

SUBJECT: Continuing the Board of Pardons and Paroles

COMMITTEE: Corrections — favorable, with amendment

VOTE: 7 ayes — Hightower, Allen, Alexander, Gray, Hupp, Marchant, Serna

0 nays

2 absent— Edwards, Farrar

WITNESSES: For — Linda Marin, Texas Citizens United for Rehabilitation of Errants; Linda F. Reeves, Texas Inmate Family Association; Patricia Dodds; Kay Freund; Mary Jo Hysaw; Jean Leath

Against — William Russell Hubbarth, Justice for All

On — Victor Rodriguez, Texas Board of Pardons and Paroles; Joe Walraven, Sunset Advisory Commission

BACKGROUND : Art. 4, sec. 11 of the Texas Constitution requires the Legislature to establish a Board of Pardons and Paroles. Code of Criminal Procedure Art. 42.18 establishes an 18-member board appointed by the governor with the consent of the Senate. Members are full-time and salaried and serve six-year terms, with the governor designating the board chair. A six-member executive committee appointed by the board chairman coordinates board activities.

The board shares responsibility for the parole system with the parole division of the Texas Department of Criminal Justice (TDCJ). The board, often working in panels of three, determines which prisoners are released on parole and the conditions of parole and mandatory supervision. The board also makes decisions about revoking parole and mandatory supervision. The board has constitutional authority to make recommendations to the governor about reprieves and commutations of punishments, except in cases of treason and impeachment, and about remitting fines and forfeitures. TDCJ's parole division supervises parolees after they have been released. TDCJ also provides the board with administrative support in several areas, including personnel, accounting, computers and office space.

The board is funded by the Legislature through an annual appropriation to TDCJ. For fiscal 1996-97, appropriations totalled about \$12.6 million. The board has about 155 full-time equivalent employees.

Under the Code of Criminal Procedure, the board is subject to review under the Sunset Act but can only be abolished by a constitutional amendment. The current statute requires that recommendations on the board be made to the 75th Legislature. The board underwent Sunset Advisory Commission review during the past interim.

DIGEST: HB 1386, as amended, would restructure policymaking for the Board of Pardons and Paroles by creating a six-member parole policy board, establish training requirements for parole revocation hearings officers, and require the board to be reviewed when the Texas Department of Criminal Justice is scheduled for review, prior to the 1999 legislative session.

HB 1386 would take effect September 1, 1997.

Board structure and operations

HB 1386 would eliminate the board's executive committee and establish a policy board to make policy and establish board rules. The governor would designate six members of the board to serve as the policy board. Initial appointments would have to be made by January 1, 1998.

The presiding officer of the board, formerly called the board chair, would be appointed to the policy board and would serve as its presiding officer. Policy board members would serve six-year terms running concurrent with their terms on the parole board. The terms would be staggered so that one-third of the membership would have terms expiring every two years. Service on the policy board would be an additional duty for parole board members.

The policy board's responsibilities would include:

- adopting rules for making parole decisions;
- establishing caseloads for board members;
- updating parole guidelines, assigning precedential value to previous board

parole decisions, and developing policies to ensure use of the guidelines;

- requiring activity reports from board members; and
- reporting at least annually to the governor and the Legislature.

The policy board also would assume other functions now performed by the board, including adopting board rules on eligibility for parole, parole hearings, information submitted for consideration in parole decisions, conditions placed on parolees, and parole violation hearings. The policy board also would develop policies on when board members would be disqualified from parole decisions as well as a plan for reviewing actions taken by a parole panel.

The policy board would to hire a board administrator to manage its day-to-day activities.

Training for parole revocation hearings officers; parole handbook

The policy board would be required to develop a training program for newly hired employees who conduct parole violation and revocation hearings. Persons hired after May 31, 1998, would have to complete the program before conducting hearings on their own.

The policy board also would have to develop an annual training program to update hearings officers on the revocation process and a procedural manual, updated biennially, for the hearings. It would have to prepare a handbook for hearing participants, such as defense attorneys, offenders and witnesses. The training programs, procedural manual and handbook would have to be developed by June 1, 1998.

Across-the-board recommendations

HB 1386 would implement standard Sunset Advisory Commission recommendations on financial reporting, public information, conflict of interest, compliance with state and federal accessibility laws, equal employment opportunity policy, policies for separating policymaking and administrative responsibilities, open meetings and administrative procedure law, career ladders and evaluations for board employees, and training for board members.

**SUPPORTERS
SAY:**

CSHB 1386 would continue the 18-member Board of Pardons and Paroles to make parole decisions. Using a gubernatorially appointed board has proven to be a practical, accountable way to administer the parole process in a way that protects the public and manages offenders. However, a six-member policy board should be created as a more efficient means of setting board policy and rules and overseeing board administration.

Because responsibilities for the parole process are split between the parole board and the parole division of TDCJ, the two should be reviewed simultaneously. A dual review would allow for examining the complex relationship between the two entities and debating changes to the whole system. Any changes in the structure of the board — including proposals to make it completely independent of or a part of TDCJ — would best be considered during this comprehensive review. TDCJ is scheduled for review by the Sunset Commission prior to the 1999 legislative session, and the board should be reviewed again with the rest of the department.

Board structure and operations

The creation of a policy board would allow parole board members to concentrate on parole decisions while board policymaking is performed by a more efficient, manageable entity. Since 1989, the Legislature has transferred many rulemaking, policymaking and administrative responsibilities to the board, but has not provided for an efficient organizational structure to perform this job. A six-member policy board would be an efficient entity to set policy for the board and would be in line with other legislative efforts to keep policymaking boards a reasonable size.

