

SUBJECT: Continuing TDCJ, health care and parole boards, Windham School District

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth
0 nays

WITNESSES: For — Doots Dufour, Diocese of Austin; Marc Levin, Texas Public Policy Foundation, Center for Effective Justice; Caroline Rickaway, Texas Probation Association; Ana Yanez Correa, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Ray Allen, Rodney Thompson Texas Probation Association; Annie Mahoney, Texas Conservative Coalition; John Stuart, National Association of Social Workers (NASW), Texas Chapter;)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; Cindy Eigler, Texas Interfaith Center for Public Policy; Allen Hightower, Correctional Managed Healthcare Committee; Jennifer Jones, Sunset Commission; Brad Livingston, Carey Welebob, April Zamora, Texas Department of Criminal Justice; Peter McGraw, Hogg Foundation for Mental Health; Rissie Owens, Texas Board of Pardons and Paroles; (*Registered, but did not testify*: Bryan Collier, Lannette Linthicum, Angie McCown, Texas Department of Criminal Justice; Tim McDonnell, Bettie Wells, Board of Pardons and Paroles)

BACKGROUND: **Texas Department of Criminal Justice**

The Texas Department of Criminal Justice (TDCJ) operates the state's adult correctional system. The agency is responsible for confining and rehabilitating offenders sentenced to state prisons and state jails, supervising offenders released on parole and mandatory supervision, and assisting local Community Supervision and Corrections (probation) Departments.

As of March 2013, there were about 150,000 offenders incarcerated in TDCJ, and the agency supervised about 87,500 offenders who were on

parole. The agency's operational capacity was 154,775. TDCJ oversees 111 correctional facilities, of which about 16 are private. The agency has about 40,000 employees, of which about 65 percent are correctional officers. TDCJ's estimated general revenue related appropriation for fiscal 2012-13 is \$5.9 billion, of which about 80 percent is used to incarcerate offenders.

The nine-member Texas Board of Criminal Justice governs TDCJ. The governor appoints the members to staggered, six-year terms and appoints the chair of the board. Board members all represent the general public and must represent different areas of the state. The board also serves as the board of trustees for the Windham School District, which provides educational, vocational, and life-skills training programs within TDCJ. The Texas Board of Criminal Justice and the Texas Department of Criminal Justice will be abolished September 1, 2013, unless continued by the Legislature.

Correctional Managed Health Care Committee

The Correctional Managed Health Care Committee develops the state's managed health care plan for delivering health care to prison inmates and establishes the policies and standards for delivering care.

TDCJ contracts with the University of Texas Medical Branch (UTMB) at Galveston and the Texas Tech University Health Sciences Center (TTUHSC) to provide the statewide managed care network which provides medical, dental, and psychiatric services to inmates. UTMB's contract covers about 80 percent of the state's about 150,800 inmates, and TTUHSC's contract covers the rest. TDCJ also has a contract with a Huntsville hospital that covers certain services for a small number of offenders.

The committee was established by the Legislature in 1993 to develop and launch a managed health care system for inmates, to act as an intermediary to contract for the care, to develop a health plan for offenders, to monitor care, and to address complaints. In 2011, the 82nd Legislature transferred to TDCJ the committee's responsibility for contracting with the care providers.

The committee has six members: a representative from TDCJ, one physician each from UTMB and TTUHSC; two public members appointed

by the governor who serve four-year terms; and the State Medicaid Director, who is an ex-officio, non-voting member. The governor designates the chair, who must be a public member who also is a physician. Non-public members serve at the will of their appointing agency.

The committee is funded with general revenue, through a strategy in TDCJ's budget, and spends about \$639,000 annually on its administration. It has three employees and receives administrative support from UTMB. The state is expected to spend an estimated \$902.3 million in general revenue in fiscal 2012-13 on inmate health care. The committee is subject to the Sunset Act and must be reviewed with TDCJ but does not have a specific abolishment date.

Board of Pardons and Paroles

Texas Constitution, Art. 4, sec. 11 requires the Legislature to establish a Board of Pardons and Paroles (BPP). Government Code, sec. 508 establishes a seven-member board appointed by the governor with the advice and consent of the Senate. Members are full time and salaried and serve staggered, six-year terms, with the governor designating the presiding officer.

The board shares responsibility for the parole system with the parole division of TDCJ. The board, along with 12 full-time parole commissioners whom it hires, usually works in panels of three to determine which inmates are released on parole and discretionary mandatory supervision, a type of parole supervision, and to determine the conditions of parole and mandatory supervision. The board also makes decisions about revoking parole and mandatory supervision, reviews requests for clemency, and makes clemency recommendation to the governor. TDCJ's parole division supervises parolees after they have been released.

