Hall, et al. S.B. No. /10 (In the Senate - Filed March 5, 2021; March 11, 2021, read 1-1 By: 1-2 1-3 first time and referred to Committee on Criminal Justice; 1-4 April 15, 2021, reported adversely, with favorable Committee 1-5 Substitute by the following vote: Yeas 5, Nays 0; April 15, 2021, 1 - 6sent to printer.) 1-7 COMMITTEE VOTE 1-8 Absent PNV Yea Nay 1-9 Whitmire Х 1-10 1-11 Х Huffman Х Bettencourt 1-12 Birdwell Х 1-13 Hinojosa Х 1-14 Miles Χ 1-15 Nichols Х 1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 710 By: Whitmire 1-17 A BILL TO BE ENTITLED 1-18 AN ACT 1-19 relating to the continuation and functions of the Commission on 1-20 Jail Standards. 1-21 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Section 511.003, Government Code, is amended to 1-23 read as follows: Sec. 511.003. SUNSET PROVISION. 1-24 The Commission on Jail Standards is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished [and this chapter expires] September 1, 2033 [2021]. SECTION 2. Sections 511.004(h), (i), and (j), Government Code, are redesignated as Section 511.00405, Government Code, and 1-25 1-26 1-27 1-28 1-29 1-30 amended to read as follows: Sec. 511.00405. TRAINING. (a) [(h)] A person who is appointed to and qualifies for office as a member of the commission 1-31 1-32 may not vote, deliberate, or be counted as a member in attendance at 1-33 a meeting of the commission until the person completes a training 1-34 program that complies with this section [Subsection (i)]. (b) [(i)] The training program [required by Subsection] 1-35 1-36 <u>(h)</u>] 1-37 must provide the person with information [to the person] regarding: 1-38 (1)the law governing commission operations [<del>this</del> 1-39 chapter]; 1-40 (2) the programs, functions, rules, and budget of the 1-41 commission; 1-42 (3)the scope of and limitations on the rulemaking authority of the commission; 1-43 1-44 the results of the most recent formal audit of the (4) 1-45 commission; (4)] the requirements of: (A) laws relating to open meetings, public 1-46 (5) [(4)]1 - 471-48 information, administrative procedure, and disclosing conflicts of 1-49 interest; and 1-50 other laws applicable to members of a state (B) policy-making body in performing their duties; and (6) [(5)] any applicable ethics policies adopted by 1-51 1-52 1-53 the commission or the Texas Ethics Commission. 1-54 (c) [(j)] A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program 1-55 1-56 1-57 [required by Subsection (h)] regardless of whether attendance at the program occurs before or after the person qualifies for office. 1-58 The executive director of the commission shall create a 1-59 (d) training manual that includes the information required by 1-60

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Subsection (b). The executive director shall distribute a copy of 2-1 2-2 the training manual annually to each member of the commission. Each member of the commission shall sign and submit to the executive 2-3 director a statement acknowledging that the member received and has 2-4 2-5 reviewed the training manual. SECTION 3. Section 511.0071, Government Code, is amended by 2-6 2-7 amending Subsections (a) and (a-1) and adding Subsections (g) and 2-8 (h) to read as follows: 2-9 (a) The commission shall prepare information of public interest describing the functions of the commission [and the commission's procedures by which complaints regarding the commission and complaints regarding jails under the commission's jurisdiction are filed with and resolved by the commission]. The 2**-**10 2**-**11 2-12 2-13 2-14 commission shall make the information available: 2**-**15 2**-**16 (1) to the public, inmates, county officials, and appropriate state agencies; and 2-17 (2) on any publicly accessible Internet website 2-18 2-19 2-20 2-21 to the public of complaints regarding the commission and complaints regarding jails under the commission's jurisdiction that are filed 2-22 with the commission. The commission shall: 2-23 2-24 (1) prescribe a form or forms on which written 2**-**25 2**-**26 complaints regarding the commission and complaints regarding jails under the commission's jurisdiction may be filed with the 2-27 commission; 2-28 (2) keep an information file in accordance with 2-29 <u>Section 511.0072</u> [<del>Subsection (f)</del>] regarding each complaint filed 2-30 with the commission regarding the commission or a jail under the 2-31 commission's jurisdiction; 2-32  $(\tilde{\mathbf{3}})$  develop procedures for prioritizing complaints filed with the commission and a reasonable time frame for 2-33 2-34 responding to those complaints and appeals of those complaints; (4) [maintain a system for promptly and efficiently omplaints filed with the commission; 2-35 2-36 acting 2-37  $\left[\frac{1}{(5)}\right]$  develop a procedure for tracking and analyzing 2-38 all complaints filed with the commission, according to criteria 2-39 that must include: 2-40 the reason for or origin of complaints; (A) 2-41 (B) the average number of days that elapse 2-42 between the date on which complaints are filed, the date on which 2-43 the commission first investigates or otherwise responds to 2-44 complaints, and the date on which complaints are resolved; (C) the outcome of investigations or the resolution of complaints, including dismissals and commission 2-45 2-46 2-47 actions resulting from complaints; 2-48 the number of pending complaints at the close (D) 2-49 of each fiscal year; [and] (E) a list of complaint topics that the commission does not have jurisdiction to investigate or resolve; 2-50 2-51 2-52 [<del>and</del>] 2-53 (F) the detailed categorization of each violation alleged in a complaint; 2-54 (G) the comprehensiviolation alleged in a complaint; and 2-55 comprehensive documentation of each 2-56 2-57 (H) for a complaint for which the commission took no action, the documentation of the reason the complaint was closed 2-58 without action; 2-59 (5) regularly analyze complaints to identify trends, including trends with respect to jails with a higher than average 2-60 2-61 2-62 number of complaints, to determine jails requiring additional 2-63 inspections; and 2-64 (6) regularly prepare and distribute to members of the commission and make available to the public a report containing a summary of the information compiled under <u>Subdivisions (4) and</u> 2-65 2-66 2-67 [Subdivision] (5). (g) The commission shall adopt rules requiring jail administrators to include in any inmate handbook and prominently 2-68 2-69

