

## **BILL ANALYSIS**

C.S.S.B. 909  
By: Whitmire  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Department of Criminal Justice (TDCJ) and Correctional Managed Health Care Committee are subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature. The Board of Pardons and Paroles is not subject to abolishment, but is subject to Sunset review at the same time as TDCJ.

As a result of its review of TDCJ, the Correctional Managed Health Care Committee, and Board of Pardons and Paroles, the Sunset Advisory Commission recommended continuation of the agencies and several changes in law to enact the Sunset Commission's recommendations.

The changes in law in this legislation aim to provide for better information to policy makers regarding the criminal justice system; improved provisions for better parole decision making; increased consideration of early termination of parole and probation; and greater oversight and transparency of correctional health care.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Criminal Justice in SECTION 35 and SECTION 40 of this bill.

### **ANALYSIS**

#### ***Includes the Texas Uniform Health Status Update form on the list of documents submitted when a defendant enters TDCJ***

CSSB 909 adds a copy of the Texas Uniform Health Status Update form, if prepared, to the list of documents a county that transfers a defendant to TDCJ must deliver to an officer designated by TDCJ, as part of the pen packet.

#### ***Authorizes district judges to permit the early release of state jail confinees who pose no threat to public safety due to their medical conditions***

CSSB 909 amends the Code of Criminal Procedure to authorize a judge sentencing a defendant convicted of a state jail felony to release the defendant to a medically suitable placement if the judge determines that the defendant does not constitute a threat to public safety. The bill requires the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), in coordination with the Correctional Managed Health Care Committee, to prepare a case summary and medical report that identifies the defendant as being elderly, physically disabled, mentally ill, terminally ill, or mentally retarded or having a condition requiring long-term care. The bill requires TCOOMMI, in cooperation with the community supervision and corrections department (CSCD) serving the sentencing court to prepare a medically recommended intensive supervision and continuity of care plan that ensures appropriate supervision of a released defendant by the CSCD and requires the defendant to remain under the care of a physician at and reside in a medically suitable placement.

The bill also requires TCOOMMI to submit to a judge who releases a defendant to an appropriate medical care facility a quarterly status report concerning the defendant's medical treatment and status. The bill provides that if a defendant released to a medically suitable placement violates the terms of that release, the judge may dispose of the matter by imposing a sanction or revoking the supervision. The bill amends TCOOMMI's statute to require

TCOOMMI to perform new duties related to the medical release of a defendant convicted of a state jail felony.

***Requires judges to consider releasing eligible offenders from probation early and establishes a process to recommend early termination of community supervision***

CSSB 909 requires that upon completion of one-half of the original community supervision period or two years of community supervision, whichever is more, the judge shall review the recommendation made under Section 76.019, Government Code, by the local CSCD supervising the defendant, and determine whether to reduce or terminate the defendant's period of community supervision. If the judge determines that the defendant has failed to satisfactorily fulfill the conditions of community supervision, the judge shall advise the defendant in writing of the requirements for satisfactorily fulfilling those conditions. The bill clarifies that provisions for reducing or terminating community supervision do not apply to a defendant convicted of a felony described by Section 3g (Limitation on Judge Ordered Community Supervision), and deletes existing text providing that this section does not apply to a defendant convicted of an offense punishable as a state jail felony. Makes a conforming deletion.

CSSB 909 defines "routine offender assessment" as any regularly scheduled evaluation, assessment, or reassessment, of a defendant's progress in satisfactorily completing the defendant's term of community supervision that is conducted by the CSCD supervising the defendant.

The bill requires local CSCDs, during the first routine offender assessment conducted after the date on which a defendant completes one-half of the original community supervision period, or two years of community supervision, whichever is later, to determine whether the defendant has satisfactorily fulfilled the conditions of community supervision; and is an appropriate candidate for termination of community supervision under Section 20, Article 42.12, Code of Criminal Procedure. The bill requires the CSCD to recommend to the court that placed the defendant on community supervision whether the court should reduce or terminate the period of community supervision and discharge the defendant.

The bill prohibits the CSCD supervising the defendant from recommending that the court reduce or terminate the defendant's period of community supervision if the defendant has not completed court-ordered counseling or treatment, or is delinquent in paying any fees, fines, court costs, or restitution that the court ordered the defendant to pay as a condition of community supervision and that the department determines the defendant has the ability to pay.

***Clarifies requirements for removal of criminal street gang database information***

The substitute clarifies that the provision in law regarding the removal of records from the intelligence database for criminal street gangs for TDCJ facilities also applies to TDCJ contract facilities and to county jails and contract facilities in which a person is confined in lieu of a TDCJ facility.

