



# Committee Report

## March 14, 2019

### House Corrections

Bill / Author	Caption	Comment	Position
HB 363  Johnson, Jarvis   et al.	Relating to the creation of the office of independent oversight ombudsman for the Texas Department of Criminal Justice.	<p>House Bill 363 would create a new “Office of Independent Ombudsman for Texas Department of Criminal Justice.” The office would be a state agency established for the purpose of monitoring the conditions of confinement and treatment of offenders and investigating, evaluating, and securing the rights of offenders. The office would also be responsible for in-depth review and analysis of data, determination of long-term needs, identification of critical issues and corresponding solutions, and assessment of the efficacy of existing programs. The Commission on Jail Standards would be required to provide office space and administrative support services for the new agency. The ombudsman would be appointed by the governor, with the advice and consent of the Senate, and would be subject to conflict of interest provisions. The ombudsman would be required to submit quarterly reports.</p> <p>Any offender could communicate with the ombudsman, who would conduct investigations regarding alleged abuse and neglect of incarcerated individuals.</p> <p>The new agency is unnecessary and a drain on the public. The Legislative Budget Board’s (LBB) fiscal note for a similar bill filed in the 84th Legislative Session (HB 3303, Miles, 84R) had an <b>estimated an annual cost of up to \$6 million:</b></p> <p>The cost implications could range between \$438,000 annually for a small oversight agency up to \$6,136,000 annually for a large oversight agency ... TDCJ indicates it currently performs functions similar to what the bill's provisions require, including initiatives for ombudsman inquiries and complaints, offender grievances, and medical grievances. TDCJ reports its Ombudsman Program includes 12 FTEs (salaries totaling \$458,330 annually), the agency's Offender Grievance Program includes 115 FTEs (salaries totaling \$4,088,566 annually), and</p>	<b>Oppose</b>  <b>(-) Limited Government</b>

TDCJ's Health Services Division addresses medical grievances utilizing 43 FTEs (salaries totaling \$1,589,652 annually). Even upon passage of this bill, TDCJ reports that it would need to continue these functions within TDCJ because they provide a management tool to ensure concerns regarding TDCJ inmates and parolees are identified or resolved at the lowest possible level. Because of TDCJ's reported need to continue with its current ombudsman-related functions and the bill's provisions do not repeal TDCJ's authority for providing those related functions, no savings are anticipated from implementation of the bill.<sup>1</sup>

Another similar bill (HB 1421) was filed in the 85th Legislative Session, and due to a variety of factors, LBB determined that “the cost of this legislation is indeterminate.”<sup>2</sup>

The Commission on Jail Standards already is charged with developing standards regarding the custody, care, and treatment of prisoners, and it conducts announced and unannounced visits to monitor compliance. TDCJ also maintains an inmate grievance system and fulfils many of the duties assigned to the new agency under the bill.

HB 573  
Dutton  
Relating to the restoration of certain rights to a criminal defendant.

***Note: HB 573 was filed in the 84th Legislature as HB 478, where it passed the House (122 Yeas, 16 Nays). It was also filed in the 85th Legislative Session as HB 152 and was voted down on third reading (63 Yeas, 77 Nays). Because of the wide swings in support and opposition, some discussion of restoration of civil rights and how they are restored is merited:***

**Oppose  
Unless  
Amended**

Being convicted of certain state and federal crimes in Texas can result in the denial of basic civil rights, such as the right to vote, hold office, serve on a jury, obtain a license for certain types of employment, and to own a firearm.

Section 48.05 of the Code of Criminal Procedure allows a person to apply for restoration of certain civil rights. The process is cumbersome. Before applying, a person must have completed the sentence for the offense and two to three years

(depending on the offense) must have passed since the conviction without the person being convicted of *any* other crime (state, federal, or another country).

An application is made on a form adopted by the Board of Pardons and Paroles, must include three or more affidavits attesting to the applicant's good character, and must include proof that the applicant has completed the sentence for the offense.

Applications are submitted to the sheriff in the county of residence, or to the Board of Pardons and Paroles. If submitted to the sheriff, the sheriff makes a recommendation on restoration of rights to the Board of Pardons and Paroles, which may concur and send the recommendation to the governor. It may also make its own independent review and submit that recommendation to the governor.

**Restoration of civil rights is ultimately a decision made by the Governor of Texas.** It is treated as a form of pardon that restores all civil rights under the laws of Texas that a person forfeits as a result of the individual's conviction of an offense, unless the certificate of restoration issued by the governor specifically provides a limitation.

Under current law, a person may apply for restoration of civil rights only for those forfeited as a result of a federal criminal conviction and for conviction of laws of another country. **However, persons convicted of crimes involving violence, drugs, or firearms either federally or in another country are not eligible to have their civil rights restored under current law.** A person may not currently apply for restoration of civil rights forfeited under violation of a Texas law.

