

BILL ANALYSIS

C.S.H.B. 2193
By: Madden
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 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% longer than the national average and revocations have increased by 8,000 cases over the last ten years, with 41% of revocations in 2004 being technical violations.

The purpose of CSHB 2193 is to reduce the number of 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. CSHB 2193 also creates a pilot project within the Community Justice Assistance Division of the Department of Criminal Justice 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

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

CSHB 2193 amends Code of Criminal Procedure to provide that in all criminal cases, the judge shall 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 from the time of the defendant's arrest and confinement until the defendant's sentence by trial court. This includes confinement in jail or in a court-ordered residential program or facility ordered as a condition of deferred adjudication community supervision.

CSHB 2193 amends Code of Criminal Procedure, to provide that the maximum period of community supervision for a felony described by Section 3g or for which on conviction registration as a sex offender is required by Chapter 62 is 10 years, not subject to the extensions provided by section 22.

CSHB 2193 provides that the maximum period of community supervision for any other felony of the first, second or third degree is five years, subject to the extensions provided by Section 22. Under current statute, the maximum term of probation for a misdemeanor is two years, subject to the extensions provided by Section 22 (c) or 22A, Article 42.12, Code of Criminal Procedure. In CSHB 2193, the term of probation for a misdemeanor case remains two years, but is subject to the extensions in all of Section 22, Article 42.12, Code of Criminal Procedure. There is no set minimum term of probation for either of these offenses.

This bill deletes language from the Code of Criminal Procedure which makes the minimum period of community supervision for a felony described by Section 13B(b) (sexual offenses against children) five years, and the maximum period ten years. These offenders are already required by Chapter 62 to register as a sex offender; therefore, under CSHB 2193, the maximum term of community supervision for these offenses is ten years and there is not a set minimum.

Under current statute, a state jail felony offender is not eligible for community supervision. This bill provides that a defendant who is convicted of a state jail felony is eligible for community supervision.

CSHB 2193 provides that a defendant is not eligible for jury recommended community supervision if the defendant is convicted of a state jail felony for which suspension of the sentence occurs automatically under Section 15(a), Article 42.12, Code of Criminal Procedure. A defendant is also not eligible for jury recommended community supervision if the defendant is adjudged guilty of an offense under Section 19.02, Penal Code (first degree murder).

CSHB 2193 provides that the maximum period of community supervision a judge may impose for a state jail felony is three years, except that the judge may extend the maximum period of community supervision to not more than five years.

CSHB 2193 provides that if a defendant is required to serve in a state jail felony facility, the judge is required to give the defendant credit for any time that the defendant spent in a county jail, residential program, or residential facility from the time of arrest until sentencing by a trial court, including any time spent in custody waiting to enter a court-ordered residential program or facility. The judge shall also credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of probation, any time served by the defendant in a state jail felony facility or court-ordered residential program or facility after sentencing.

CSHB 2193 provides an additional exception to Section 15(a) (1), Article 42.12, Code of Criminal Procedure. This change provides that on conviction of a state jail felony under Section 481.115 (b), 481.1151 (b) (1), 481.116 (b), 481.121 (b) (3), or 481.129 (g) (1), Health and Safety Code (various offenses related to the possession of a controlled substance), the judge shall 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), 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. The change made by CSHB 2193 does not prevent courts from using 12.44(a), but in the event of subsequent state jail drug convictions, these individuals will not crowd the state jail system as incarcerates.

CSHB 2193 amends Code of Criminal Procedure to provide that the judge "may" rather than "shall" require community service. This bill also deletes language requiring that the judge note on the order placing the defendant on community service why the determination was made to not require community service. CSHB 2193 simply allows the judge to determine that a defendant is or is not required to do community service based on certain listed criteria.

Under current statute, the period of community supervision may be reduced or terminated by the judge after the defendant has satisfactorily completed one-third of the original period, or two years, whichever is less. CSHB 2193 requires that the judge review the 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. Additionally, the judge is not required to review a defendant's record if the defendant has not paid restitution, fines, costs or fees that the defendant has the ability to pay or the defendant has not completed court ordered counseling or treatment. CSHB 2193 requires that if the defendant's probation record is not reviewed at the one-half point because of this, the judge shall review the defendant's record and consider termination not later than 12 months after the defendant has paid the restitution, fines, costs, or fees, or completed counseling or treatment. If it is determined that the defendant has failed to fulfill the conditions, the judge shall advise the defendant in writing of the requirements for satisfactorily fulfilling those conditions. CSHB 2193 clarifies that in reviewing the defendant's record, a judge may not refuse to terminate a period of community supervision solely on the grounds that the defendant is indigent and unable to pay restitution, fines, costs, or fees. Additionally, this mandatory judicial review does not apply to a defendant convicted of a felony described by Section 3g, Article 42.12, Code of Criminal Procedure.

