

## **BILL ANALYSIS**

C.S.H.B. 3386  
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Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It is the opinion of interested parties that the operations of the Texas Department of Criminal Justice and the Texas Board of Pardons and Paroles are not as efficient and cost-effective as they could be. C.S.H.B. 3386 seeks to address this issue by proposing several revenue-generating policies and changes relating to the supervision of certain people convicted of a certain criminal offense and to the organization and operation of certain correctional entities.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3386 amends the Code of Criminal Procedure to require a judge, if the community supervision of a certain defendant is revoked after a hearing on a violation of a condition of community supervision, as an alternative to the procedure provided by provisions of law relating to revocation of community supervision, dispose of the case as if there had been no community supervision and sentence the defendant to the custody of the Texas Department of Criminal Justice (TDCJ) for the term of imprisonment originally assessed and to provide that the jurisdiction of the court continues for 365 days after the date the execution of the sentence actually begins. The bill makes this requirement and related bill provisions apply to a defendant who is convicted of a felony other than a state jail felony or a certain sexual or assaultive felony and who is determined by the judge at a community supervision revocation hearing to have violated a condition of community supervision other than the commission of an offense punishable by confinement and to not be a proper candidate for continuation or modification of community supervision. The bill requires TDCJ, not later than the 300th day after the date on which the defendant is received into TDCJ custody, to send the convicting court the record of the defendant's conduct and conformity to TDCJ rules, including a specific statement as to whether or not the defendant has committed a major disciplinary violation or an offense while imprisoned. The bill requires the judge of the convicting court, on receipt of such a report, not earlier than the 330th day or later the 365th day after the date on which the defendant is received into TDCJ custody, if in the judge's opinion the defendant would not benefit from further imprisonment, to suspend further execution of the sentence imposed and place the defendant on community supervision unless the defendant's conduct record indicates that the defendant has committed a major disciplinary violation or an offense.

C.S.H.B. 3386 amends the Government Code to authorize the district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district to establish committees from among their membership to further the efficient operation of the community supervision and corrections department established by the judges. The bill, in the provision of law authorizing a community supervision and corrections department to operate programs for the supervision and rehabilitation of persons in pretrial intervention programs, authorizes a department to assist in

the operation of such programs and specifies that the authorization applies to programs including diversion programs and other specialized court programs for persons charged with felonies.

C.S.H.B. 3386 sets forth temporary provisions, set to expire, January 1, 2013, to require TDCJ and the Board of Pardons and Paroles to conduct a joint study concerning the effectiveness of communications between TDCJ and the board concerning inmates who are confined in TDCJ or are under the supervision of TDCJ following release on parole or to mandatory supervision. The bill requires the study to evaluate whether transferring any duties between TDCJ and the board, or reorganizing any aspect of TDCJ or the board, could achieve any cost savings or organizational efficiencies. The bill requires TDCJ and the board, not later than December 1, 2012, to submit the results of the study to the governor, the lieutenant governor, the speaker of the house of representatives, the Sunset Advisory Commission, and the standing committees in the house of representatives and the senate that have primary jurisdiction over TDCJ.

C.S.H.B. 3386 requires the policies adopted by TDCJ governing the use of the pay telephone service by an inmate confined in a TDCJ-operated facility to allow for an average monthly call usage rate per eligible inmate of not less than 480 minutes per month, rather than an average monthly call rate of eight calls with each call having an average duration of not less than 10 minutes.

C.S.H.B. 3386 requires TDCJ to establish an inmate package program through which family members and friends of inmates may purchase and ship gifts to inmates through authorized vendors. The bill requires such a program to be established and operated at no cost to TDCJ. The bill authorizes a vendor to participate in the program if the vendor demonstrates to the satisfaction of TDCJ that the vendor is able to ensure the security of packages shipped through the program and provide proof that the vendor's employees have been subjected to criminal history background checks sufficient to exclude from employment with the vendor individuals who might pose a security risk to TDCJ or to inmates and if the vendor enters into a contract with TDCJ. The bill requires TDCJ, by contract, to require each vendor that participates in the program to remit to TDCJ a percentage of the vendor's profits resulting from the vendor's participation in the program. The bill requires money received from a vendor by TDCJ in that manner to be deposited to the credit of the general revenue fund. The bill requires TDCJ by policy to establish the percentage of a vendor's profits the vendor must agree to remit to TDCJ under the contract. The bill requires TDCJ to ensure that such a program is fully operational not later than September 1, 2011, and to delay the implementation of the program until and unless TDCJ determines that the program may be established and operated at no cost to TDCJ.

C.S.H.B. 3386 requires TDCJ to adopt policies designed to manage inmate population based on similar health conditions suffered by inmates. The bill requires the policies to maximize organizational efficiencies and reduce health care costs to TDCJ by housing inmates with similar health conditions in the same unit or units that are, if possible, served by or located near one or more specialty health care providers most likely to be needed for the treatment of the health condition. The bill requires an inmate confined in a facility operated by or under contract with TDCJ, other than a halfway house, to pay to the department an annual health care services fee in the amount of \$100. The bill removes the requirement that such an inmate who initiates a visit to a health care provider make a copayment of \$3 to TDCJ and makes provisions of law regarding the payment of the copayment applicable to the payment of the annual fee. The bill removes the prohibition on TDCJ charging a copayment for specified types of health care.

