

## **BILL ANALYSIS**

Senate Research Center

H.B. 2193  
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Criminal Justice  
5/19/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

In March of 2005, state officials announced that the Texas prison system was at maximum capacity. To offset its capacity problem, the Texas Department of Criminal Justice (TDCJ) asked for an additional appropriation to contract with counties and private providers for additional beds as an emergency and temporary measure. Policymakers are faced with the prospect of building new prisons or initiating creative reforms to address the capacity issue. The Community Justice Assistance Division of TDCJ reports that Texas probation terms are 67 percent longer than the national average and revocations have increased by 8,000 cases over the last ten years, with 41 percent of revocations in 2004 being technical violations.

H.B. 2193 reduces the caseloads in our community supervision programs by reducing the number of years defendants can be placed on supervision, and by giving judges discretion to reduce or terminate a case at one-half of the defendant's term. H.B. 2193 also creates a pilot project within the Community Justice Assistance Division of TDCJ to accomplish a reduction in specialized caseloads for supervision officers, increase judicial oversight, reduce revocations, and increase monitoring and field contact by supervision officers.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2(a), Article 42.03, Code of Criminal Procedure, as follows:

(a) Requires the judge of the court in which the defendant was convicted, in all criminal cases, to give the defendant credit on the defendant's sentence for the time that the defendant has spent in jail or in a court-ordered residential program or facility in said cause from the time of the defendant's arrest and confinement until the defendant's sentence by the trial court, including confinement in jail or in a court-ordered residential program or facility ordered as a condition of deferred adjudication community supervision.

SECTION 2. Amends Section 3, Article 42.12, Code of Criminal Procedure, as follows:

Sec. 3. JUDGE ORDERED COMMUNITY SUPERVISION. (a) Makes no changes to this Subsection.

(b) Provides that in a felony case, the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is, subject to specific extensions provided by Section 22, 10 years for a felony listed in Section 3g, a felony for conviction registration as a sex offender is required by Chapter 62 (Sex Offender Registration Program), or any other first or second degree felony and 5 years, for a third degree felony other than a third degree felony otherwise described by this subsection.

(c) Provides that the maximum period of community supervision in a misdemeanor case is two years, subject to extensions provided by Section 22.

(d) Redesignates existing text from Subsection (e). Provides that a defendant is not eligible for community supervision under this section if the defendant is sentenced to a term of imprisonment that exceeds 10 years. Deletes existing text from Subsection (d) authorizing a judge to increase certain community supervision periods, and relating to a person sentenced to a term of confinement.

(e) Redesignates existing text from Subsection (g). Deletes existing text from Subsection (f) relating to the minimum and maximum periods of community supervision for a felony.

(f) Provides that this section applies to offenses listed in Section 3g only to the extent that Subsection (b) establishes minimum and maximum periods of community supervision for those offenses.

SECTION 3. Amends Sections 4(b) and (d), Article 42.12, Code of Criminal Procedure, as follows:

(b) Requires the judge, if the jury recommends community supervision, to place the defendant on community supervision for any period permitted under Section 3(b) or 3(c), as appropriate, subject to the extensions provided by Section 22.

(d) Provides that a defendant is not eligible for community supervision under this section if the defendant is convicted of a state jail felony for which suspension of the sentence occurs automatically under Section 15(a), rather than being sentenced to serve a term of confinement under Section 12.35 (State Jail Felony Punishment), Penal Code, or is adjudged guilty of an offense under Section 19.02 (Murder), Penal Code.

SECTION 4. Amends Section 5(a), Article 42.12, Code of Criminal Procedure, as follows:

(a) Provides that the minimum and maximum terms of a period of community supervision under this section are the same terms provided under Section 3(b), subject to the extensions provided by Section 22. Prohibits the period of community supervision in a misdemeanor case from exceeding two years, subject to the extensions provided by Section 22. Deletes existing text prohibiting community supervision from exceeding certain periods in certain felony cases and authorizing a judge to increase the maximum period of community supervision.

SECTION 5. Amends Section 15(a)(1), Article 42.12, Code of Criminal Procedure, to require the judge to suspend the imposition of the sentence and place the defendant on community supervision, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a) (Reduction of State Jail Felony Punishment to Misdemeanor Punishment), Penal Code, in which event the judge may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed.

SECTION 6. Amends Sections 15(h)(2), and (3), Article 42.12, Code of Criminal Procedure, as follows:

(2) Authorizes a judge to credit any time a defendant is required to serve in a state jail felony facility time served by the defendant in a county jail or a court-ordered residential program or facility from the time of the defendant's arrest and confinement until sentencing by the trial court, including any time spent in custody waiting to enter a court-ordered residential program or facility, but only if the defendant successfully competes the court-ordered residential program after sentencing.

(3) Requires the judge to credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision any time served by the defendant in a state jail felony facility or court-ordered residential program or facility after sentencing.

SECTION 7. Amends Section 16(a), Article 42.12, Code of Criminal Procedure, to authorize, rather than require, a judge to require as a condition for community supervision that the defendant work a specified number of hours at a community service project or projects for an organization or organizations approved by the judge and designated by the Department of Criminal Justice (department). Prohibits the judge from requiring that a defendant work at a community service project upon making specific determinations and noting said determinations on the order placing the defendant on community supervision.