***Requires judges to conduct a competitive hiring process for CSCD Directors***

The bill requires judges, described by Section 76.002, Government Code, when there is a vacancy in the position of a CSCD department director to publicly advertise the position; post a job description, qualifications for the position, and application requirements; conduct a competitive hiring process and adhere to state and federal equal employment opportunity laws; and review applicants who meet the posted qualifications and comply with the application requirements.

***Establishes a Criminal Justice Legislative Oversight Committee to provide information and analysis regarding the state's criminal justice system***

CSSB 909 amends the heading to Subtitle C, Title 3, Government Code to add OVERSIGHT COMMITTEES, and defines "committee" as the Criminal Justice Legislative Oversight Committee. The bill establishes the Criminal Justice Legislative Oversight Committee (committee) to provide research, analysis, and recommendations to help guide state criminal justice policies. The committee consists of the following six members: the Chair of the Senate Committee on Criminal Justice; the Chair of the House Committee on Corrections; two members of the Senate appointed by the Lieutenant Governor; and two members of the House of Representatives appointed by the Speaker of the House of Representatives. The bill provides

that appointed members serve at the pleasure of the appointing official. The Lieutenant Governor and the Speaker of the House of Representatives appoint a presiding officer on an alternating basis to serve a two-year term expiring on February 1 of each odd-numbered year and to call committee meetings.

The bill directs the committee to conduct in-depth examination of the state's criminal justice system, including an assessment of the cost-effectiveness of the use of state and local funds; an identification of critical problems in the system; and a determination of the long-range needs of the system. The bill requires the committee to recommend to the legislature strategies to solve the problems identified and policy priorities to address the long-range needs; and to advise and assist the Legislature in developing plans, programs, and proposed legislation to improve the effectiveness of the system.

The bill provides that the committee has all other powers and duties provided to a special committee by Subchapter B, Chapter 301, Government Code; the rules of the senate and the house of representatives; and policies of the senate and house committees on administration. The bill authorizes the committee to hire staff, or contract with universities or other suitable entities to assist the committee in carrying out its duties. The bill specifies that funding to support the operation of the committee shall be provided from funds appropriated to the Texas Legislative Council.

The bill requires the committee to submit a report to the Legislature no later than January 1 of each odd-numbered year that contains the recommendations regarding problems and long-range needs of the criminal justice system.

***Continuation of the Texas Department of Criminal Justice and compliance with Sunset management action recommendations***

CSSB 909 changes the Texas Department of Criminal Justice's Sunset review date to 2011 to continue the agency for four years. The bill also requires TDCJ to comply with and implement the management action recommendations regarding TDCJ adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of TDCJ, and report to the Sunset Advisory Commission the information required regarding TDCJ's implementation of the recommendations no later than November 1, 2008. Provides that this section expires June 1, 2009.

***Requires TDCJ to use a dynamic risk assessment tool for sex offenders***

CSSB 909 defines "sexual offense," for the purpose of this section, as a criminal offense the conviction of which requires a person to register as a sex offender under Chapter 62, Code of Criminal Procedure. The bill requires TDCJ, before an inmate who is serving a sentence for a sexual offense is discharged or released on parole or mandatory supervision, to use the dynamic risk assessment tool developed by the Council on Sex Offender Treatment under Section 110.164, Occupations Code, to assign the inmate a risk level of low, medium, or high. The bill specifies that TDCJ shall conduct the risk assessment in addition to any other risk assessment TDCJ is required to conduct.

***Requires the development of a dynamic risk assessment tool for sex offenders***

CSSB 909 requires the Council on Sex Offender Treatment to develop or adopt a dynamic risk assessment tool to be used in determining the likelihood that a person who is confined in a penal institution and will become subject to the sex offender registration program under Chapter 62, Code of Criminal Procedure, on being released from the institution will commit a sex offense described by Article 62.001(5), Code of Criminal Procedure, after being released. The bill requires the dynamic risk assessment tool to enable the assignment to a person of a risk level of low, medium, or high.

***Prohibits certain interagency communications***

CSSB 909 provides that TDCJ, regardless of available capacity in the program, may not prohibit a parole panel from, or request a parole panel to refrain from, requiring an inmate to participate in and complete a treatment program operated by TDCJ before the inmate is released on parole.

***Requires management-employee meetings***

CSSB 909 requires TDCJ's director to meet regularly with representatives of an eligible state employee organization, certified by the Comptroller under Section 403.0165, that represents TDCJ employees in disciplinary or grievance matters, to identify department policies or practices that impair the efficient, safe, and effective operation of TDCJ facilities; and issues that could lead to unnecessary conflicts between TDCJ and TDCJ employees that could undermine retention and recruitment of those employees.

