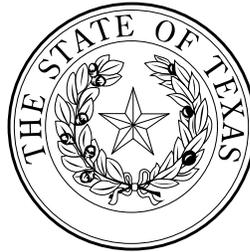


# **Board of Pardons and Paroles**

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**Staff Report**



**Texas Sunset  
Advisory Commission**

**1996**

## TEXAS SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**BOARD OF PARDONS AND PAROLES**

**SUNSET STAFF REPORT**

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# **EXECUTIVE SUMMARY**



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# Executive Summary

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Parole in Texas has become increasingly important to the state's criminal justice system and to the general public. Parole populations have more than doubled since 1985, going from 30,242 offenders under active parole supervision to 72,216 parolees. As required by the Texas Constitution, the Board of Pardons and Paroles (Board) was created by the Texas Legislature to make determinations on paroles. The Constitution also gives the Board the responsibility of making recommendations to the Governor on executive clemency, such as pardons and commutations or reprieves of punishment. The Governor appoints the Board's 18 members and designates the Chair, who serves as the chief executive officer and employs staff to support the Board's functions. A staff of hearing officers conduct parole revocation hearings throughout the state and make recommendations on continuation or revocation of release to the Board. Board staff also processes clemency requests for Board review, renders legal advice to the Board, and provides administrative support.

The Sunset staff looked at the parole process, the Board's role and effectiveness in it, and the Board's relationship with Pardons and Paroles Division of the Texas Department of Criminal Justice (TDCJ). The review focused primarily on the Board's ability to function as a public policymaking body. Staff reviewed the Board's structure, degree of independence from TDCJ, and qualification of hearing officers. The following material describes the results of the review.

## 1. Restructure the Board of Pardons and Paroles to better support its present responsibilities and functions.

The Legislature's reformation of the criminal justice system in 1989 resulted in the Board of Pardons and Paroles configuration as a stand-alone, 18-member Board, administratively attached to TDCJ, that existed solely to make individual determinations on pardons and paroles. In 1993, the Legislature gave the Board rulemaking responsibility for the parole process and a staff of 155. The current structure of the Board impedes efficient policymaking and administration of parole matters.

***Recommendation:*** Restructure the Board to create a six-member Parole Policy Board, within the full 18-member Board. The Governor would appoint the Policy Board members to serve staggered six-

year terms. The Policy Board would be authorized to hire a Board Administrator; and to establish rules and policies relating to parole processes, including updating parole guidelines and developing policies for their use.

## 2. Strengthen training and technical support for parole revocation hearing officers.

The parole revocation process must adequately consider issues of liberty, due process, and public safety. Well-trained hearing officers are necessary to ensure the process considers these issues fairly and independently. To better enable hearing officers to conduct parole revocation hearings, the Board should intensify its training efforts for all hearing officers and improve technical support of the process.

***Recommendation:*** Require all newly hired hearing officers to complete an enhanced training curriculum before conducting unsupervised hearings, and require all hearing officers to complete annual training updates. Additionally, require the Board to develop a participant handbook and biennially update the hearing officer procedural manual. The updates should include parole revocation hearing precedents.

### 3. Restudy the Board of Pardons and Paroles in two years in conjunction with the Department of Criminal Justice Sunset review.

The Board's functions in making parole decisions and recommending clemency to the Governor continue to be needed. While the Board generally performs these functions effectively, aspects of its operations mesh with those of TDCJ's Pardons and Paroles Division. Over the years, the Legislature has shifted various parole functions and programs

between the Board and TDCJ. Sunset staff reviewed the relationship between the Board and TDCJ and found a complex set of interconnected issues that demonstrated the need for a comprehensive analysis of the whole parole process, which would be an appropriate part of the Sunset review of TDCJ in 1999.

***Recommendation:*** Restudy the Board of Pardons and Paroles in 1999 as part of the Sunset review of the Texas Department of Criminal Justice. The focus of this subsequent review should be on major operational and organizational issues that affect the overall parole process including the consideration of consolidating the Board and TDCJ's Pardons and Paroles Division either under the Board or TDCJ. Every effort should be made in this review to avoid restudying issues and functions that are under the clear authority of the Board.

## Fiscal Impact Summary

The recommendation to reauthorize the Board would require continuation of its annual appropriation of approximately \$6.3 million. The recommendation requiring the employment of a Board Administrator would have a cost to the state and General Revenue associated with the salary and overhead and benefits for that position.

## **APPROACH AND RESULTS**



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# Approach and Results

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## Approach

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Composed of 18 full-time members appointed by the Governor, the Board of Pardons and Paroles (Board) determines which state prisoners are to be released on parole, what conditions are set for their supervision in the community, and whether to re-imprison parolees who fail to comply with release conditions. The Board also advises the Governor on granting pardons and commutations of punishment. Established by a constitutional amendment in 1936, the Board has undergone a number of changes in size and structure. Today the Board is attached, for administrative and budgetary purposes, to the Texas Department of Criminal Justice (TDCJ).

Responsibility for the parole system is split between the Board and TDCJ. While the Board votes to release inmates on parole, TDCJ supervises parolees in the community. When TDCJ parole officers become aware of parolees who may have committed new offenses or violated conditions of release, they may impose additional conditions of parole such as placing the parolee on intensive supervision. However, only the Board may conduct hearings to revoke parole.

In forming the approach to the review, Sunset staff evaluated the benefits of parole, the structure of the Board and its staff organization, the conduct of revocation hearings, the training of hearing officers, and the relationship between the Board and TDCJ in their joint administration of the parole system.

The Sunset review focused on improving the operations of the Board as a public body representing the citizens of Texas. The issues in this report concentrate on improving the policymaking functions of the Board by determining the appropriateness of its structure and on improving the hearings process through staff training.

## Review Activities

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In conducting the review the Sunset staff:

- Worked extensively with the Board Chair and staff;
- Attended Board-panel parole decision meetings;

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*In addition to reviewing the Board and its operations, the review also looked at the joint administration of the parole system.*

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*Failure to take legislative action would not abolish the Board but would remove it from further Sunset review.*

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- Observed the work of hearing officers in conducting revocation hearings;
- Attended quarterly public meetings of the full Board and reviewed past minutes of meetings;
- Met with members of the Board;
- Attended training sessions for Board staff;
- Worked with staffs from TDCJ, Governor's Office, and Criminal Justice Policy Council;
- Worked with staff from key legislators' offices, legislative committees, and the Legislative Budget Board;
- Reviewed agency documents and reports, state statutes, legislative committee reports and previous legislation, and court opinions;
- Conducted interviews with and solicited written comments from state and national advocacy and interest groups about their concerns regarding parole, including Justice for All, Texans Against Sexual Assault, and Texas Criminal Defense Lawyers' Association;
- Received correspondence and phone calls from crime victims and their relatives;
- Received correspondence and phone calls from inmates and their relatives;
- Researched the structure of agencies in other states with common functions; and
- Compared the structure of the Board to other state policymaking bodies.

## Results

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The Sunset staff review of the Board of Pardons and Paroles began by asking whether its functions continue to be needed. Although the Board is created by the Constitution and cannot be abolished without a constitutional amendment, the authority to administer parole is statutorily granted and may be repealed by the Legislature. To do so, however, would require action by the Legislature. Unlike other boards and commissions, the Parole Board is not subject to abolishment under the Sunset Act, but is only subject to review. Failure to take legislative action would not abolish the Board or its functions, but would in fact remove it from further review.

The Sunset review sought to determine if Texas should continue to offer parole. The most important purpose of parole is to protect public safety by assessing risk and controlling which inmates are released into the

community; helping parolees peacefully and productively reenter society by supervising them in the community; and re-imprisoning parolees who violate the terms of their release and again become a threat to the public. By providing a means for early release before the expiration of prison terms, parole also helps control inmates' behavior and provides impetus for inmates to rehabilitate themselves through educational and treatment programs available in prison. For these reasons, Sunset staff concluded that parole is a vital component of the state's criminal justice system in safeguarding the public.