The board currently has an unwieldy number of members who are spread out across the state, making policy- and decisionmaking by the board more difficult. In addition, board members have full-time responsibilities with a sizeable number of parole decisions to make. In fiscal 1995, each member considered an average of 8,400 parole cases and 4,300 parole revocations recommendations, set conditions on 2,200 inmates released on mandatory supervision, and considered 1,600 clemency applications, according to the Sunset Advisory Commission. A smaller policy board would allow for necessary board administration and policy making without forcing all 18 members to take time away from their parole decision duties. HB 1386

would provide that service on the policy committee would be an additional duty for its members, ensuring that policy committee members would not be able to shirk their other duties.

While current law establishes an executive committee composed of the chair of the board and six members appointed by the chair, this body has acted like a subcommittee of the board and has proved inadequate for board policymaking. The board itself has limited the authority of the executive committee by requiring ratification of the committee's decisions by the full board. The committee does not have authority to impose its decisions on other board members, and the board members — all independently appointed by the governor — do not have an obligation to follow the committee's recommendations. Also, the executive committee is not subject to standard state policies, such as open meetings requirements.

A new policy board, appointed by the governor and empowered with the necessary statutory authority, could solve these problems. Because the governor would appoint the policy board, if board members disagreed with policy made by the policy board, they could turn to the governor with their concerns. By subjecting the policy board to common requirements imposed on other state policymaking bodies, such as open meetings rules, HB 1386 would bring the board's policymaking in line with generally accepted practices.

Requiring the policy board to update parole guidelines and develop policies for use by board members would help ensure that inmates with similar histories and circumstances would be treated in comparable manner. This requirement would not force board members to vote in a particular way but would allow some weight to be given to the guidelines. The use of parole guidelines is not new; HB 1386 would simply require that the guidelines be updated.

The board also needs an full-time administrator. Currently, the board chair fulfills this responsibility along with other responsibilities for making parole decisions. The operation of the board would be improved by separating the responsibilities for day-to-day operation of the board — including its 155 employees — from the job of board chair, leaving the chair to concentrate on parole decisions and policymaking duties. Creating a board

administrator would be in line with other legislative action to establish administrative heads for full-time boards or commissions.

Training for parole revocation hearings officers; parole handbook

Requiring training for newly hired parole revocation hearings officers and annual training for all officers would ensure that they are adequately trained and aware of the latest court decisions and any changes in hearings requirements. Parole revocation hearings, held to consider accusations that parolees have violated terms of their release, are complex proceedings that can result in parolees being returned to prison. The hearings are civil administrative proceedings that deal with complex technical and legal issues involving the admissibility of evidence, witness testimony, due process rights, public safety and more. The current training program is limited and does not involve annual training for the board's 38 hearings officers who are not required to be attorneys and who have varying backgrounds and experience. HB 1386 would ensure that hearings officers are trained so that hearings would be fair and follow all necessary rules and that officers are given annual training like other state hearing officers.

The function of parole revocation hearings is properly housed with the board. The board and its hearings officers have the necessary experience to deal with the complex issues considered in the parole process. This function should stay within the criminal justice system and not be transferred to another agency such as the State Office of Administrative Hearings, which has no experience in this area.

Across-the-board recommendations

Adopting the Sunset Advisory Commission's across-the-board provisions would provide consistency among state agencies by standardizing in statute many operational procedures and requirements. The equal opportunity provision simply would require a policy statement that includes an analysis of the board's workforce, procedures to determine underuse in the workforce, and reasonable methods to address areas of underuse. HB 1385 would not impose hiring requirements but merely an analysis and policy statement based on federal and state equal opportunity guidelines.

**OPPONENTS
SAY:**

Some of the changes that HB 1386 would require could actually hurt, not help, the parole process. Other ideas to make the parole process more efficient should be considered, such as making the parole board a part of TDCJ or giving the board the responsibilities currently assigned to TDCJ's parole division.

Board structure and operations

Creating a six-member policy board with authority to impose policy on all 18 members of the board of pardons and paroles could result in a two-tiered board with policy board members wielding substantially more authority than other members. This could result in board members being excluded from policymaking and reduce the board's effectiveness. All 18 members of the board are gubernatorial appointments who should be given equal authority. At a minimum, decisions of the policy board should have to be ratified by some portion — perhaps one-half or two-thirds — of the full board.

HB 1385 could result in the work of policy board members being reassigned to other members who are already carrying full workloads.

It could be unwise to require the policy board to develop policies to ensure that board members use parole guidelines. This could reduce board members' discretion and hamstringing their ability to make decisions appropriate for individual cases.

Training for parole revocation hearings officers; parole handbook

The training requirements in HB 1385 could be strengthened by setting an annual training minimum and including issues dealing with crime victims. A better approach to conducting parole hearings might be to transfer the function to the State Office of Administrative Hearings.

Across-the-board recommendations

The provision requiring the board administrator to prepare a written policy statement “to assure implementation of a program of equal opportunity” and include procedures for determining “the extent of underuse in the board workforce of all persons for whom federal or state guidelines encourage a

more equitable balance” is vague. It would unwisely go beyond what is required by state and federal employment regulations.

NOTES:

The committee amendments would (1) require the board's general counsel to report directly to the governor rather than to the board's second highest officer, in cases where there are potential grounds for removing the presiding officer, and (2) specified that making the policy board subject to open meetings and administrative laws would not affect the exemptions now provided for board hearings and interviews involving parole decisions.

The companion bill, SB 357 by Brown, has been referred to the Senate Criminal Justice Committee.