

By: Madden, Cain

H.B. No. 3386

Substitute the following for H.B. No. 3386:

By: Madden

C.S.H.B. No. 3386

A BILL TO BE ENTITLED

AN ACT

relating to the supervision of certain people convicted of a criminal offense and to the organization and operation of certain correctional entities.

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

SECTION 1. Article 42.12, Code of Criminal Procedure, is amended by adding Section 23A to read as follows:

Sec. 23A. ALTERNATIVE REVOCATION PROCEDURE. (a) This section applies only to a defendant who:

(1) is convicted of a felony other than:

(A) a state jail felony; or

(B) a felony listed in Section 22(a)(4); and

(2) at a hearing under Section 21 is determined by the judge to:

(A) have violated a condition of community supervision other than the commission of an offense punishable by confinement; and

(B) not be a proper candidate for continuation or modification of community supervision under Section 22.

(b) If the community supervision of a defendant to whom this section applies is revoked after a hearing under Section 21, the judge shall, as an alternative to the procedure provided by Section 23, dispose of the case as if there had been no community supervision and sentence the defendant to the custody of the Texas

1 Department of Criminal Justice for the term of imprisonment
2 originally assessed, except that the jurisdiction of the court
3 continues for 365 days after the date the execution of the sentence
4 actually begins.

5 (c) Not later than the 300th day after the date on which the
6 defendant is received into the custody of the Texas Department of
7 Criminal Justice, the department shall send the convicting court
8 the record of the defendant's conduct and conformity to department
9 rules, including a specific statement as to whether or not the
10 defendant has committed a major disciplinary violation or an
11 offense while imprisoned.

12 (d) On receipt of the report from the Texas Department of
13 Criminal Justice, but not earlier than the 330th day or later than
14 the 365th day after the date on which the defendant is received into
15 the custody of the Texas Department of Criminal Justice, if in the
16 opinion of the judge the defendant would not benefit from further
17 imprisonment, the judge of the convicting court shall suspend
18 further execution of the sentence imposed and place the defendant
19 on community supervision under the terms and conditions of this
20 article unless the record provided under Subsection (c) indicates
21 that the defendant has committed a major disciplinary violation or
22 an offense.

23 SECTION 2. Section 76.002, Government Code, is amended by
24 adding Subsection (f) to read as follows:

25 (f) The district and statutory county court judges
26 described by Subsection (a) may establish committees from among
27 their membership to further the efficient operation of the

1 department established by the judges.

2 SECTION 3. Section 76.011(a), Government Code, is amended
3 to read as follows:

4 (a) The department may operate, or assist in the operation
5 of, programs for the supervision and rehabilitation of persons in
6 pretrial intervention programs, including diversion programs and
7 other specialized court programs for persons charged with felonies.
8 Programs may include testing for controlled substances. A person
9 in a pretrial intervention program may be supervised for a period
10 not to exceed two years.

11 SECTION 4. Chapter 493, Government Code, is amended by
12 adding Section 493.030 to read as follows:

13 Sec. 493.030. JOINT STUDY CONCERNING INTERAGENCY
14 COMMUNICATION. (a) The department and the Board of Pardons and
15 Paroles shall conduct a joint study concerning the effectiveness of
16 communications between the department and the board concerning
17 inmates who are confined in the department or are under the
18 supervision of the department following release on parole or to
19 mandatory supervision. The study must evaluate whether
20 transferring any duties between the department and the board, or
21 reorganizing any aspect of the department or the board, could
22 achieve any cost savings or organizational efficiencies.

23 (b) The department and the Board of Pardons and Paroles
24 shall, not later than December 1, 2012, submit the results of the
25 study conducted under Subsection (a) to the governor, the
26 lieutenant governor, the speaker of the house of representatives,
27 the Sunset Advisory Commission, and the standing committees in the

1 house of representatives and the senate that have primary
2 jurisdiction over the department.

3 (c) This section expires January 1, 2013.

4 SECTION 5. Section 495.027(d), Government Code, is amended
5 to read as follows:

6 (d) Subject to board approval, the department shall adopt
7 policies governing the use of the pay telephone service by an inmate
8 confined in a facility operated by the department, including a
9 policy governing the eligibility of an inmate to use the service.
10 The policies adopted under this subsection may not unduly restrict
11 calling patterns or volume and must allow for an average monthly
12 call usage rate of not less than 480 minutes per month ~~[eight calls,~~
13 ~~with each call having an average duration of not less than 10~~
14 ~~minutes,~~] per eligible inmate.