The bill requires the director to submit an annual report, which must be signed by the director and each representative of an employee organization that participates in the meetings, to the Criminal Justice Legislative Oversight Committee on the outcome of these meetings. The bill requires the report to include a statement from each party regarding the impact of the meetings on recruitment and retention of TDCJ employees and on employee morale.

***Clarifies when TDCJ may provide assistance to law enforcement entities***

CSSB 909 authorizes TDCJ to allow employees who are granted law enforcement authority under this section to assist municipal, county, state, or federal law enforcement officers, without regard to being in a county of the state. The bill also expands the assistance that may be provided on request to include an emergency situation that presents an immediate or potential threat to public safety if assistance is not received, in addition to apprehending an escapee of a municipal or county jail, as currently provided, and to include a privately operated or federal correctional facility. The bill also specifies that a TDCJ employee who assists a law enforcement officer under this expanded authority has the same powers and duties as the officer requesting assistance.

***Prison Industry Enhancement Certification Program***

CSSB 909 increases the cap on the number participants in the Private Sector/Prison Industry Enhancement Certification Program from 500 to 700, and requires contracts for the provision of services through the Private Sector/Prison Industry Enhancement Certification Program to include payment of not less than the federal minimum wage.

***Requires TDCJ to provide screening and education regarding fetal alcohol exposure during pregnancy***

CSSB 909 requires TDCJ to establish a screening program to identify female inmates who are between the ages of 18 and 44; sentenced to a term of confinement of two years or less; and at risk for having a pregnancy with alcohol-related complications. The bill requires the screening program to evaluate the family planning practices of each of the female inmates identified in relation to the inmate's consumption of alcohol and risk of having a pregnancy with alcohol-related complications; include an objective screening tool to be used by TDCJ employees administering the screening program; and occur during the diagnostic process or at another time determined by TDCJ. CSSB 909 requires TDCJ to provide a brief substance abuse intervention to all female inmates identified by the screening program as being at risk for having a pregnancy with alcohol-related complications; and an educational brochure describing the risks and dangers of consuming alcohol during pregnancy to all female inmates.

The bill requires TDCJ to establish and use a screening program in state jail felony facilities that is substantially similar to the program established and used by TDCJ under Section 501.059. CSSB 909 requires TDCJ to provide to all female defendants confined in state jail felony facilities an educational brochure describing the risks and dangers of consuming alcohol during pregnancy.

***Requires TDCJ to make information about the offender healthcare system readily available to inmates***

CSSB 909 requires TDCJ to ensure that certain information about the offender healthcare system is available to any inmate confined in a facility operated by or under contract with TDCJ. This information includes a description of the level, type, and variety of healthcare services available; the formulary used by correctional healthcare personnel in prescribing medication to inmates; correctional managed healthcare policies and procedures; and the process for filing of inmate grievances concerning healthcare services provided to inmates.

***Continuation of the Correctional Managed Health Care Committee and compliance with Sunset management action recommendations***

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CSSB 909 provides that the Correctional Managed Health Care Committee's role and responsibilities are subject to review under Chapter 325 (Sunset Act), and that the Correctional Managed Health Care Committee shall be reviewed during the period in which TDCJ is reviewed. The bill continues the Committee by removing the current statutory Sunset provision that provides that unless continued in existence as provided by Chapter 325, the Correctional Managed Health Care Committee is abolished and this subchapter expires September 1, 2007.

The bill also requires the Correctional Managed Health Care Committee, University of Texas Medical Branch at Galveston, and Texas Tech University Health Sciences Center to comply with and implement the management action recommendations regarding those entities adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of those entities, and to report to the Sunset Advisory Commission not later than November 1, 2008, the information required regarding the implementation of the recommendations. Provides that this section expires June 1, 2009.

***Designates the presiding officer of the Correctional Managed Health Care Committee***

The bill requires the Governor to designate a public member of the Correctional Managed Health Care Committee who is licensed to practice medicine in this state as the presiding officer of the Correctional Managed Health Care Committee.