The board has about 600 staff and in fiscal 2012-13 received about \$51.4 million in general revenue.

Because the BPP is established in the Constitution, it cannot be abolished by statute but only by a constitutional amendment. However, it is subject to review under the Sunset Act and must be reviewed with TDCJ.

Windham School District

Windham School District provides educational, vocational and life-skills training programs within TDCJ. The TDCJ board serves as Windham's board of trustees, overseeing the districts and hiring the superintendent.

Windham has about 1,100 staff, including teachers, principals, counselors, college-level instructors, administrators, and support staff. The staff works at a central office in Huntsville and in 86 TDCJ units throughout the state. About 63,000 offenders participated in Windham's programs in fiscal 2011-12.

In fiscal 2011 Windham received about \$80 million in total revenue, with \$65.3 million coming from the Foundation School Program and being passed through the Texas Education Agency.

The 82nd Legislature placed Windham under a special purpose review of its structure, management, and operations to be conducted as part of TDCJ's Sunset review.

DIGEST:

CSHB 2289 would continue the Texas Department of Criminal Justice and the Texas Board of Criminal Justice until September 1, 2021, and would revise laws dealing with the Correctional Managed Health Care Committee, the Board of Pardons and Paroles, and the Windham School District. These revisions would include:

- expanding the components of the offender reentry plan and requiring TDCJ to adopt the plan;
- requiring TDCJ to adopt a standardized risk and needs assessment instrument for offenders;
- establishing requirements for individual treatment plans for inmates;
- requiring TDCJ to establish case management committees to assess inmates;
- requiring TDCJ to establish a standard grant making process for probation funding and studying the feasibility of performance-based grants;
- revising the procedures for handling victim impact statements;
- changing the structure of the Correctional Managed Health Committee and revising the duties of the committee and TDCJ as they relate to inmate health care;

- revising the decision making procedures of the Board of Pardons and Paroles to require explanations to offenders for decisions, to require the establishment and maintenance of parole approval rates for the parole guidelines, and to establish peer review panels to examine voting patterns; and
- requiring Windham School District to evaluate the effectiveness of its programs.

The bill would take effect September 1, 2013.

Texas Department of Criminal Justice

Offender reentry. TDCJ would be required to adopt the comprehensive reentry and reintegration plan that it currently is required to develop. The bill would expand the mandatory elements of the plan, including requiring it to:

- incorporate the risk and needs assessment required by the bill;
- identify transition services provided by TDCJ;
- coordinate reentry services through state and volunteer programs;
- collect and maintain data about inmates who received and did not receive reentry services; and
- evaluate the effective of reentry and reintegration services by reporting data, including recidivism information.

TDCJ would have to adopt the comprehensive plan by January 1, 2014. A currently required report on recidivism and the reentry and reintegration plan would be eliminated.

TDCJ would have to work with the Board of Pardons and Paroles and the Windham School District to establish the role of each entity in providing reentry and reintegration services. The comprehensive reentry plan would have to include the responsibilities of each entity.

TDCJ would have to regularly evaluate the plan and update it at least every three years. The evaluation of the plan would have to delivered to legislative leaders by September 1 of even-numbered years, beginning in 2016.

CSHB 2289 would expand the membership of the 22 member state reentry

task force, currently coordinated by TDCJ and the Office of Court Administration, to include additional representatives of state, criminal justice, and local entities.

The current duties that the task force is authorized to undertake would become mandatory, and it would be given additional duties relating to identifying the task force's goals, a timeline for achieving the goals, and the responsibilities of its members.

Risk and needs assessment instrument. TDCJ would be required to adopt a standardized instrument to assess the risk and needs of offenders in the criminal justice system based on criminogenic factors. TDCJ would have to implement the instrument by January 1, 2015.

The instrument would have to be made available to local community supervision departments. TDCJ would have to require local community supervision departments to use the risk and needs assessment when placing persons on probation and when required by an offender's reentry and reintegration plan.

Individual treatment plan. CSHB 2289 would establish requirements for the plans that TDCJ creates for individual inmates and formally name the plans "individual treatment plans". The plans would have to include a record of inmates' participation in programs, results of any assessments of the inmate, and inmates' treatment and programming needs. The plans would have to be reviewed and updated annually. Before being paroled, inmates would have to agree to participate in the programs and activities described by the plans.