15 SECTION 6. Subchapter B, Chapter 495, Government Code, is
16 amended by adding Section 495.029 to read as follows:

17 Sec. 495.029. INMATE PACKAGE PROGRAM. (a) The department
18 shall establish an inmate package program through which family
19 members and friends of inmates may purchase and ship gifts to
20 inmates through authorized vendors. The inmate package program
21 must be established and operated at no cost to the department.

22 (b) A vendor may participate in the inmate package program
23 if the vendor:

24 (1) demonstrates to the satisfaction of the department
25 that the vendor is able to:

26 (A) ensure the security of packages shipped
27 through the program; and

1 (B) provide proof that the vendor's employees
2 have been subjected to criminal history background checks
3 sufficient to exclude from employment with the vendor individuals
4 who might pose a security risk to the department or to inmates; and

5 (2) enters into a contract described by Subsection (c)
6 with the department.

7 (c) The department, by contract, shall require each vendor
8 that participates in the inmate package program to remit to the
9 department a percentage of the vendor's profits resulting from the
10 vendor's participation in the inmate package program. Money
11 received from a vendor by the department under this subsection
12 shall be deposited to the credit of the general revenue fund.

13 (d) The department by policy shall establish the percentage
14 of a vendor's profits the vendor must agree to remit to the
15 department under a contract described by Subsection (c).

16 SECTION 7. Subchapter C, Chapter 499, Government Code, is
17 amended by adding Section 499.055 to read as follows:

18 Sec. 499.055. POPULATION MANAGEMENT BASED ON INMATE HEALTH.
19 The department shall adopt policies designed to manage inmate
20 population based on similar health conditions suffered by inmates.
21 The policies adopted under this section must maximize
22 organizational efficiencies and reduce health care costs to the
23 department by housing inmates with similar health conditions in the
24 same unit or units that are, if possible, served by or located near
25 one or more specialty health care providers most likely to be needed
26 for the treatment of the health condition.

27 SECTION 8. Subchapter A, Chapter 501, Government Code, is

amended by adding Section 501.0052 to read as follows:

Sec. 501.0052. ADULT EDUCATION PROGRAM. (a) The department may 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:

(1) increase the success of inmates in obtaining and maintaining employment after release or discharge; and

(2) reduce recidivism among inmates.

(b) The department shall:

(1) coordinate any adult education program established under this section with the literacy program established under Section 501.005 to maximize the effectiveness of, and to reduce the duplication of the services provided by, both programs; and

(2) maximize the use of virtual and online educational resources in any adult education program established under this section.

SECTION 9. Section 501.063, Government Code, is amended to read as follows:

Sec. 501.063. ANNUAL INMATE FEE ~~[COPAYMENTS]~~ FOR ~~[CERTAIN]~~ HEALTH CARE ~~[VISITS]~~. (a) An inmate confined in a facility operated by or under contract with the department, other than a halfway house, ~~[who initiates a visit to a health care provider]~~ shall pay an annual health care services fee ~~[make a copayment]~~ to the department in the amount of \$100 ~~[\$3]~~. The inmate shall pay ~~[make]~~ the annual fee ~~[copayment]~~ out of the inmate's trust fund.

If the balance in the fund is insufficient to cover the fee
~~[copayment]~~, 50 percent of each deposit to the fund shall be applied
toward the balance owed until the total amount owed is paid.

(b) ~~[The department may not charge a copayment for health
care.]~~

~~[(1) provided in response to a life-threatening or
emergency situation affecting the inmate's health;~~

~~[(2) initiated by the department;~~

~~[(3) initiated by the health care provider or
consisting of routine follow-up, prenatal, or chronic care; or~~

~~[(4) provided under a contractual obligation that is
established under the Interstate Corrections Compact or under an
agreement with another state that precludes assessing a copayment.]~~

~~[(c)]~~ The department shall adopt policies to ensure that
before any deductions are made from an inmate's trust fund under
this section ~~[an inmate initiates a visit to a health care~~
~~provider]~~, the inmate is informed that the annual health care
services fee ~~[a \$3 copayment]~~ will be deducted from the inmate's
trust fund as required by Subsection (a).

(c) ~~[(d)]~~ The department may not deny an inmate access to
health care as a result of the inmate's failure or inability to pay
a fee under this section ~~[make a copayment]~~.

