

SUBJECT: Functions of parole board and credit for parole time if parole is revoked

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Haggerty, Farrar, Allen, Ellis, Gray, Hopson, Isett, Ritter

0 nays

1 absent — Hodge

WITNESSES: *(On original bill:)*

For — Linda Reeves, Inmate Families Organization; *Registered but did not testify*: Amy Mizcles, National Alliance for the Mentally Ill of Texas; Ken Whalen, Texas Daily Newspaper Association and Texas Press Association; Suzy Woodford, Common Cause

Against — Gary Cohen, Texas Criminal Defense Lawyers Association; William “Rusty” Hubbarth, Justice For All

BACKGROUND: The Texas Constitution, Art. 4, sec. 11 requires the Legislature to establish a Board of Pardons and Paroles. Government Code, sec. 598 establishes an 18-member board appointed by the governor with the advice and 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 committee designated by the governor serves as a policy committee, whose duties include adopting the board’s rules.

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. TDCJ’s parole division supervises parolees after they have been released.

DIGEST: CSHB 1649 would change some of the functions of the Board of Pardons and Paroles and would allow some inmates who had their parole revoked to receive credit toward their sentences for time they spent on parole.

The bill would take effect September 1, 2001.

Structure and functions of the board. It would be grounds for removal from the board if a member failed to comply with policies or rules adopted by the policy board.

The presiding officer of the board, now designated by the governor, would report directly to the governor and would serve as the administrative head of the board and the policy board.

Establishing the required work hours for board members would be added to the duties of the policy board, and the board would have to require members to file reports on the hours worked. Board members would have to file activity reports on the performance of their statutory duties.

CSHB 1649 would add the following to the duties of the board members: determining which inmates were released on mandatory supervision, issuing special conditions of parole, modifying and withdrawing conditions of parole and mandatory supervision, and making decisions about continuing or modifying parole and mandatory supervision.

The current authorization for the board to continue, revoke, or modify parole or mandatory supervision after a hearing to determine whether an offender had violated the conditions of parole would be given to parole panels. Parole panels, instead of the board, could order restitution payments from parolees and could revoke parole for failing to comply with the order. A parole panel, instead of the board, would have to notify criminal justice officials that it was considering parole for specific inmates.

The current requirements for parole panels to allow victims to participate in the parole consideration process would be applied to the process for considering mandatory supervision.

Allowing credit for time spent on parole. CSHB 1649 would allow some offenders who had their parole revoked to be given credit toward their sentences for the time they spent on parole.

For offenders convicted of specific serious or violent crimes listed in Government Code, sec. 508.149, and those who previously had been convicted of one of these offenses, current law requiring them to serve the remainder of their sentences if their parole is revoked would continue.

Other offenders whose parole was revoked would be divided into two groups. Offenders in one group would continue as under current law. Offenders in the other group could receive credit for some of their time on parole.

If on the date of the issuance of an arrest warrant or summons that initiated the parole revocation process, the offender was subject to a sentence for which the remaining portion was *greater* than the time from their parole release date to the date the warrant or summons was issued (the time spent on parole), the remaining portion of their sentence would be served *without credit for the time the person spent on parole*.

If on the date of issuance of the warrant or summons triggering parole revocation, the offender was subject to a sentence with a remaining portion that was *less* than the time from the parole release date to the date of the warrant's or summons' issuance (the time spent on parole), the remaining portion of the sentence would be served for an amount of time *equal to the portion of the sentence remaining on the date that the arrest warrant or citation was issued*.

This bill would take effect September 1, 2001, and would apply to revocations that occurred on or that date.

SUPPORTERS
SAY:

Structure and functions of board. CSHB 1649 would help impose some accountability on the Board of Pardons and Paroles. Some board members have been criticized for being unresponsive to outside concerns and for being unconcerned with following board policies and procedures. CSHB 1649 would address these concerns by providing that failure to comply with board rules and policies would be grounds for removal. This would not infringe on the board's sovereignty, because the board sets these policies and rules, and removal would not be automatic but could take place after the standard process for removal.