***Updates statutory duties of the Correctional Managed Health Care Committee***

CSSB 909 updates the statutory duties of the Correctional Managed Health Care Committee to reflect its current functions, including developing statewide policies for the delivery of correctional health care; maintaining the contracts for offender healthcare services; communicating with TDCJ and the Legislature regarding the financial needs of the correctional healthcare system; allocating funding made available through legislative appropriations for correctional health care; monitoring the expenditures of the University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center; serving as a dispute resolution forum between TDCJ as well as the healthcare providers; addressing problems found through monitoring activities by TDCJ and healthcare providers; and identifying and addressing long-term needs of the correctional healthcare system. The bill requires the Correctional Managed Health Care Committee to report to the Texas Board of Criminal Justice at the board's regularly scheduled meetings on its policy decisions, the financial status of the correctional healthcare system, and corrective actions taken by or required of TDCJ or the healthcare providers. The bill also deletes language for the committee to determine a capitation rate, monitor and report on general quality of care issues, allocating money to the inmate healthcare providers, and acting as an independent third party for purposes of dispute resolution.

***Expands TDCJ's authority to monitor the quality of health care provided to offenders***

CSSB 909 deletes existing text limiting TDCJ's monitoring activities and requires TDCJ to monitor the quality of health care delivered by the healthcare providers. The bill authorizes TDCJ to require the healthcare providers to take corrective action if the care provided does not meet expectations. The bill requires TDCJ and the medical care providers to include a list and the status of any corrective actions required of the healthcare providers when communicating their monitoring results to both the Board of Criminal Justice and the Correctional Managed Health Care Committee.

***Requires the Correctional Managed Health Care Committee to make information about offender healthcare services readily available to the public***

CSSB 909 requires the Correctional Managed Health Care Committee to ensure that certain information about the correctional healthcare system is available to the public. This information includes contracts between TDCJ, the correctional managed Health Care Committee, and healthcare providers; the formulary used by correctional healthcare personnel in prescribing medication to inmates; correctional managed healthcare policies and procedures; quality assurance statistics and data; general information concerning the costs associated with correctional health care; aggregate statistical information concerning inmate deaths and the prevalence of disease among inmates; the process for filing inmate grievances concerning health care; general grievance statistics; contact information for complaints; information regarding the regulation and discipline of healthcare professionals; unit data regarding healthcare services provided; and dates and agendas for quarterly meetings of the Correctional Managed Health Care Committee.

Requires the Correctional Managed Health Care Committee to make the information available on its website and, on request, in writing. The bill also requires the Committee to cooperate with TDCJ and the health care providers to ensure the website is linked to those of the Department and health care providers, is accessible through the State of Texas website, and can be located through common search engines. The bill requires the Correctional Managed Health Care Committee to cooperate with TDCJ to ensure that public disclosure of the information would not pose a security threat.

***Expands conflict of interest and employment restrictions applicable to the Parole Board to include parole commissioners***

CSSB 909 applies the same eligibility requirements currently applicable to parole board members for persons employed as parole commissioners. Specifically, the bill makes a person ineligible to be employed as a parole commissioner if the person or person's spouse is employed by or participates in the management of a business entity receiving funds from TDCJ or the Parole Board; owns an entity funded or regulated by TDCJ or the Parole Board; or receives a substantial amount of tangible goods, services, or funds from TDCJ or the Parole Board. The bill clarifies that compensation that a parole commissioner's spouse receives as an employee of TDCJ or the Parole Board may not be considered in determining eligibility based on financial interest. The bill also prohibits parole commissioners and their spouses from being officers or paid representatives of a criminal justice trade association, and prohibits parole commissioners from being registered lobbyists. CSSB 909 specifies that a current or former employee of TDCJ may not serve as a parole commissioner for two years after the persons stops working at TDCJ.

***Requires the Board of Pardons and Paroles to maintain a separate budget***

CSSB 909 requires the Board of Pardons and Paroles to prepare, approve, and submit a Legislative Appropriations Request separate from TDCJ's in accordance with the rules and procedures of the Legislative Budget Board. The bill requires the Parole Board to maintain its Legislative Appropriations Request and budget structure separate from TDCJ's.

***Requires a salary career ladder for parole officers***

CSSB 909 requires TDCJ's executive director to adopt a salary career ladder for parole officers. The bill specifies that the salary career ladder must base a parole officer's salary on the officer's classification and years of service with TDCJ. The substitute requires TDCJ to classify all parole officer positions as Parole Officer I, Parole Officer II, Parole Officer III, Parole Officer IV, or Parole Officer V; and specifies that a parole officer to whom the schedule applies and who received an overall evaluation of at least satisfactory in the officer's most recent annual evaluation is entitled to an annual salary increase, during each of the officer's first 10 years of service in a designated parole officer classification, equal to one-tenth of the difference between the officer's current annual salary; and the minimum annual salary of a parole officer in the next highest classification.

***Changes the definition of close relative of a deceased victim***

The bill redefines "close relative of a deceased victim" to include the nearest relative by consanguinity, if other close relatives are deceased or incapacitated, for purposes of notifying victims regarding parole consideration.

