
SUBJECT: Timelines for parole revocation hearings and transfers to TDCJ

COMMITTEE: Corrections — committee substitute recommended

VOTE: 9 ayes — Hightower, Allen, Alexander, Edwards, Farrar, Gray, Hupp, Marchant, Serna
0 nays

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Donald Lee, Conference of Urban Counties; Craig Pardue, Dallas County; Mark Mendez, Tarrant County Commissioners Court; Jim Hodges
Against — Linda Marin, Texas Citizens United for Rehabilitation of Errants; Gary Cohen, Texas Criminal Defense Lawyers Association; Kay Freund, Jim Leath, Patricia Dodds, Mary L. Hysaw
On — Melinda Hoyle Bozarth, Texas Department of Criminal Justice

BACKGROUND
:
An arrest warrant may be issued for persons who have been released from prison on parole, mandatory supervision, or a conditional pardon if they are accused of violating a rule or conditions of their parole, they have been arrested for an offense, there is reliable evidence that they pose a danger to society or they have been released but were not actually eligible for parole. These arrest warrants, commonly called “blue warrants,” are issued to peace officers, who then arrest and hold the person pending a parole revocation hearing.
Under the Art. 42.18 of the Code of Criminal Procedure, persons accused of parole violations are entitled to a hearing with a parole panel to determine if their parole will be revoked, modified, or left unchanged. The hearing must be held within 70 days from the person’s arrest. A hearing can be held later than 70 days after the arrest if the parole panel determines a delay is necessary to assure due process for the person. However, an arrest warrant must be withdrawn if the hearing is not held before the 121st day after the arrest. The parole panel has 30 days after the hearing to make its decision.

The warrant need not be withdrawn within 120 days after the arrest under the following circumstances: if the person has been removed from the sheriff's custody and placed in a community residential facility; is subject to pending criminal charges that have not been adjudicated; is in custody in another state or federal correctional facility; or a continuance is granted, not to exceed the 181st day after the arrest.

DIGEST:

CSHB 1112 would establish new deadlines for holding parole revocation hearings for parolees housed in local facilities after being arrested on a warrant and would establish a new procedure to allow persons to be moved from a local facility and held in a Texas Department of Criminal Justice (TDCJ) facility pending a parole revocation hearing. The bill also would establish criteria for holding preliminary parole revocation hearings.

CSHB would apply only to warrants executed on or after January 1, 1998, the bill's effective date.

Transfer of parolee to TDCJ facility. CSHB 1112 would allow TDCJ to authorize a local facility to transfer a person awaiting a parole revocation hearing to a TDCJ facility within 150 miles of the local facility, if there is adequate space.

Parole revocation hearings. CSHB 1112 would make changes in the deadlines for parole revocation hearings being held because of an alleged parole violation or because a person was ineligible for release. The bill would eliminate the current deadlines of 70 days (or longer if a parole panel determined a delay was necessary) after an arrest to hold a hearing. It also would eliminate the current requirement that an arrest warrant be withdrawn if a hearing has not been held within 120 days after an arrest and would eliminate current exceptions to this requirement.

For persons being held in local facilities, parole panels would have to dispose of charges against a person before the 61st day after: (1) a person was arrested pursuant to an arrest warrant for an administrative parole violation and the person had not been charged within the 61 days with the commission of a new offense, except for fine-only traffic offenses; or (2) a sheriff who has custody of a parolee accused of a new offense notifies

TDCJ that the person has discharged their sentence or the prosecution for the alleged offenses has been dismissed.

For persons who had been transferred to a TDCJ facility or who were returned to TDCJ after being in custody in another state or in a federal facility, parole panels would have to dispose of charges “within a reasonable time.”

Parole panels would not be held to these deadlines if: (1) the person was in custody in another state or a federal correctional institution; (2) the sheriff did not provide the parole panel a place to hold a hearing; or (3) the panel granted the person a continuance or determines for good cause that a continuance is necessary. If a continuance was granted, in no event could the charges be disposed of later than the 30th day after the date the panel would otherwise have been required to dispose of the charges. If a sheriff did not provide a place for the hearing, panels would not have to dispose of charges until the 60th day after a sheriff provided a place.

The bill would define disposal of charges to be when: (1) a person's parole, mandatory supervision or conditional pardon was revoked and the person was transferred from the custody of the sheriff to TDCJ or the parole was continued or modified and the person was released from the county jail; (2) the warrant was withdrawn; or (3) the person was transferred to TDCJ pending a hearing.

Preliminary hearings. Preliminary hearings to determine whether probable cause or reasonable grounds existed to believe the person had violated a condition of release would have to be held within a reasonable amount of time unless the person waived the hearing or had been charged with an administrative parole violation or had been judged guilty or pled guilty or nolo contendere to an offense committed after being released, except for fine-only traffic offenses.

SUPPORTERS
SAY:

CSHB 1112 is necessary to clearly define county and state responsibilities for handling accused parole violators to ensure that counties are not overburdened by this duty. The bill would set new, reasonable deadlines for handling parole revocation hearings for parolees being held in county jails and would give the state a new option for dealing with these persons by

authorizing their transfer to TDCJ to await a hearing. If the state provides the parole board with funds for additional hearings officers, there is no reason why the state should not be able to coordinate its resources and meet the deadlines established by the bill.