(d) ~~[(e)]~~ The department shall deposit money received under
this section in an account in the general revenue fund that may be
used only to pay the cost of administering this section. At the
beginning of each fiscal year, the comptroller shall transfer any
surplus from the preceding fiscal year to the state treasury to the

1 credit of the general revenue fund.

2 SECTION 10. Subchapter B, Chapter 501, Government Code, is
3 amended by adding Section 501.067 to read as follows:

4 Sec. 501.067. AVAILABILITY OF CERTAIN MEDICATION. (a) In
5 this section, "over-the-counter medication" means medication that
6 may legally be sold and purchased without a prescription.

7 (b) The department shall make over-the-counter medication
8 available for purchase by inmates in each inmate commissary
9 operated by or under contract with the department.

10 (c) The department may not deny an inmate access to
11 over-the-counter medications as a result of the inmate's inability
12 to pay for the medication. The department shall pay for the cost of
13 over-the-counter medication for inmates who are unable to pay for
14 the medication out of the profits of inmate commissaries operated
15 by or under contract with the department.

16 (d) The department may adopt policies concerning the sale
17 and purchase of over-the-counter medication under this section as
18 necessary to ensure the safety and security of inmates in the
19 custody of, and employees of, the department, including policies
20 concerning the quantities and types of over-the-counter medication
21 that may be sold and purchased under this section.

22 SECTION 11. Subchapter B, Chapter 508, Government Code, is
23 amended by adding Section 508.0442 to read as follows:

24 Sec. 508.0442. PRIORITY CONSIDERATION OF CERTAIN INMATES
25 FOR RELEASE; TRANSFER OF CUSTODY. (a) This section applies only to
26 an inmate:

27 (1) who is eligible for release on parole;

1 (2) who has been identified by the department under
2 Section 493.015 as an illegal criminal alien;

3 (3) who has not been identified by the department as a
4 member of a security threat group; and

5 (4) who is not serving a sentence for an offense:

6 (A) described by Section 3g(a)(1), Article
7 42.12, Code of Criminal Procedure, or for which the judgment
8 contains an affirmative finding under Section 3g(a)(2) of that
9 article; or

10 (B) described by Article 62.001(5), Code of
11 Criminal Procedure.

12 (b) The board shall establish a procedure to prioritize the
13 consideration by parole panels of inmates described by Subsection
14 (a) for release on parole. The board shall also establish
15 procedures to:

16 (1) ensure that a parole panel considers for release
17 on parole an inmate described by Subsection (a) as soon as is
18 practicable after the first date on which the inmate is eligible for
19 parole; and

20 (2) determine whether a final order of deportation has
21 been entered with reference to an inmate described by Subsection
22 (a) or will be entered before the first date on which the inmate is
23 eligible for release on parole.

24 (c) If it is determined that a final order of deportation
25 has not been entered with reference to an inmate described by
26 Subsection (a), and will not be entered before the first date on
27 which the inmate is eligible for release on parole, the board shall

1 notify the department of that determination. On receipt of notice
2 under this subsection, the department shall immediately request
3 from United States Immigration and Customs Enforcement that, with
4 reference to the inmate, a final order of deportation be entered in
5 an expedited manner.

6 (d) If a parole panel votes to release on parole an inmate
7 described by Subsection (a), the department shall, as soon as is
8 practicable, deliver the inmate to the custody of United States
9 Immigration and Customs Enforcement for immediate deportation.

10 SECTION 12. Section 508.283, Government Code, is amended by
11 adding Subsection (f) to read as follows:

12 (f) The department shall adopt a policy that requires parole
13 panels to consider all non-incarceration sanctions before revoking
14 a person's release on parole or to mandatory supervision.

15 SECTION 13. Section 509.007, Government Code, is amended to
16 read as follows:

17 Sec. 509.007. COMMUNITY JUSTICE PLAN. (a) The division
18 shall require as a condition to payment of state aid to a department
19 or county under Section 509.011 and eligibility for payment of
20 costs under Section 499.124 that a community justice plan be
21 submitted for the department. The community justice council shall
22 submit the plan required by this subsection. A community justice
23 council may not submit a plan under this section unless the plan is
24 first approved by the judges described by Section 76.002 who
25 established the department served by the council. The council
26 shall submit a revised plan to the division each even-numbered
27 ~~[odd-numbered]~~ year by a date designated by the division. A plan

1 may be amended at any time with the approval of the division.