C.S.H.B. 3386 authorizes TDCJ to establish an adult education program to provide inmates with adult basic education, high school equivalency programs, cognitive skills training, and technical and vocational training necessary to increase the success of inmates in obtaining and maintaining employment after release or discharge and reduce recidivism among inmates. The bill requires TDCJ to coordinate any such adult education program with the literacy program for inmates to maximize the effectiveness of, and to reduce the duplication of services provided by, both programs and requires TDCJ to maximize the use of virtual and online educational resources in

any such adult education program.

C.S.H.B. 3386 requires TDCJ to make over-the-counter medication available for purchase by inmates in each inmate commissary operated by or under contract with TDCJ. The bill prohibits TDCJ from denying an inmate access to over-the-counter medications as a result of the inmate's inability to pay for the medication. The bill requires TDCJ to pay for the cost of over-the-counter medication for inmates who are unable to pay for the medication out of the profits of inmate commissaries operated by or under contract with TDCJ. The bill authorizes TDCJ to adopt policies concerning the sale and purchase of over-the-counter medication under the bill's provisions as necessary to ensure the safety and security of inmates in the custody of, and employees of, TDCJ, including policies concerning the quantities and types of over-the-counter medication that are authorized to be sold and purchased under the bill's provisions. The bill defines "over-the-counter medication."

C.S.H.B. 3386 requires the Board of Pardons and Paroles to establish a procedure to prioritize the consideration by parole panels of certain inmates for release on parole. The bill makes this requirement apply to an inmate who is eligible for release on parole; has been identified by TDCJ as an illegal criminal alien; has not been identified by TDCJ as a member of a security threat group; and is not serving a sentence for an offense for which a conviction renders a person ineligible for judge-ordered community supervision or for which the judgment contains an affirmative finding that a deadly weapon was used or exhibited during the commission or during immediate flight therefrom or for an offense listed as a reportable conviction or adjudication under the sex offender registration program. The bill requires the board to establish procedures to: ensure that a parole panel considers for release on parole such an inmate as soon as is practicable after the first date on which the inmate is eligible for parole; and determine whether a final order of deportation has been entered with reference to such an inmate or will be entered before the first date on which the inmate is eligible for release on parole. The bill requires the board, if it is determined that such a final order of deportation has not been entered with reference to such an inmate and will not be entered before the first date on which the inmate is eligible for release on parole, to notify TDCJ of that determination and requires TDCJ, on receipt of that notice, to immediately request from United States Immigration and Customs Enforcement that, with reference to the inmate, a final order of deportation be entered in an expedited manner. The bill requires TDCJ, if a parole panel votes to release on parole such an inmate, as soon as is practicable, to deliver the inmate to the custody of United States Immigration and Customs Enforcement for immediate deportation. The bill makes application of these provisions relating to priority consideration of such an inmate for release contingent on the passage of H.B. 2734 or substantially similar legislation by the 82nd Legislature, Regular Session, 2011.

C.S.H.B. 3386 requires TDCJ to adopt a policy that requires parole panels to consider all non-incarceration sanctions before revoking a person's release on parole or to mandatory supervision. The bill requires the revised community justice plan submitted by a community justice council to the community justice assistance division for purposes of payment of state aid to a community supervision and corrections department, to be submitted each even-numbered year, rather than each odd-numbered year, by a date designated by the division. The bill requires such a community justice plan to include, in addition to other components, a description of additional alternative sanctions the community supervision and corrections department could use to more fully rehabilitate persons under the supervision of the department, were the department to receive additional state aid.

C.S.H.B. 3386 requires TDCJ to issue a request for information to potential contractors and vendors to determine whether contracting for the transportation of inmates is more cost-effective than TDCJ transporting inmates. The bill requires TDCJ, the Board of Pardons and Paroles, Texas Tech University Health Sciences Center, and The University of Texas Medical Branch at Galveston to jointly develop a plan under which an inmate in TDCJ custody who requires specific medical care that is significantly more expensive than the care provided, on average, to other inmates is temporarily released under supervision for a time sufficient to enable the inmate

to receive the necessary care in a setting other than the correctional managed health care system. The bill requires such a plan to seek to maximize coverage of the necessary medical care under any health benefit plan coverage available to the inmate, including coverage under Medicaid, Medicare, or a private health benefit plan. The bill requires TDCJ and the board, if after developing the plan TDCJ and the board determine that the program may be implemented without requiring any statutory changes, to implement the program. The bill requires TDCJ, not later than January 1, 2013, and regardless of whether contracts are entered into concerning the transportation of inmates or whether a medical release plan is implemented under the bill's provisions, to submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the senate and the house of representatives with primary jurisdiction over TDCJ concerning the results of the request for information relating to the cost-effectiveness of contracting for inmate transportation and the contents of the medical release plan.

