

SUBJECT: Time frame for parole board to reconsider inmates for release on parole

COMMITTEE: Corrections — committee substitute recommended

VOTE: 4 ayes — Allen, Hopson, Alonzo, Haggerty

0 nays

3 absent — Stick, Farrar, Mabry

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered but did not testify:*) Scott Henson, American Civil Liberties Union, League of United Latin American Citizens, and NAACP; Elizabeth Joblin, Texas Inmate Families Association; Hector Ortiz, William C. Velasquez Institute

Against — None

On — Carl Reynolds, Texas Department of Criminal Justice

BACKGROUND: Government Code, ch. 508 governs parole and mandatory release procedures. Sec. 508.141 specifies that a parole panel may consider for release or may release on parole an inmate who has been sentenced to a prison term, is confined in a penal or correctional institution, and is eligible for release on parole, if the panel determines that the inmate's release will not increase the likelihood of harm to the public. No provisions in the Government Code govern when a parole panel must reconsider a defendant who was denied parole initially.

Rules of the Board of Pardons and Paroles (TAC, title 37, part 5, ch. 145) provide that a case reviewed by a parole panel for parole consideration may be denied a favorable parole action and set for a review in a future specific month and year, known as a setoff. The next review date may be set at any time within the three-year incarceration period following the prior parole docket date, but not less than one year from either the prior parole docket date or the date of the panel decision, if the prior parole docket date has passed.

Under the Pardons and Parole board's rules, to be considered for parole, other than on initial parole eligibility, the defendant must not have had a major disciplinary misconduct report in the six-month period before the parole review date. Also, an inmate with pending charges alleging a felony offense committed while in the Texas Department of Criminal Justice (TDCJ) and for which a complaint has been filed in a Texas court cannot be considered for release on parole or mandatory supervision.

The Pardons and Paroles Policy Board comprises six members of the Board of Pardons and Paroles designated by the governor. Among its other duties, the policy board is responsible for adopting rules relating to the decision-making processes used by the board and parole panels.

Government Code, sec. 508.149(a) specifies certain offenses for which an inmate may not be released on mandatory supervision if he or she has been convicted previously of one of the offenses or is serving a sentence for certain offenses, including:

- a felony offense for which the judgment contains an affirmative finding that the defendant used a deadly weapon in the commission of the offense;
- capital, first-degree (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000), or second-degree (two to 20 years in prison and an optional fine of up to \$10,000) murder;
- first-degree or second-degree aggravated kidnaping;
- second-degree or third-degree (two to 10 years in prison and an optional fine of up to \$10,000) indecency with a child;
- second-degree sexual assault, first-degree or second-degree aggravated assault, or first-degree aggravated sexual assault;
- first-degree injury to a child or an elderly or disabled person;
- first-degree arson;
- second-degree robbery or first-degree aggravated robbery; and
- first-degree burglary.

DIGEST:

CSSB 917 would require the Pardons and Parole policy board to establish a date on which the board could reconsider for release an inmate who previously had been denied release. This policy would have to require the board to reconsider for release an inmate serving a sentence for an offense

listed in Government Code, sec. 508.149(a), during a month designated by the parole panel that denied release. The designated month would have to begin between one and five years after the date of the denial. The policy would have to require the board to reconsider for release an inmate other than one serving a sentence for the specified offenses as soon as practicable after the first anniversary of the date of denial.

The 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. The policy board would have to adopt the reconsideration policy by January 1, 2004.

**SUPPORTERS
SAY:**

CSSB 917 appropriately would prioritize the reconsideration of inmates for release on parole, speeding up review of nonviolent offenders while allowing the board to set off for up to five years the reconsideration of serious, violent offenders.

The bill would allow the parole board to grant a setoff of one to five years to a serious, violent offender before his or her next parole review. Under current rules, the board must reconsider an inmate for parole within three years after each denial, which is stressful for victims and a waste of time for the board. If the board concludes that a violent offender has not made progress and is a poor candidate for parole, the board should have the flexibility to grant a five-year setoff rather than having to reconsider the inmate within three years. CSSB 917 would allow the board instead to concentrate its resources on cases worthy of its attention. Each time an offender is up for parole, it is traumatic for victims and their families, who face the potential release of a threatening offender and must write letters opposing release, an unnecessarily draining requirement. Many other states allow setoff periods of five years or longer for violent offenders.

The bill appropriately would speed up the reconsideration of nonviolent offenders, requiring review as soon as practicable after a year of denial, which would make available more prison beds for violent offenders. Assuming that admission and release trends do not change significantly, the Criminal Justice Policy Council projects that demand for prison space will exceed operational capacity by 2,131 beds at the end of fiscal 2003, by 4,755 beds at the end of fiscal 2004, and by 6,865 beds at the end of fiscal 2005, leading to backlogs in

county jails as convicted felons await available beds in TDCJ facilities. For nonviolent offenders serving relatively short sentences, three years is too long to have to wait for reconsideration. By that time, the offenders already may have completed their sentences.

The board would retain wide discretion to make release decisions under CSSB 917. It could reconsider violent offenders between one and five years of the initial denial, as the board saw fit. The board could be trusted to use its discretion appropriately and not grant a five-year setoff except in the worst cases. The board also would retain flexibility to reconsider nonviolent offenders, because it would have to reconsider their release as soon as practicable after one year of the denial.

**OPPONENTS
SAY:**

It would be inappropriate for the Legislature to mandate what rules the board must adopt. Also, CSSB 917 would mandate rules that might conflict with existing board rules. For example, under current rules, an inmate who has had a major disciplinary report within the past six months is not eligible for parole consideration, nor is an inmate with a pending charge for an offense committed while in TDCJ. The bill would appear to override these existing constraints on board reconsideration of an inmate for parole.

The bill would establish two classes of inmates who would be treated differently for parole review purposes. Inmates who committed certain listed crimes could face setoffs of five years, while those who committed other crimes would receive mandatory review every year. An offender who committed burglary would receive the same treatment as a murderer, which might not be appropriate depending on the specific facts of the case.

The board might grant the maximum five-year setoff too aggressively, which could result in inmates who had made progress languishing in prison unnecessarily. The current three-year review process ensures that defendants who are suitable for release are released in a timely fashion.

NOTES:

The Senate engrossed version of SB 917 would not require the board to designate the month during which it would have to reconsider a violent

defendant's release, nor would it specify that the bill's provisions applied to an inmate serving a sentence for specific offenses.