2 (b) A community justice plan required under this section
3 must include:

4 (1) a statement of goals and priorities and of
5 commitment by the community justice council, the judges described
6 by Section 76.002 who established the department, and the
7 department director to achieve a targeted level of alternative
8 sanctions;

9 (2) a description of methods for measuring the success
10 of programs provided by the department or provided by an entity
11 served by the department; ~~and~~

12 (3) a proposal for the use of state jail felony
13 facilities and, at the discretion of the community justice council,
14 a regional proposal for the construction, operation, maintenance,
15 or management of a state jail felony facility by a county, a
16 community supervision and corrections department, or a private
17 vendor under a contract with a county or a community supervision and
18 corrections department; and

19 (4) a description of additional alternative sanctions
20 the department could use to more fully rehabilitate persons under
21 the supervision of the department, were the department to receive
22 additional state aid under Section 509.011.

23 SECTION 14. (a) The Texas Department of Criminal Justice
24 shall issue a request for information to potential contractors and
25 vendors to determine whether contracting for the transportation of
26 inmates is more cost-effective than the department transporting
27 inmates.

1 (b) The Texas Department of Criminal Justice, the Board of
2 Pardons and Paroles, Texas Tech University Health Sciences Center,
3 and The University of Texas Medical Branch at Galveston shall
4 jointly develop a plan under which an inmate in the custody of the
5 department who requires specific medical care that is significantly
6 more expensive than the care provided, on average, to other inmates
7 is temporarily released under supervision for a time sufficient to
8 enable the inmate to receive the necessary care in a setting other
9 than the correctional managed health care system operated under
10 Subchapter E, Chapter 501, Government Code. The plan established
11 under this subsection must seek to maximize coverage of the
12 necessary medical care under any health benefit plan coverage
13 available to the inmate, including coverage under Medicaid,
14 Medicare, or a private health benefit plan.

15 (c) If after developing the plan required under Subsection
16 (b) of this section, the Texas Department of Criminal Justice and
17 the Board of Pardons and Paroles determine that the program may be
18 implemented without requiring any statutory changes, the
19 department and board shall implement the program.

20 (d) Regardless of whether contracts are entered into
21 concerning the transportation of inmates or whether a medical
22 release plan is implemented under Subsection (c) of this section,
23 not later than January 1, 2013, the Texas Department of Criminal
24 Justice shall submit a report to the governor, the lieutenant
25 governor, the speaker of the house of representatives, and each
26 standing committee of the senate and the house of representatives
27 with primary jurisdiction over the Texas Department of Criminal

1 Justice concerning the results of the request for information
2 issued under Subsection (a) of this section and the contents of the
3 medical release plan developed under Subsection (b) of this
4 section.

5 SECTION 15. (a) The Texas Department of Criminal Justice
6 shall conduct a study to determine the most efficient and
7 cost-effective manner possible in which to operate state jail
8 felony facilities.

9 (b) Not later than January 1, 2012, the Texas Department of
10 Criminal Justice shall submit a report to the governor, the
11 lieutenant governor, the speaker of the house of representatives,
12 each standing committee of the senate and the house of
13 representatives with primary jurisdiction over the Texas
14 Department of Criminal Justice, and the Legislative Budget Board
15 concerning the results of the study conducted under Subsection (a)
16 of this section.

17 SECTION 16. Section 23A, Article 42.12, Code of Criminal
18 Procedure, as added by this Act, applies only to a person who is
19 initially placed on community supervision on or after the effective
20 date of this Act.

21 SECTION 17. (a) Except as provided by Subsection (b) of
22 this section, the Texas Department of Criminal Justice shall ensure
23 that the inmate package program required under Section 495.029,
24 Government Code, as added by this Act, is fully operational not
25 later than September 1, 2011.

26 (b) The Texas Department of Criminal Justice shall delay the
27 implementation of the inmate package program until and unless the

1 department determines that the program may be established and
2 operated at no cost to the department.

3 SECTION 18. Section 508.0442, Government Code, as added by
4 this Act, is contingent on the passage of H.B. No. 2734 or
5 substantially similar legislation by the 82nd Legislature, Regular
6 Session, 2011. If H.B. No. 2734 or substantially similar
7 legislation by the 82nd Legislature, Regular Session, 2011, does
8 not become law, Section 508.0442, Government Code, as added by this
9 Act, has no effect.

10 SECTION 19. This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect September 1, 2011.