zone or with the use of a child.

DIGEST:

CSHB 1670 would make all inmates, except those serving a sentence of death or those who would be required to register as sex offenders upon release, eligible for release on MRIS on a date determined by the parole panel. The bill would require TCOMI to report to the parole panel, rather than the Board of Pardons and Paroles, on the offender's medical and placement status.

The bill would specify that only parole panels composed of the presiding officer of the board and two members appointed to the panel by the presiding officer could make determinations regarding the release of inmates on MRIS. When TCOMI identified an inmate as a candidate for release, TCOMI would have to present to a parole panel relevant information concerning the inmate

and the inmate's potential for release.

CSHB 1670 would repeal Section 2, Chapter 1435, Acts of the 77th Legislature, Regular Session, 2001, which directed the efficient use of the facility designated for MRIS releases.

The bill would take effect on September 1, 2003, and would apply to inmates serving sentences in the institutional division of the Texas Department of Criminal Justice on or after that date, regardless of when the offense for which the sentence was imposed was committed.

**SUPPORTERS
SAY:**

CSHB 1670 would save taxpayer dollars by increasing the pool of offenders eligible for release on MRIS. Incarcerated offenders are not eligible for Medicaid, Medicare, or other federal programs, which means that the state must pay 100 percent of the costs of caring for chronically ill and elderly inmates. Once these offenders are released on parole, they become eligible for Medicaid and other federal programs, which helps defray the state's costs.

This bill would help reduce the financial burden that geriatric and chronically ill inmates place on the criminal justice system. According to CMHCC, healthcare costs for inmates over the age of 55 are approximately \$18 to 20 dollars a day, which is three to four times that of the average inmate. As of August 31, 2002, according to the Criminal Justice Policy Council (CJPC), there were 6,361 offenders confined in TDCJ who were 55 years of age or older. Also, according to CMHCC, the 20 inmates with the highest hospitalization bills in fiscal 2002 cost the state, on average, \$100,000 each. A number of those inmates were on life support ventilators for extended periods of time. Eighteen of those 20 do not qualify for release on MRIS under current law.

CSHB 1670 would help alleviate prison overcrowding. By moving special needs offenders out of prison, it would free up more prison beds for younger, more violent offenders. Assuming that admission and release trends do not change significantly, CJPC projects that demand for prison space will exceed operational capacity by 2,131 beds at the end of fiscal 2003, by 4,755 beds at the end of fiscal 2004, and by 6,865 beds at the end of fiscal 2005, leading to backlogs in county jails as convicted felons await available beds in TDCJ facilities. According to TCOMI, 518 inmates in fiscal 2002 were referred to

parole panels for release to MRIS, and 97 were approved. Even slight increases in those numbers would help TDCJ manage a growing prison population.

Furthermore, CSHB 1670 would be good for inmate families, who would be able to more freely visit and help care for offenders near the end of their lives. They also would be able to ensure that loved ones were receiving the care and medication they needed, which greatly would reduce stress for relatives of offenders. From a humanitarian point of view, corrections facilities are not the best place for persons nearing the end of their lives.

Critically ill inmates often are incapable of causing harm to society if released. In many cases, they either do not have long to live or are on some type of life support which renders them harmless. Recidivism among offenders decreases dramatically as they age and is very low among those age 55 and older.

There would be adequate safeguards under CSHB 1670 to ensure public safety. The parole panel would have to determine that the inmate did not pose a threat to the public, and the offender would have to submit to electronic monitoring and super-intensive supervision. Furthermore, TCOMI would have to give a quarterly report to the parole panel on the offender's status, and the panel could modify the conditions of release if there were any problems, or revoke the offender's parole altogether. CSHB 1670 would not mandate releases but simply would give the parole panel more options.

**OPPONENTS
SAY:**

Offenders who were convicted of felonies and sentenced to prison time should have to serve their sentences, regardless of their age or medical condition. The state should be careful about undermining a court's decision by releasing an offender from prison early. By expanding the net of eligibility, CSHB 1670 would allow the parole panel to grant MRIS to violent offenders who could live for many years and commit future crimes upon their release.

Public safety concerns should trump TDCJ's financial concerns. Violent offenders might be able to fake or exaggerate their medical conditions to ensure their release, which would endanger the public. Furthermore, doctors cannot always accurately predict how dangerous a patient might be in the future.

**OTHER
OPPONENTS
SAY:**

CSHB 1670 would not go far enough. It should include sex offenders in the eligible pool of candidates for MRIS. The parole panel could effectively screen them like any other offender and ensure they would not have the opportunity to re-offend. Including sex offenders would greatly improve the financial benefits of the bill to the state. According to CMHCC, eight of the 20 most costly hospitalized inmates in fiscal 2002 were sex offenders and would not qualify for MRIS even under this bill. Furthermore, many elderly inmates are serving sentences for sex offenses and would be excluded from consideration.

NOTES:

The committee substitute differs from the bill as introduced by excluding an inmate serving a sentence of death from consideration for release MRIS. It also would not require TCOMI to present information regarding the release of an inmate in person to the entire parole panel, and would allow multiple parole panels, rather than just a single panel, to consider MRIS cases.