Specifically requiring the policy board to establish work hours for the board and requiring reports on those hours would increase board accountability. Currently, there is no way of knowing how much board members work.

Requiring the board's presiding officer to report to the governor would ensure that the board chair was accountable to someone and simply would codify current practice. The board and its chair would remain independent, and the governor would not be insinuated into parole decisions. Both the governor and the parole board are executive agencies, so it would not be inappropriate for the two to communicate.

Provisions of CSHB 1649 that would designate certain functions to parole panels would put into statute many of the board's current practices. The statutes already allow panels to make parole release decisions, and the bill would harmonize other parts of the statutes by authorizing the board to do things such as impose sanctions and order restitution payments.

Allowing credit for time spent on parole. Currently, when parole is revoked and offenders are returned to prison, they must serve any time remaining on their sentences that was not served before they were released on parole. This means that a person with a 10-year sentence who served five years in prison and then four years on parole before having his or her parole revoked would be sent back to prison to serve all five years of the sentence without any credit for time spent on parole. This offender could wind up spending 14 years under supervision — 10 in prison and four on parole — for a 10-year sentence.

CSHB 1649 would give the Board of Pardons and Paroles options to deal with nonviolent offenders only. Serious and violent offenders, such as those who commit crimes against persons or violate drug laws, and those with previous serious, violent offenses who had their parole revoked would continue to be sent back to prison for the remainder of their terms.

Other offenders whose parole was revoked and whose remaining portion of their sentence was *less* than the amount of time they had spent on parole could have their parole street time count toward their sentences. For example, assume that a person given a 10-year sentence served four years and then was released on parole. That person served five years on parole and

then had the parole revoked. The remaining portion of the sentence would be one year. The date from release on parole to the date of the revocation warrant would be five years. That person would receive credit for the time on parole, and the remaining portion of the sentence would be computed as equal to the portion of the sentence remaining on the date the warrant was issued, or one year.

Offenders whose remaining portion of their sentences was *greater* than their release time would continue to be sent back to prison for the remainder of their sentences, just as they are under current law.

It is appropriate to allow certain nonviolent offenders to have their sentences recalculated to ensure that the penalty for parole violations is not too onerous and that some nonviolent offenders do not spend more time under supervision than their original sentence. Giving credit in limited situations for parole street time would allow space in the state's prisons to be used by serious, violent offenders instead of nonviolent parole violators. Over time, this could result in significant reductions in the needed amount of state prison capacity.

OPPONENTS
SAY:

Structure and functions of board. Requiring the presiding officer of the parole board to report directly to the governor could infringe on the board's traditional autonomy. Although appointed by the governor, board members' decisions are generally considered independent of the governor and should remain that way, with no appearance of gubernatorial influence.

Allowing credit for time spent on parole. Parole is a privilege, and offenders who violate it should have to serve the remainder of their sentences. Offenders who cannot follow the rules established by the parole board should not be given special breaks and allowed credit toward their sentences for time spent on parole.

NOTES:

HB 1649 as filed would have reduced the board to six members, established a new position of parole commissioner, and eliminated the policy board. Board members would have continued to make parole decisions about most violent inmates, and 18 parole commissioners would have made parole decisions for other inmates. The committee substitute eliminated these

provisions and added those related to calculating time to be served after parole revocation.

Portions of CSHB 1649 are included in other legislation. The portion dealing with allowing credit for time spent on parole is included in HB 1585 by Gallego, also on today's General State Calendar. The portion dealing with board work hours is included in HB 1582 by Gallego, which has been sent to the Local and Consent Calendars Committee. The portion dealing with duties of the board members is included in HB 1584 by Gallego, which passed the House April 20 on Local, Consent, and Resolutions Calendar and has been referred to the Senate Criminal Justice Committee.