HB 573 seeks to address this issue by allowing a person who forfeits civil rights by way of a state law conviction to apply for restoration of those rights. The bill would require that three years have passed from the time of any conviction before a person may apply for restoration. A person would still have to satisfy all other criteria, apply to the local sheriff or the Board of Pardons and Paroles. Most importantly, **the ultimate**

**decision would still be made by the governor, as it is now** with respect to federal violations and violations of the laws of another county.

Civil rights are a foundational aspect of a free society. When a person violates the law, they can lose the privilege to engage in some activities otherwise permitted. House Bill 573 does not require the automatic restoral of those rights. It does not obligate any party with respect to restoral of those rights. It adds to an existing process the possibility that the governor of Texas may ultimately decide that a person’s rights may be restored, based on completion of sentence, proof of reformation, and a showing that the person can be a productive member of society once again.

*Amendment: opponents of this bill last session argued that the bill “could permit serious and violent offenders to avoid the consequences of their crimes by allowing a person convicted of any offense under Texas law, including a capital crime, to apply for a restoration of civil rights. Allowing those convicted of violent crimes under state law to be pardoned effectively could reduce the severity of punishment for such offenses, an essential component of deterring crime and keeping communities safe.”<sup>3</sup>*

*To address these concerns, Representative Schaefer offered a floor amendment that excluded any offense for which a person would not be eligible for community supervision. This includes the most serious state-level offenses, such as capital murder, aggravated kidnapping, sexual assault, indecency with a child, and aggravated robbery. Excluding such offenses is appropriate and mirrors extant statutory language that excludes the most serious federal offenses (those involving violence, drugs, or firearms) from the restoration of civil rights. Adoption of this amendment would change TCC’s position on the bill to “neutral”.*

HB 574  
Dutton

Relating to the consequences of successfully completing a period of deferred adjudication community supervision.

Under House Bill 574, an offender’s dismissal and discharge following successful completion of a deferred adjudication community supervision program may not be used as grounds for denying a professional license to an individual who is otherwise entitled to or qualified for the license.

**Oppose**  
**(-) Role of Government**

The bill also *eliminates* current provisions that state that, if a defendant is an applicant for or holder of a child care facility license, DFPS may consider the fact that the defendant has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license. Under HB 574, a child care license could not be denied on that basis.

Finally, the bill *eliminates* a provision which says that, if the defendant is an applicant for or the holder of a license to provide mental health or medical services for the rehabilitation of sex offenders, the Council on Sex Offender Treatment may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license issued by that council.

The main concern with HB 574 is that employment criteria are rightfully fact-dependent. It is entirely possible that deferred adjudication for *certain* offenses should not present a bar for certain types of licenses. Instead of discretely pairing certain licenses/types of employment with offenses that are irrelevant (e.g. deferred adjudication for public intoxication cannot prevent a qualified individual from obtaining a barber’s license), the bill paints with a broader brush. For example, mental health provider and child care licenses may be contingent on properly restrictive criteria due to the vulnerable nature of the populations licensees serve. Eliminating agencies’ ability to consider deferred adjudications for those two licenses seems imprudent, even though in many other contexts deferred adjudications should not present a bar.

HB 788 Davis, Sarah	Relating to a study on the assessments used by the Board of Pardons and Paroles to make parole decisions.	House Bill 788 would require the Board of Pardons and Paroles to conduct a study on the effectiveness of the assessment components of the parole guidelines (Government Code § 508.144) and used by the board and parole panels in determining which inmates should be released on parole. The study would specifically cover inmates considered for parole during the period between January 1, 2017 and December 31, 2019 from the Texas Board of Criminal Justice and other criminal justice agencies with relevant information on recidivism of those inmates.	<b>Neutral</b>
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<p>HB 812</p> <p>White</p>	<p>Relating to the amount of the health care services fee paid by certain inmates.</p>	<p>Under current law, an inmate confined in a facility other than a halfway house is charged \$100 health care services fee for a visit to a health care provider. That fee covers all visits to the provider for one year. The fee is paid out of the inmate’s trust fund. If the fund’s balance is insufficient to cover to the fee, then 50 percent of each deposit to the fund shall be applied towards the fee balance until the fee is paid.</p> <p>House Bill 812 would lower the \$100 fee to \$3, but it would also repeal the provision providing that the fee applies for one full year. In other words, health care services fee would be \$3 per visit.</p> <p>A fiscal note for HB 812 is not available at the time of this analysis, but it would make sense for there to be some kind of fiscal impact based on HB 812’s changes. The position on the bill may be subject to change based on the impact as described by the Legislative Budget Board.</p>	<p><b>Neutral</b></p>
<p>HB 1191</p> <p>Johnson, Jarvis</p>	<p>Relating to an annual report concerning the number of inmates who have been in the conservatorship of a state agency responsible for providing child protective services.</p>	<p>Current law requires the Texas Department of Criminal Justice to submit an annual report to the governor, lieutenant governor, speaker of the house, and each standing committee with primary jurisdiction over the department. The report must summarize statistical information concerning the number of inmates who have at any time been in the conservatorship of a state agency responsible for providing child protective services.</p> <p>House Bill 1191 would require that the report be sent to each member of the legislature and made public on the department’s website. It also must include, disaggregated by age, the number of inmates who have not previously served a term of imprisonment.</p>	<p><b>Neutral</b></p>
<p>HB 1377</p> <p>Dutton</p>	<p>Relating to the creation of a commission to review certain laws of this state that restrict the rights or activities of persons convicted of a felony offense and to make certain</p>	<p>House Bill 1377 would create a commission to review all laws of Texas that restrict the rights or activities of persons convicted of a felony offense, including the right to vote, the right to serve on a jury, and eligibility for occupational licenses. The commission would be required to make recommendations as a result of its findings. The commission would be composed of nine members. Two would be appointed by the governor. Two would be appointed by the lieutenant governor. Two would be appointed by the speaker. Two would be appointed by the chief justice of the supreme court, and one would be</p>	<p><b>Neutral</b></p>