Staff also examined the question of whether the Board's executive clemency functions should be continued. Executive clemency, which includes pardons and commutations or reprieves of punishment, is an act of grace that allows the state to forgive the consequences of punishment or to adjust its severity. The Texas Constitution vests the Governor with the power to grant clemency upon the written recommendation of the Board. Sunset staff concluded that the long-standing authority of the Executive branch to decide clemency matters should remain intact and that the Board provides needed assistance to the Governor.

Once the determination was made that the Board should continue to pursue its activities regarding paroles and executive clemency, the review focused on improving the quality of the parole process by clarifying the relationship between the Board and TDCJ's Parole Division. Sunset staff also looked at issues and functions that are under the clear authority of the Board, including improvements in the Board's structure and in the training of hearing officers. The results of this analysis are discussed in the following material.

***Quality of the Parole Process as Administered by the Board and TDCJ -***

The Sunset staff looked at operational aspects of the Board to see if changes could be made to improve the effectiveness, efficiency, and accountability of the parole process. This review was complicated by the fact that the parole system is jointly administered by the Board and the TDCJ Parole Division. The Board paroles inmates out of TDCJ-run prisons into the community to be supervised by TDCJ's parole officers. When the Parole Division believes a parolee should be sent back to prison for violating the law or rules of release, the Board must offer the parolee a due-process hearing and make a determination on whether to revoke parole. If the Board revokes parole, the offender again becomes the responsibility of the TDCJ Institutional Division, and the parole selection and review process begins again. In short, the actions of the Board and TDCJ affect each other and the parole system is controlled by both.

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*Sunset staff sought to look only at issues under the clear authority of the Board.*

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Sunset staff also found that neither the Board nor the parole process generally has had the benefit of a comprehensive evaluation in recent years. This lack of comprehensive study and the multiple changes to the Board's statute over time have further complicated the interdependence between the Board and TDCJ.

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*The actions of the Board and TDCJ affect each other and the parole system is controlled by both.*

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Because of this interdependence and the need to finally clarify the relationship between the Board and the TDCJ Parole Division, Sunset staff concluded that the Board should be restudied at the same time TDCJ undergoes Sunset review in two years. Reviewing the Board simultaneously with TDCJ would allow the Legislature to comprehensively evaluate the efficiency and effectiveness of the entire parole process and not just the Board's parts. The focus of this subsequent review should be on major operational and organizational issues that affect the overall parole process, including the issue of consolidating the operations of the Board and Parole Division either under the Board or TDCJ. The staff's approach to this next review would be generally to avoid restudying issues and functions under the clear authority of the Board, although any issue may be reexamined as it relates to the larger issues affecting the overall parole process. The need for this more comprehensive review is discussed in **Issue 3**.

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*The Board should be restudied in two years with TDCJ when the rest of the parole system is up for review.*

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**Board Structure** - The staff examined the adequacy of administrative and organizational structures in place for the Board to carry out its duties. These duties include both parole determinations, parole rulemaking, and the administrative functions necessary to support these activities. The Board is an anomaly in state government — it is the largest full-time state board. Despite its size, the Board is charged with significant rulemaking responsibilities. In addition, the Board oversees a staff comparable to a midsize state agency without the benefit of a staff person clearly responsible for the day-to-day administration of the Board's activities. The current structure of the Board, including its size and its administrative assignments, impedes its ability to efficiently set parole policy and administer the parole process.

As discussed in **Issue 1**, creating a smaller policy body from within the current membership of the Board would improve the effectiveness of the parole process by streamlining the creation of policy and allowing the other Board members to focus on parole decision making, not policymaking. Similarly, authorizing the Board to hire a Board Administrator would improve the Board's operation by freeing the Board Chair from routine administrative tasks.

**Hearing Officer Training** - The Sunset review focused on whether the Board provides hearing officers with sufficient training and support to ensure due process and maintain public safety. A parolee, like an inmate, is entitled to constitutional protections, including procedural due process. Hearing officers at the Board must maintain the fairness and effectiveness of hearings. As a result, they should be more than just impartial; they should be able to make decisions on legal questions such as admissibility of evidence and the application of law.

The Board has established a revocation process that complies with legal standards and precedents. However, to better enable hearing officers to conduct revocation hearings, the Board should intensify its training efforts, apply those efforts to all hearing officers, and improve technical support of the officers. These changes are the subject of **Issue 2**.

As a result of the Sunset review activities described above, the staff offers the following recommendations concerning the Board of Pardons and Paroles. These recommendations are discussed in detail in the issues presented in this report.

## Recommendations

1. Restructure the Board of Pardons and Paroles to better support its present responsibilities and functions.
2. Strengthen training and technical support for parole revocation hearing officers.
3. Restudy the Board of Pardons and Paroles in two years in conjunction with the Department of Criminal Justice Sunset review.

## Fiscal Impact

The recommendation to reauthorize the Board would require continuation of its annual appropriation of approximately \$6.3 million. The recommendation requiring the employment of a Board Administrator would have a cost to the state and General Revenue. The estimated cost would include one full-time equivalent at a salary of \$41,160-\$45,420 annually plus overhead and benefits. The recommendation concerning training of hearing officers could result in minimal additional costs for travel and expenses related to attendance at required training, but the exact amount of this expense cannot be estimated. The recommendations concerning the Board structure and restudying the Board along with TDCJ in 1999 have no fiscal impact.

Fiscal Year	Gain/(Loss) to General Revenue Fund (001)	Change in FTE's From Fiscal Year 1996
1998	(\$56,675)	+1
1999	(\$56,675)	+1
2000	(\$56,675)	+1
2001	(\$56,675)	+1
2002	(\$56,675)	+1



# ISSUES

# Issue 1



## Restructure the Board of Pardons and Paroles to Better Support its Present Responsibilities and Functions.

### Background

The Board of Pardons and Paroles (Board) is an 18-member, full-time body that makes decisions on granting and revoking parole, establishes conditions of parole and mandatory supervision, and recommends executive clemency to the Governor. The Governor appoints the Board Chair and the other members subject to Senate confirmation. Members serve six-year terms, but may be removed for any reason by the Governor who made the appointment. While the full Board meets on a quarterly basis, it conducts most of the routine work of deciding parole matters in three-member panels. Parole Board members serve at seven sites located near major detention facilities throughout the state.

To facilitate the work of the Board, the Legislature created a six-member Executive Committee. The Board Chair serves as the committee's Chair and selects the remaining five members. The statute assigns to the Executive Committee responsibility for coordinating Board activities, distributing caseload, and handling other matters as assigned by the Board Chair.

The Board of Pardons and Paroles is administratively attached to the Texas Department of Criminal Justice (TDCJ). TDCJ provides personnel services, accounting and payroll services, computer support, office space, and other administrative support to the Board. However, the Board has direct control over 155 full-time employees who conduct hearings, process executive clemency applications, and provide analytical assistance to the Board.

In its review of the Board's structure, the staff focused on the adequacy of administrative and organizational structures in place for the Board to carry out its duties. These duties include both parole-related activities as well as the administrative functions necessary to support these activities.

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*The 18-member Board make decisions on granting and revoking parole, and setting conditions of release.*

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## Findings

- ▼ **The Board's organizational structure has not been modified in response to recent statutory changes in its responsibilities.**
  - ◆ In 1989, the Legislature enlarged the Board from six to 18 members, repealed the Board's independent status, eliminated the Board's independent staff and Executive Director position, and administratively attached it to TDCJ. At the same time, the Legislature removed all rulemaking and policymaking authority — including parole rulemaking authority — from the Board and vested it in the Board of Criminal Justice. Although these changes resulted in the Board as a large deliberative body without an Executive Director, the Board did not experience organizational difficulties because its sole responsibility was to vote on parole matters with no administrative, policymaking, or rulemaking responsibilities.
  - ◆ Over time, however, the Parole Board's rulemaking authority has been restored along with some of its staffing. In 1993, the Legislature restored the Board's authority to make rules controlling the parole process. At the same time, the Legislature transferred to the Board from TDCJ the personnel to process clemency applications and conduct parole revocation hearings. The result is a Board with rulemaking, policymaking, and administrative responsibilities, but without a sufficient organizational structure in place to carry out these activities.
  
