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COMMITTEE SUBSTITUTE HOUSE BILL 2352

REDUCE PRISON OVERCROWDING AND IMPROVE THE PAROLE PROCESS

BACKGROUND AND PROBLEM

Mandatory Supervision was originally created to ensure that individuals had a supervised transition from prison to the community. Functionally similar to parole, the release mechanism established by the Legislature differs from parole insofar as Government Code Section 508.147 requires the Texas Board of Pardons and Paroles (BPP) to release a person, with various exceptions, to mandatory supervision when his or her accrued “good time” plus calendar time equals the full sentence.¹ To accrue good time, an inmate must first meet certain classification and status restrictions, which fluctuate depending on an individual’s conduct and behavior while incarcerated. Furthermore, an individual must be actively engaged in various programs² and maintain a good disciplinary record (e.g., comply with all rules and regulations, etc.).³ Significantly, an inmate subject to discipline may lose a portion or all of his or her good conduct time. For instance, an inmate may lose up to 30 days for a first-time refusal to attend a treatment program; on the third offense, s/he could lose up to 60 days. For more serious violations, an inmate may lose all accrued good time.⁴ Furthermore, under current statute, mandatory supervision is not permitted for individuals with certain violent or sex offenses.⁵

Government Code Section 508.149 currently requires a parole panel to conduct a discretionary review of **every** individual who meets the eligibility requirements for mandatory supervision to determine whether it will release the individual to parole at the pre-determined statutory time. Because BPP also retains the right to impose discretionary review over **every** person eligible for mandatory supervision, the current mandatory supervision scheme has the effect of granting BPP, in a limited set of cases, the discretion to override pre-determined, statutory release dates.

CRITICAL FACTS

- In 2009, BPP reviewed 18,554 persons eligible for mandatory supervision on top of the 76,607 parole considerations already under evaluation; in addition, it reviewed 30,389 parole violations and 1,061 clemency cases.⁶
- BPP procedures require a 90-day review period prior to a person’s mandatory supervision release date.⁷ This additional review effort generates unnecessary inefficiencies, incurs additional costs, and strains resources.
- Under present code, a person denied release to mandatory supervision under a discretionary review must be reconsidered at least twice in the two years following the date of the determination;⁸ pursuant to BPP policy, a person is automatically given a one year set off for her next review.⁹ As a result, a single denial costs the state roughly \$18,358. Additionally, BPP usually begins compiling the review file about six months prior to eligibility, so the process repeats within six months after a denial.
- As of August 31, 2010, the Texas Department of Criminal Justice (TDCJ) had a population of 8,068 inmates eligible for mandatory supervision subject to BPP review.¹⁰ This population cost the state **\$409,773.72 per day** to incarcerate.

LOGISTICS OF C.S.H.B. 2352

C.S.H.B. 2352 seeks to maximize efficiency and public safety by amending Government Code Section 508.149 so that certain low-risk individuals eligible for mandatory supervision are removed from the purview of BPP’s discretionary review. Specifically, C.S.H.B. 2352 allows an isolated group of low-risk individuals who meet specific criteria to be released to mandatory supervision without being subject to further review. Importantly, BPP will continue to retain discretion over a significant segment of the prison population. Furthermore, with respect to individuals who fall

within the ambit of BPP's discretionary review, C.S.H.B. 2352 will retain the statutory language that gives the parole panel discretion to deny mandatory supervision if the panel feels the inmate's accrued good conduct time does not accurately reflect his or her potential for rehabilitation, or would endanger the public.¹¹ Mindful of public safety, C.S.H.B. 2352 will also:

