

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 25, 2007**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: SB909** by Whitmire (Relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, and the Correctional Managed Health Care Committee, and to the functions of the Board of Pardons and Paroles. ), **As Passed 2nd House**

<b>Estimated Two-year Net Impact to General Revenue Related Funds</b> for SB909, As Passed 2nd House: a negative impact of (\$12,231,730) through the biennium ending August 31, 2009.
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**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2008	(\$5,965,865)
2009	(\$6,265,865)
2010	(\$6,265,865)
2011	(\$6,265,865)
2012	(\$6,265,865)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>
2008	(\$5,965,865)
2009	(\$6,265,865)
2010	(\$6,265,865)
2011	(\$6,265,865)
2012	(\$6,265,865)

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2007</b>
2008	11.0
2009	11.0
2010	11.0
2011	11.0
2012	11.0

**Fiscal Analysis**

The Texas Department of Criminal Justice (TDCJ) and the Correctional Managed Health Care Committee (the 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 (Parole Board) is not subject to abolishment, but is subject to Sunset review at the same time as TDCJ. This bill contains the following Sunset Commission recommendations regarding TDCJ, the Parole Board, and the Committee.

- Requires a county transferring a defendant to the TDCJ to deliver to an officer designated by TDCJ a copy of the defendant's Texas Uniform Health Status Update Form.
- Authorizes judges to permit the early release to intensive supervision for state jail inmates who pose no risk to public safety due to their medical conditions.
- Authorizes judges to reduce or terminate terms of community supervision on completion of one-half of the original community supervision period or two years, whichever is more and after holding a hearing.
- Amends the Code of Criminal Procedure relating to the removal of records for inmates confined in a correctional facility under contract with TDCJ, or in a county jail in lieu of being confined in a TDCJ facility.
- Amends the Government Code relating to the hiring of community supervision department directors.
- Requires community supervision and corrections departments (CSCDs) to identify and recommend probationers appropriate for early termination.
- Amends the Government Code to rename the heading to Subtitle C, Title 3 to read Legislative Agencies and Oversight Committees.
- Establishes a six-member Criminal Justice Legislative Oversight Committee.
- Continues TDCJ until 2011 to provide for the next Sunset review.
- Defines compliance with sunset recommendations.
- Requires TDCJ to use a dynamic risk assessment tool to assign a risk level to an inmate serving a sentence for a sexual offense before their sentence is discharged.
- Prohibits the department from prohibiting a parole panel to require an inmate to participate in and complete a treatment program operated by the department before the inmate is released on parole.
- Allows regularly scheduled meetings between management and employees on department policies and issues.
- Allows the department to allow employees who are granted law enforcement authority to assist municipal, county, state or federal law enforcement.
- Amends the conditions under which private sector industries program operates.
- Requires screening for and education concerning fetal alcohol exposure during pregnancy.
- Establishes that the Correctional Managed Health Care Committee (CMHCC) is subject to review under the Texas Sunset Act during the same period in which TDCJ is reviewed.
- Requires various health institutions to comply with and implement the management action recommendations of the Sunset Advisory Commission and report requested information.
- Specifies the prerequisites of the presiding officer of Managed Healthcare.
- Requires CMHCC to develop statewide policies for the delivery of correctional health care.
- Defines the requirements of quality of care monitoring by TDCJ and health care providers.
- Requires the development of appropriate alternative dispute resolution procedures.
- Requires screening for and education concerning fetal alcohol exposure during pregnancy.
- Expands conflict of interest provisions concerning financial and personal interests, and previous employment restrictions to parole commissioners.
- Requires the development and implementation of policies that provide the public with opportunities to speak on issues to the Board of Pardons and Paroles.
- Requires the Board of Pardons and Paroles to prepare and submit a legislative appropriations request that is separate from TDCJ. The budget structure of the Board of Pardons and Paroles shall be maintained separately from TDCJ.
- Requires the Board of Pardons and Paroles to implement appropriate technological solutions maintain a system on complaints filed with the board, negotiate rulemaking and alternative dispute resolution.
- Requires the executive director of TDCJ to establish a career ladder for parole officers.
- Requires the Parole Board to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process when no spouse, parent, child, or sibling can participate.
- Requires the Parole Board to annually review and update the parole guidelines, and report to the Legislature its efforts to meet them. Requires members who deviate from the parole guidelines

to provide specific reasons explaining the deviation.