- ▼ **The current structure of the Board of Pardons and Paroles impedes efficient policymaking and administration of parole matters.**
  - ◆ Policymaking is difficult for large boards to accomplish. While the primary role of the Board is to make decisions on the suitability of individuals for parole and decisions to revoke parolees who violate the terms of parole, policymaking is still a key role of the Board. Parole decision making requires setting rules to govern the parole process and establishing precedents to guide determinations of similar cases and ensure consistency of decision making.

While the Board requires 18 members to adequately handle its parole caseload, a large Board can have difficulty performing policymaking functions. Because of its size and location of

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*Since 1989, legislative changes have restored the Board's administrative, policymaking, and rulemaking duties.*

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members throughout the state, the Board has experienced difficulty in scheduling meetings, discussing issues, voting, and traveling throughout the state to conduct meetings.

- ▶ In addition, Board members are full-time state officials whose primary duties are to make parole decisions, not to try to set policy or administer employees. Each Board member is responsible for a large number of decisions. In fiscal year 1995, each Board member considered an average of 8,400 cases for parole. In addition, each Board member reviewed some 4,300 parole revocation recommendations made by the Board's hearings officers, set conditions on 2,200 inmates released on mandatory supervision, and considered 1,600 applications for executive clemency.<sup>1</sup> As a result of its parole-related workload, the full Board only meets quarterly to perform policy and administrative duties.
- ▶ To assist the 18-member Board with the formation of policy and other matters, the Legislature authorized the formation of an Executive Committee, but this device has not proven adequate to solve the Board's problems in policymaking. Although the Executive Committee has statutory authority to coordinate Board activities, distribute caseloads, and conduct administrative matters as determined by the Board Chair, the Committee is limited by several factors as discussed below.

A current Board rule has limited the Executive Committee's usefulness by reserving responsibility for developing policies on parole and overall operation and administration to the whole Board — not the Executive Committee. Furthermore, the Board has not adopted any rules defining the role of the Executive Committee. As all of the Executive Committee's recommendations must go through the full Board, the Executive Committee process has not proven to be very useful.

The Executive Committee has no authority to ensure that policy decisions are carried out by other members. All Board members are appointed by the Governor, while Executive Committee members are designated by the Board Chair. Because Board members are appointed by and serve at the will of the Governor, they have not shown an obligation to follow policy recommendations by a small group of Board members selected by the Chair.

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*Each Board member annually considers about 8,400 parole cases and 4,300 parole revocations.*

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*The Board Chair, absent an agency administrator, handles the day-to-day duties of administering 155 employees.*

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Finally, the Executive Committee does not come under common statutory provisions regarding conduct of meetings. The Executive Committee is simply a committee of the Board, and does not constitute a quorum of the full Board. As a result, the Executive Committee is not bound by the requirements of the Open Meetings Act and other statutes that apply to state boards or commissions. These requirements include public notice of meetings and agendas, public access to meetings, and preservation of meeting records.

- The effective functioning of the Board of Pardons and Paroles is impaired by the absence of an administrator. By resolution, the Board has delegated the responsibility for day-to-day administration to the Board Chair. These administrative responsibilities are in addition to the Chair's duties of parole decision making and other responsibilities as Chair. This administrative structure is unusual — particularly for a Board with 155 full-time employees.

Interviews with and observations of work of the Board Chair showed that the workload as both a Parole Board member and de facto administrative director requires extensive time and that both tasks may suffer as a result. For example, routine requests for information on the Board's functions and other administrative matters are funneled to the Board Chair for resolution.

- The Legislature has expressed its intent to keep policymaking bodies at a reasonable size.**
  - Most boards or commissions created by the Legislature are much smaller than the Board of Pardons and Paroles. Of 105 agency enabling statutes examined by Sunset staff, 85 percent have boards with fewer than 10 members. The most common number of board members is nine and the second most common size is six.

The Board of Pardons and Paroles is the state's largest full-time, executive agency board. Texas has four other full-time commissions — the Public Utility Commission, Railroad Commission, Natural Resource Conservation Commission, and Workforce Commission — but these have just three members.

The Legislature has created only five other boards of equal size to the Board of Pardons and Paroles and one that is larger. However, all of these other large boards are part-time bodies with limited purposes or authority.<sup>2</sup> Most of these boards are large due to ex-officio members needed to bring special expertise for advisory purposes.

- The Legislature has reduced the size of state boards when doing so would result in increased decision making efficiency. For example, the Legislature, in 1993, reduced the size of the Board of Health from 18 to six members. The bill's proponents argued successfully that a six-member board would be more efficient at policymaking than an 18-member one.<sup>3</sup>

▼ **Most other states' parole boards have fewer members than Texas.**

- The size of Texas' Board of Pardons and Paroles is out-of-line with that of most other states. Only one state, New York, has a parole board with more members than Texas', and most states have parole boards of five to seven members each.<sup>4</sup>

▼ **Establishing a six-member policymaking body of Board members would improve the effectiveness of the parole process.**

- Setting rules governing the parole process and setting precedents are important roles assigned to the Board. These roles have proven difficult to accomplish given such a large Board. Reducing the number of individuals involved in the policymaking process would improve the process by making it easier for the decision makers to meet and by reducing the unwieldy nature of such a large Board.
- Creating a smaller policymaking body from the membership of the larger Board would also allow the other Board members to focus on parole decision making, not administrative chores, and address statutory duties that have gone unaddressed.

For example, in 1985, the Legislature required the Board to create and use guidelines in making parole decisions to increase voting consistency among Board members to ensure that a comparable amount of time is served by inmates with similar circumstances. While the Board did institute

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*Using a smaller group of Board members to make policy and administrative decisions would allow other members to focus on parole decision making.*

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guidelines, the offense severity and risk factors have not been updated since 1988. In addition, the guidelines do not reflect the 1993 sentencing reform policy changes and evidence shows that the Board does not fully and consistently apply the guidelines.<sup>5</sup>

The Board also has not been able to address common information activities that allow others to assess how well the Board operates. For example, the Board does not publish an annual report detailing its activities to the Legislature.

- ▼ **Authorizing the policymaking body to hire a Board Administrator would improve the Board's operating ability.**
  - ▶ The Legislature has acted to create administrative heads of agencies with full-time boards or commissions. For example, before 1983, the Chair of the Texas Employment Commission also performed duties as the agency's Executive Director. This arrangement caused conflict and confusion within the Commission and agency.<sup>6</sup> To end this conflict, the Legislature, in 1983, created the position of Executive Director in statute with a clearly defined set of duties and responsibilities.
 

Also in 1983, the Legislature created an administrative head for the Public Utility Commission (PUC). Questions arose at PUC regarding the appropriateness of have the Commission chair serve as Executive Director. An Attorney General Opinion said such an arrangement was inappropriate citing the incompatibility of having the same person hold two separate positions in which one is subordinate and accountable to the other.<sup>7</sup>
  - ▶ Creating a Board Administrator position would free the Board Chair from routine administrative tasks, assign authority and responsibility for day-to-day operations, and would clearly separate the policymaking responsibilities of the Board from the responsibility for day-to-day management of staff. These benefits would improve the overall operation of the Board.

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*The structure of the Board impedes its ability to set parole policy and administer the process.*

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## Conclusion

The Board of Pardons and Paroles underwent major changes in the Legislature's recreation of the state's criminal justice system in 1989. These changes resulted in a stand-alone Board, administratively attached

to TDCJ, that existed for the sole purpose of making parole decisions and considering pardons. To that end, the Legislature expanded the size of the Board from six to 18 members.

Over time, however, rulemaking authority was given back to the Board along with responsibility for oversight of a staff of 155. Today, the Board is an anomaly in state government — it is the largest full-time state board and, despite its size, the Board is charged with creating parole rules. In addition, the Board oversees a staff comparable to a midsize state agency without the benefit of a Board Administrator. The current structure of the Board, including its size and its administrative assignments, impedes its ability to efficiently set parole policy and administer the parole process.

Creating a smaller policy body — out of the current membership of the Board — would improve the effectiveness of the parole process by streamlining the creation of policy and by allowing the other Board members to focus on parole decision making, not policymaking. Similarly, authorizing the Board to hire a Board Administrator would improve the Board's operation by freeing the Board Chair from routine administrative tasks.

