

BILL ANALYSIS

H.B. 1326
By: Hope
Judiciary
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Recent decisions in state and federal courts have increased the concern of district and county court at law judges regarding liability for incidents or activities involving community supervision and correction departments (CSCDs).

In *Hardin County Supervision and Corrections Department v. Sullivan and Broughton*, decided by the Austin Court of Appeals on March 20, 2003, the court held that in an age discrimination suit brought by several probation officers under Chapter 21 of the Texas Labor Code, the district judges and not the director of a CSCD constituted the employer of the plaintiffs and were thus the proper defendants in the lawsuit.

In *Alexander, et al. v. Tarrant County, et al.*, No. Civ.A.403CV1280Y, decided in the U.S. District Court, N.D. Tex. on August 23, 2003, the court ruled in a case involving the death of a prisoner in the custody of a CSCD that the defendant judges were not entitled to immunity for the performance of their administrative tasks pertaining to the CSCD.

The U.S. Supreme Court has distinguished acts of judges as administrative or judicial in nature and has held that a judge cannot claim judicial immunity for acts deemed administrative. See *Forrester v. White*, 108 U.S. 538 (1988).

HB 1326 would remove the district and county court at law judges from the management and operation of CSCDs. All operation and management decisions would become the responsibility of the director of each CSCD.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill changes the duties of the judges establishing a CSCD from employing personnel to approving a budget and community justice plan. Statutory county court judges trying criminal cases are given this responsibility in addition to district judges.

The bill makes a specific grant of immunity for such judges in suits arising out of actions by a CSCD or its director or a fiscal officer.

The bill sets out the duties of the director.

Section 76.002(b), which entitles the judges to participate in the management of the CSCD, is repealed. The authority of the judges to veto the carrying of a weapon by an officer in the discharge of his duties is also repealed.

EFFECTIVE DATE

September 1, 2005