

AN ACT

relating to community supervision and corrections departments and to the immunity of certain judges for administrative acts in connection with those departments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 76.002(a), Government Code, is amended to read as follows:

(a) The district judge or district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district shall:

(1) establish a community supervision and corrections department; and

(2) approve the department's budget and community justice plan [~~employ district personnel as necessary to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities~~].

SECTION 2. Section 76.003(a), Government Code, is amended to read as follows:

(a) A community justice council must be established by the [~~district judge or district~~] judges described by Section 76.002 who are [~~in each jurisdiction~~] served by a department, unless a board or

1 council that was in existence on September 1, 1991, is performing
2 duties substantially similar to those imposed on a community
3 justice council under this section. The council shall provide
4 continuing policy guidance and direction for the development of
5 community justice plans and community corrections facilities,
6 ~~and~~ programs, and conditions of community supervision.

7 SECTION 3. Section 76.004, Government Code, is amended to
8 read as follows:

9 Sec. 76.004. DEPARTMENT DIRECTOR; FISCAL OFFICER. (a) The
10 ~~[district judge or]~~ judges described by Section 76.002 shall
11 appoint a department director who must meet, at a minimum, the
12 eligibility requirements for officers established under Section
13 76.005.

14 (a-1) The department director shall perform or delegate the
15 responsibility for performing the following duties:

16 (1) overseeing the daily operations of the department;

17 (2) preparing annually or biennially a budget for the
18 department;

19 (3) negotiating and entering into contracts on behalf
20 of the department;

21 (4) establishing policies and procedures for all
22 functions of the department;

23 (5) developing personnel policies and procedures,
24 including disciplinary proceedings; and

25 (6) establishing procedures and practices through
26 which the department will address an employment-related grievance.

27 (b) The department director shall employ a sufficient

1 number of officers and other employees to conduct presentence
2 investigations, supervise and rehabilitate defendants placed on
3 community supervision, enforce the conditions of community
4 supervision, and staff community corrections facilities. A person
5 employed under this subsection is an employee of the department and
6 not of the judges or judicial districts [~~perform the professional~~
7 ~~and clerical work of the department~~].

8 (c) The [~~district judge or~~] judges described by Section
9 76.002 may appoint for the department a fiscal officer, other than
10 the county auditor. The fiscal officer is responsible for:

11 (1) managing and protecting funds, fees, state aid,
12 and receipts to the same extent that a county auditor manages county
13 funds and funds of other local entities;

14 (2) ensuring that financial transactions of the
15 department are lawful and allowable; and

16 (3) prescribing accounting procedures for the
17 department.

18 (d) The [~~district judge or~~] judges described by Section
19 76.002 may appoint a person as fiscal officer only after
20 investigating the person and determining that the person is:

21 (1) a person of unquestionably good moral character
22 and intelligence; and

23 (2) a financial officer with at least two years'
24 experience in auditing and accounting.

25 (e) A fiscal officer appointed under this section, before
26 beginning employment and not later than the 20th day after the date
27 of appointment, shall:

1 (1) take an oath stating that the person meets the
2 qualifications required by this section and will not have a
3 personal interest in any contract entered into by the department;
4 and

5 (2) execute a good and sufficient surety bond that:

6 (A) is in the amount of \$5,000 or more;

7 (B) is approved by and payable to the [~~district~~
8 ~~judge or~~] judges described by Section 76.002; and

9 (C) is conditioned on the faithful performance by
10 the fiscal officer of the officer's duties.

11 (f) The [~~district judge or~~] judges described by Section
12 76.002 shall set the annual compensation of a fiscal officer
13 appointed under this section, and the department shall pay all
14 costs related to the functions of the fiscal officer.

15 (g) Subsections (c)-(f) do not diminish the rights of the
16 following officers or entities to examine and audit accounts,
17 records, receipts, and expenditures of a department:

18 (1) the county auditor of a county served by the
19 department;

20 (2) the comptroller; [~~and~~]

21 (3) the state auditor; and

22 (4) the division.

23 SECTION 4. Chapter 76, Government Code, is amended by
24 adding Section 76.0045 to read as follows:

25 Sec. 76.0045. JUDICIAL RESPONSIBILITIES; IMMUNITY. (a)
26 The responsibility of a judge described by Section 76.002 for
27 personnel decisions is limited to the appointment of a department

1 director and a fiscal officer.