- Maintain current restrictions that preclude an individual who is serving a sentence for or was previously convicted of specific offenses enumerated in statute from being considered for mandatory supervision.¹²
- Allow the parole panel to continue to set and approve conditions of parole and supervision for all individuals. Such conditions could include ankle monitors, mandatory participation in programming, counseling, etc.
- Provide discretionary review over the following convictions: (A) felonies of the third degree or higher for an offense under Penal Code Sections 15.031 (Criminal Solicitation of a Minor), 19.04 (Manslaughter), 20.03 (Kidnapping), 20A.02 (Trafficking of Persons), 21.12 (Improper Relationship Between Educator and Student); 22.01 (Assault), 22.05 (Deadly Conduct), 22.07 (Terroristic Threat), 25.08 (Sale or Purchase of Child), and 25.11 (Continuous Violence Against the Family) of the Penal Code; and (B) felonies of the first or second degree under Penal Code Section 22.09 (Tampering With Consumer Product).
- Ensure that the parole panel retains discretionary review over any person who has been previously convicted of a felony offense at least twice and who has served at least two terms of imprisonment in a facility operated or under contract with TDCJ.
- Provide that the parole panel maintain discretion over any inmate who is serving a sentence for or was previously convicted of an offense that was not excluded from mandatory supervision at the time of his or her conviction, but was subsequently added to the enumerated offenses no longer eligible for mandatory supervision release.
- Include a permissive recommendation review, which provides discretion over a person who has been the subject of a major disciplinary action in the 12-month period preceding the individual's scheduled release date, providing there is a recommendation that the parole panel review that person.

SOLUTION: SUPPORT C.S.H.B. 2352

Increase BPP's efficiency and save taxpayer dollars by allowing BPP to release low-risk individuals who are eligible for mandatory supervision without subjecting them to further review. By releasing specific individuals who already meet the established mandatory supervision criteria to parole, BPP can devote additional time and attention to more significant parole cases. C.S.H.B. 2352 will also decrease the burden on prisons by freeing up needed space to house individuals who pose an actual threat to public safety, while providing significant savings for taxpayers.

¹ TEX. GOV. CODE § 508.147.

² *Id.* at § 498.003 (regardless of the classification...department may grant good conduct time to inmate only if inmate is actively engaged in an agricultural, vocational, or educational endeavor, in an industrial program or other work program, or in a treatment program, unless the inmate is not capable of participating in such a program or endeavor.).

³ TDCJ *Offender Orientation Handbook*, 7, Printed November 2004.

⁴ TDCJ, Correctional Institutions Division: *Disciplinary Rules and Procedures for Offenders; Good Time Loss Limits Chart*, April 2010.

⁵ *Id.* at § 508.149(a).

⁶ Texas BPP, *Annual Report FY 2009*, <http://www.tdcj.state.tx.us/bpp/publications/AR%20FY%202009.pdf>, 1, 17, 21.

⁷ Texas BPP, Policy Number BPP-POL.145.202, (10 Jan. 2011), http://www.tdcj.state.tx.us/bpp/policies_directives/POL.145.202%20_DMS.pdf.

⁸ TEX. GOV. CODE § 508.149(d).

⁹ Texas BPP, Board Policy Number BPP-POL.145.202.

¹⁰ TDCJ: Statistical Report FY 2010, p. 17.

¹¹ *Id.* at § 508.149(b)(1).

¹² *Id.* at § 508.149(a) (excluded offenses include: (1) use of deadly weapon in commission of crime; (2) murder; (3) capital murder; (4) aggravated kidnapping; (5) indecency with child; (6) sexual assault; (7) aggravated sexual assault; (8) aggravated assault; (9) injury to a child, elderly individual, or disabled individual (first degree felony); (10) arson (first degree felony); (11) robbery; (12) aggravated robbery; (13) burglary (first degree felony); (14) offenses relating to employment, authorization, or inducement of sexual conduct or performance by a child; (15) continuous sexual abuse of child or children; (16) enhancements of drug offenses committed in "drug-free zones (e.g., near kids/schools); (17) use of child in commission of certain drug offenses (e.g., manufacture or delivery); and (18) solicitation to commit a capital felony). Bear in mind that the Texas Legislature occasionally amends this provision to incorporate more/new offenses.