SECTION 8. Amends Sections 20(a) and (b), Article 42.12, Code of Criminal Procedure, as follows:

(a) Sets forth requirements for the judge in reviewing a defendant's record to determine a reduction or termination of the length of community supervision. Makes nonsubstantive changes.

(b) Provides that this section does not apply to a defendant convicted of an offense under Sections 49.04-49.08 (Intoxication Manslaughter), Penal Code, a defendant convicted of an offense for which on conviction registration as a sex offender is required under Chapter 62 (Sex Offender Registration Program), or a defendant convicted of a felony described by Section 3g.

SECTION 9. Amends Section 22(c), Article 42.12, Code of Criminal Procedure, to authorize the judge to extend a period of community supervision on a showing of good cause under this section as often as determined necessary.

SECTION 10. Amends Section 23(b), Article 42.12, Code of Criminal Procedure, to provide that no part of the time that the defendant is on community supervision shall be considered as any part of the time that he shall be sentenced to serve, except that on revocation, the judge is authorized to credit the defendant time served by the defendant as a condition of community supervision in a county jail, community corrections facility, or court-ordered residential program or facility, but only if the defendant successfully completes the court-ordered residential program after sentencing.

SECTION 11. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0178, as follows:

Art. 102.0178. COSTS ATTENDANT TO CERTAIN INTOXICATION AND DRUG CONVICTIONS. (a) Requires a person to pay \$50 as a court cost on conviction of an offense under certain chapters, in addition to other costs on conviction imposed by this chapter.

(b) Requires the court to assess and make a reasonable effort to collect the cost due under this article whether or not any other court cost is assessed or collected.

(c) Sets forth the conditions for which a person is considered to have been convicted, for purposes of this article.

(d) Provides that court costs under this article are collected in the same manner as other fines or costs. Requires an officer collecting the costs to keep separate records of the funds collected as costs under this article and to deposit the funds in the county or municipal treasury, as appropriate.

(e) Sets forth requirements for the custodian of a county or municipal treasury.

(f) Authorizes a county or municipality to retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) Requires the custodian of the treasury, if no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, to file

the report required for the quarter in the regular manner and to state that no funds were collected.

(h) Requires the comptroller of public accounts (comptroller) to deposit the funds received under this article to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469 (Drug Court Programs), Health and Safety Code. Requires the legislature to appropriate money from the account solely to the criminal justice division of the governor's office for distribution to drug court programs that apply for the money.

(i) Provides that funds collected under this article are subject to audit by the comptroller.

SECTION 12. Amends Section 469.001, Health and Safety Code, as follows:

Sec. 469.001. New heading: DRUG COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) Makes no changes to this subsection.

(b) Authorizes the court, with the consent of the attorney representing the state, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt, if a defendant enters a drug court program following an arrest for an offense punishable as a state jail felony under Chapter 481 (Texas Controlled Substances Act). Authorizes the court to dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant successfully completes the program, on motion of the attorney representing the state. Authorizes the court to proceed as if the case had never been stayed, if the defendant fails to successfully complete the program.

(c) Requires the court, on ex parte petition or other request of a defendant, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter), Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the drug court program if the defendant meets specific qualifications.

SECTION 13. Amends Section 469.002, Health and Safety Code, to authorize the commissioners court of a county to establish specific types of drug court programs.

SECTION 14. Amends Section 469.003, Health and Safety Code, by adding Subsection (c), to authorize a drug court program established under Section 469.002 to make certain notifications and provide information.

SECTION 15. Amends Section 469.004, Health and Safety Code, as follows:

Sec. 469.004. FEES. (a) Authorizes a drug court program established under Section 469.002 to collect certain fees from a participant in the program.

(b) Authorizes fees collected under this section to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the program. Sets forth requirements for the fees.

SECTION 16. Amends Section 469.006, Health and Safety Code, as follows:

Sec. 469.006. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a) Requires the commissioners court of a county with a population of more than 200,000, rather than 550,000, to establish a drug court program under Subdivision (1) of Section 469.002.

(b) Redesignates existing text from Subsection (c). Requires a county required under this section to establish a drug court program to apply for available federal and state funds to pay the costs of the program.

(c) Provides that notwithstanding Subsection (a), a county is required to establish a drug program under this section only if the county receives federal or state funding specifically for that purpose.

(d) Provides that a county that does not establish a drug court program as required by this section and maintain the program is ineligible to receive certain funds and grants from the state.

SECTION 17. Amends Section 76.002(a), Government Code, to set forth requirements for the district judge or 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.

SECTION 18. Amends Section 76.003(a), Government Code, to require a community justice council to be established by the judges described by Section 76.002 in each jurisdiction.

SECTION 19. Amends Section 76.004, Government Code, as follows:

Sec. 76.004. DEPARTMENT DIRECTOR; FISCAL OFFICER. (a) Requires the judges described by Section 76.002 to appoint a community supervision and corrections department (department) director to meet, at a minimum, the eligibility requirements for officers established under Section 76.005.