C.S.S.B. No. 710 display throughout the jail information regarding the procedure for 3-1 complaint investigation and resolution. 3-2 The commission shall ensure that a jail complies with (h) 3-3 3-4 Subsection (g) during any inspection of the jail. Chapter 511, Government 3-5 Code, SECTION 4. is amended by 3-6 adding Section 511.0072 to read as follows: 3-7 Sec. 511.0072. COMPLAINT INFORMATION. The comm<u>ission</u> (a) maintain a system to promptly and efficiently act on 3-8 shall complaints filed with the commission. The commission shall 3-9 maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or 3-10 3-11 3-12 investigation of the complaint, and its disposition. The commission shall 3-13 make information (b) available 3-14 its procedures for complaint investigation and describing 3-15 resolution. 3-16 The commission shall periodically notify the complaint (c) 3-17 parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation. 3-18 3-19 SECTION 5. Chapter 511, Government Code, is amended by 3-20 3-21 adding Section 511.0081 to read as follows: Sec. 511.0081. ADVISORY COMMITTEES. (a) The commission by 3-22 rule may establish advisory committees to make recommendations to 3-23 the commission on programs, rules, and policies administered by the 3-24 commission. <u>th</u>is 3-25 establishing an advisory committee under this commission shall adopt rules, including rules (b) In 3**-**26 secti<u>on,</u> the 3-27 regarding: 3-28 (1)the purpose, role, responsibility, goals, and duration of the committee; 3-29 3-30 the of and quorum requirement for the (2) size 3-31 committee; qualifications for committee membership; 3-32 (3)appointment procedures for members; 3-33 (4)3-34 (5) terms of service for members; training requirements for members; policies to avoid conflicts of 3-35 (6) 3-36 (7)interest policies by 3-37 members; 3-38 (8)periodic review process to evaluate the а 3-39 continuing need for the committee; and (9) policies to ensure the committee does not violate any provision of Chapter 551 applicable to the commission or the 3-40 3-41 3-42 committee. 3-43 SECTION 6. Section 511.0085, Government Code, is amended by 3-44 amending Subsection (b) and adding Subsection (c) to read as 3-45 follows: 3-46 (b) The set of risk factors developed under this section may 3-47 include the number of months since the commission's last inspection 3-48 of the jail. (c) 3-49 The commission shall use the set of risk factors under <u>this section</u> [<del>Subsection (a)</del>] to guide the s process for all jails under the commission's 3-50 developed 3-51 all jails under commission's inspections process the 3-52 jurisdiction by: 3-53 (1)establishing a risk assessment plan to use in 3-54 assessing the overall risk level of each jail; and 3-55 (2) regularly monitoring the overall risk level of 3-56 each jail. 3-57 SECTION 7. Chapter 511, Government Code, is amended by 3-58 adding Section 511.0086 to read as follows: 3-59 Sec. 511.0086. RISK-BASED INSPECTIONS. (a) The commission shall adopt a policy prioritizing the inspection of jails under the commission's jurisdiction based on the relative risk level of a 3-60 3-61 3-62 The policy must require the commission to use the risk jail. 3-63 assessment plan established under Section 511.0085 to: 3-64 (1) schedule announced and unannounced inspections of jails under the commission's jurisdiction; and (2) determine how frequently and intensively the 3-65 3-66 3-67 commission conducts risk-based inspections. The policy may provide for the commission to 3-68 (b) use alternative inspection methods for jails determined to be low-risk,