***Requires the Board of Pardons and Paroles to annually update the parole guidelines and report to the Legislature on its efforts to meet them***

CSSB 909 requires the Parole Board to ensure that the parole guidelines require consideration of an inmate's adjustment in all programs in which the inmate participated during the inmate's term of confinement.

The bill also requires Parole Board members and parole commissioners to produce a written statement describing in detail the specific circumstances regarding the departure from the guidelines, and provide a copy of the statement to the inmate if a parole board member or parole commissioner deviates from the parole guidelines in voting on a parole decision.

CSSB 909 deletes existing text requiring the Board of Pardons and Paroles to review the guidelines periodically, and instead requires the Board of Pardons and Paroles to meet annually to review and discuss the parole guidelines. The bill authorizes the Parole Board to consult

outside experts to assist with the review. Requires the Parole Board to consider how well the parole guidelines serve the needs of parole decision makers, reflect parole panel decisions, and predict successful parole outcomes. The bill authorizes the Board of Pardons and Paroles, based on this review, to update the guidelines and to modify the recommended parole approval rates. The Parole Board is not required to hold an open meeting to review the guidelines as required by Subsection (d), but any modification or updates to the guidelines made by the Parole Board under Subsection (e) must occur in an open meeting.

The bill requires the Parole Board to annually submit a report to the Criminal Justice Legislative Oversight Committee, the Lieutenant Governor, the Speaker of the House of Representatives, and the presiding officers of the standing committees in the Senate and House of Representatives primarily responsible for criminal justice regarding the Parole Board's application of the parole guidelines adopted by the Parole Board under Section 508.144. Sets forth certain requirements for the report.

***Establishes a process to release eligible, low-risk offenders from parole early.***

CSSB 909 authorizes TDCJ's pardons and parole division to allow a releasee to serve the remainder of the releasee's sentence without supervision and without being required to report if a parole supervisor at the regional level has approved the releasee's early release from supervision under the procedures for early release from supervision under Section 508.1555. Deletes existing text relating to certain requirements a releasee must meet to obtain an early release.

The bill establishes the procedure for early release from supervision, requiring a parole officer to annually identify the releasees under the parole officer's supervision who are eligible for early release from supervision by having completed one-half of their remaining sentence upon release from imprisonment, have not violated the rules or conditions of release during the preceding two-year period, have not had their parole revoked, and have made a good faith effort to comply with restitution and can serve society's interest without supervision. The bill requires the parole officer to review the eligible releasees, including any releasees the parole officer has previously declined to recommend for early release, to determine if a recommendation for early release from supervision is appropriate. In conducting the review and determining recommendations, the parole officer shall consider whether the releasee has a low risk of recidivism and has made a good faith effort to comply with the conditions of release. The bill requires a parole officer to forward to the parole supervisor at the regional level, any recommendations for early release the parole officer makes. The pardons and parole division shall allow a releasee to serve the remainder of the releasee's sentence without supervision and without being required to report if the parole supervisor approves the recommendation.

***Requires TDCJ to establish a new funding formula for basic supervision probation.***

CSSB 909 modifies the funding structure of state aid to local community supervision and corrections departments (CSCDs). One of several methods that funding is currently provided to CSCDs is based on a per diem amount for each felony defendant directly supervised by the CSCD. CSSB 909 separates this method of per capita felony placement funding into two categories: (1) a per diem amount for felony defendants that are placed on community supervision and supervised by the CSCD that is based on a per capita funding formula which is established in subsection (i), Section 509.011, Government Code (as added by this bill); and (2) a per diem amount based on each felony defendant participating in a pretrial program and supervised by the CSCD. In addition, current statute provides for a per diem amount (per capita funding) for a period not to exceed 182 days for each defendant supervised by the CSCD, other than a felony defendant. CSSB 909 changes this to apply specifically to misdemeanor defendants placed on community supervision and supervised by the CSCD.

Subsection (i) as added by this Act, requires the Community Justice Assistance Division (division) of TDCJ to annually establish a per capita funding formula to determine the percentage of the total amount provided in the General Appropriations Act that each CSCD is entitled to receive as per capita funding for felony defendants and misdemeanor defendants placed on community supervision for up to 182 days, and supervised by the CSCD. The formula for felony defendants placed on community supervision must include: (1) higher per capita rates for those felony defendants supervised by a CSCD who are serving the early years of a term of community supervision than for those defendants who are serving the end of a term of community supervision; (2) penalties in per capita funding with respect to each defendant

supervised by a CSCD whose community supervision is revoked due to a technical violation of an applicable condition of community supervision; and (3) awards in per capita funding with respect to each felony defendant supervised by a CSCD who is discharged following an early termination of community supervision.

