

**SUBJECT:** Eligibility to represent a person before the Board of Pardons and Paroles

**COMMITTEE:** Corrections — favorable, without amendment

**VOTE:** 4 ayes — Allen, Hopson, Haggerty, Mabry

0 nays

3 absent — Stick, Alonzo, Farrar

**WITNESSES:** For — William Habern, Texas Criminal Defense Lawyers Correction and Parole Committee; David P. O’Neil; Daniel R. Lang

Against — None

On — Gerald Garrett, Texas Board of Pardons and Paroles

**BACKGROUND:** In response to controversies over parole consultants and parole decisions, the 73rd Legislature in 1993 established that only attorneys licensed in Texas could represent prisoners for compensation. It also extended from two years to 10 years the amount of time that must elapse before a former member or employee of the Board of Pardons and Paroles, Texas Board of Criminal Justice (TBCJ), or Texas Department of Criminal Justice (TDCJ) may practice before the Pardons and Paroles board. Under Government Code, sec. 508.083(d), a former member or employee of any of these entities may not represent any person or receive compensation for services rendered on a matter pending before the board or a parole panel with which the former member or employee had direct personal involvement or that was within the member’s or employee’s official responsibility.

Government Code, sec. 572.054(b) generally prohibits former state officers or former state employees who were at a certain salary range (currently, \$34,308 per year or higher) at regulatory agencies from representing or receiving compensation for rendering services to any person regarding a particular matter in which the former officer or employee participated during their state service or employment, either through personal involvement or because a case or proceeding was within their personal responsibility.

**DIGEST:** HB 301 would allow a licensed attorney who was a former member or employee of the Pardons and Paroles board or of the TBCJ to represent a person before the board or a parole panel or to receive compensation regarding a matter pending before the board or a parole panel after two years, rather than the current 10. A former employee of TDCJ would have to wait two years, rather than 10, before representing an inmate before the board or a parole panel or receiving compensation for services related to a matter pending before the board or a parole panel. The bill would repeal Government Code, sec. 508.083(d).

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS SAY:** HB 301 would reduce the excessive waiting period for a former member of the board or the TBCJ or a former employee of either of those boards or of TDCJ to represent a person before the board or a parole panel. The current 10-year period largely was a response to the parole of Kenneth McDuff, whom law enforcement officials later suspected of killing as many as nine women after his release, and to representation of inmates by a former board chairman who was an orthodontist. The bill would not affect the requirement that representatives appearing before the board be attorneys.

Revising the statute to a two-year waiting period would be a more reasonable approach to inmate representation before the board. The 10-year provisions of current law arguably take away the rights of attorneys who practice in this limited field to make a living. The law does not require district attorneys who stop prosecuting to wait a certain period before representing criminal defendants, nor do criminal defense attorneys who become prosecutors have a mandatory waiting period.

Current law burdens public defenders who provide counsel for indigent inmates under TBCJ's direction. These attorneys perform a variety of representation — for example, for criminal trials and appeals, immigration cases, divorce cases, and writs of habeas corpus — yet they never appear before the parole board. HB 301 would correct the unfair waiting period for this small group once they leave state employment.

The current revolving-door statutes under Government Code, sec. 572.054(b), dealing with representation by former officers or employees of regulatory agencies, could address potential concerns about the bill's repeal section. From a practical standpoint, that section of the code essentially would reach all attorneys who are former employees of the Pardons and Paroles board, TBCJ, or TDCJ and who would be subject to HB 301's repealer. Also, these attorneys would be subject to the State Bar's conflict-of-interest provisions. Enactment of HB 301 is necessary to make statutes affecting representation of inmates more consistent with laws applied to former employees and board members of other state agencies.

**OPPONENTS  
SAY:**

State law needs to draw a line for cases in which a former board member or employee has had personal involvement or official responsibility. In those cases, current law that prohibits any representation seems appropriate and should not be repealed. Otherwise, the public might question whether someone's associations or actions in an official capacity had been motivated by prospects of future payment for representation. The specific prohibition regarding employees of the criminal justice board and department that HB 301 would repeal applies to all employees, not just those at the higher pay levels, as does the more general revolving-door statute.