C.S.H.B. 3386 requires TDCJ to conduct a study to determine the most efficient and cost-effective manner possible in which to operate state jail felony facilities. The bill requires TDCJ, not later than January 1, 2012, to submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, each standing committee of the senate and the house of representatives with primary jurisdiction over TDCJ, and the Legislative Budget Board concerning the results of the study.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3386 differs from the original by requiring a judge, if a certain defendant's community supervision is revoked after a hearing on a violation of a condition of the supervision and as an alternative to state law community supervision revocation procedures, to dispose of the case as if there had been no community supervision and sentence the defendant to the custody of the Texas Department of Criminal Justice (TDCJ) for the term of imprisonment originally assessed, whereas the original authorizes a judge who disposes of a case as if there had been no community supervision to require the defendant to serve a specific term of imprisonment in TDCJ. The substitute differs from the original by making that requirement apply with respect to a defendant convicted of a felony other than a state jail felony or a certain sexual or assaultive felony who is determined to have violated a condition of community supervision other than the commission of an offense punishable by confinement and to not be a proper candidate for continuation or modification of community supervision, whereas the original makes the authorization apply with respect to a person convicted of a felony. The substitute omits a provision included in the original providing for the release of such a person from TDCJ on completion of the term of imprisonment. The substitute contains provisions not included in the original specifying that the jurisdiction of the court continues for 365 days after the date the execution of the sentence actually begins, requiring TDCJ to send to the convicting court the record of the defendant's conduct and conformity to TDCJ rules by a certain date, and requiring the judge of that court on receipt of the TDCJ report and by a certain date to suspend further execution of the imposed sentence and place the defendant on community supervision unless the record indicates a certain major disciplinary violation or an offense.

C.S.H.B. 3386 omits provisions included in the original requiring the Texas Board of Criminal Justice and TDCJ to maintain joint headquarters in Austin and exempting a division of TDCJ and a distribution of a power or a duty established by statute on or after September 1, 2011, from provisions of law authorizing the executive director of TDCJ to create, eliminate, and reorganize divisions within TDCJ. The substitute omits a provision included in the original requiring TDCJ to make reductions in certain department employee benefits before considering reducing the number of department employees for purposes of making downward budgetary adjustments.

C.S.H.B. 3386 contains provisions not included in the original requiring TDCJ to establish an inmate package program and setting out the requirements for the establishment and implementation of the program, vendor participation in the program, and the remission of vendor program profits to TDCJ. The substitute contains provisions not included in the original requiring TDCJ to establish an adult education program to provide inmates with certain education and training and setting out requirements relating to the program.

C.S.H.B. 3386 contains provisions not included in the original requiring TDCJ to make over-the-counter medication available for purchase by inmates in each inmate commissary operated by or under contract with TDCJ, setting out requirements relating to inmate access to and payment for the medication, authorizing TDCJ to adopt policies concerning the sale and purchase of the medication, and defining "over-the-counter medication."

C.S.H.B. 3386 contains provisions not included in the original requiring the Board of Pardons and Paroles to establish a procedure to prioritize the consideration by parole panels of certain parole-eligible inmates identified by TDCJ as illegal criminal aliens and procedures to ensure that such a consideration is completed at a certain time and to determine a final order of deportation with reference to such an inmate has been entered or will be entered by a certain date. The substitute contains provisions not included in the original requiring the board and TDCJ to take certain actions on a determination that a final order has not been entered with reference to such an inmate or will not be entered by that date and requiring TDCJ to deliver such an inmate voted by a parole panel to be released to the custody of United States Immigration and Customs Enforcement for immediate deportation. The substitute contains a provision not included in the original making passage of its provisions relating to priority consideration of such inmates on release and transfer of custody contingent on the passage of certain other legislation by the 82nd Legislature, Regular Session, 2011.

C.S.H.B. 3386 differs from the original by requiring TDCJ to adopt a policy requiring parole panels to consider all non-incarceration sanctions before revoking a person's release on parole or to mandatory supervision, whereas the original requires the Board of Pardons and Paroles to adopt such a policy.

C.S.H.B. 3386 contains provisions not included in the original requiring TDCJ to issue a request for information to potential contractors and vendors to determine whether contracting for the transportation of inmates is more cost-effective than the transportation of inmates by TDCJ, requiring TDCJ to jointly develop with specified entities a plan for the temporary medical release of certain inmates requiring specific medical care, setting out requirements relating to the plan, providing for the implementation of the program after the plan is developed, and requiring TDCJ to submit to certain state entities a report concerning the results of the request for information and the contents of the medical release plan.

C.S.H.B. 3386 contains a provision not included in the original requiring TDCJ to conduct a study to determine the most efficient and cost-effective manner possible in which to operate state jail felony facilities and to report the results of the study to certain state officials and entities.

C.S.H.B. 3386 differs from the original by making the substitute effective on passage, or, if it does not receive the necessary vote, September 1, 2011, whereas the original makes the original effective on September 1, 2011. The substitute differs from the original in nonsubstantive ways.