Currently, the division is required to consider the amounts appropriated in the General Appropriations Act for basic supervision when establishing per diem payments to CSCDs for felony defendants and non-felony defendants. CSSB 909 removes this requirement and instead provides that in establishing the per capita funding formula under subsection (i), as added by this Act, the division shall consider the amounts appropriated in the General Appropriations Act for basic supervision as sufficient to provide basic supervision in each year of the fiscal biennium. CSSB 909 provides that the Texas Board of Criminal Justice by rule may adopt a policy limiting the percentage of benefit or loss a CSCD may realize as a result of the operation of the per capita funding formula established under Subsection (i), as added by this Act. The bill requires the division to establish the per capita funding formula, as added by this Act, by not later than January 1, 2008, and it is to be used for the state fiscal year beginning September 1, 2008.

***Payment of overtime for TDCJ employees***

CSSB 909 requires TDCJ to compensate a person employed by TDCJ for any overtime accrued by the employee for which the employee is entitled to compensation under Section 659.015 by not later than the date TDCJ compensates employees at the regular rate of pay for the period in which the employee accrued the overtime.

***Prohibits exemptions from licensing requirements for TDCJ sex offender treatment providers***

The substitute prohibits TDCJ from exempting its sex offender treatment providers from the State's licensing requirements under Chapter 110, Occupations Code.

***Authorizes the Texas Board of Criminal Justice to exempt TDCJ vehicles from inscription requirements***

CSSB 909 authorizes the governing body of the Texas Department of Criminal Justice to, by rule, exempt a motor vehicle under control and custody of TDCJ beyond just the institutional division and the pardons and paroles division, from the inscription requirements under Section 721.002, Transportation Code which identify a vehicle as belonging to the agency.

***Requires TDCJ to study electronic monitoring equipment***

CSSB 909 requires TDCJ to study the operation and maintenance of different types of electronic monitoring equipment, including the equipment's cost-effectiveness, level of supervision, and the different rehabilitation and treatment options afforded by the equipment. The bill requires TDCJ to report its findings to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and appropriate standing committees of the Legislature no later than December 1, 2009.

***Applies standard Sunset across-the-board recommendations***

CSSB 909 applies standard Sunset across-the-board recommendations to the Board of Criminal Justice, Board of Pardons and Paroles, and the Correctional Managed Health Care Committee regarding the use of technology and alternative dispute resolution. The bill also applies standard Sunset across-the-board recommendations to the Board of Criminal Justice and the Board of Pardons and Paroles regarding negotiated rulemaking. CSSB 909 updates standard Sunset across-the-board recommendations to the Correctional Managed Health Care Committee and the Board of Pardons and Paroles regarding maintaining information on certain complaints. The bill also updates standard Sunset across-the-board recommendations for the Board of Pardons and Paroles regarding grounds for the removal of board members, and public participation before the Board.

***Additional provisions***

CSSB 909 describes the retroactive effects and implementation dates related to certain amended sections and added provisions, and sets forth the effective date on which various new requirements will apply, including those related to the Texas Uniform Health Status Update form, early probation termination, probation funding formula, appointments to the Criminal Justice Legislative Oversight Committee, dynamic risk assessment for sex offenders, fetal alcohol screening and education, health care information for offenders and the public, conflict of



interest and employment restrictions for parole commissioners, adoption of a career ladder for parole officers, parole decisions, parole guideline review and annual report, and early parole release.

### *Technical corrections*

The bill makes technical corrections throughout the bill, including making certain references to “defendant” gender neutral; and updating references to the Health and Human Services Commission, Department of State Health Services, Department of Aging and Disability Services, Department of Savings and Mortgage Lending, and Texas Commission on Environmental Quality.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSSB 909 adds new language to the original bill that adds a copy of the Texas Uniform Health Status Update form, if prepared (pursuant to Jail Standard 273.4(c) Texas Administrative Code, Title 37, Part 9), to the list of documents that a county that transfers a defendant to TDCJ must deliver to an officer designated by TDCJ.

The substitute adds new language that clarifies that the provision in law regarding the removal of records from the intelligence database for criminal street gangs for TDCJ facilities also applies to TDCJ contract facilities and to county jails and contract facilities in which a person is confined in lieu of a TDCJ facility.

The substitute adds new language that requires judges, described by Section 76.002, Government Code, to conduct an open and competitive hiring process for the appointment of a Community Supervision and Corrections Department (CSCD) director when a vacancy occurs, including publicly advertising the position; posting the job description, qualifications for the position, and application requirements; and reviewing applicants that meet the posted qualifications and comply with the application requirements.