Regarding extensions of community supervision, CSHB 2193 provides that in a felony case, the judge may extend the period of community supervision by imposing a maximum of five one-year

extensions for good cause. The judge may not impose more than one extension per hearing, regardless of the number of violations alleged at the hearing and the period of community supervision in a felony case may not exceed ten years.

CSHB 2193 provides that upon revocation of community supervision, the judge shall credit the defendant time served in a county jail as a condition of community supervision, community corrections facility, or court-ordered residential program or facility.

CSHB 2193 creates a \$50 court fee on a conviction of an intoxication or drug offense to help fund drug courts. The funds will be deposited in the county or municipal treasury (as appropriate) and the custodian of a county or municipal treasury shall keep the records and send the comptroller the funds. A county or municipality may retain 10 percent of the funds collected as a collection fee. The comptroller shall deposit the funds received to the credit of the drug court account in the general revenue fund to help fund drug court programs.

This bill also allows drug courts to defer state jail felony proceedings, and if the defendant successfully completes the drug court program, to dismiss the indictment or information charging the defendant with the commission of the offense. If the defendant fails to successfully complete the program, the court may proceed as if the case had never been stayed. Additionally, the defendant may apply for an expunction that shall be granted if the defendant has not been previously convicted of a felony offense and is not arrested or convicted for any other felony offense for two years after successful completion of the drug court program.

The original drug court statute was drafted with only adult drug courts in mind. The enabling statute is amended in CSHB 2193 to allow counties to establish: adult drug courts, juvenile drug courts, reentry drug courts, family dependency treatment courts, and other court programs that have the essential characteristics described by section 469.001, Health and Safety Code.

CSHB 2193 also allows drug courts to notify the Governor's Criminal Justice Division (CJD) prior to or upon implementation and to provide CJD with performance data on request.

CSHB 2193 amends Health and Safety Code to more clearly delineate that all drug court program fees may be paid on a periodic basis (at the discretion of the judge) and must be based on the participant's ability to pay. CSHB 2193 specifies that fees must be used only for purposes specific to the drug court program.

CSHB 2193 reduces the population bracket for counties with mandatory drug courts from 550,000 to 200,000. Additionally, language is deleted to eliminate the requirement that drug courts must have 100 participants during the first four months of operation.

This bill amends Health and Safety Code to require that the mandated counties apply for state funds available to pay the costs of the drug court program, as well as federal funds. This section is also amended to remove the reference to CJD providing financial assistance to counties pursuing federal funding for drug courts. Additionally, a county is only required to establish a drug court program if it receives federal or state funding specifically for that purpose. CSHB 2193 also clarifies that a mandated county must establish *and maintain* a drug court. It also provides that a county that does not comply with the mandate is ineligible to receive grants for substance abuse treatment from CJD, rather than all grants from CJD.

CSHB 2193 provides immunity and liability protections to certain judges and clarifies the responsibilities of these judges with regard to their community supervision and corrections departments (CSCDs).

This bill requires that the district judges and statutory county court judges trying criminal cases in the county or counties served by the judicial district must establish a community supervision and corrections department (CSCD), approve both the department's budget and community justice plan, establish a community justice council, appoint a department director, and if a fiscal officer is appointed, set the annual compensation of the fiscal officer. Under current statute, only the district judge and district judges are required to do these things.

This bill provides that a corrections officer may carry a weapon only if the CSCD director agrees to the authorization. Under current statute, the judge participating in the management of the department must agree.

CSHB 2193 also clearly enumerates the responsibilities of the CSCD director and sets forth the CSCD director duties. The department director is required 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 corrections facilities. Under current statute, it is the district judge or district judges responsibility to employ necessary district personnel.

Additionally, CSHB 2193 allows the CSCD, instead of the judges who administer the CSCD, to authorize expenditures of funds provided for the purpose of providing facilities, equipment, and utilities and the state auditor is added to the list of officers or entities to examine and audit accounts, records, receipts, and expenditures of a department (CSCD).