Case management committee. Each TDCJ facility would be required to establish a case management committee to assess inmates and ensure they were receiving appropriate services or participating in appropriate programs. The committees would have to review inmates' individual treatment plans, discuss them with inmates, and meet with inmates when they were initially placed in facilities and if they were reclassified based on refusal to participate in a program. Committees would have to be established by October 1, 2013.

Probation grant formulas. CSHB 2289 would require TDCJ's Community Justice Assistance Division (CJAD) to establish goals for each grant program and a process for making grants to local probation departments.

CJAD would have to establish a process for appealing decisions about grant applications. The division also would have to monitor grant performance and make certain information available to the public. TDCJ would have to comply with these requirements by January 1, 2014.

CJAD would have to review its funding formulas, study the feasibility of adopting performance-based funding formulas, and make recommendations for changes to current formulas. The review would have to include whether the formulas should consider offenders' risk level or other factors. By January 1, 2017, CJAD would have to include information from the study in reports that it currently is required to produce.

Victim impact statements. TDCJ's victim services division would have to develop recommendations to ensure that completed victim impact statements were submitted to TDCJ. The recommendations would have to be developed by January 1, 2014.

Courts would be required to inquire whether a victim impact statement had been returned to the prosecutor. Prosecutors, instead of the local victim assistance coordinator, would be required to make the statements available to the court, upon inquiry. If a person were put on probation, prosecutors, instead of courts, would be required to forward victim impact statements to local probation departments.

Information about whether a victim impact statement was returned to a prosecutor would be added to the things that courts should include in their judgments.

Correctional managed health care

The Correctional Managed Health Care Committee would be expanded from five to nine voting members. The four new members would be appointed by the governor for four-year terms and would be:

- two physicians who were employed by a medical school other than The University of Texas Medical Branch at Galveston or the Texas Tech University Health Science Center; and
- two members who were licensed mental health professionals.

After the four-year term of the two physicians ended, the governor would be required to use an alphabetical list of the state's medical schools to appoint two members from the next two medical schools that alphabetically follow the names of the schools employing the vacating members. The governor would have to make the appointments of the new members by January 31, 2014.

The bill would revise the duties of the CMHCC and transfer some of its duties to TDCJ. Among the duties transferred to TDCJ would be the authority of the committee to enter into certain types of contracts relating to financial consulting services, financial monitoring, and actuarial consulting services.

TDCJ's current authority to contract to implement the managed health care plan would be revised and enumerated. The agency could enter into a contract with any entity for offender health care, including contracting for services and the integration of services into the managed health care provider network.

TDCJ would be required to report quarterly to the LBB and the governor on actual and projected expenditures for correctional managed health, utilization and acuity data, savings realized from contracting with providers other than UTMB and TTHSC. The first report would have to be submitted by the 30th day after the end of the first quarter of fiscal 2014.

Board of Pardons and Paroles (BPP)

Notification of parole decisions. When granting or denying an inmate's release on parole or denying a release on mandatory supervision, parole panels would be required to provide a clear and understandable written explanation of the decision and the reasons for it that related specifically to the inmate. The statement would have to be provided to the inmate and placed in the inmate's file. Parole panels could withhold information that was confidential and was not public information or that the panel considered to possibly jeopardize the health and safety of anyone.

The explanation of parole panels' decisions would apply only to decisions made on or after November 1, 2013.

Parole approval rates. The parole board would be required to establish

and maintain a range of recommended parole approval rates for each category or score within the currently required parole guidelines, which are defined as the basic criteria on which parole decision are made. The board would be required to review and discuss the parole approval rates annually when it reviews its parole guidelines. Modifications to the range of recommended parole approval rates would have to be done in an open meeting.

The bill would eliminate a current requirement that board members and parole commissioners who deviate from the current parole guidelines produce a written statement describing the circumstances of the deviation.

The range of recommended parole rates would have to be established by January 1, 2014.

Peer review panels. The parole board would be required to conduct an annual review of the voting patterns of each regional office and individual parole panel members to identify those with parole approval rates that deviate from the recommended range of rates for a category or score by more than 5 percent.

The board would have to develop and implement a peer review process. Under this process, panels would have to review the parole decisions of a regional office that deviated from the range of recommended parole approval rates. The chair of the board would have to designate the peer review panel from among the board members and parole commissioners.

The review panels would have to determine whether deviations were justified or indicated a need for additional training, a reexamination of the parole guidelines, or a modification of the range of recommended parole approval rates. The panels also would have to make recommendations to the regional offices being reviewed so the office could more accurately align its approval rates with the range of recommended approval rates.

The peer review process would have to be implemented by January 1, 2014.

Parole hearing. CSHB 2289 would allow the parole board to delegate hearings, but not parole determinations, to hearings officers.