3-69

C.S.S.B. No. 710 including using abbreviated inspection procedures or other methods 4-1 4-2 instead of conducting an in-person inspection. SECTION 8. Section 511.009, Government Code, is amended by 4-3 4 - 4amending Subsections (a), (a-1), and (a-2) and adding Subsection 4-5 (f) to read as follows: 4-6 (a) The commission shall: 4-7 (1) adopt reasonable rules and procedures 4-8 establishing minimum standards for the construction, equipment, 4-9 maintenance, and operation of county jails; 4-10 (2) adopt reasonable rules and procedures 4**-**11 establishing minimum standards for the custody, care, and treatment 4-12 of prisoners; 4-13 (3) adopt reasonable rules establishing minimum 4-14 standards for the number of jail supervisory personnel and for 4**-**15 4**-**16 programs and services to meet the needs of prisoners; (4) adopt reasonable rules and procedures 4-17 establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails; (5) regularly review the commission's rules 4-18 4-19 and 4-20 4-21 procedures and revise, amend, or change <u>the</u> rules and procedures if necessary; 4-22 (6) provide to local government officials consultation on and technical assistance for county jails; 4-23 (7) review and comment on plans for the construction and major modification or renovation of county jails; 4-24 4-25 4**-**26 (8) require that the sheriff and commissioners of each 4-27

4-27 county submit to the commission, on a form prescribed by the 4-28 commission, an annual report on the conditions in each county jail 4-29 within their jurisdiction, including all information necessary to 4-30 determine compliance with state law, commission orders, and the 4-31 rules adopted under this chapter;

4-32 (9) review the reports submitted under Subdivision (8) 4-33 and require commission employees to inspect county jails regularly 4-34 to ensure compliance with state law, commission orders, and rules 4-35 and procedures adopted under this chapter;

4-36 (10) adopt a classification system to assist sheriffs 4-37 and judges in determining which defendants are low-risk and 4-38 consequently suitable participants in a county jail work release 4-39 program under Article 42.034, Code of Criminal Procedure;

4-40 (11) adopt rules relating to requirements for 4-41 segregation of classes of inmates and to capacities for county 4-42 jails;

4-43 (12) [require that the chief jailer of each municipal 4-44 lockup submit to the commission, on a form prescribed by the 4-45 commission, an annual report of persons under 17 years of age 4-46 securely detained in the lockup, including all information 4-47 necessary to determine compliance with state law concerning secure 4-48 confinement of children in municipal lockups;

4-49 [(13) at least annually determine whether each county 4-50 jail is in compliance with the rules and procedures adopted under 4-51 this chapter;

4-52 [(14) require that the sheriff and commissioners court 4-53 of each county submit to the commission, on a form prescribed by the 4-54 commission, an annual report of persons under 17 years of age 4-55 securely detained in the county jail, including all information 4-56 necessary to determine compliance with state law concerning secure 4-57 confinement of children in county jails;

4-58 [(15) schedule announced and unannounced inspections 4-59 of jails under the commission's jurisdiction using the risk 4-60 assessment plan established under Section 511.0085 to guide the 4-61 inspections process;

4-62 [(16)] adopt a policy for gathering and distributing the commission's jurisdiction information 4-63 jails to under 4-64 regarding: 4-65 (A) common issues concerning jail 4-66 administration;

4-67 (B) examples of successful strategies for 4-68 maintaining compliance with state law and the rules, standards, and 4-69 procedures of the commission; and

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5-1 5-2 jails; (C) solutions to operational challenges for

5-3  $(13) [\frac{(17)}{(17)}]$ report to the Texas Correctional Office on 5-4 Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure; (14) [(18)] adopt reasonable rules and procedures 5-5

5-6 5-7 establishing minimum requirements for a county jail to: 5-8

determine if a prisoner is pregnant; (A)

5-9 ensure that the jail's health services plan (B) addresses medical care, including obstetrical and gynecological care, mental health care, nutritional requirements, and any special 5-10 5-11 5-12 housing or work assignment needs for prisoners who are known or 5-13 determined to be pregnant; and

5-14 (C) identify when a pregnant prisoner is in labor 5**-**15 5**-**16 and provide appropriate care to the prisoner, including promptly transporting the prisoner to a local hospital;