CSHB 2193 also provides that the district judges and statutory county court judges who administer CSCDs have judicial immunity in a suit arising from: (1) the performance of their duties in establishing a community supervision and corrections department, (2) approving the department's budget and community justice plan, and (3) the appointment of a department director or a fiscal officer, (4) an act or failure to act by a department employee or a department director or fiscal officer. This bill requires that the attorney general defend a statutory county court judge in an action in state or federal court under certain circumstances.

CSHB 2193 makes other confirming changes to the Government Code by changing "district judge or judges" to "judges described by section 76.002" (district judges *and* statutory county court judges trying criminal cases in the county or counties served by the judicial district).

CSHB 2193 provides that that the community justice plan may not be submitted to the Community Justice Assistance Division unless it is first approved by the district judges and statutory county court judges who administer the CSCD.

CSHB 2193 allows the director of a CSCD to authorize a community supervision official to accept payment by credit card and to collect a fee for processing the payment. The director may only make this authorization with the approval of the district judges or statutory county court judges who administer CSCDs.

CSHB 2193 requires the Community Justice Assistance Division (division) to establish a pilot program that provides grants to selected CSCDs for the implementation of a system of progressive sanctions designed to reduce the revocation rate of defendants placed on community supervision. The division is required to give priority in providing grants to departments serving counties with above average revocation rates. This bill provides that the division, in determining which departments are candidates for grants, give preference to departments that use progressive sanctions models and present a plan that will target medium-risk and high-risk defendants.

CSHB 2193 requires the division to provide a report to the board not later than December 1, 2006 and outlines the details of what the report must include. The report must contain certain data on departments receiving grants and an analysis of the scope, effectiveness, and cost benefit of those programs funded by grants. The report shall also compare those programs to similar programs in existence in various departments before March 1, 2005. CSHB 2193 further requires the board to forward the report to the lieutenant governor and the speaker of the house not later than December 15, 2006.

CSHB 2193 repeals Section 4(c), 16(b), 18(c), and 22A, Article 42.12, Code of Criminal Procedure. This bill also repeals Section 76.002 (b), Government Code, which provides that the district judges trying criminal cases and judges of statutory county courts trying criminal cases that are served by a CSCD are entitled to participate in the management of the department.

Section 31 of this Act sets forth saving's provisions.

EFFECTIVE DATE

C.S.H.B. 2193 79(R)

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2193 amends Code of Criminal Procedure to provide that in all criminal cases, the judge shall 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 from the time of the defendant's arrest and confinement until the defendant's sentence by trial court. This includes confinement in jail or in a court-ordered residential program or facility ordered as a condition of deferred adjudication community supervision.

The substitute, unlike the original, specifically addresses probation terms for 3g felony offenders, providing that the maximum period of community supervision for a felony described by section 3g, Article 42.12, Code of Criminal Procedure, or for which on conviction registration as a sex offender is required by Chapter 62 is 10 years. This maximum period of ten years is not subject to the extensions provided by section 22, Article 42.12, Code of Criminal Procedure, and there is no set minimum for these offenses under the substitute bill.

The original bill provided that the minimum period of community supervision for a felony case would be one half of the minimum term of imprisonment applicable to the offense and the maximum would be five years. The substitute provides that the maximum period of community supervision for any felony of the first, second, or third degree (with the exception of 3g offenders and sex offenders described above) is five years, subject to the extensions provided by Section 22, Article 42.12, Code of Criminal Procedure. In CSHB 2193, the term of probation for a misdemeanor case remains two years, but is subject to the extensions in all of Section 22. There is no set minimum term of probation for either of these offenses.

The substitute deletes language from the Code of Criminal Procedure which makes the minimum period of community supervision for a felony described by Section 13B(b) (sexual offenses against children) five years, and the maximum period ten years.

The substitute provides that a defendant who is convicted of a state jail felony is eligible for community supervision.

CSHB 2193 provides that a defendant is not eligible for jury recommended community supervision if the defendant is convicted of a state jail felony for which suspension of the sentence occurs automatically under Section 15(a), Article 42.12, Code of Criminal Procedure. A defendant is also not eligible for jury recommended community supervision if the defendant is adjudged guilty of an offense under Section 19.02, Penal Code (first degree murder).

CSHB 2193 provides that the maximum period of community supervision a judge may impose for a state jail felony is three years, except that the judge may extend the maximum period of community supervision to not more than five years.

