

## **BILL ANALYSIS**

Senate Research Center

S.B. 1009  
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Government Organization  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The legislature created the Texas Commission on Jail Standards (TCJS) in 1975 to develop and enforce minimum standards for county jails and other facilities housing county or out-of-state inmates. Today, TCJS's core mission includes regulating and supporting the management of county jails by developing jail standards, inspecting jails, investigating complaints, and reviewing and approving jail construction and operational plans.

TCJS is subject to the Sunset Act and will be abolished September 1, 2009, unless continued by the legislature. The Sunset review found that the State does have an interest in working collaboratively with counties to ensure proper construction and safe operation of jails, but also found opportunities to improve the agency's operations and better meet the needs of counties and the public.

S.B. 1009 enacts the recommendations of the Sunset Advisory Commission on the TCJS.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Jail Standards (TCJS) in SECTION 6 (Section 511.0071, Government Code) of this bill.

Rulemaking authority is expressly granted to TCJS in SECTION 9 (Section 511.009, Government Code) of this bill.

Rulemaking authority previously granted to TCJS is rescinded in SECTION 13 (Section 511.0071(c), Government Code) of this bill.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 Commission on Jail Standards (TCJS) is subject to Chapter 325 (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, TCJS is abolished and this chapter expires September 1, 2021, rather than September 1, 2009.

SECTION 2. Amends Sections 511.004(g)-(j), Government Code, as follows:

(g) Provides that a person is not eligible for appointment as a public member of TCJS if the person or the person's spouse is registered, certified, or licensed by a regulatory agency, rather than an occupational regulatory agency, in the field of law enforcement.

(h) 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 Subsection (i), rather than providing that to be eligible to take office as a member of TCJS a person appointed to TCJS is required to complete at least one course of a training program that complies with Subsection (i).

(i) Requires that the training program required by Subsection (h) provide information to the person regarding this chapter, rather than the enabling legislation that created TCJS;

the programs, functions, rules, and budget of TCJS; the results of the most recent formal audit of TCJS; the requirements of law relating to open meetings, public information, administrative procedure, and conflicts of interest, rather than the rules of TCJS with an emphasis on the rules that relate to disciplinary and investigatory authority; and any applicable ethics policies adopted by TCJS or the Texas Ethics Commission. Deletes existing text relating to the current budget of TCJS, the results of the most recent formal audit of TCJS, and to laws relating to open meetings, open records, administrative procedure, and conflicts of interest.

(j) Provides that a person appointed to TCJS is entitled to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program required by Subsection (h) regardless of whether attendance at the program occurs before or after the person qualifies for office, rather than for travel expenses incurred in attending the training program required by Subsection (h) as provided by the General Appropriations Act and as if the person were a member of TCJS.

SECTION 3. Amends Section 511.0041(a), Government Code, as follows:

(a) Provides that it is a ground for removal from TCJS if a member does not have at the time of taking office, rather than appointment, the qualifications required by Section 511.004; is ineligible for membership under Section 511.004(g) or 511.0042, rather than violates a prohibition established by Section 511.0042; or is absent from more than half of the regularly scheduled TCJS meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of TCJS.

SECTION 4. Amends Section 511.0042, Government Code, as follows:

Sec. 511.0042. CONFLICT OF INTEREST. (a) Prohibits a person from being a member of TCJS or a TCJS employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person is an officer, employee, or paid consultant of a Texas trade association in the field of county corrections, or the person's spouse is an officer manager, or paid consultant of a Texas trade association in the field of county corrections. Deletes existing text regarding membership on or employment by TCJS.

(b) Defines "Texas trade association."

(c) Redesignates Subsection (d) as Subsection (c). Prohibits a person from being, rather than serving as, a member of TCJS or acting as the general counsel to TCJS if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists) because of the person's activities for compensation on behalf of a profession related to the operation of TCJS.

SECTION 5. Amends Chapter 511, Government Code, by adding Section 511.0061, as follows:

Sec. 511.0061. USE OF TECHNOLOGY. Requires TCJS to implement a policy requiring TCJS to use appropriate technological solutions to improve TCJS's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TCJS on the Internet.

SECTION 6. Amends Section 511.0071, Government Code, by amending Subsections (a), (d), (e), and (f), and adding Subsection (a-1), as follows:

(a) Authorizes TCJS to prepare information of public interest describing the functions of TCJS and TCJS's procedures by which complaints regarding TCJS and complaints regarding jails under TCJS's jurisdiction are filed with and resolved by TCJS. Requires TCJS to make the information available to the public, inmates, county officials, and appropriate state agencies, and on any publicly accessible Internet website maintained by TCJS.

(a-1) Requires TCJS to adopt rules and procedures regarding the receipt, investigation, resolution, and disclosure to the public of complaints regarding TCJS and complaints regarding jails under TCJS jurisdiction that are filed with TCJS. Requires TCJS to prescribe a form or forms on which written complaints regarding TCJS and complaints regarding jails under TCJS jurisdiction are authorized to be filed with TCJS; keep an information file in accordance with Subsection (f) regarding each complaint filed with TCJS regarding TCJS or a jail under TCJS jurisdiction; develop procedures for prioritizing complaints filed with TCJS and a reasonable time frame for responding to those complaints; maintain a system for promptly and efficiently acting on complaints filed with TCJS; develop a procedure for tracking and analyzing all complaints filed with TCJS, according to criteria that must include the reason for or origin of complaints, the average number of days that elapse between the date on which complaints are filed, the date on which TCJS first investigates or otherwise responds to complaints, and the date on which complaints are resolved, the outcome of investigations or the resolution of complaints, including dismissals and TCJS actions resulting from complaints, the number of pending complaints at the close of each fiscal year, and a list of complaint topics that TCJS does not have jurisdiction to investigate or resolve; and regularly prepare and distribute to members of TCJS a report containing a summary of the information compiled under Subdivision (5).