- Requires TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.
- Establishes a new funding formula for the community justice assistance division of the Texas Department of Criminal Justice (TDCJ). Provides for funding formula calculated for felony probationers (as opposed to funding direct felony probationers), funding for felons being supervised in pre-trial diversions programs, misdemeanor funding for 182 days of supervision (limited to \$.70 per day), and funding for community correction programs calculated as current policy allows. Specifies that in establishing the new funding formula, the CJAD would include the following weights which only apply to felony probationers:
  - Higher per capita rates for those defendants supervised by a department who were serving the early years of a term of community supervision than for those defendants who were serving the end of the term of community supervision; and
  - Awards in per capita funding with respect to each felony defendant supervised by a department who was discharged following an early termination of community supervision.

Authorizes the Texas Board of Criminal Justice to adopt a policy limiting the percentage of benefit or loss a department could realize as a result of the operation of the per capita funding formula established under this measure.

- Provides for paid compensation for overtime accrued by a TDCJ employee.
- Requires the Texas Correctional Office on Offenders with Medical or Mental Impairments to identify and recommend state jail inmates eligible for early release to intensive supervision.
- Requires the Council of Sex Offender Treatment to develop or adopt a dynamic risk assessment tool used in determining the likelihood that a person confined in a penal institution, who will be subject to Chapter 62, will commit an offense described by Article 62.001(5) Code of Criminal Procedure (sex-related offense) after release.
- Prohibits TDCJ from exempting any employee from a licensing requirement imposed by Section 110.302 Occupations Code (sex offender treatment provider license).
- Updates department/commission titles in the Transportation Code regarding exemption from inscription requirement for certain state-owned motor vehicles.
- Requires TDCJ to study using GPS tracking and electronic monitoring devices for people on parole and report the findings to the Legislature.
- Updates provisions relating to bringing arrested persons before the proper court within specified timeframes.
- Provides that a determination by the court of whether it proceeds with an adjudication of guilt on the original charge is reviewable in the same manner as a revocation hearing conducted under Section 21, Article 42.12, Code of Criminal Procedures.
- Authorizes judges, for certain state jail felony offenses, to suspend the imposition of a sentence and place the defendant on community supervision or order the sentence to be executed if the conviction resulted from an adjudication of guilt of a defendant previously placed on deferred adjudication community supervision for the offense.
- Permits a judge to order a defendant to make a specified donation to a nonprofit food bank or food pantry in lieu of requiring the defendant to work a specified number of hours at a community service project.
- Requires probation fees to follow defendants if they are transferred to different court jurisdictions.
- Expands the provision allowing rendering of a judgment and sentence in the absence of the defendant.
- Establishes the chaplaincy division as a division within TDCJ.
- Establishes certain requirements for conducting taste tests and awarding commissary bids within TDCJ.
- Authorizes TDCJ to provide for the practice of bundling products into categories to ensure savings through bulk purchasing, discounts for advance invoice payments, and online ordering.
- Requires TDCJ, in awarding a bid for food goods for a cafeteria in a TDCJ facility, to give preference to contractors who provide foods of higher nutritional value.
- Requires TDCJ to adopt a zero-tolerance policy concerning the detection, prevention, and punishment of the sexual abuse.
- Authorizes the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) and the Department of Aging and Disability Services (DADS) to enter into a lease

agreement to finance, design, and build a medical facility to house inmates released on medically recommended intensive supervision.

- Creates a Center for Correctional Public Health and Health Promotion.
- Requires TDCJ to conduct a study regarding certain types of inmates.
- Directs a transfer of approximately 25 acres in Wood County from TDCJ to the City of Winnsboro to use the property for a purpose that benefits the public interest of the state.

## **Methodology**

The fiscal impact of SECTION 2 and 37 of the bill on offender population would depend on the number of state jail inmates who pose no risk to public safety due to medical conditions released early to intensive supervision probation. Based on the medical costs associated with state jail inmates previously released on medically recommended intensive supervision, and assuming only 5 percent of all medically-eligible inmates would be released, the result would be approximately \$1,063,479 million in savings to the State. The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) is required to work with the Committee to identify eligible state jail inmates and prepare a continuity of care plan for them.

SECTION 3, 6, and 43 of the bill would amend the Code of Criminal Procedure by requiring a judge to review a defendant's record and consider whether to reduce or terminate the period of probation upon completion of one-half of the original community supervision period, or two years of community supervision, whichever is more. It also requires CSCDs to identify and recommend probationers appropriate for early termination from supervision. The number of probationers who may be released from supervision is unknown; therefore, the fiscal impact cannot be determined. This provision would result in savings to the State depending on the number of defendants with supervision terminated early, as a result of the bill. Early terminations would result in a corresponding decrease in fees paid from probationers to local government (community supervision and corrections departments - CSCDs).

SECTION 11, 38, and 45 of the bill amends the Government Code and requires TDCJ to use a dynamic risk assessment tool to assign a risk level to an inmate before being discharged or is released on parole who has been serving a sentence for a sexual offense. Currently, the Department of Criminal Justice utilizes the Static-99 risk assessment tool at no cost to the State. Estimating the fiscal impact of using the dynamic risk assessment tool would depend on the Council on Sex Offender Treatment developing or adopting a new assessment tool. Costs that may be associated with the dynamic assessment tool could be a polygraph exam (\$150 per test) or penile plethysmograph (\$250-\$350 per test) which would result in a fiscal impact to TDCJ, based on the number of offenders required to be tested. If the intent of the bill includes assessing offenders who are discharged from community supervision, the number of offenders impacted would be higher.

SECTION 21 of the bill defines the requirements for the quality of care monitoring by the TDCJ and health care providers. The Department of Criminal Justice Health Services Division would monitor the quality of care of the health care providers. TDCJ has estimated the cost to be approximately \$845,009 annually (includes 11 new FTE's salaries \$795,009 and operating expenses of \$50,000).

SECTION 27 of the bill would require the Board of Pardons and Paroles to prepare and submit a legislative appropriations request that is separate from TDCJ. Also, the budget structure of the Board of Pardons and Paroles shall be maintained separately from TDCJ. The bill does not provide for associated start up costs required to establish a separate agency such as office space rental, information resources, and other necessary costs.

SECTION 29 and 50 of the bill would require TDCJ to establish a career ladder for parole officers. TDCJ has estimated the fiscal impact to be approximately \$5.7 million for fiscal year 2008 and 2009. The estimate includes salary expenditures for all parole positions to the appropriate pay levels. The incremental pay raise would cost approximately \$3.0 million in the subsequent years.

SECTION 35 of the bill would establish a new funding formula for basic supervision probation for the community justice assistance division (CJAD) of the Department of Criminal Justice. Section 56 of the bill provides that the new funding formula would be used for the state fiscal year beginning in

September 1, 2008. CJAD has estimated that the fiscal impact on the funding allocation to the community supervision and corrections departments (CSCDs) could be approximately \$11.4 million in fiscal year 2009. This calculation includes the amount of funding necessary to protect CSCDs from potential financial losses as a result of the bill, \$4.2 million in fiscal year 2009. The impact to account for the projected loss of offender fees is estimated to be \$7.2 million in fiscal year 2009. However, the bill provides that the board may adopt a policy limiting loss or gain as a result of the operation of the new formula. It is unknown how much loss or gain the board would allow as a result of the new formula, therefore, at this time, the impact of the provision to the CSCDs is unknown. The bill would provide for developing a funding formula calculated based on a per diem amount for each offender on felony probation (as opposed to funding direct supervision felony probationers), funding for felons being supervised in pre-trial diversions programs, and misdemeanor defendants placed on community supervision funding for no longer than 182 days of supervision (limited to \$.70 per day), and funding for community correction programs calculated as current policy allows.

HOUSE AMENDMENT 9, 2<sup>nd</sup> READING, requires judges to hold a hearing to release a state jail offender on Medically Recommended Intensive Supervision. HOUSE AMENDMENT 10, 2<sup>nd</sup> READING: Requires judges to hold a hearing before terminating community supervision of an offender. These provisions will result in costs to the State and to localities. The provisions would reduce the number of offenders eligible for early termination, resulting in additional costs to the State. The offenders would be required to complete their terms of supervision and the State would pay the associated costs of that supervision. The costs cannot be estimated because it would depend on the number of offenders released.

HOUSE AMENDMENT 12, 2<sup>nd</sup> READING, requires a CSCD to provide notice to the victim prior to recommending termination. It also makes certain offenders ineligible for a reduction or early termination of probation. The provisions would reduce the number of offenders eligible for early termination and they would be required to complete their terms of supervision. The fiscal impact to CSCDs is unknown because it would depend on the number of offenders released from probation.

HOUSE AMENDMENT 16, 2<sup>nd</sup> READING, removes penalties for technical revocations from the probation funding formula. Without a penalty for revocations, CSCDs would receive funding up-front for offenders on supervision, but would not have an incentive to work with offenders longer on supervision prior to revocation. Without these penalties, the CSCDs could recommend revocations for offenders who may have normally stayed on community supervision, resulting in more admissions to prison. Increased prison admissions would result in higher costs to the state, since probation costs approximately \$2 per day per offender and prison costs approximately \$40 per day per offender. The fiscal impact of the amendment cannot be determined because the number of probationers that would or would not be revoked is unknown.

HOUSE AMENDMENT 17, 2<sup>nd</sup> READING, specifies that relative to the probation funding formula, certain actions do not count as technical violations. It would require in the development of the funding formula, that the technical violations named in the amendment be excluded. The fiscal impact of the amendment cannot be determined because the number of probationers that would or would not be revoked is unknown.

HOUSE AMENDMENT 22, 2<sup>nd</sup> READING would authorize the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) and the Department of Aging and Disability Services (DADS) jointly with a real estate investment trust to enter into a lease agreement to finance, design, and build a medical facility contiguous to an urban area to house the released inmates. TCOOMMI and DADS can contract with a private vendor to provide treatment services. This amendment is identical to House Bill 2100 with the addition of Subsection (i) to Section 508.146, Government Code. According to the Department of Aging and Disability Services (DADS), the original fiscal note for House Bill 2100 is unchanged by this amendment. The Department of Criminal Justice (TDCJ) assumes that the facility operator would be a private vendor with a contract with the DADS. Any fiscal impact related to Subsection (i) cannot be determined at this time. The cost to implement this amendment is estimated to be approximately \$3,484,335 for fiscal year 2008 and \$3,484,335 in fiscal year 2009. The cost would depend on the number of individuals eligible for services as described above which is unknown. DADS bases its estimate on serving a population of 50 individuals. It is assumed that the cost per individual per day is \$168.73 (Level 13 TILE 201) and

also, the it is assumed that approximately 25 percent of the individuals would need to receive Ventilator services at an additional cost of \$88.77 per day. DADS assumed no existing Medicaid certified facility would admit the inmate population and no Medicaid matching funds would be available, therefore, costs for the services would be 100 percent General Revenue.

The Texas Department of Criminal Justice has determined that the cost of implementing the other provisions and the amendments of this bill would not be significant.

The Correctional Managed Health Care Committee has determined that the costs to implement the provisions in the bill are not anticipated to be significant and could be absorbed with current resources.

The Board of Pardons and Paroles has determined that no fiscal impact is anticipated to implement SECTIONS 25, 26, 28, and 30-32 of the bill.

Unless otherwise noted, all costs associated with implementation of the bill have been estimated upon the Act becoming effective on September 1, 2007.

### **Local Government Impact**

The provisions of the bill that are likely to have an impact on local government are the provisions amending community supervision statutes. For SECTION 35 of the bill, which would establish a new funding formula for basic supervision probation, this analysis indicates the amount of state funding necessary to protect Community Supervision and Corrections Departments from potential financial losses as a result of the bill. SECTION 3 of the bill would likely result in decreased community supervision populations, depending on the number of defendants with supervision terminated early, as a result of the bill. Local governments would experience a decrease in revenue through lowered court costs and lowered probation fees to community supervision and corrections departments. The impact to individual localities would vary considerably due to court costs, probation fees, and supervision costs which vary by locality.

Under existing statute, in addition to funding received from the state for each felony offender on direct community supervision, the court may impose a supervision fee on the offender to help offset the costs of their supervision. Collection of the supervision fee and other fees imposed on offenders may be spread over the length of their community supervision; a shorter period of supervision could reduce the collection rate. However, if the majority of felony community supervision cases are not extended beyond the proposed maximum terms, there would be a reduction in the number of felony offenders under supervision, which would result in reduced workload and costs to a community supervision and corrections department.

**Source Agencies:** 116 Sunset Advisory Commission, 696 Department of Criminal Justice

**LBB Staff:** JOB, ES, MN, GG, SDO