CSHB 2193 also provides that if a defendant is required to serve in a state jail felony facility, the judge is required to give the defendant credit for any time that the defendant spent in a county jail, residential program, or residential facility from the time of arrest until sentencing by a trial court, including any time spent in custody waiting to enter a court-ordered residential program or facility. The judge shall also credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of probation, any time served by the defendant in a state jail felony facility or court-ordered residential program or facility after sentencing.

CSHB 2193 provides an additional exception to Section 15(a) (1), Article 42.12, Code of Criminal Procedure. This change provides that on conviction of a state jail felony under Section 481.115 (b), 481.1151 (b) (1), 481.116 (b), 481.121 (b) (3), or 481.129 (g) (1), Health and Safety Code (various offenses related to the possession of a controlled substance), the judge shall 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), Penal Code, in which event the judge may suspend the imposition of the

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sentence and place the defendant on community supervision or may order the sentence to be executed. The change made by CSHB 2193 does not prevent courts from using 12.44(a), but in the event of subsequent state jail drug convictions, these individuals will not crowd the state jail system as incarcerates.

CSHB 2193 amends Code of Criminal Procedure to provide that the judge "may" rather than "shall" require community service. The substitute simply allows the judge to determine that a defendant is or is not required to do community service based on certain listed criteria.

The original bill gives the judges the ability to terminate or reduce community supervision for a defendant at any time before the expiration of the term of community supervision if it is in the best interest and safety for society. CSHB 2193 requires that the judge review the 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. Additionally, under CSHB 2193, the judge is not required to review a defendant's record if the defendant has not paid restitution, fines, costs or fees that the defendant has the ability to pay or the defendant has not completed court ordered counseling or treatment. CSHB 2193 requires that if the defendant's probation record is not reviewed at the one-half point because of this, the judge shall review the defendant's record and consider termination not later than 12 months after the defendant has paid the restitution, fines, costs, or fees, or completed counseling or treatment. If it is determined that the defendant has failed to fulfill the conditions, the judge shall advise the defendant in writing of the requirements for satisfactorily fulfilling those conditions. CSHB 2193 clarifies that in reviewing the defendant's record, a judge may not refuse to terminate a period of community supervision solely on the grounds that the defendant is indigent and unable to pay restitution, fines, costs, or fees. Additionally, this mandatory judicial review does not apply to a defendant convicted of a felony described by Section 3g, Article 42.12, Code of Criminal Procedure.

Regarding extensions of community supervision, CSHB 2193 provides that in a felony case, the judge may extend the period of community supervision by imposing a maximum of five one-year extensions for good cause. The judge may not impose more than one extension per hearing, regardless of the number of violations alleged at the hearing and the period of community supervision in a felony case may not exceed ten years.

The original bill provides that upon revocation, the judge may credit against any term of confinement a defendant is sentenced to serve all or part of the time that the defendant served on community supervision. The substitute provides that upon revocation, no part of the time a defendant is on community supervision shall be considered as any part of the time the defendant shall be sentenced to serve, but the judge shall credit the defendant time served in a county jail as a condition of community supervision, community corrections facility, or court-ordered residential program or facility.

The original bill had altered statute regarding continuing court jurisdiction in felony cases. Under the original bill, the jurisdiction of a court in which a sentence requiring imprisonment in the institutional division of the Texas Department of Community Justice is imposed by a judge of the court, shall continue for two years from the date the sentence begins. The substitute does not make this change to statute, and the jurisdiction of a court remains 180 days in the substitute.

CSHB 2193 creates a \$50 court fee on a conviction of an intoxication or drug offense to help fund drug courts. The funds will be deposited in the county or municipal treasury (as appropriate) and the custodian of a county or municipal treasury shall keep the records and send the comptroller the funds. A county or municipality may retain 10 percent of the funds collected as a collection fee. The comptroller shall deposit the funds received to the credit of the drug court account in the general revenue fund to help fund drug court programs.

The substitute also allows drug courts to defer state jail felony proceedings, and if the defendant successfully completes the drug court program, to dismiss the indictment or information charging the defendant with the commission of the offense. If the defendant fails to successfully complete the program, the court may proceed as if the case had never been stayed. Additionally, under the substitute, the defendant may apply for an expunction that shall be granted if the defendant has not been previously convicted of a felony offense and is not arrested or convicted for any other felony offense for two years after successful completion of the drug court program.