5-17 (15) [<del>(19)</del>] provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of 5-18 5-19 food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of 5-20 5-21 5-22 impropriety;

(16) [<del>(20)</del>] adopt reasonable rules and procedures 5-23 establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two 5-24 5-25 5-26 in-person, noncontact visitation periods per week of at least 20 5-27 minutes duration each; 5-28

(17) [(21)]require the sheriff of each county to:

5-29 (A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States 5-30 5-31 5-32 Department of Veterans Affairs or a similar service; and

5-33 (B) use the data described by Paragraph (A) to 5-34 assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans 5-35 5-36 5-37 Affairs;

5-38  $(18) [\frac{(22)}{(22)}]$ adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, 5-39 5-40 as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the 5-41 5-42 guardian on the prisoner's approved visitors list on the guardian's 5-43 5-44 request and providing the guardian access to the prisoner during a 5-45 facility's standard visitation hours if the prisoner is otherwise 5-46 eligible to receive visitors; and

5-47 (B) require the guardian to provide the sheriff 5-48 with letters of guardianship issued as provided by Section 5-49 5-50

1106.001, Estates Code, before being allowed to visit the prisoner; (19) [(23)] adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to: 5-51 5-52

(A) give prisoners the ability to access a mental health professional at the jail or through a telemental health service 24 hours a day or, if a mental health professional is not at the county jail at the time, then require the jail to use all reasonable efforts to arrange for the inmate to have access to a 5-53 5-54 5-55 5-56 5-57 mental health professional within a reasonable time; 5-58

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a 5-59 5-60 day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be 5-61 5-62 5-63 transported to access a health professional; and

5-64 (C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells 5-65 5-66 5-67 confining at-risk individuals; and

(20) [<del>(24)</del>] adopt reasonable rules and procedures 5-68 establishing minimum standards for the quantity and quality of 5-69

C.S.S.B. No. 710 feminine hygiene products, including tampons in regular and large 6-1 sizes and menstrual pads with wings in regular and large sizes, 6-2 6-3 provided to a female prisoner. 6-4 (a-1) A county jail that as of September 1, 2015, has incurred significant design, engineering, or construction costs to provide prisoner visitation that does not comply with a rule or procedure adopted under Subsection (a)(16) [(a)(20)], or does not 6-5 6-6 6-7 have the physical plant capability to provide the in-person prisoner visitation required by a rule or procedure adopted under 6-8 6-9 6**-**10 6**-**11 Subsection (a)(16) [(a)(20)], is not required to comply with any commission rule or procedure adopted under Subsection (a)(16) 6-12  $[\frac{(a)(20)}{(20)}]$ . 6-13 (a-2) A commission rule or procedure adopted under Subsection (a) (16) [(a)(20)] may not restrict the authority of a county jail under the commission's rules in effect on September 1, 6-14 6**-**15 6**-**16 2015, to limit prisoner visitation for disciplinary reasons. 6-17 (f) The commission's compliance with the requirements of 6-18 this section, particularly the requirements regarding the adoption of rules and procedures, is not contingent on the enactment and becoming law of any additional legislation. SECTION 9. Chapter 511, Government Code, is amended by adding Sections 511.00901, 511.00902, and 511.00903 to read as 6-19 6-20 6-21 6-22 6-23 follows: Sec. 511.00901. DUTY REGARDING MINIMUM STANDARDS. 6-24 (a) The 6**-**25 6**-**26 commission shall ensure that the minimum standards established under Section 511.009 take into consideration the needs and risks of the different types and sizes of jails under the commission's 6-27 6-28 jurisdiction. (b) The commission shall, on an ongoing basis, review the minimum standards to identify any standards that do not account for the needs and risks of the different types and sizes of jails. In 6-29 6-30 6-31 In conducting the review, the commission shall solicit feedback from a 6-32 diverse collection of jails, including those of different types and 6-33 6-34 sizes. (c) The commission shall revise any standards identified under Subsection (b) as the commission considers necessary. In 6-35 6-36 revising a standard, the commission shall consider: 6-37 6-38 (1) establishing tiered or separate standards depending on the size, resources, or type of jail; (2) clarifying or amending existing standards; and (3) publishing guidance on the commission's rule 6-39 6-40 6-41 6-42 interpretations. 6-43 (d) The commission may not lower any standard in effect on 6-44 1, 2021, as a result of a review conducted under this September 6-45 section. Sec. 511.00902. REINSPECTION. The commission share a sail following a and procedures for reinspecting a jail following a 6-46 6-47 rules 6-48 determination by the commission that the jail is not in compliance 6-49 with minimum standards. The rules and procedures must require the commission to: 6-50 6-51 (1)reinspect all jails not in compliance; 6-52 (2) establish a percentage of reinspections for which 6-53 the commission shall assess the jail's compliance with all minimum standards, regardless of whether the jail was in compliance with a 6-54 particular standard during the previous inspection; and (3) randomly select the jails subj 6-55 6-56 jails subject to а reinspection described by Subdivision (2). 6-57 Sec. 511.00903. INSPECTION TREND ANALYSIS. The commission regularly analyze data collected during inspections or 6-58 6-59 shall reported to the commission under this chapter to identify trends in noncompliance, inspection outcomes, serious incidents, and any 6-60 6-61 other related area of jail operations. 6-62 SECTION 10. Chapter 511, Government Code, is amended by 6-63 adding Section 511.0145 to read as follows: 6-64 Sec. 511.0145. ENFORCEMENT ACTIONS. (a) The commission adopt rules establishing a system of graduated, escalating 6-65 6-66 <u>sh</u>all enforcement actions the commission is authorized under this chapter 6-67 to take against jails under the commission's jurisdiction that: 6-68 (1) have not made timely progress correcting 6-69