2 (b) The responsibility of a judge described by Section
3 76.002 for budgetary decisions is limited to:

4 (1) appointment of a fiscal officer; and

5 (2) approval of the department's budget.

6 (c) A judge described by Section 76.002 has judicial
7 immunity in a suit arising from:

8 (1) the performance of a duty described by Section
9 76.002(a); or

10 (2) the appointment of a department director or a
11 fiscal officer or an act or failure to act by a department employee
12 or by a department director or fiscal officer.

13 SECTION 5. Section 76.0051, Government Code, is amended to
14 read as follows:

15 Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. An officer is
16 authorized to carry a weapon while engaged in the actual discharge
17 of the officer's duties only if:

18 (1) the officer possesses a certificate of firearms
19 proficiency issued by the Commission on Law Enforcement Officer
20 Standards and Education under Section 1701.257, Occupations Code
21 [415.038]; and

22 (2) the director of the department agrees [~~and the~~
23 ~~judges participating in the management of the department agree~~] to
24 the authorization.

25 SECTION 6. Section 76.006, Government Code, is amended by
26 amending Subsections (a) and (h) and adding Subsection (j) to read
27 as follows:

1 (a) Except as provided by Subsection (c), department
2 employees are not state employees. The department shall contract
3 for all employee benefits with one county served by the department
4 and designated for that purpose by the [~~district judge or~~] judges
5 described by Section 76.002. To the extent that employee benefits
6 are provided by a county under this subsection, the employees are
7 governed by personnel policies and benefits equal to personnel
8 policies for and benefits of other employees of that county. This
9 subsection does not apply to employee benefits for group insurance
10 and related coverages provided to employees of a department through
11 the group benefits program for state employees under Chapter 1551,
12 Insurance Code.

13 (h) If under Subsection (a) the [~~district judge or~~] judges
14 described by Section 76.002 change the designation of the county
15 providing employee benefits, the [~~district judge or~~] judges may not
16 subsequently change that designation before the 10th anniversary of
17 the date on which the previous designation was made.

18 (j) The attorney general shall defend a statutory county
19 court judge in an action in state or federal court if:

20 (1) the cause of action is the result of the judge
21 performing a duty described by Section 76.002, 76.003, or 76.004;
22 and

23 (2) the judge requests the attorney general's
24 assistance in the defense.

25 SECTION 7. Section 76.009(a), Government Code, is amended
26 to read as follows:

27 (a) The department [~~district judge or judges~~] may expend

1 district funds in order to provide expanded facilities, equipment,
2 and utilities if:

3 (1) the department needs to increase its personnel in
4 order to provide more effective services or to meet workload
5 requirements established under Chapter 509;

6 (2) the county or counties certify to the department
7 director [~~judge or judges~~] that they have neither adequate space in
8 county-owned buildings nor adequate funds to lease additional
9 physical facilities, purchase additional equipment, or pay for
10 additional utilities required by the department; and

11 (3) the county or counties provide facilities,
12 equipment, and utilities at or above the levels required by the
13 division.

14 SECTION 8. Section 76.010(c), Government Code, is amended
15 to read as follows:

16 (c) The department [~~district judge or judges~~] may authorize
17 expenditures of funds provided by the division to the department
18 for the purposes of providing facilities, equipment, and utilities
19 for community corrections facilities or state jail felony
20 facilities if:

21 (1) the community justice council recommends the
22 expenditures; and

23 (2) the division, or the state jail division in the
24 case of a state jail felony facility, provides funds for the purpose
25 of assisting in the establishment or improvement of the facilities.

26 SECTION 9. Sections 509.001(1) and (4), Government Code,
27 are amended to read as follows:

1 (1) "Community corrections facility" means a physical
2 structure, established by the judges described by Section 76.002 [~~a~~
3 ~~judicial district~~] after authorization of the establishment of the
4 structure has been included in the local community justice plan,
5 that is operated by a department or operated for a department by an
6 entity under contract with the department, for the purpose of
7 confining persons placed on community supervision and providing
8 services and programs to modify criminal behavior, deter criminal
9 activity, protect the public, and restore victims of crime. The
10 term includes:

11 (A) a restitution center;

12 (B) a court residential treatment facility;

13 (C) a substance abuse treatment facility;

14 (D) a custody facility or boot camp;

15 (E) a facility for an offender with a mental
16 impairment, as defined by Section 614.001, Health and Safety Code;
17 and

18 (F) an intermediate sanction facility.