Windham School District

CSHB 2289 would require Windham to evaluate the effectiveness of its programs. It would have to compile and analyze information about each of its programs, including performance-based information and data about its academic, vocational training, and life skills programs. The information would have to include, for each person who participated in Windham programs, an evaluation of disciplinary violations while incarcerated, subsequent arrests, convictions, confinements, costs of confinement, and education achievements. Windham would have to use the information to evaluate whether its programs met its goals and to make necessary changes.

CSHB 2289 would make the Windham School District subject to Sunset review and would require that it be reviewed when TDCJ was reviewed.

SUPPORTERS SAY:

TDCJ should be continued for another eight years because no other entity could perform the agency's jobs of confining offenders, providing educational and rehabilitation programs to inmates, managing parolees, assisting local probation departments, and contracting for inmate health care. The state has an ongoing need to protect public safety by performing these tasks.

CSHB 2289 would continue the TDCJ for eight years, instead of the standard 12 years. The size and complexity of the agency and the changes made to treatment and diversion programs in recent years warrant a more frequent review than the standard Sunset recommendation. CSHB 2289 also would require the Correctional Managed Health Care Committee, the Parole Board, and the Windham School District to be reviewed in eight years with TDCJ so the entire adult system can be reviewed comprehensively. A review done sooner than eight years might be of limited usefulness, as the changes in CSHB 2289 might not have had enough time to be fully implemented and evaluated.

Texas Department of Criminal Justice

Offender reentry. CSHB 2289 would address problems with a lack of focus and coordination in TDCJ's efforts to aid the reintegration into society of the about 75,000 offenders released each year. In 2009, the Legislature required TDCJ to develop a comprehensive reentry plan and to evaluate the plan's impact on offender recidivism, and it established a

reentry task force to examine the challenges of reentry. CSHB 2289 would flesh out those laws by requiring TDCJ to adopt a formal plan, establishing specific requirements for the plan, and requiring regular evaluation and updates of the plan.

CSHB 2289 would improve reentry services for individual inmates, which could reduce recidivism. For example, TDCJ would be required to identify transition services for offenders, coordinate services through state and volunteer programs, and collect data relating to reentry.

CSHB 2289 would expand the membership of TDCJ's reentry task force to include numerous entities involved with offenders and the criminal justice system. Expanded representation would ensure that the committee was a forum for all stake holders. The bill would focus and clarify the work of the task force by requiring it to identify its goals, the responsibilities of its members, and more.

Risk and needs assessment instrument. CSHB 2249 would address the current problem of TDCJ performing several fragmented assessments at different times by requiring the agency to adopt and use one consistent risk and needs assessment tool from probation through parole. TDCJ has been pursuing the use of a unified risk assessment instrument, and CSHB 2249 would help formalize this decision.

Individual treatment plan. The requirements in CSHB 2249 to upgrade offender treatment plans would result in better treatment and programming for inmates which could increase inmates' success when reentering society.

Case management committees. CSHB 2289's requirement to establish case management committees would be a natural extension of the current unit classification committees. The bill would ensure that a committee at each unit worked to direct the placement of offenders in education and rehabilitation programs. Having the committees review individual treatment plans and discuss them with offenders should improve offender management, which could result in better rehabilitation.

Probation grant formulas. CSHB 2289 would address the lack of statutory framework for TDCJ's probation grant system by requiring the agency to implement standard grant processes. The bill also would move the grant process toward performance-based funding by having TDCJ

study its feasibility.

Victim impact statements. CSHB 2289 would improve the process for considering victims' input by clarifying who was responsible for making victim impact statements available to courts, TDCJ, and probation departments. The bill would require courts to inquire about the statements to ensure that courts received this important information.

Correctional managed health care

CSHB 2289 would expand the Correctional Managed Health Care committee so that representatives from the state's medical schools could rotate through committee seats and so that the mental health community was adequately represented. This diverse expertise would improve the ability of the committee to perform its duties. The University of Texas Medical Branch and the Texas Tech University Health Sciences Center would retain seats on the committee due to their decade of experience in providing health care to the majority of offenders.

CSHB 2289 would clarify and formalize the current system of providing inmate health care with the Correctional Managed Health Care Committee developing the managed health care plan and TDCJ contracting with providers. The bill would clarify that TDCJ could contract with any entity to provide the care and would transfer to TDCJ some of the other committee duties that dovetail with contracting.

Retaining the committee, instead of giving all its duties to TDCJ, would ensure that the state continues to deliver inmate health care in a way that meets its duty to maintain a constitutional prison health care system and avoids costly litigation.