Both the original bill and the substitute authorize the reduction or termination of community supervision for defendants placed on community supervision. However, unlike the original bill that makes all felony and misdemeanor probationers who have completed either two years or one-third of their community supervision eligible, CSSB 909 requires completion of one-half of the original community supervision period or two years, whichever is more, and excludes defendants convicted of 3g offenses, certain intoxication and alcoholic beverage offenses, or offenses for which registration as a sex offender is required under Chapter 62 of the Code of Criminal Procedure. In addition, the substitute modifies the original bill by making these provisions apply to a defendant **placed** on community supervision on or after the effective date of this Act, rather than a defendant on community supervision on or after the effective date of this Act.

The substitute adds new language that prohibits the department supervising the defendant from recommending that the court reduce or terminate the defendant’s period of community supervision if the defendant has not completed court-ordered counseling or treatment. The substitute modifies language in the original bill that prohibits the department supervising the defendant from recommending that the court reduce or terminate the defendant’s period of community supervision if the defendant is delinquent in paying any fees, fines, court costs, or restitution that court ordered the defendant to pay as a condition of community supervision and the department determines the defendant has the ability to pay.

Unlike the original bill, the substitute requires the judge to review the recommendation made under Section 76.019, Government Code, by the community supervision and corrections department supervising the defendant and determine whether to reduce or terminate the defendant’s period of community supervision. Additionally, if the judge determines that the defendant has failed to satisfactorily fulfill the conditions of community supervision, the

substitute requires the judge to advise the defendant in writing of the requirements for satisfactorily fulfilling those conditions.

The substitute removes the provision in the original bill that requires the Lieutenant Governor and the Speaker of the House of Representatives to give first consideration to members of the Senate Finance Committee or the House Appropriations Committee when making appointments to the Criminal Justice Legislative Oversight Committee.

The substitute adds new language that defines “sexual offense” as a criminal offense the conviction of which requires a person to register as a sex offender under Chapter 62, Code of Criminal Procedure. The substitute requires TDCJ, before an inmate who is serving a sentence for a sexual offense is discharged or released on parole or mandatory supervision, to use a dynamic risk assessment tool developed by the Council on Sex Offender Treatment under Section 110.164, Occupations Code, to assign the inmate a risk level of low, medium, or high. The bill specifies that TDCJ shall conduct the risk assessment in addition to any other risk assessment TDCJ is required to conduct.

The substitute adds new language to require the Council on Sex Offender Treatment to develop or adopt a dynamic risk assessment tool to be used in determining the likelihood that a person who is confined in a penal institution and will become subject to the sex offender registration provisions under Chapter 62, Code of Criminal Procedure, on being released from the institution will commit a sex offense described by Article 62.001(5), Code of Criminal Procedure, after being released. The substitute requires the dynamic risk assessment tool to enable the assignment to a person of a risk level of low, medium, or high.

The substitute adds new language specifying that TDCJ may not prohibit a parole panel from or request a parole panel to refrain from requiring an inmate to participate in and complete a treatment program operated by TDCJ, regardless of available capacity in the program, before being released on parole.

The substitute adds new language that requires TDCJ’s director to meet regularly with representatives of an eligible state employee organization, certified by the Comptroller under Section 403.0165, that represents TDCJ employees in disciplinary or grievance matters, to identify department policies or practices that impair the efficient, safe, and effective operation of TDCJ facilities; and issues that could lead to unnecessary conflicts between TDCJ and TDCJ employees that could undermine retention and recruitment of those employees. The substitute requires the director to submit an annual report, which must be signed by the director and each representative of an employee organization that participates in the meetings, to the Criminal Justice Legislative Oversight Committee on the outcome of these meetings. The bill requires the report to include a statement from each party regarding the impact of the meetings on recruitment and retention of TDCJ employees and on employee morale.

CSSB 909 adds new language that clarifies TDCJ’s authority to allow its employees to assist law enforcement officials in emergency situations. The substitute authorizes TDCJ to allow employees who are granted law enforcement authority to assist municipal, county, state, or federal law enforcement officers, rather than just peace officers in any county of the state, if assistance is requested for an emergency situation that presents an immediate or potential threat to public safety if assistance is not received. The substitute adds language that authorizes TDCJ to provide assistance to apprehend an escapee of a privately operated or federal correctional facility in addition to an escapee of a municipal or county jail. The substitute provides that an employee who assists in these emergency situations has the same powers and duties as the officer requesting the assistance.