CSHB 1112 would ensure that the state accepts its responsibility to handle persons for whom it has issued arrest warrants and who are being supervised by the state criminal justice system. These new procedures would not infringe on the any due process or other rights of parolees.

County budgets are being strained by the costs of housing a large number of accused parole violators for lengthy time periods. These parolees are accused of technical or administrative parole violations, such as failing to report to their parole officer, changing their residences without permission, or failing to pay restitution. As of February 1997, about 2,700 technical parole violators were housed in county jails awaiting a hearing, according to one estimate. Some counties report a doubling in the number of accused parole violators that they are housing. In some cases the number of accused parole violators exceeds the number of persons in the jail who are waiting for transfer to TDCJ. This has placed a financial burden on counties, with some estimating that they are spending millions of dollars annually handling these parolees.

The current deadlines that require arrest warrants to be withdrawn if a hearing is not held within 120 days of an arrest and allow another 30 days for parole panels to make their decision have proved inadequate to ensure the timely handling of these cases. Even if a decision is made to revoke parole and return those persons to TDCJ, they can spend even more time, up to 45 days, awaiting transfer. Statewide, on average counties are housing parolees for 101 days.

CSHB 1112 would address this problem by requiring the state either to hold a hearing and transfer a person out of the county jail in a reasonable amount of time or to transfer persons to a TDCJ facility pending their parole revocation hearing. The state would generally have 60 days to hold a hearing but could grant continuances of another 30 days if necessary. Setting a deadline for cases to be disposed — including revocation and transfer to TDCJ or a continuation of parole and release from the jail —

would be the only way to ensure that the state would act in a timely manner and that counties would not be overburdened.

The bill contains safeguards to ensure the state would not be held to these deadlines if persons had been accused of new crimes and were being dealt with by the local criminal justice system, if a sheriff did not provide a place for the hearing, or if the person was in another state or a federal facility.

In addition, the bill would give the state a new option by authorizing the transfer of persons to a TDCJ facility pending a parole revocation hearing. This would allow the use of state facilities to house these parolees if a hearing could not be held within the deadline or if it simply was more desirable to make the transfer. However, CSHB 1112 would ensure that this would be done only if space was available.

By limiting the distance a person could be transferred to no more than 150 miles, CSHB 1112 would ensure that persons are not moved an unreasonable distance from their families or lawyers. This 150-mile distance would be in line with the standard distance used in the judicial system for limiting how far witness can be subpoenaed for a trial. In addition, because persons are held in the counties where they are arrested, they may not even be near their families or lawyers to begin with, a fact for which the state is not responsible.

CSHB 1112 would define when a preliminary hearing was necessary, following guidelines in case law. For persons transferred to TDCJ facilities, hearings would have to be held within a reasonable time. This would be in line with court opinions and would adequately ensure that persons are given hearings in a timely fashion without unnecessarily restricting the state. The parole board would have authority to set a timetable for these hearings, if necessary.

**OPPONENTS
SAY:**

It could be burdensome for the state to be held to a 60 or 90 day deadline for disposing of a parole violation case, which the bill defines as both holding a hearing *and* transferring a person out of a sheriff's custody. Problems could arise because two different entities are responsible for these duties. The state board of pardons and paroles is responsible for holding parole revocation hearings, and TDCJ is responsible for transferring a person from a sheriff's

custody to a state facility. If a hearing were held at the end of the 60- or 90-day period, it could be difficult for the necessary paperwork to be processed and for TDCJ to transfer a person within the deadline. This could leave the state with no choice but to transfer large numbers of persons to state facilities, possibly displacing other offenders.

CSHB 1112 should set deadlines for parole revocation hearings for persons who have been transferred to TDCJ facilities. The bill would require only that the hearings occur in “within a reasonable time.” This is vague and could be subject to abuse if persons are allowed to languish in a facility awaiting their hearing.

CSHB 1112 could be unfair to persons who are transferred to TDCJ facilities away from their families, resources and lawyers pending their hearings.

OTHER
OPPONENTS
SAY:

Preliminary hearings should be provided in all cases, including technical violations, so that all parolees accused of violations are afforded a full due process.

CSHB 1112 could be expensive to the state, costing about \$4.3 million in general revenue through fiscal 1999 to hire an additional 30 hearings officers and 42 clerical and supervisory personnel. The state should ensure that counties meet their responsibilities for dealing with these persons, some of whom have been rounded up during high publicity “sweeps” of areas.

NOTES:

The original version of the bill would have allowed local facilities to request TDCJ to transfer persons awaiting parole revocation hearings. If TDCJ refused, it would have had to reimburse the local facility for the cost of medical care for the inmate. The original version also would have reduced the number of days in which a revocation hearing must be held from the current 70 days after arrest to 60 days.

The companion bill, SB 1875 by Bivins, has been referred to the Senate Criminal Justice Committee.