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7-1 noncompliance issues; or

(2) have failed multiple inspections within a certain 7-2 7-3 number of years as determined by the commission.

7-4 The rules must establish time frames (b) for the commission to take certain graduated, escalating enforcement actions against 7-5 7-6 jails.

7-7 The commission shall develop a schedule of actions to (c) 7-8 guide the enforcement actions the commission may take under rules adopted under Subsection (a). The commission shall make the 7-9 7-10 schedule available on any publicly accessible Internet website , 7**-**11 maintained by the commission. The schedule must:

(1) recommend the appropriate enforcement 7-12 action based on the severity of the noncompliance; and 7-13 7-14

(2) include consideration of any:

7**-**15 7**-**16 (A) aggravating factors, inc violations and failing consecutive inspections; and factors, including repeat 7-17

(B) mitigating factors.

7-18 SECTION 11. Section 511.019(c), Government Code, is amended 7-19 to read as follows:

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under 7**-**20 7**-**21 7-22 Section 511.009(a)(19) [511.009(a)(23)].

SECTION 12. Section 511.021, Government Code, is amended by 7-23 7-24 amending Subsections (a) and (b) and adding Subsection (c) to read as follows:

7**-**25 7**-**26 (a) On the death of a prisoner in a county jail, the 7-27 commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to 7-28 investigate the death as soon as possible. Except as otherwise provided by Subsection (b), the appointed law enforcement agency shall conduct the investigation. 7-29 7-30 7**-**31

7-32 (b) A law enforcement agency appointed by the commission under Subsection (a) may present evidence to the commission that 7-33 investigating the death would create a conflict of interest that cannot be mitigated by the law enforcement agency. If the commission determines that the conflict of interest cannot be 7-34 7-35 7-36 mitigated, the commission shall appoint another law enforcement 7-37 7-38 agency under Subsection (a) to investigate the death.

(c) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection (a), including rules relating to cooperation between law 7-39 7-40 7-41 enforcement agencies and to procedures for handling evidence. 7-42 7-43

SECTION 13. Sections 511.0071(e) and (f), Government Code, 7-44 are repealed.

SECTION 14. Not later than March 1, 2022, the Commission on Standards shall develop the rules required by Section 7-45 7-46 Jail 511.0071(g), Government Code, as added by this Act. Not later than April 1, 2022, each jail under the jurisdiction of the Commission on 7-47 7-48 7-49 Jail Standards shall post the information and update the inmate 7-50 handbooks as necessary to comply with the commission's rules 7-51 adopted under that section.

SECTION 15. (a) Except as provided by Subsection (b) of this section, Section 511.00405, Government Code, as redesignated and 7-52 7-53 amended by this Act, applies to a member of the Commission on Jail Standards appointed before, on, or after the effective date of this 7-54 7-55 7-56 Act.

7-57 (b) A member of the Commission on Jail Standards who, before 7-58 the effective date of this Act, completed the training program required by Section 511.004, Government Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the 7-59 7-60 7-61 training program required by Section 511.00405, Government Code, as 7-62 7-63 redesignated and amended by this Act. A member described by this subsection may not vote, deliberate, or be counted as a member in 7-64 attendance at a meeting of the commission held on or after December 7-65 1, 2021, until the member completes the additional training. 7-66 7-67 SECTION 16. This Act takes effect September 1, 2021.

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