The substitute adds new language to increase the cap on the number participants in the Private Sector/Prison Industry Enhancement Certification Program from 500 to 700, and requires contracts for the provision of services through the Private Sector/Prison Industry Enhancement Certification Program to include payment of not less than the federal minimum wage.

CSSB 909 adds new language to require the Board of Pardons and Paroles to prepare, approve, and submit a Legislative Appropriations Request separate from TDCJ’s in accordance with the

rules and procedures of the Legislative Budget Board. The substitute requires the Parole Board to maintain its Legislative Appropriations Request and budget structure separate from TDCJ's.

The substitute adds new language to require TDCJ's executive director to adopt a salary career ladder for parole officers. The substitute specifies that the salary career ladder must base a parole officer's salary on the officer's classification and years of service with TDCJ. The substitute requires TDCJ to classify all parole officer positions as Parole Officer I, Parole Officer II, Parole Officer III, Parole Officer IV, or Parole Officer V; and specifies that a parole officer to whom the schedule applies and who received an overall evaluation of at least satisfactory in the officer's most recent annual evaluation is entitled to an annual salary increase, during each of the officer's first 10 years of service in a designated parole officer classification, equal to one-tenth of the difference between the officer's current annual salary; and the minimum annual salary of a parole officer in the next highest classification.

CSSB 909 adds new language to require the Parole Board to ensure that the parole guidelines require consideration of an inmate's adjustment in all programs in which the inmate participated during the inmate's term of confinement.

The original bill amends the statutory funding formula for community supervision by eliminating the separate per capita, per diem funding formula amounts for felony and misdemeanor defendants. The original bill authorizes the Community Justice Assistance Division (division) of TDCJ to annually establish a funding formula, based on statutorily defined criteria, for payments to CSCDs that each CSCD is entitled to receive for all defendants placed on community supervision and supervised by the CSCD. The substitute retains the formula for community corrections funding; creates a new basic supervision formula for felons; and separates misdemeanor and pre-trial funding from the funding formula for felony defendants.

In determining the annual funding formula for payments to CSCDs, the original bill authorizes the division to assign different weights to factors relating to the characteristics of the defendants supervised by the CSCD, including the number of felony and nonfelony defendants supervised; and the defendant's risk level, level of supervision, and length of time under supervision; the population of counties served by the CSCD; and the percentage of all felony defendants in the state supervised by the department.

The substitute requires the division to annually establish a per capita funding formula for payments to CSCDs that each CSCD is entitled to receive for felony defendants supervised by the CSCD, and misdemeanor defendants placed on community supervision for up to 182 days and supervised by the CSCD. The substitute requires the formula for basic supervision of felons to include: (1) higher per capita rates for those felony defendants supervised by a CSCD who are serving the early years of a term of community supervision than for those defendants who are serving the end of a term of community supervision; (2) penalties in per capita funding with respect to each defendant supervised by a CSCD whose community supervision is revoked due to a technical violation of an applicable condition of community supervision; and (3) awards in per capita funding with respect to each felony defendant supervised by a CSCD who is discharged following an early termination of community supervision.

Both the original bill and the substitute require that in establishing the formula funding required by the bills, the division shall consider the amounts appropriated in the General Appropriations Act for basic supervision as sufficient to provide basic supervision in each year of the fiscal biennium.

CSSB 909 adds new language that provides that the Texas Board of Criminal Justice by rule may adopt a policy limiting the percentage of benefit or loss a CSCD may realize as a result of the operation of the per capita funding formula established under Subsection (i), as added by this Act.

The original bill requires the division to establish the funding formula described by Section 509.011(f), Government Code, as amended by this Act, no later than April 1, 2008, and for it to be used for the state fiscal year beginning September 1, 2008. The substitute requires the division to establish the per capita funding formula, as added by this Act, by not later than January 1, 2008, to be used for the state fiscal year beginning September 1, 2008.

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CSSB 909 adds new language to require TDCJ to compensate a person employed by TDCJ for any overtime accrued by the employee for which the employee is entitled to compensation under Section 659.015 by not later than the date TDCJ compensates employees at the regular rate of pay for the period in which the employee accrued the overtime.

The substitute adds new language that prohibits the Texas Board of Criminal Justice from exempting any TDCJ employee from a sex offender treatment provider license requirement under Chapter 110, Occupations Code.

CSSB 909 adds new language that authorizes the governing body of the Texas Department of Criminal Justice to, by rule, exempt a motor vehicle under control and custody of TDCJ, beyond just the institutional or pardons and paroles divisions, from the inscription requirements under Section 721.002, Transportation Code which identify a vehicle as belonging to the agency.