(d) Deletes existing text requiring TCJS to keep an information file about certain complaints. Requires TCJS to adopt rules and procedures regarding the referral of a complaint filed with TCJS from or related to a prisoner to the appropriate local agency for investigation and resolution, rather than requiring TCJS to refer such a complaint to the appropriate local agency for investigation or resolution. Authorizes TCJS to perform a special inspection of a facility named in the complaint to determine compliance with TCJS requirements.

(e) Provides that this subsection (requiring that if a written complaint is filed with TCJS that TCJS has authority to resolve, TCJS at least quarterly and until final disposition of the complaint is required to notify the parties to the complaint of the status of the complaint, unless the notice would jeopardize an undercover investigation) does not apply to a complaint referred to a local agency under Subsection (d).

(f) Requires TCJS to collect and maintain information about each complaint received by TCJS regarding TCJS or a jail under TCJS jurisdiction.

SECTION 7. Amends Section 511.008(e), Government Code, to require TCJS to develop and implement policies that clearly separate the policymaking responsibilities of TCJS and the management responsibilities of the executive director and the staff of TCJS, rather than that clearly define the respective responsibilities of TCJS and the staff of TCJS.

SECTION 8. Amends Chapter 511, Government Code, by adding Section 511.0085, as follows:

Sec. 511.0085. RISK FACTORS; RISK ASSESSMENT PLAN. (a) Requires TCJS to develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under TCJS jurisdiction. Requires that the set of risk factors include a history of the jail's compliance with state law and TCJS rules, standards, and procedures; the population of the jail; the number and nature of complaints regarding the jail, including complaints regarding a violation of any required ratio of correctional officers to inmates; problems with the jail's internal grievance procedures, available mental and medical health reports relating to inmates in the jail, including reports relating to infectious disease or pregnant inmates; recent turnover among sheriffs and jail staff, inmate escapes from the jail; the number and nature of inmate deaths at the jail, including the results of the investigations of those deaths; and whether the jail is in compliance with TCJS rules, standards developed by the Texas Correctional Office on Offenders with Medical or Mental Impairments, and the requirements of Article 16.22 (Examination and Transfer of Defendant Suspected of Having Mental Illness or Mental Retardation), Code of Criminal Procedure, regarding screening and assessment protocols for the early identification of and reports concerning persons with mental illness.

(b) Requires TCJS to use the set of risk factors developed under Subsection (a) to guide the inspections process for all jails under TCJS jurisdiction by establishing a risk assessment plan to use in assessing the overall risk level of each jail, and regularly monitoring the overall risk level of each jail.

SECTION 9. Amends Section 511.009(a), Government Code, as follows:

(a) Requires TCJS to 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; adopt a policy for gathering and distributing to jails under TCJS' jurisdiction information regarding common issues concerning jail administration, examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of TCJS, and solutions to operational challenges for jails; report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure; adopt reasonable rules and procedures establishing minimum requirements for jails to determine if a prisoner is pregnant and ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant; and provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under TCJS's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety. Deletes existing text requiring TCJS to adopt a policy for gathering and distributing to jails under TCJS' jurisdiction information regarding solutions to operational challenges for jails based on the jail's history of compliance with TCJS standards and other high-risk factors identified by TCJS.

SECTION 10. Amends Section 511.0101(a), Government Code, to require each county to submit to TCJS on or before the fifth day of each month a report containing certain information, including the total number of prisoners who were confined in the county jail during the preceding month, based on a count conducted on each day of that month, who were known or had been determined to be pregnant. Makes nonsubstantive changes.

SECTION 11. Amends Chapter 511, Government Code, by adding Section 511.0115, as follows:

Sec. 511.0115. PUBLIC INFORMATION ABOUT COMPLIANCE STATUS OF JAILS. Requires TCJS to provide information to the public concerning whether the jails under TCJS jurisdiction are in compliance with state law and the rules, standards, and procedures of TCJS, on any publicly accessible Internet website maintain by TCJS; and through other formats, including newsletters or press releases, as determined by TCJS.

SECTION 12. Amends Chapter 511, Government Code, by adding Section 511.018, as follows:

Section. 511.018. ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TCJS to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of TCJS rules, and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for use by Governmental Bodies) to assist in the resolution of internal and external disputes under TCJS jurisdiction.

(b) Provides that TCJS procedures relating to alternative dispute resolution are required to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TCJS to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative

dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by TCJS.

SECTION 13. Repealer: Section 511.0071(c) (relating to TCJS establishing methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of TCJS for the purpose of directing complaints to TCJS), Government Code.

SECTION 14. Provides that the change in law made by Section 511.004(h), Government Code, as amended by this Act, regarding training for members of TCJS does not affect the entitlement of a member serving on TCJS immediately before September 1, 2009, to continue to serve and function as a member of TCJS for the remainder of the member's term, unless otherwise removed as provided by law. Provides that the change in law described by Section 511.004(h), Government Code, applies only to a member appointed or reappointed on or after September 1, 2009.

SECTION 15. Provides that the changes in law made by this Act in the prohibitions or qualifications applying to a member of TCJS do not affect the entitlement of a member serving on TCJS immediately before September 1, 2009, to continue to serve and function as a member of TCJS for the remainder of the member's term, unless otherwise removed as provided by law. Provides that those changes in law apply only to a member appointed on or after September 1, 2009.

SECTION 16. Effective date: September 1, 2009.