The substitute allows counties to establish: adult drug courts, juvenile drug courts, reentry drug courts, family dependency treatment courts, and other court programs that have the essential characteristics described by section 469.001, Health and Safety Code. The substitute also allows drug courts to notify the Governor's Criminal Justice Division (CJD) prior to or upon implementation and to provide CJD with performance data on request.

CSHB 2193 amends Health and Safety Code to more clearly delineate that all drug court program fees may be paid on a periodic basis (at the discretion of the judge) and must be based on the participant's ability to pay. The substitute specifies that fees must be used only for purposes specific to the drug court program.

The substitute reduces the population bracket for counties with mandatory drug courts from 550,000 to 200,000. Additionally, language is deleted to eliminate the requirement that drug courts must have 100 participants during the first four months of operation.

CSHB 2193 amends Health and Safety Code to require that the mandated counties apply for state funds available to pay the costs of the drug court program, as well as federal funds. The Health and Safety Code is also amended to remove the reference to CJD providing financial assistance to counties pursuing federal funding for drug courts. Additionally, a county is only required to establish a drug court program if it receives federal or state funding specifically for that purpose. CSHB 2193 also clarifies that a mandated county must establish *and maintain* a drug court. It also provides that a county that does not comply with the mandate is ineligible to receive grants for substance abuse treatment from CJD, rather than all grants from CJD.

CSHB 2193 provides immunity and liability protections to certain judges and clarifies the responsibilities of these judges with regard to their community supervision and corrections departments (CSCDs). The original bill only addressed the changes regarding approving the department's budget and community justice plan.

The substitute requires that the district judges and statutory county court judges trying criminal cases in the county or counties served by the judicial district must establish a community supervision and corrections department (CSCD), approve both the department's budget and community justice plan, establish a community justice council, appoint a department director, and if a fiscal officer is appointed, set the annual compensation of the fiscal officer.

The substitute provides that a corrections officer may carry a weapon only if the CSCD director agrees to the authorization.

The substitute clearly enumerates the responsibilities of the CSCD director and sets forth the CSCD director duties. The department director is required 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 corrections facilities.

Additionally, the substitute allows the CSCD, instead of the judges who administer the CSCD, to authorize expenditures of funds provided for the purpose of providing facilities, equipment, and utilities and the state auditor is added to the list of officers or entities to examine and audit accounts, records, receipts, and expenditures of a department (CSCD).

CSHB 2193 also provides that the district judges and statutory county court judges who administer CSCDs have judicial immunity in a suit arising from: (1) the performance of their duties in establishing a community supervision and corrections department, (2) approving the department's budget and community justice plan, and (3) the appointment of a department director or a fiscal officer, (4) an act or failure to act by a department employee or a department director or fiscal officer. The substitute also requires that the attorney general defend a statutory county court judge in an action in state or federal court under certain circumstances.

The substitute makes other confirming changes to the Government Code by changing "district judge or judges" to "judges described by section 76.002" (district judges *and* statutory county court judges trying criminal cases in the county or counties served by the judicial district).

CSHB 2193 allows the director of a CSCD to authorize a community supervision official to accept payment by credit card and to collect a fee for processing the payment. The director may only make this authorization with the approval of the district judges or statutory county court judges who administer CSCDs.

Both the original bill and the substitute bill establish a prison diversion pilot program that provides grants to selected department (CSCDs) for the implementation of a system of progressive sanctions designed to reduce the revocation rate of defendants placed on community supervision. In both the original and substitute, the division is required to give priority in grants to departments serving counties with revocation rates greater than the state average. However, in the substitute more detail is provided concerning conditions of receiving grants, and reports.

More specifically, the substitute provides that the division, in determining which departments are candidates for grants, give preference to departments that use progressive sanctions models and present a plan that will target medium-risk and high-risk defendants. The substitute requires the division to provide a report to the board not later than December 1, 2006 and outlines the details of what the report must include. CSHB 2193 further requires the board to forward the report to the lieutenant governor and the speaker of the house not later than December 15, 2006.

CSHB 2193 repeals Section 4(c), 16(b), 18(c), and 22A, Article 42.12, Code of Criminal Procedure. This bill also repeals Section 76.002 (b), Government Code which provides that the district judges trying criminal cases and judges of statutory county courts trying criminal cases that are served by a CSCD are entitled to participate in the management of the department.

The substitute sets forth saving's provisions.