(a-1) Requires the department director to perform or delegate the responsibility for performing specific duties.

(b) Requires the department director to employ a sufficient number of officers and other employees to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities. Provides that a person employed under this subsection is an employee of the department and not of the judges or judicial districts.

(c) Authorizes the judges described by Section 76.002 to appoint a fiscal officer for the department, other than the county auditor.

(d)-(f) Makes a conforming change.

(g) Provides that Subsections (c)-(f) do not diminish the rights of specific officers or entities to examine and audit accounts, records, receipts, and expenditures of the department.

SECTION 20. Amends Chapter 76, Government Code, by adding Section 76.0045, as follows:

Sec. 76.0045. JUDICIAL RESPONSIBILITIES; IMMUNITY. (a) Provides that the responsibility of a judge described by Section 76.002 for personnel decisions is limited to the appointment of a department director and a fiscal officer.

(b) Sets forth limitations for the responsibility of a judge described by Section 76.002 for budgetary decisions.

(c) Sets forth situations for which a judge described by Section 76.002 has judicial immunity in a suit.

SECTION 21. Amends Section 76.0051, Government Code, as follows:

Sec. 76.0051. AUTHORIZATION TO CARRY WEAPON. Provides that an officer is authorized to carry a weapon while engaged in the actual discharge of the officer's duties under specific circumstances, only if the officer meets certain requirements and the director of the department agrees to the authorization.

SECTION 22. Amends Section 76.006, Government Code, by amending Subsections (a) and (h), and adding Subsection (j), as follows:

(a)-(h) Makes conforming changes.

(j) Requires the attorney general to defend a statutory county court judge in an action in state or federal court if certain guidelines are met.

SECTION 23. Amends Section 76.009(a), Government Code, to make a conforming change.

SECTION 24. Amends Section 76.010(c), Government Code, to authorize the department, rather than the district judge or judges, to authorize expenditures of funds provided by the community justice division of TDCJ to the department for specific purposes.

SECTION 25. Amends Section 102.021, Government Code, to require a person convicted of an offense to pay additional costs attendant to convictions under Chapter 49 (Intoxication and Alcoholic Beverages Offenses), Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 469, Health and Safety Code in addition to all other costs.

SECTION 26. Amends Section 509.007, Government Code, as follows:

Sec. 509.007. COMMUNITY JUSTICE PLAN. Sets forth requirements for a community justice plan required under this section. Makes a conforming change.

SECTION 27. Amends Chapter 509, Government Code, by adding Section 509.016, as follows:

Sec. 509.016. PRISON DIVERSION PILOT PROGRAM. (a) Requires the division to establish a pilot program that provides grants to selected departments for the implementation of a system of progressive sanctions designed to reduce the revocation rate of defendants placed on community supervision. Requires the division to give priority in providing grants to departments serving counties in which the revocation rate for defendants on community supervision significantly exceeds the statewide average.

(b) Requires the division to give preference to departments that present to the division a plan that will target medium-risk and high-risk defendants and use progressive sanction models that adhere to the components set forth in Section 469.001, Health and Safety Code, in determining which departments are proper candidates for grants under this section. Requires a department to offer a plan that contains some if not all of specific components, as a condition to receiving a grant.

(c) Requires the division, not later than December 1, 2006, to provide a report to the board. Sets forth requirements for the report, in addition to the deadline for providing the report to specific entities.

SECTION 28. Amends Section 132.002, Local Government Code, by adding Subsection (f), as follows:

(f) Authorizes the director of a community supervision and corrections department, with the approval of the judges described by Section 76.002, Government Code, to authorize a community supervision official who collects fees, fines, court costs, and other charges to perform specific functions.

SECTION 29. Repealers:

(1) Sections 4(c) (relating to authorizing a judge to increase the maximum period of community supervision), 16(b) (relating to limitations on the amount of community service work ordered by the judge), 18(c) (relating to prohibiting a defendant from earning good credit conduct for time spent in a community corrections facility), and 22A

(Extending Supervision Period for Sex Offenders), Article 42.12, Code of Criminal Procedure; and

(2) Section 76.002(b) (relating to the entitlement of district judges and judges of statutory county courts trying criminal cases), Government Code.

SECTION 30. (a) Makes application of this Act prospective.

(b) Makes application of Article 102.0178, Code of Criminal Procedure, and amending Section 102.021, Government Code, prospective.

(c) Makes application of Section 469.001, Health and Safety Code, as amended by this Act, prospective.

(d) Requires the commissioners court of a county required under Section 469.006, Health and Safety Code, as amended by this Act, to establish a drug court program to establish the program by a specific date.

(e) Makes application of Section 76.0045, Government Code, prospective.

(f) Requires the community justice assistance division of the Texas Department of Criminal Justice to develop criteria and review grant proposals, as required by Section 509.016, Government Code, as added by this Act, as soon as possible after the effective date of this Act, and to begin making grants under that section not later than September 30, 2005.

SECTION 31. Effective date: September 1, 2005.