19 (4) "State aid" means funds appropriated by the
20 legislature to the division to provide financial assistance to:

21 (A) the judges described by Section 76.002
22 [~~judicial districts,~~] for:

23 (i) a department established by the judges
24 [~~the administration of departments~~];

25 (ii) the development and improvement of
26 community supervision services and community-based correctional
27 programs;

1 (iii) the establishment and operation of
2 community corrections facilities; and

3 (iv) assistance in conforming with
4 standards and policies of the division and the board; and

5 (B) state agencies, counties, municipalities,
6 and nonprofit organizations for the implementation and
7 administration of community-based sanctions and programs.

8 SECTION 10. Section 509.007, Government Code, is amended to
9 read as follows:

10 Sec. 509.007. COMMUNITY JUSTICE PLAN. (a) The division
11 shall require as a condition to payment of state aid to a department
12 or county under Section 509.011 and eligibility for payment of
13 costs under Section 499.124 that a community justice plan be
14 submitted for the department. The community justice council shall
15 submit the plan required by this subsection. A community justice
16 council may not submit a plan under this section unless the plan is
17 first approved by the ~~[district]~~ judges described by Section 76.002
18 who established ~~[manage]~~ the department served by the council. The
19 council shall submit a revised plan to the division each
20 odd-numbered year by a date designated by the division. A plan may
21 be amended at any time with the approval of the division.

22 (b) A community justice plan required under this section
23 must include:

24 (1) a statement of goals and priorities and of
25 commitment by the community justice council, the ~~[district]~~ judges
26 described by Section 76.002 who established ~~[manage]~~ the
27 department, and the department director to achieve a targeted level

1 of alternative sanctions;

2 (2) a description of methods for measuring the success
3 of programs provided by the department or provided by an entity
4 served by the department; and

5 (3) a proposal for the use of state jail felony
6 facilities and, at the discretion of the community justice council,
7 a regional proposal for the construction, operation, maintenance,
8 or management of a state jail felony facility by a county, a
9 community supervision and corrections department, or a private
10 vendor under a contract with a county or a community supervision and
11 corrections department.

12 SECTION 11. Section 509.011(a), Government Code, is amended
13 to read as follows:

14 (a) If the division determines that a department complies
15 with division standards and if the community justice council has
16 [~~department or judges managing the department have~~] submitted a
17 community justice plan under Section 76.003 and the supporting
18 information required by the division and the division determines
19 the plan and supporting information are acceptable, the division
20 shall prepare and submit to the comptroller vouchers for payment to
21 the department as follows:

22 (1) for per capita funding, a per diem amount for each
23 felony defendant directly supervised by the department pursuant to
24 lawful authority;

25 (2) for per capita funding, a per diem amount for a
26 period not to exceed 182 days for each defendant supervised by the
27 department pursuant to lawful authority, other than a felony

1 defendant; and

2 (3) for formula funding, an annual amount as computed
3 by multiplying a percentage determined by the allocation formula
4 established under Subsection (f) times the total amount provided in
5 the General Appropriations Act for payments under this subdivision.

6 SECTION 12. Section 76.002(b), Government Code, is
7 repealed.

8 SECTION 13. The change in law made by Section 76.0045,
9 Government Code, as added by this Act, applies only to an act or
10 failure to act by a judge, a community supervision or corrections
11 department, or a department director that occurs on or after the
12 effective date of this Act. An act or failure to act by a judge, a
13 community supervision and corrections department, or a department
14 director that occurs before the effective date of this Act is
15 governed by the law in effect on the date the act or failure to act
16 occurred, and the former law is continued in effect for that
17 purpose.

18 SECTION 14. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 1326 was passed by the House on March 29, 2005, by the following vote: Yeas 142, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1326 on May 16, 2005, by the following vote: Yeas 138, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1326 was passed by the Senate, with amendments, on May 12, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor