

1-1 By: Hope, Solis, et al. (Senate Sponsor - Whitmire) H.B. No. 1326
1-2 (In the Senate - Received from the House March 30, 2005;
1-3 April 5, 2005, read first time and referred to Committee on
1-4 Criminal Justice; May 5, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 5, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1326 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to community supervision and corrections departments and
1-11 to the immunity of certain judges for administrative acts in
1-12 connection with those departments.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 76.002(a), Government Code, is amended
1-15 to read as follows:

1-16 (a) The district judge or district judges trying criminal
1-17 cases in each judicial district and the statutory county court
1-18 judges trying criminal cases in the county or counties served by the
1-19 judicial district shall:

1-20 (1) establish a community supervision and corrections
1-21 department; and

1-22 (2) approve the department's budget and community
1-23 justice plan [~~employ district personnel as necessary to conduct~~
1-24 ~~presentence investigations, supervise and rehabilitate defendants~~
1-25 ~~placed on community supervision, enforce the conditions of~~
1-26 ~~community supervision, and staff community corrections~~
1-27 ~~facilities].~~

1-28 SECTION 2. Section 76.003(a), Government Code, is amended
1-29 to read as follows:

1-30 (a) A community justice council must be established by the
1-31 [~~district judge or district~~] judges described by Section 76.002 who
1-32 are [~~in each jurisdiction~~] served by a department, unless a board or
1-33 council that was in existence on September 1, 1991, is performing
1-34 duties substantially similar to those imposed on a community
1-35 justice council under this section. The council shall provide
1-36 continuing policy guidance and direction for the development of
1-37 community justice plans and community corrections facilities,
1-38 [~~and~~] programs, and conditions of community supervision.

1-39 SECTION 3. Section 76.004, Government Code, is amended to
1-40 read as follows:

1-41 Sec. 76.004. DEPARTMENT DIRECTOR; FISCAL OFFICER. (a) The
1-42 [~~district judge or~~] judges described by Section 76.002 shall
1-43 appoint a department director who must meet, at a minimum, the
1-44 eligibility requirements for officers established under Section
1-45 76.005.

1-46 (a-1) The department director shall perform or delegate the
1-47 responsibility for performing the following duties:

1-48 (1) overseeing the daily operations of the department;

1-49 (2) preparing annually or biennially a budget for the
1-50 department;

1-51 (3) negotiating and entering into contracts on behalf
1-52 of the department;

1-53 (4) establishing policies and procedures for all
1-54 functions of the department;

1-55 (5) developing personnel policies and procedures,
1-56 including disciplinary proceedings; and

1-57 (6) establishing procedures and practices through
1-58 which the department will address an employment-related grievance.

1-59 (b) The department director shall employ a sufficient
1-60 number of officers and other employees to conduct presentence
1-61 investigations, supervise and rehabilitate defendants placed on
1-62 community supervision, enforce the conditions of community
1-63 supervision, and staff community corrections facilities. A person

2-1 employed under this subsection is an employee of the department and
2-2 not of the judges or judicial districts ~~[perform the professional~~
2-3 ~~and clerical work of the department]~~.

2-4 (c) The ~~[district judge or]~~ judges described by Section
2-5 76.002 may appoint for the department a fiscal officer, other than
2-6 the county auditor. The fiscal officer is responsible for:

2-7 (1) managing and protecting funds, fees, state aid,
2-8 and receipts to the same extent that a county auditor manages county
2-9 funds and funds of other local entities;

2-10 (2) ensuring that financial transactions of the
2-11 department are lawful and allowable; and

2-12 (3) prescribing accounting procedures for the
2-13 department.

2-14 (d) The ~~[district judge or]~~ judges described by Section
2-15 76.002 may appoint a person as fiscal officer only after
2-16 investigating the person and determining that the person is:

2-17 (1) a person of unquestionably good moral character
2-18 and intelligence; and

2-19 (2) a financial officer with at least two years'
2-20 experience in auditing and accounting.

2-21 (e) A fiscal officer appointed under this section, before
2-22 beginning employment and not later than the 20th day after the date
2-23 of appointment, shall:

2-24 (1) take an oath stating that the person meets the
2-25 qualifications required by this section and will not have a
2-26 personal interest in any contract entered into by the department;
2-27 and

2-28 (2) execute a good and sufficient surety bond that:

2-29 (A) is in the amount of \$5,000 or more;

2-30 (B) is approved by and payable to the ~~[district~~
2-31 ~~judge or]~~ judges described by Section 76.002; and

2-32 (C) is conditioned on the faithful performance by
2-33 the fiscal officer of the officer's duties.

2-34 (f) The ~~[district judge or]~~ judges described by Section
2-35 76.002 shall set the annual compensation of a fiscal officer
2-36 appointed under this section, and the department shall pay all
2-37 costs related to the functions of the fiscal officer.

2-38 (g) Subsections (c)-(f) do not diminish the rights of the
2-39 following officers or entities to examine and audit accounts,
2-40 records, receipts, and expenditures of a department:

2-41 (1) the county auditor of a county served by the
2-42 department;

2-43 (2) the comptroller; ~~and~~

2-44 (3) the state auditor; and

2-45 (4) the division.

2-46 SECTION 4. Chapter 76, Government Code, is amended by
2-47 adding Section 76.0045 to read as follows:

2-48 Sec. 76.0045. JUDICIAL RESPONSIBILITIES; IMMUNITY. (a)
2-49 The responsibility of a judge described by Section 76.002 for
2-50 personnel decisions is limited to the appointment of a department
2-51 director and a fiscal officer.

2-52 (b) The responsibility of a judge described by Section
2-53 76.002 for budgetary decisions is limited to:

2-54 (1) appointment of a fiscal officer; and

2-55 (2) approval of the department's budget.

2-56 (c) A judge described by Section 76.002 has judicial
2-57 immunity in a suit arising from:

2-58 (1) the performance of a duty described by Section
2-59 76.002(a); or

2-60 (2) the appointment of a department director or a
2-61 fiscal officer or an act or failure to act by a department employee
2-62 or by a department director or fiscal officer.

2-63 SECTION 5. Section 76.0051, Government Code, is amended to
2-64 read as follows:

2-65 Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. An officer is
2-66 authorized to carry a weapon while engaged in the actual discharge
2-67 of the officer's duties only if:

2-68 (1) the officer possesses a certificate of firearms
2-69 proficiency issued by the Commission on Law Enforcement Officer

3-1 Standards and Education under Section 1701.257, Occupations Code
3-2 [415.038]; and

3-3 (2) the director of the department agrees [~~and the~~
3-4 ~~judges participating in the management of the department agree~~] to
3-5 the authorization.

3-6 SECTION 6. Section 76.006, Government Code, is amended by
3-7 amending Subsections (a) and (h) and adding Subsection (j) to read
3-8 as follows:

3-9 (a) Except as provided by Subsection (c), department
3-10 employees are not state employees. The department shall contract
3-11 for all employee benefits with one county served by the department
3-12 and designated for that purpose by the [~~district judge or~~] judges
3-13 described by Section 76.002. To the extent that employee benefits
3-14 are provided by a county under this subsection, the employees are
3-15 governed by personnel policies and benefits equal to personnel
3-16 policies for and benefits of other employees of that county. This
3-17 subsection does not apply to employee benefits for group insurance
3-18 and related coverages provided to employees of a department through
3-19 the group benefits program for state employees under Chapter 1551,
3-20 Insurance Code.

3-21 (h) If under Subsection (a) the [~~district judge or~~] judges
3-22 described by Section 76.002 change the designation of the county
3-23 providing employee benefits, the [~~district judge or~~] judges may not
3-24 subsequently change that designation before the 10th anniversary of
3-25 the date on which the previous designation was made.

3-26 (j) The attorney general shall defend a statutory county
3-27 court judge in an action in state or federal court if:

3-28 (1) the cause of action is the result of the judge
3-29 performing a duty described by Section 76.002, 76.003, or 76.004;
3-30 and

3-31 (2) the judge requests the attorney general's
3-32 assistance in the defense.

3-33 SECTION 7. Section 76.009(a), Government Code, is amended
3-34 to read as follows:

3-35 (a) The department [~~district judge or judges~~] may expend
3-36 district funds in order to provide expanded facilities, equipment,
3-37 and utilities if:

3-38 (1) the department needs to increase its personnel in
3-39 order to provide more effective services or to meet workload
3-40 requirements established under Chapter 509;

3-41 (2) the county or counties certify to the department
3-42 director [~~judge or judges~~] that they have neither adequate space in
3-43 county-owned buildings nor adequate funds to lease additional
3-44 physical facilities, purchase additional equipment, or pay for
3-45 additional utilities required by the department; and

3-46 (3) the county or counties provide facilities,
3-47 equipment, and utilities at or above the levels required by the
3-48 division.

3-49 SECTION 8. Section 76.010(c), Government Code, is amended
3-50 to read as follows:

3-51 (c) The department [~~district judge or judges~~] may authorize
3-52 expenditures of funds provided by the division to the department
3-53 for the purposes of providing facilities, equipment, and utilities
3-54 for community corrections facilities or state jail felony
3-55 facilities if:

3-56 (1) the community justice council recommends the
3-57 expenditures; and

3-58 (2) the division, or the state jail division in the
3-59 case of a state jail felony facility, provides funds for the purpose
3-60 of assisting in the establishment or improvement of the facilities.

3-61 SECTION 9. Sections 509.001(1) and (4), Government Code,
3-62 are amended to read as follows:

3-63 (1) "Community corrections facility" means a physical
3-64 structure, established by the judges described by Section 76.002 [~~a~~
3-65 ~~judicial district~~] after authorization of the establishment of the
3-66 structure has been included in the local community justice plan,
3-67 that is operated by a department or operated for a department by an
3-68 entity under contract with the department, for the purpose of
3-69 confining persons placed on community supervision and providing

4-1 services and programs to modify criminal behavior, deter criminal
4-2 activity, protect the public, and restore victims of crime. The
4-3 term includes:

- 4-4 (A) a restitution center;
- 4-5 (B) a court residential treatment facility;
- 4-6 (C) a substance abuse treatment facility;
- 4-7 (D) a custody facility or boot camp;
- 4-8 (E) a facility for an offender with a mental
4-9 impairment, as defined by Section 614.001, Health and Safety Code;
4-10 and
- 4-11 (F) an intermediate sanction facility.

4-12 (4) "State aid" means funds appropriated by the
4-13 legislature to the division to provide financial assistance to:

4-14 (A) the judges described by Section 76.002
4-15 ~~[judicial districts,]~~ for:

4-16 (i) a department established by the judges
4-17 ~~[the administration of departments];~~

4-18 (ii) the development and improvement of
4-19 community supervision services and community-based correctional
4-20 programs;

4-21 (iii) the establishment and operation of
4-22 community corrections facilities; and

4-23 (iv) assistance in conforming with
4-24 standards and policies of the division and the board; and

4-25 (B) state agencies, counties, municipalities,
4-26 and nonprofit organizations for the implementation and
4-27 administration of community-based sanctions and programs.

4-28 SECTION 10. Section 509.007, Government Code, is amended to
4-29 read as follows:

4-30 Sec. 509.007. COMMUNITY JUSTICE PLAN. (a) The division
4-31 shall require as a condition to payment of state aid to a department
4-32 or county under Section 509.011 and eligibility for payment of
4-33 costs under Section 499.124 that a community justice plan be
4-34 submitted for the department. The community justice council shall
4-35 submit the plan required by this subsection. A community justice
4-36 council may not submit a plan under this section unless the plan is
4-37 first approved by the ~~[district]~~ judges described by Section 76.002
4-38 who established [manage] the department served by the council. The
4-39 council shall submit a revised plan to the division each
4-40 odd-numbered year by a date designated by the division. A plan may
4-41 be amended at any time with the approval of the division.

4-42 (b) A community justice plan required under this section
4-43 must include:

4-44 (1) a statement of goals and priorities and of
4-45 commitment by the community justice council, the ~~[district]~~ judges
4-46 described by Section 76.002 who established [manage] the
4-47 department, and the department director to achieve a targeted level
4-48 of alternative sanctions;

4-49 (2) a description of methods for measuring the success
4-50 of programs provided by the department or provided by an entity
4-51 served by the department; and

4-52 (3) a proposal for the use of state jail felony
4-53 facilities and, at the discretion of the community justice council,
4-54 a regional proposal for the construction, operation, maintenance,
4-55 or management of a state jail felony facility by a county, a
4-56 community supervision and corrections department, or a private
4-57 vendor under a contract with a county or a community supervision and
4-58 corrections department.

4-59 SECTION 11. Section 509.011(a), Government Code, is amended
4-60 to read as follows:

4-61 (a) If the division determines that a department complies
4-62 with division standards and if the community justice council has
4-63 ~~[department or judges managing the department have]~~ submitted a
4-64 community justice plan under Section 76.003 and the supporting
4-65 information required by the division and the division determines
4-66 the plan and supporting information are acceptable, the division
4-67 shall prepare and submit to the comptroller vouchers for payment to
4-68 the department as follows:

4-69 (1) for per capita funding, a per diem amount for each

5-1 felony defendant directly supervised by the department pursuant to
5-2 lawful authority;

5-3 (2) for per capita funding, a per diem amount for a
5-4 period not to exceed 182 days for each defendant supervised by the
5-5 department pursuant to lawful authority, other than a felony
5-6 defendant; and

5-7 (3) for formula funding, an annual amount as computed
5-8 by multiplying a percentage determined by the allocation formula
5-9 established under Subsection (f) times the total amount provided in
5-10 the General Appropriations Act for payments under this subdivision.

5-11 SECTION 12. Section 76.002(b), Government Code, is
5-12 repealed.

5-13 SECTION 13. The change in law made by Section 76.0045,
5-14 Government Code, as added by this Act, applies only to an act or
5-15 failure to act by a judge, a community supervision or corrections
5-16 department, or a department director that occurs on or after the
5-17 effective date of this Act. An act or failure to act by a judge, a
5-18 community supervision and corrections department, or a department
5-19 director that occurs before the effective date of this Act is
5-20 governed by the law in effect on the date the act or failure to act
5-21 occurred, and the former law is continued in effect for that
5-22 purpose.

5-23 SECTION 14. This Act takes effect immediately if it
5-24 receives a vote of two-thirds of all the members elected to each
5-25 house, as provided by Section 39, Article III, Texas Constitution.
5-26 If this Act does not receive the vote necessary for immediate
5-27 effect, this Act takes effect September 1, 2005.

5-28 * * * * *