

By: Hope

H.B. No. 1326

A BILL TO BE ENTITLED

AN ACT

1
2 relating to community supervision and corrections departments and
3 to the immunity of certain judges for administrative acts in
4 connection with those departments.

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

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

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

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

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

20 SECTION 2. Chapter 76, Government Code, is amended by
21 adding Section 76.0021 to read as follows:

22 Sec. 76.0021. JUDICIAL IMMUNITY. A judge described by
23 Section 76.002 has judicial immunity in a suit arising from an act
24 or failure to act by a department, a department director, or a

1 fiscal officer.

2 SECTION 3. Section 76.003(a), Government Code, is amended
3 to read as follows:

4 (a) A community justice council must be established by the
5 [~~district judge or district~~] judges described by Section 76.002 in
6 each jurisdiction served by a department, unless a board or council
7 that was in existence on September 1, 1991, is performing duties
8 substantially similar to those imposed on a community justice
9 council under this section. The council shall provide continuing
10 policy guidance and direction for the development of community
11 justice plans and community corrections facilities and programs.

12 SECTION 4. Section 76.004, Government Code, is amended to
13 read as follows:

14 Sec. 76.004. DEPARTMENT DIRECTOR; FISCAL OFFICER. (a) The
15 [~~district judge or~~] judges described by Section 76.002 shall
16 appoint a department director who must meet, at a minimum, the
17 eligibility requirements for officers established under Section
18 76.005.

19 (a-1) The department director shall:

20 (1) oversee the daily operations of the department;

21 (2) prepare annually or biennially a budget for the
22 department;

23 (3) negotiate and enter into contracts on behalf of
24 the department;

25 (4) establish policies and procedures for all
26 functions of the department;

27 (5) develop personnel policies and procedures,

1 including disciplinary proceedings; and

2 (6) establish procedures and practices through which
3 the department will address an employment-related grievance.

4 (b) The department director shall employ a sufficient
5 number of officers and other employees to conduct presentence
6 investigations, supervise and rehabilitate defendants placed on
7 community supervision, enforce the conditions of community
8 supervision, staff community corrections facilities, and perform
9 the professional and clerical work of the department.

10 (c) The [~~district judge or~~] judges described by Section
11 76.002 may appoint for the department a fiscal officer, other than
12 the county auditor. The fiscal officer is responsible for:

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

16 (2) ensuring that financial transactions of the
17 department are lawful and allowable; and

18 (3) prescribing accounting procedures for the
19 department.

20 (d) The [~~district judge or~~] judges described by Section
21 76.002 may appoint a person as fiscal officer only after
22 investigating the person and determining that the person is:

23 (1) a person of unquestionably good moral character
24 and intelligence; and

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

27 (e) A fiscal officer appointed under this section, before

1 beginning employment and not later than the 20th day after the date
2 of appointment, shall:

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

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

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

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

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

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

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

20 (1) the county auditor of a county served by the
21 department;

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

23 (3) the state auditor; and

24 (4) the division.

25 SECTION 5. Section 76.0051, Government Code, is amended to
26 read as follows:

27 Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. An officer is

1 authorized to carry a weapon while engaged in the actual discharge
2 of the officer's duties only if:

3 (1) the officer possesses a certificate of firearms
4 proficiency issued by the Commission on Law Enforcement Officer
5 Standards and Education under Section 1701.257, Occupations Code
6 ~~[415.038]~~; and

7 (2) the director of the department agrees ~~[and the~~
8 ~~judges participating in the management of the department agree]~~ to
9 the authorization.

10 SECTION 6. Sections 76.006(a) and (h), Government Code, are
11 amended to read as follows:

12 (a) Except as provided by Subsection (c), department
13 employees are not state employees. The department shall contract
14 for all employee benefits with one county served by the department
15 and designated for that purpose by the ~~[district judge or]~~ judges
16 described by Section 76.002. To the extent that employee benefits
17 are provided by a county under this subsection, the employees are
18 governed by personnel policies and benefits equal to personnel
19 policies for and benefits of other employees of that county. This
20 subsection does not apply to employee benefits for group insurance
21 and related coverages provided to employees of a department through
22 the group benefits program for state employees under Chapter 1551,
23 Insurance Code.

24 (h) If under Subsection (a) the ~~[district judge or]~~ judges
25 described by Section 76.002 change the designation of the county
26 providing employee benefits, the ~~[district judge or]~~ judges may not
27 subsequently change that designation before the 10th anniversary of

1 the date on which the previous designation was made.

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

4 (a) The [~~district judge or~~] judges described by Section
5 76.002 may expend district funds in order to provide expanded
6 facilities, equipment, and utilities if:

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

10 (2) the county or counties certify to the [~~judge or~~]
11 judges described by Section 76.002 that they have neither adequate
12 space in county-owned buildings nor adequate funds to lease
13 additional physical facilities, purchase additional equipment, or
14 pay for additional utilities required by the department; and

15 (3) the county or counties provide facilities,
16 equipment, and utilities at or above the levels required by the
17 division.

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

20 (c) The [~~district judge or~~] judges described by Section
21 76.002 may authorize expenditures of funds provided by the division
22 to the department for the purposes of providing facilities,
23 equipment, and utilities for community corrections facilities or
24 state jail felony facilities if:

25 (1) the community justice council recommends the
26 expenditures; and

27 (2) the division, or the state jail division in the

1 case of a state jail felony facility, provides funds for the purpose
2 of assisting in the establishment or improvement of the facilities.

3 SECTION 9. Section 509.007, Government Code, is amended to
4 read as follows:

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

17 (b) A community justice plan required under this section
18 must include:

19 (1) a statement of goals and priorities and of
20 commitment by the community justice council, the [~~district~~] judges
21 who established the department and approve the department's budget
22 and community justice plan [~~manage the department~~], and the
23 department to achieve a targeted level of alternative sanctions;

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

27 (3) a proposal for the use of state jail felony

1 facilities and, at the discretion of the community justice council,
2 a regional proposal for the construction, operation, maintenance,
3 or management of a state jail felony facility by a county, a
4 community supervision and corrections department, or a private
5 vendor under a contract with a county or a community supervision and
6 corrections department.

7 SECTION 10. Section 76.002(b), Government Code, is
8 repealed.

9 SECTION 11. The change in law made by Section 76.0021,
10 Government Code, as added by this Act, applies only to an act or
11 failure to act by a judge, a community supervision or corrections
12 department, a department director, or a fiscal officer that occurs
13 on or after the effective date of this Act. An act or failure to act
14 by a judge, a community supervision and corrections department, a
15 department director, or a fiscal officer that occurs before the
16 effective date of this Act is governed by the law in effect on the
17 date the act or failure to act occurred, and the former law is
18 continued in effect for that purpose.

19 SECTION 12. This Act takes effect September 1, 2005.