	recommendations regarding those laws.	appointed by the presiding judge of the court of criminal appeals. Members of the commission would not be entitled to compensation or reimbursement for expenses.	
HB 1653 White	Relating to certain criminal justice reforms, including measures related to reentry and reintegration of state jail felony defendants and pretrial intervention programs that provide an alternative to incarceration.	House Bill 1653 would authorize grants to jurisdictions so that they could experiment with implementation of pretrial diversion using similar methods as Harris County. The state jail felony system in Texas is badly in need of top to bottom reform, and House Bill 1653 works towards that goal.  <i>See separate analysis.</i>	<b>Support</b>
HB 2168 Allen	Relating to a trauma history assessment for certain defendants and inmates.	House Bill 2168 would require assessments of inmates to determine whether the inmate has experienced “adverse childhood experiences or other significant trauma,” and refer that inmate, as needed, to the appropriate medical or mental health care professional for treatment. The bill would require the same assessment at the time of an inmate’s initial placement on community supervision.  The Texas Department of Criminal Justice already offers health care services to all offenders, including mental health. <sup>4</sup> Under the correctional health care plan, those offenders are entitled to any health care service deemed medically necessary, which involves determinations that the services are: <ul style="list-style-type: none"> <li>• appropriate and necessary for the symptoms, diagnosis or treatment of the medical condition;</li> <li>• provided for the diagnosis or direct care and treatment of the medical condition;</li> <li>• within standards of good medical practice within the organized medical community;</li> <li>• not primarily for convenience; and,</li> <li>• the most appropriate provision or level of service which can be safely provided.<sup>5</sup></li> </ul>	<b>Oppose</b>  <b>(-) Limited Government</b>

While adverse childhood experiences or other significant trauma are serious issues, the state does not need another mandated requirement for this type of screening, especially given the health care that is already available to inmates.

### TCC Positions:

*Please note that for bills at the committee level, additional information provided at the committee hearing on a bill may influence the final position that TCC adopts if the bill reaches the floor. The positions adopted at committee level are based on the best available information about the bill at the time of writing.*

**Support:** The bill rests on or advances a conservative principle or principles.

**Support & Amend:** The bill rests on or advances a conservative principle or principles. It should be supported, but specific amendments suggested by TCC would improve the bill.

**Oppose:** The bill undermines a conservative principle or principles.

**Oppose Unless Amended:** This bill undermines a conservative principle or principles and should be opposed unless there are amendments that would fully address those concerns. In that case, the amendments should be offered and supported. If adopted, the bill becomes a “Support” or a “Neutral.”

**Oppose & Amend:** This bill undermines a conservative principle or principles and should be opposed no matter what. There may be amendments worthy of offering and supporting, but the bill is fundamentally flawed and those amendments cannot turn the bill into a “Support.”

**Neutral:** The bill neither rests on nor undermines a conservative principle, or there are competing conservative approaches to a problem addressed by a bill. In that case, TCC staff will inform members of these issues the best they can in order to empower members to make their own decisions.

### ENDNOTES

<sup>1</sup> LBB Fiscal Note for HB 3303 (84R, 2015)

<sup>2</sup> <https://capitol.texas.gov/tlodocs/85R/fiscalnotes/html/HB01421I.htm>

<sup>3</sup> <https://hro.house.texas.gov/pdf/ba85r/hb0152.pdf#navpanes=0>

<sup>4</sup> <https://www.tdcj.texas.gov/divisions/cmhc/services.html>.

<sup>5</sup> <https://www.tdcj.texas.gov/divisions/cmhc/services.html>.