Board of Pardons and Paroles

Notification of parole decisions. CSHB 2289 would improve the information given to offenders who are denied parole so that they might better understand what steps could be taken to better their rehabilitation and their chance of parole approval in the future. In many cases, the information given to inmates currently is too vague to help offenders know why their parole was denied, including the listing of both possible and actual reasons for the denial of parole. CSHB 2289 would address this problem by requiring the parole board to provide clear and understandable

written explanations of its decision, including reasons that apply directly to the offender.

Parole approval rates. CSHB 1 would include several changes to improve and to monitor the parole decision-making process to increase its reliability, validity, and effectiveness. For example, the bill would require the board to establish and maintain a range of recommended parole approval rates for each parole guideline. This would give the board a tool to examine parole voting to identify whether the guidelines were applied consistently and whether the guidelines or recommended approval rates should be re-examined. Several other states operate on a similar evidence-based driven model.

These changes would not limit parole board or commissioners' discretion, establish any right to parole, or require approval based on recommended approval rates. Parole voting patterns would be examined retrospectively so they would not influence a decision on an individual case.

Peer review panels. The peer review panels established by the bill would give the board another formal way to evaluate its work. A 2010 report showed wide voting variations among members within the current guidelines. The panels would help ensure that the parole guidelines were applied in a consistent manner and could help identify needs for additional training or updating the guidelines. Peer review panels would be more transparent and consistent than the current system and would institutionalize the review system rather than rely on the board chair.

The process established by the bill would not be burdensome for the panels or the board chair because as they would examine only the most significant departures from the guidelines, not all voting decisions, and could analyze a reasonable sample of votes.

Windham School District

Currently, Windham School District does not consistently evaluate its programs and services, making it difficult to know whether it is achieving its goals. CSHB 2289 would require Windham to examine its programs, including by collecting performance-based data. This would allow Windham to make decisions about its structure and programs. It also would allow the Legislature to make an informed decision about whether Windham should continue to provide educational services for inmates or

whether another model should be instituted. Changing this structure now would be premature.

OPPONENTS
SAY:

TDCJ should undergo Sunset review again in 2025, the standard 12-year period. The agency is running well, and the shortened Sunset review periods could distract the agency from its core missions.

Correctional Managed Health Care Committee

The Correctional Managed Health Care Committee should be restructured as a committee of the Texas Board of Criminal Justice, instead of remaining an independent entity. Since TDCJ took over the task of contracting with offender health care providers, there is no need for an independent entity to perform the few remaining duties of the committee. When the state changed to a managed health care system for inmates, it was necessary for CMHCC to have independent staff to develop and launch the new system, but it is no longer needed as an intermediary.

TDCJ could easily integrate the communication, monitoring, reporting, and other duties done by the committee. This change could save the state some of the annual roughly \$673,000 budget for committee staff.

Board of Pardons and Paroles

Notification of parole decisions. The parole board currently gives offenders who are rejected for parole adequate and useful information about why they are rejected. The board has developed a system that provides information efficiently and uniformly and works to revise the system when necessary. Providing individualized information to the offenders could strain the board's resources since it considers about 100,000 cases annually.

Parole approval rates. Requiring the board to establish and maintain recommended approval rates would be an inappropriate way to evaluate parole decisions. Currently, parole guidelines are just one of many tools used by board members and parole commissioners to make decisions. Other information often considered includes case summaries, court information, and victim input. CSHB 2289 could result in expectations about parole decisions based solely on the guidelines and in the approval rates being viewed as a type of quota. This would be inappropriate given that the parole board's function is to act in a purely discretionary way.

Other states' parole boards do not use pre-established approval rates.

Peer review panels. It is unnecessary and inappropriate to require the use of peer review panels. The board currently has an effective system for evaluating voting patterns of members and parole guidelines. Under this system, the board chair regularly receives reports on voting patterns, and the board has a parole guidelines committee to review the guidelines and modify them. This system has resulted in increased parole approval rates and declining parole revocation rates over the last decade, illustrating that the parole guidelines are working well to determine the likelihood of offenders' success on parole. Requiring certain actions by peer review panels for what are purely discretionary decisions would be inappropriate.

OTHER
OPPONENTS
SAY:

TDCJ and the other criminal justice entities should be reviewed every four to six years instead of the eight-year period in CSHB 2289. The complexity of the criminal justice system and the importance of its success in rehabilitating offenders and ensuring public safety warrant more frequent evaluations of these entities.

NOTES:

The companion bill, SB 213 by Whitmire, was reported favorably as substituted by the House Corrections Committee on April 18.