## Recommendation

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### Change in Statute

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- **Restructure the Board of Pardons and Parole to:**
  - create a six-member Parole Policy Board,
  - authorize the Governor to designate the Parole Policy Board members from the 18-member Parole Board in a manner that ensures staggered six-year terms,
  - require the Policy Board to hire a Board Administrator to carry out functions of the Board not related to parole decision making, and
  - abolish the Board of Pardons and Paroles' Executive Committee.
- **Charge the Parole Policy Board with:**
  - promulgating rules for parole and other policy decisions, establishing caseload for Board members, updating parole guidelines and developing policies for their use;

- prescribing the form and content of Board activity reports to include information on decisions, workload, and use of parole guidelines; and
- reporting annually to the Governor and Legislature on parole release decisions, workloads, and use of parole guidelines.

This recommendation would retain the Board of Pardons and Paroles as an 18-member Board appointed by the Governor, but would vest all rulemaking, policymaking, and administrative authority in a six-member Parole Policy Board. The remaining Board members would implement the policy decisions of the Policy Board. The Policy Board would also need to decide the respective workload and duties of its members in addition to that of the remaining Board members. For example, while Policy Board members would continue to vote on individual cases, the Policy Board could establish its members as the tie breakers for Parole Board panel decisions.

The Policy Board would be responsible for setting parole precedents to be followed when decisions are made on the granting and revocation of parole. The Policy Board would also ensure that parole guidelines are updated and used by all Board members when making parole granting decisions. The Policy Board would follow all applicable statutes governing the behavior of state boards, such as the Open Meetings Act, and would be required to make annual reports to the Governor and Legislature regarding the activities of the Board, including information on decisions, workloads, and use of parole guidelines.

The recommendation would also authorize the Policy Board to hire a Board Administrator. The Board's current authority to hire the Director of Hearings and General Counsel would transfer to the Policy Board. The Board Administrator would be responsible for hiring the Board's other staff. The Board Administrator would have responsibility for management of all the day-to-day activities of the Board's staff.

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## Fiscal Impact

The recommendation to create a Parole Policy Board and charge the Policy Board with promulgating rules would have no fiscal impact on the state.

Requiring the Policy Board to hire a Board Administrator would have a cost to the state and General Revenue. The estimated cost would include one full-time equivalent at an annual salary of \$41,160-\$45,420 annually plus overhead and benefits.

Fiscal Year	Gain/(Loss) to General Revenue Fund (001)	Change in Number of FTE's From Fiscal Year 1996
1998	(\$56,675)	+1
1999	(\$56,675)	+1
2000	(\$56,675)	+1
2001	(\$56,675)	+1
2002	(\$56,675)	+1

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<sup>1</sup> Analysis based on data supplied by the Board of Pardons and Paroles on October 11, 1996, data supplied by the Board of Pardons and Paroles on October 7, 1996, and Board of Pardons and Parole, *Self Evaluation Report to the Sunset Advisory Commission*, September, 1995, p. 20-21,

<sup>2</sup> The other boards are Commission on the Arts, Higher Education Coordinating Board, Historical Commission, Board of Dental Examiners, Board of Medical Examiners, and Texas Judicial Council.

<sup>3</sup> House Research Organization, *Special Legislative Report: Major Issues of the 73rd Legislature*, September 30, 1993.

<sup>4</sup> John C. Runda, Edward E. Rhine, and Robert E. Wetter, *The Practice of Parole Boards* (Lexington, Kentucky: Association of Paroling Authorities, International, 1994), 28-32.

<sup>5</sup> Criminal Justice Policy Council, *Evaluation of the use of Parole Guidelines by the Texas Board of Pardons and Paroles*, June 1996.

<sup>6</sup> Texas Sunset Advisory Commission, *Staff Evaluation of Texas Employment Commission*, 1982, p. 21.

<sup>7</sup> Office of the Attorney General, *Letter Opinion No. LO-89-57*, July 18, 1989.



## Issue 2



### Strengthen Training and Technical Support for Parole Revocation Hearing Officers.

#### Background

Inmates may be released from prison before the full length of their sentence either on parole or on release to mandatory supervision. The Board of Pardons and Paroles (Board) has the discretion to release on parole inmates it judges to no longer pose a threat to the public. Under mandatory supervision, certain inmates who committed crimes before September 1, 1996 are automatically released from prison based on the time served and the amount of good conduct time they have earned. Inmates released on either parole or mandatory supervision must satisfy the terms and conditions of their release and submit to supervision in the community for the remainder of their sentences. If they violate the terms of their release, they are subject to revocation of their release and return to prison.

Releasees accused of violating the terms of release are entitled by law to a hearing before the Board or its designee. Typically, a parole officer will provide a report detailing the alleged violation and request a warrant to be issued for the releasee's arrest. The parole officer then notifies the releasee of the right to a hearing and the conditional right to counsel. A releasee is entitled to both a preliminary and final revocation hearing. In some instances, the Board, or its designee, the hearing officer, holds a preliminary hearing to determine whether probable cause exists that a revokable violation has occurred and to notify the releasees of their right to a revocation hearing. The parolee has the option of waiving the right to a hearing.

If the Board votes to proceed to a revocation hearing, the hearing officer will conduct a full revocation hearing and make a recommendation to the Board whether the releasee has violated the conditions of parole and if so, what sanctions, if any, should be imposed. These sanctions range from intensifying the level of supervision to revoking the release and returning the releasee to prison.

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*Hearing officers determine whether a parolee has violated terms of release and recommend appropriate sanctions.*

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The Board currently employs 38 hearing officers, typically former parole officers, to conduct revocation hearings. These hearings are civil administrative proceedings designed to afford the releasee due process of law before the Board makes a determination whether to revoke. The hearing is an informal proceeding in which the hearing officer may give more leeway in admitting evidence than a judge would in a case tried before a jury. The standard of proof during the fact-finding phase of the revocation hearing is whether a preponderance of credible evidence shows that the releasee has violated parole. The rules of evidence used in non-jury civil cases in state district courts apply to revocation hearings. Parties to the hearing, however, may object to offers of proof, and the hearing officer may exclude irrelevant or questionable evidence.

Clearly, the parole revocation process is important to both protect public safety as well as the rights of the releasee. To ensure that the process of revoking parole privileges provides these protections and meets federal requirements, the Legislature required the Board to develop and implement a training program that would assist hearing officers understand all aspects of the parole revocation process. The Sunset review focused on whether the Board provides hearing officers with sufficient training and support to ensure due process and maintain public safety.

## Findings

▼ The ability to properly revoke parole privileges is critical to the effective use of parole and often involves legal and technical issues.

► The Board is responsible for conducting a large number of parole revocation hearings. In fiscal year 1996, 10,919

revocation hearings were held, resulting in 3,279 revocations.

The table, *Parole Revocation Hearing Workload Measures*, summarizes the number and disposition of revocation hearings over the past five fiscal years.<sup>1</sup>

Parole Revocation Hearing Workload Measures				
Fiscal Year	Hearings Held <sup>^</sup>	Revocations	Recommendations Upheld*	Average Caseload <sup>+</sup>
1992	8,924	2,227	N/A	27.54
1993	12,629	3,981	N/A	28.44
1994	18,617	6,399	N/A	40.83
1995	20,417	6,277	N/A	44.77
1996	10,919	3,279	88.2%	23.95

<sup>^</sup> - includes preliminary hearings

\* - Hearing officer recommendations

<sup>+</sup> - Monthly average per hearing officer

- ▶ Parole revocation hearings are administrative in nature, but are not governed under the state's Administrative Procedure Act (APA). The APA provides formal guidelines for pre-trial, evidentiary, and documentation standards to ensure due process. However, the U.S. Supreme Court has established minimum due process rights in parole revocation hearings that differ from current APA procedural requirements. Application of APA standards to the parole revocation hearing process would result in additional expense in meeting APA requirements including discovery and interrogatories which are not part of revocation hearings. In addition, applying APA requirements would not enhance fairness.

Without statutory guidelines, however, the Board has greater discretion in establishing the procedure for revocation hearings through rule or policy. The higher level of discretion demands a well trained, competent hearing officer to administer the hearings.

- ▶ Parole revocation hearings deal with many difficult legal and technical issues, including admissibility of evidence, confidentiality, and the handling and/or confrontation of witnesses. Since hearing officers at the Board are not required to be attorneys, they rely solely on training and experience when making decisions. Failure to appropriately address issues raised during a revocation hearing can lead to inappropriate restrictions on liberty or costly court litigation, or it can jeopardize public safety.

▼ **The Board and participants in the parole revocation process have identified training and technical support as two areas needing improvement.**

- ▶ In 1995, the Board identified the difficulty in hiring experienced staff for hearing officer positions because of limited financial and organizational incentives. Additionally, the lack of general and specific recurrent training opportunities for hearing officers leads to difficulty ensuring policies and procedures are uniformly understood and applied. Moreover, a lack of training opportunities results in fewer chances for hearing officers to share work experiences and problem solving techniques.<sup>2</sup>

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*Hearing officers must rely on limited training to deal with difficult legal and technical issues that arise in parole revocation hearings.*

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- ▶ Criminal defense lawyers also identified training of hearing officers as a shortcoming of the process. The Texas Criminal Defense Lawyers Association (TCDLA) considers training as a major point of contention and asserts that hearing officers need better training in:
  - conducting hearings;
  - admission of evidence, including hearsay, scientific tests, or business and public records; and
  - ability to make independent decisions and rulings.<sup>3</sup>

The TCDLA maintains lawyers are not necessary to administer revocation hearings, but is concerned that other state administrative hearings involving issues of liberty, such as revoking drivers' licenses, afford greater protections.<sup>4</sup>

- In part, to address these concerns, the Board established a new training program in 1995. Before conducting hearings, hearing officers participate in a two-week training course and conduct hearings under direct supervision. However, this training regimen applies only to newly hired hearing officers, resulting in only four of the Board's 38 parole revocation hearing officers having received any extensive or formal job training.

Hearing officers hired before 1995 currently receive no formal or recurrent training. Hearing officer supervisors meet on a quarterly basis to discuss issues concerning the hearing process and each supervisor independently communicates information and decisions to their respective officers. The Board conducted a two-day training session in April 1996 to address legal issues and lawsuits affecting the hearing process. However, the Board does not have an annual training program for hearing officers.

- In addition to limited training opportunities, hearing officers face the challenge of limited technical support. As discussed below, information critical to hearing officer performance is outdated or nonexistent.

The hearing officer procedural and training manual that includes the basic job elements was established in 1990, and except for the recent rewrite of one chapter, has not been updated since.

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*The Board does not have an annual or recurrent training program for hearing officers.*

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The Board has not developed a mechanism to routinely provide hearing officers with information summarizing past cases and decisions, thus requiring decisions to be made independent of proven approaches or institutional experience.

A guide to the parole revocation hearing process has not been developed, resulting in misconceptions and unrealistic expectations by participants.

The Board does not consistently maintain information, such as the number and content of Board decisions overturned by the courts, that is integral to developing a hearing officer training regimen.

▼ **Past judicial review of Board parole revocation decisions illustrates the need for well-trained and supported hearing officers.**

- Parole decisions by the Board are challenged in either state or federal District Court and most often are in the form of a Writ of Habeas Corpus, a suit that alleges a constitutional violation. Many challenges are frivolous, but the courts have found several to be meritorious.
- Two recent court cases decided in fiscal year 1996 overturned parole revocations made by the Board and ordered new revocation hearings to be held. Both a state and federal District Court ruled that the hearing officers had abused their discretion in finding good cause for the admission of hearsay and overruling parolees' rights to confront their accuser.<sup>5</sup> A successful and effective training program would highlight these examples and uniformly communicate solutions to correct any errors in hearing officer decision making.

▼ **Agencies with comparable administrative hearing responsibilities provide more extensive training for hearing officers.**

- The State Office of Administrative Hearings (SOAH) is responsible for conducting Administrative License Revocation (ALR) hearings. ALR hearings involve decisions on whether to revoke or suspend personal licenses, such as driver licenses. The hearing officers for ALR hearings are attorneys, yet SOAH provides these hearing officers with three days of annual training and requires the officers to annually complete

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*The Board does not routinely provide hearing officers with summaries of past decisions to use as precedents.*

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*Other state agencies have extensive training programs for hearing officers.*

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40 continuing education credits. The Board has no similar process or requirements.

- The Texas Workers Compensation Commission, which conducts contested case hearings, requires its hearing officers to be attorneys and to engage in a six to eight week training regimen before independently conducting hearings.<sup>6</sup>

▼ **Properly trained and supported hearing officers will help ensure that parole revocation hearings are fair and independent.**

- Since issues of liberty and public safety are at stake, the hearing officer has a crucial task of making competent and appropriate recommendations. While parolees' liberty is conditional, they do have basic rights of fairness. Revocation of parole privileges does result in a substantial loss to the parolee and others.

Society also has a stake in the recommendations made concerning parole revocation. Society's interest lies in reintegrating an offender quickly, yet safely, into society. The interest is not in having parole revoked and returning offenders back to prison, especially if the offender is returned based on erroneous information or evaluation. Therefore, the hearing officer role is essential in not only protecting public safety, but the public's interest.

- A fair and competently run revocation process reduces both costly administrative appeals and judicial proceedings. Competently administered hearings can provide greater assurances that public safety has been maintained while providing offenders an alternative to expensive and continuing incarceration.

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*The Board needs to intensify its training efforts and technical support of hearing officers.*

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## Conclusion

A parolee, like a prisoner, is entitled to constitutional protection, including procedural due process. Hearing officers at the Board have the difficult task of maintaining the fairness and effectiveness of the hearing process established to provide due process. As a result, they should be more than just impartial; they should be routinely trained to be able to make decisions on legal questions such as admissibility of evidence and the application of law.

The Board has established a revocation process that complies with legal standards and precedents. However, to better enable hearing officers to conduct revocation hearings, the Board should intensify its training efforts, apply those efforts to all hearing officers, and improve technical support of the officers.

## Recommendation

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### Change in Statute

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- **Require all newly hired hearing officers to complete an enhanced training curriculum before conducting unsupervised hearings.**
- **Require all hearing officers to complete an annual training update.**
- **Require the development of a plain language handbook to be used by participants in the hearings process.**
- **Require a biennial update of the hearing officer procedural manual, including updating hearing precedents.**

These recommendations would raise the priority of providing adequate training and sufficient support to hearing officers and the parole revocation process. Requiring all new hires to receive extensive training before assuming hearing duties, and requiring current hearing officers to undergo recurrent training, underscores the Board's current efforts to improve the training curriculum. Newly hired hearing officers would assume a probationary status until the completion of a formal training program. Mandating an improved training regime for hearing officers may require resources to be reallocated from other parole efforts.

Creation of a handbook to familiarize users, such as defense attorneys, parolees, and witnesses, with the hearing process and procedure would improve communication among participants. The process and procedure used in conducting parole revocation hearings would be clearly delineated and participants would be able to develop realistic expectations of the process.

Biennially updating the hearing officer procedural manual would provide for the inclusion of any legislative changes or recent case studies or precedents. Tracking and updating precedents would allow hearing officers to make more standardized decisions that are consistent with Board policy.

The actual responsibility for developing this handbook and updating the procedural manual should go to the newly created Policy Board as discussed in Issue 1 of this report, contingent on its establishment by the Legislature. Of course, if the Board is continued in its current organizational structure, the full Board would have this responsibility.

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## Management Action

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- The Board of Pardons and Paroles should develop and maintain statistical information regarding the disposition of parole revocation hearings and the number and percent of hearing officer recommendations upheld by the Board and decisions challenged in court.

The current information management capabilities of the Board and Pardons and Paroles is limited and dependent upon support from TDCJ. However, the Board should still consider the information required to administer the revocation hearing process and identify data that will be useful in tailoring their training efforts. Ultimately, additional resources may be required to modernize the current system.

The Board's history and the frequent organizational upheaval it has experienced emphasizes the need for a consistent management information system. Currently, gaps in data prevents an accurate assessment of performance and need.

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## Fiscal Impact

This recommendation could result in minimal additional costs for travel and expenses relating to hearing officers attending required training and for development of a handbook. Such expenses can be covered by existing appropriations.

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<sup>1</sup> Board of Pardons and Paroles, Information Request by Sunset, Nov. 1, 1996.

<sup>2</sup> Board of Pardons and Parole, Interoffice Memorandum - Hearing Section, April 10, 1995.

<sup>3</sup> William T. Habern and Gary J. Cohen, *A Defense Lawyer's Perspective of Constitutional Due Process Problems in the Parole Revocation Process*, *Voice*, Vol. 25, No. 1, January/February 1996, p. 38.

<sup>4</sup> *Ibid.*

<sup>5</sup> Joe Anthony Romero vs. Wayne Scott and Victor Rodriguez, United States District Court, Southern District of Texas, Civil Action H-95-1126, October 2, 1995; and, Andrew Jackson Middleton, III vs. Texas Board of Pardons and Paroles, 174th Judicial District Court of Harris County, Cause No. 582076, August 28, 1996.

<sup>6</sup> Telephone interview, Don Kay, Texas Workers' Compensation Commission, November 4, 1996.

## Issue 3



### Restudy the Board of Pardons and Paroles in Two Years in Conjunction with the Department of Criminal Justice Sunset Review.

#### Background

The Board of Pardons and Paroles (Board) was established by Constitutional amendment in 1936 as a citizen's Board to recommend acts of executive clemency and paroles to the Governor, who had exclusive decision-making authority in these areas. A 1983 amendment to the Constitution removed the Governor from the parole process and established the Board as a statutory agency, with six full-time Board members. This change gave the Board authority for parole selection, supervision, and revocation but left the Governor as the final authority to grant or deny executive clemency.

With the creation of the Texas Department of Criminal Justice (TDCJ) in 1989, the Legislature expanded the Board to 18 members but made it a division of the new criminal justice agency. The Board continued to make parole release and revocation decisions and to recommend pardons and other forms of clemency to the Governor. Only a year later, however, the Board and a small support staff were separated from TDCJ, although they remained administratively linked for budgeting, purchasing, and personnel policies. Responsibility for parole supervision and revocation as well as the processing of clemency requests for Board consideration remained with TDCJ's Pardons and Paroles Division (Parole Division).

In 1993, the Legislature made the Board once again responsible for parole revocation hearings and transferred the staff of hearing officers from the Parole Division to the Board. The clemency staff was also moved back under the Board's administrative authority. Currently, the primary function of the Parole Division is to supervise parolees according to terms and conditions established by the Board.

Because the state Constitution requires the Legislature to establish a Board to make recommendations concerning executive clemency to the Governor,<sup>1</sup> the Board is not subject to abolishment under the Sunset Act. Abolishing the Board would require a Constitutional

*Although subject to Sunset review, the Board can be abolished only by amending the Constitution.*

amendment approved by the state's voters. However, the Legislature by statute has vested the Board with the authority to decide parole matters. As the Legislature could effectively decommission the Board by eliminating its statutory authority, it is subject to Sunset review the same as any other agency.<sup>2</sup> Short of recommending discontinuing or transferring an agency's functions, a Sunset review focuses on improving operations and promoting the public interest in agencies under evaluation.

The Sunset review of the Board revealed that the operations of the Board are interrelated to those of the Parole Division. Significant and complex issues concerning the parole system extend across both entities. A complete analysis of the parole system should consider the full implications of proposed changes on both the Board and TDCJ to assure that changes actually produce the desired result. Yet, the Sunset staff will not begin reviewing TDCJ until after the next session of the Legislature. The evaluation of the Board, its functions, and its relationship with TDCJ led to the findings discussed in the following material.

## Findings

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*Parole serves a vital role in the criminal justice system.*

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- ▼ **The parole process serves a vital role by helping to protect public safety, control inmates' behavior in prison, and relieve prison overcrowding.**
  - ◆ Parole protects public safety in the following ways: by periodically reviewing prisoners to re-evaluate the risk they pose to society; controlling which inmates are released early from prison; setting conditions to govern the conduct of releasees in the community; supervising parolees and monitoring their behavior in the community; and re-imprisoning parolees who present a threat to the public.
  - ◆ The possibility of parole helps control the behavior of prison inmates by offering incentives to obey institutional rules and participate in rehabilitative self-improvement programs, such as alcohol and drug counseling and educational courses.
  - ◆ When court orders required Texas to relieve overcrowding in the state's prisons, parole was used to expedite the release of inmates.<sup>3</sup> Before the capacity of the prison system was expanded in recent years, the state exercised emergency powers under the Texas Prison Management Act to accelerate inmates' parole-eligibility dates because of overcrowding.<sup>4</sup>

▼ **Executive clemency appropriately provides opportunities for rehabilitated offenders to more fully participate in society and for the state to adjust punishment in accordance with the interests of justice.**

- ▶ Pardons generally restore civil rights lost as a result of a felony convictions to offenders who have completed their sentences. When the Governor restores offenders' rights to vote, hold public office, or be employed in certain professions or occupations, the state is acknowledging that they have satisfied their debt to society and should be allowed to more fully participate in the community.
- ▶ Commutations and reprieves of punishment allow the state to adjust its criminal sanctions based on offenders' rehabilitation or other factors, such as terminal illness. Though rare, full pardons based on innocence, give the state the opportunity to free persons wrongly convicted of a crime.

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*The parole process cannot be adequately reviewed by looking at the Board in isolation.*

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▼ **Because the Board and TDCJ are so interconnected, a thorough analysis of the parole process cannot occur through an isolated review of the Board.**

- ▶ The Board paroles inmates out of TDCJ-run prisons into the community to be supervised by TDCJ's parole officers. When the Parole Division believes a parolee should be sent back to prison for violating the law or rules of release, the Board must offer a parolee a due process hearing and make a determination on whether to revoke parole. If the Board revokes parole, the offender again becomes the responsibility of the TDCJ Institutional Division, and the parole selection and review process begins again.

The respective jurisdictions of the Board and TDCJ are especially tangled in the areas of reviewing alleged parole violations and imposing sanctions or conditions short of parole revocation. TDCJ possesses discretion on which parole violations should be brought to the Board's attention and when to initiate the Board's revocation process by the issuance of arrest warrants for parole violators. The Board Chair has expressed concern about TDCJ's authority and practices in these areas.

- ▶ As the following points reveal, the Board has generally not had the benefit of a comprehensive evaluation in recent years.

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*Making changes to parole without looking at the effect on TDCJ could harm the entire parole process.*

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Such an evaluation cannot be conducted at this time because of the close interrelationship between the Board and TDCJ. Reviewing the Board in isolation without a complete understanding of TDCJ limits the ability to make informed decisions as to the most efficient and effective way of operating parole functions. Because of the interdependency between the Board and TDCJ, changes made after a review of only one of the entities could jeopardize the integrity of the parole process as a whole. In addition, last session the Legislature specifically delayed the Sunset review of TDCJ until 1999 indicating its intent to wait two years before addressing larger criminal justice issues.

- The Board has been restructured many times since its creation in 1936. Since 1981, the Board or its functions have been restructured or transferred five times. The text box *Changes to the Board of Pardons and Parole Since 1981* summarizes these reform efforts. In conjunction with these changes, the Board's staff has also been transferred back and forth between the Board and TDCJ. The Board now has four main staff divisions: a general counsel's office; a hearing section; an executive clemency unit; and an administrative support staff.

The complex history of the Board and TDCJ obscures the policy reasons behind the many substantive changes over so short a period of time. In not reviewing TDCJ simultaneously with the Board, Sunset staff is left with an incomplete picture of why the parole process is structured as it is now.

<b>Changes to the Board of Pardons and Paroles Since 1981</b>
<p><b>1983</b> - The Board became a statutory agency charged with making parole decisions, setting and modifying conditions of release, supervising released offenders, issuing arrest or pre-revocation warrants for release violators, and making parole revocation decisions.</p>
<p><b>1989</b> - The Board and its staff became a division of the newly created TDCJ.</p>
<p><b>1990</b> - The Board was re-established as a separate body with 18 members, though most of its support staff remained at TDCJ. As reorganized, the Board had the following authority: to approve or deny parole, to establish release conditions, to issue pre-revocation warrants, and to issue subpoenas for revocation hearings. The Board shared parole revocation powers with TDCJ, which could impose sanctions on violators whose release was continued or modified. TDCJ had the sole responsibility of supervising releasees. Staff employed to process executive clemency requests for Board review remained at TDCJ.</p>
<p><b>1993</b> - The Board regained sole responsibility for conducting revocation hearings and revoking parole. The revocation hearing officers and executive clemency staff were transferred from TDCJ to the Board. The Board was given statutory authority to hire a general counsel and other support staff but not an Executive Director.</p>

▼ **The split between TDCJ's and the Board's parole functions revealed issues that would be best resolved in a combined review of the Board and TDCJ.**

- ▶ A combined review of the Board and TDCJ may reveal that some functions performed by one should be transferred to the other. In 1994, for instance, the Texas Performance Review analyzed TDCJ and recommended that its responsibilities for selecting parole candidates and issuing pre-revocation warrants be transferred to the Board.
- ▶ In a combined review of the Board and TDCJ, Sunset staff could consider the following issues that all concern the Board's relationship with the Parole Division:

*Should the Board and the Parole Division be consolidated?*

Currently, these functions of making parole decisions, setting or modifying parole conditions, supervising parolees, and revoking parole are divided between the Board and TDCJ. Should these functions be the responsibility of a single entity? Could some or all of these functions be transferred elsewhere?

*Who should issue pre-revocation warrants?* The Board formerly had the power to issue arrest warrants for releasees accused of violating parole conditions. TDCJ now has sole authority to issue and withdraw such warrants. Should the Board control this function, as a judge does in probation cases?

*Who should present revocation hearing waivers?* When the Parole Division's parole officers notify parolees of allegations that could result in revocation of parole, they give parolees the option to waive their right to a hearing. Should the Board's hearing officers present hearing waivers to parolees, as judges do in arraigning criminal defendants or alleged probation violators?

*Who should serve revocation-hearing witness subpoenas?*

Alleged parole violators who request a revocation hearing are entitled to have witnesses appear in their defense. Parole officers serve subpoenas to compel the attendance of defense witnesses. Should an independent person be allowed to serve defense witness subpoenas, as is the practice in criminal and civil court cases as well as in hearings conducted under the Administrative Procedure Act?

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*TDCJ's Sunset date was moved to 1999 as the Legislature chose that time to address criminal justice issues.*

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*The review found several issues that should be addressed in a combined review of the Board and TDCJ.*

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*The Board should remain independent pending a combined review with TDCJ.*

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*Who should set and modify conditions of release?* The Board sets and modifies conditions of release for parolees and imposes sanctions against them, including revocation. Yet, TDCJ's parole officers have the most contact with releasees and are most familiar with their level of adjustment in the community. Should TDCJ be authorized to set or modify release conditions or to impose sanctions short of revocation?

- ▶ Leaving the Board as an independent entity is appropriate until a combined review of the Board and TDCJ in 1999 to determine the proper positioning of functions and responsibilities between the two organizations.

## Conclusion

Pardons and paroles are important criminal justice tools in preserving social order and protecting the state's communities. Sunset staff concluded that the Board serves an essential role in recommending pardons and deciding paroles. In looking at the Board's history, Sunset staff found a series of fragmentary changes that made determining whether the parole process is being operated in the most effective and efficient manner difficult. In studying the parole process, the Sunset review noted the programmatic and operational interdependence between the Board and TDCJ. Problems result from this interdependence and split in responsibilities, particularly in the area of parole revocation. These problems need to be addressed to ensure parole processes work as effectively as possible.

In light of these problems and the history of transferring certain parole functions back and forth between the Board and TDCJ, Sunset staff concluded that a simultaneous, comprehensive review of both agencies is necessary in 1999, when TDCJ is scheduled for Sunset review.

## Recommendation

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### Change in Statute

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- **Change the Sunset review date for the Board of Pardons and Paroles to 1999.**

This recommendation would require Sunset staff to restudy the Board at the same time it reviews TDCJ next biennium. The focus of this review should be on major operational and organizational issues that affect the overall parole process as it is administered by the Board and TDCJ. This review would not necessarily require restudying issues and functions that are under the clear authority of the Board, although any issue may be reexamined if it relates to the larger issues affecting the overall parole process. Reviewing the Board simultaneously with TDCJ would allow the Legislature to comprehensively evaluate the efficiency and effectiveness of the organizational structure and operations of the entire parole process.

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### Fiscal Impact

If the Legislature continues the current functions of the Board of Pardons and Paroles, using the existing or recommended modified organizational structure, the Board's annual appropriation of about \$6.3 million in fiscal year 1996 would continue to be required for its operations.

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<sup>1</sup> Tex. Const. art. 4, § 11.

<sup>2</sup> Tex. Code Crim. Proc. Ann. art. 42.18 (Vernon Supplement 1997).

<sup>3</sup> Comptroller of Public Accounts, State of Texas, *Texas Crime, Texas Justice*, "Parole and Mandatory Supervision" (Austin, Tex., September 1992), p. 103.

<sup>4</sup> *Ibid.*

<sup>5</sup> Comptroller of Public Accounts, State of Texas, *A Report from the Texas Performance Review—Behind the Walls: The Price and Performance of the Texas Department of Criminal Justice*, "Restructure TDCJ" (Austin, Tex., April 1994), pp. 27-28.



# **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Board of Pardons and Paroles</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Modify	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Do Not Apply	9. Provide for public testimony at meetings of the policymaking body.
Modify	10. Provide for notification and information to the public concerning agency activities.
Modify	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Not Applicable	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Do Not Apply	14. Require information to be maintained on complaints.
Apply	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Modify	16. Require development of an equal employment opportunity policy.
Modify	17. Require the agency to establish career ladders.
Modify	18. Require a system of merit pay based on documented employee performance.

<b>Board of Pardons and Paroles</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	5. Authorize the staggered renewal of licenses.
Not Applicable	6. Authorize agencies to use a full range of penalties.
Not Applicable	7. Specify disciplinary hearing requirements.
Not Applicable	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

# **BACKGROUND**



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# Background

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## Agency History

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The Board of Pardons and Paroles (Board) was established by Constitutional amendment in 1936 as a citizen's Board to recommend acts of executive clemency and paroles to the Governor, who had exclusive decision-making authority in these areas. A 1983 amendment to the Constitution removed the Governor from the parole process and established the Board as a statutory agency, with six full-time Board members. This change gave the Board authority for parole selection, supervision, and revocations but kept the Governor's authority to grant executive clemency, although only on the recommendation of the Board.

With the creation of the Texas Department of Criminal Justice (TDCJ) in 1989, the Legislature expanded the Board to 18 members and transferred its staff functions to the new corrections agency. The Board, with its small clerical staff, was responsible for parole release and revocation decisions and recommending pardons to the Governor with staff work provided by the new TDCJ Pardons and Paroles Division (Parole Division). In 1993, the Legislature returned administrative responsibilities to the Board for revocation hearings and executive clemency, and it specified staffing for the Board, including a General Counsel, Hearings Directors, and hearings officers. The Parole Division continues to supervise parolees under terms and conditions established by the Board.

In making decisions to release inmates from prisons, the Board has traditionally been seen as the valve controlling the flow of inmates out of prison to serve out their sentences under supervision in the community. Whereas parole decisions are discretionary, requiring approval from the Board, release from prison on "mandatory supervision" has not required Board approval. Under mandatory supervision, which was initiated in 1977, inmates must be released when the time they have served and the good-conduct time they have earned equals the length of their sentence. These releasees are still subject to the same requirements of supervision and possible revocation as parolees. In 1987, the Legislature changed this provision to deny eligibility for mandatory supervision for inmates convicted of certain violent offenses.

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*The Board has traditionally been seen as the valve controlling the flow of inmates out of prison.*

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In 1995, the Legislature deferred decisions to the Board on mandatory supervision for any inmate whose offense was committed on or after September 1, 1996. Under this change, the Board could deny release to any inmate eligible for mandatory supervision, regardless of the nature of the offense.

## Policymaking Structure

The Board of Pardons and Paroles (Board) is composed of 18 full-time, salaried members, who serve six-year staggered terms. They are appointed by the Governor, with the advice and consent of the Senate. Board members must be representative of the general public and have been Texas residents for the two years immediately preceding their appointment. The Governor designates the Board Chair, who serves at the pleasure of the Governor. The full Board is required to meet at least quarterly. The Board conducts most of its routine business of deciding paroles or parole revocations in panels comprised of three members assigned by the Board Chair.

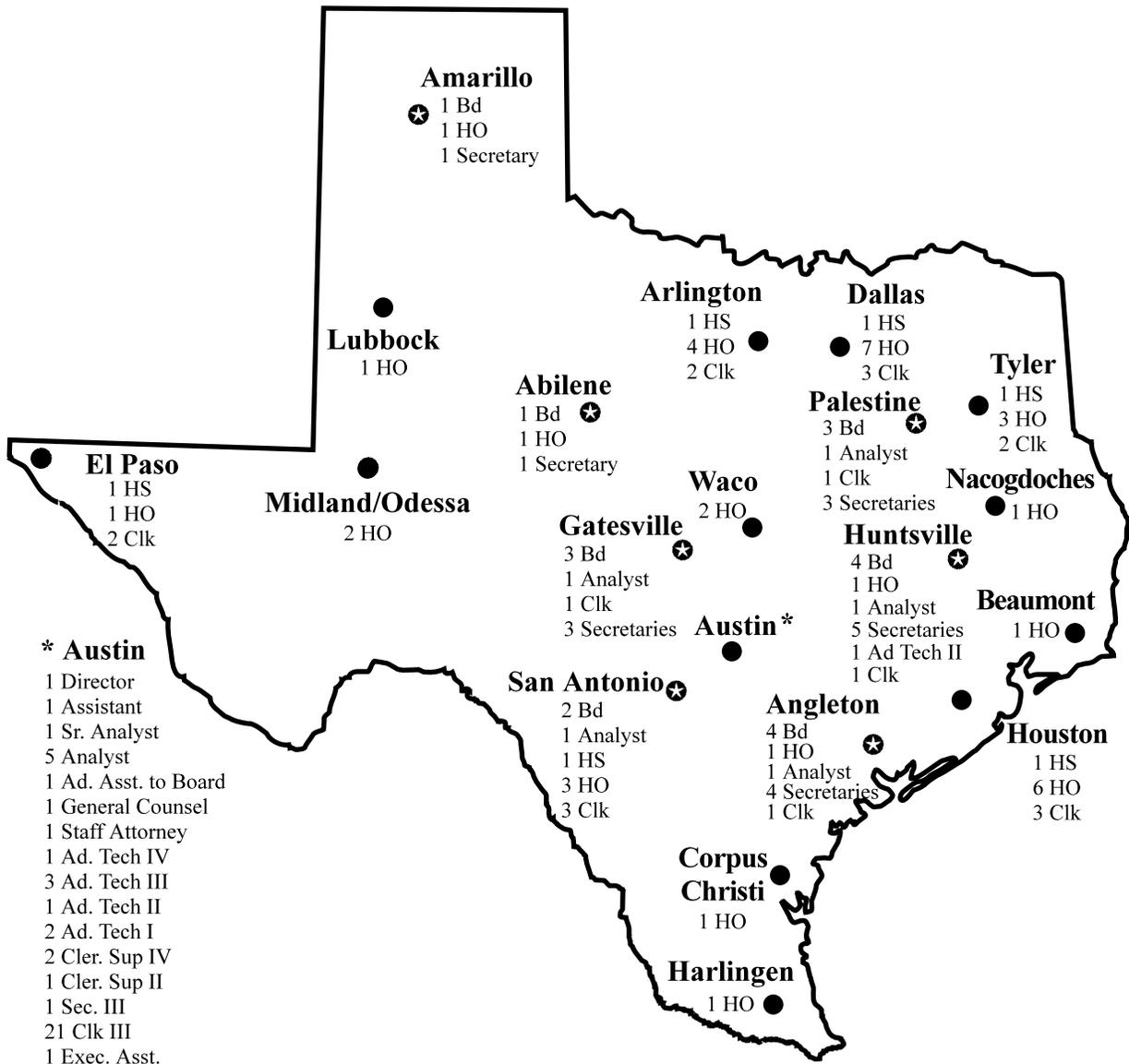
*The Board is organized decentrally, with members serving in field offices or near prison sites.*

The Board is organized decentrally, with members serving in field offices at or near prison sites around the state. The map, *Board of Pardons and Paroles Field Offices*, illustrates locations. To facilitate the work of the Board, the Governor appoints the Board Chair to also serve as the head of the Board's Executive Committee. The Chair appoints six members to serve on the Executive Committee. The Committee is responsible for coordinating Board activities, fairly and efficiently distributing caseloads among the panels, and administering other Board matters.

The Texas Constitution requires the Legislature to establish a Board of Pardons and Paroles and specifies procedures for Board action in recommending pardons and other forms of clemency. The Constitution does not so specifically address the parole process, though it does authorize the Legislature to enact parole laws and laws for informing juries about the effect of parole on time served for criminal offenses. Under the Constitution, the Governor may grant reprieves, commutations, and pardons in criminal cases only upon the recommendation of a majority of Board members.<sup>1</sup>

The Texas Code of Criminal Procedure provides for the release of inmates or prisoners on parole and designates the Board as the exclusive authority to determine paroles. Specifically, the statute requires the Board to determine:

**Board of Pardons and Paroles  
Field Offices**



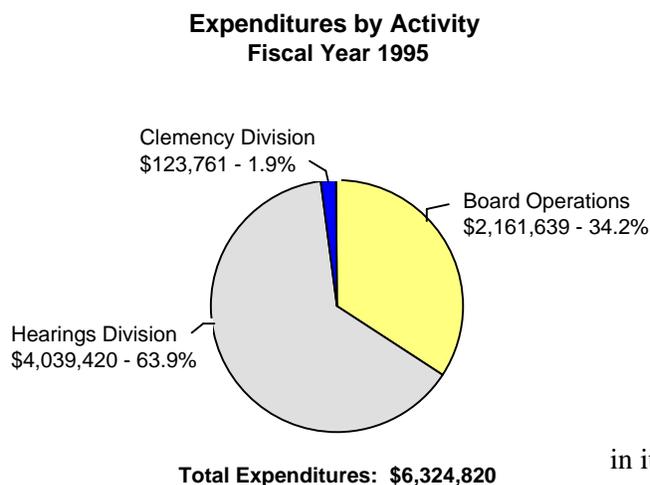
⊛ Current Board Member Offices

- which prisoners are to be released on parole,
- conditions and rules of parole and mandatory supervision,
- which prisoners may be released from supervision and reporting, and
- the revocation of parole and mandatory supervision.

## Funding and Organization

### FUNDING

The Board of Pardons and Paroles is funded entirely by General Revenue as a separate strategy in the appropriation to the Texas Department of Criminal Justice (TDCJ). The Board provides input to TDCJ regarding its funding requirements, which are then incorporated in the Department's request. In fiscal year 1995, the Board received funding of \$6.3 million. While the Board's operations were carried as a separate strategy within TDCJ's appropriation request, funding for hearings and clemency operations was included within TDCJ's parole supervision and parole selection strategies, respectively.



The Board implements this strategy through three basic activities: Board functions related to parole, parole revocation, and clemency; hearings to determine if revocation or other sanctions are appropriate; and clemency applications, including pardons, commutations, and remissions of fines. The chart, *Expenditures by Activity - Fiscal Year 1995*, provides a breakdown of the Board's expenditures in each of these areas.

The Legislature requires the Sunset Commission, in its reviews, to consider agencies' compliance with laws and rules regarding use of Historically Underutilized Businesses (HUBs). Because the Board relies on TDCJ for all purchases, however, consideration of HUB use does not apply to this review.

### ORGANIZATION

The Board of Pardons and Paroles employed 155 full-time equivalent employees in fiscal year 1995. The Board's headquarters is in Austin and 55 employees are housed there. The majority of the Board's personnel—100 employees—perform hearings functions and are located in cities shown on the map, *Board of Pardons and Paroles Field Offices*.

The organizational structure of the agency's offices is illustrated in the chart, *Board of Pardons and Paroles Organizational Chart*. Board members serve at seven sites located mostly near major detention facilities around the state. Including the Board member locations, the staff operates out of 18 offices statewide.

A comparison of the agency's workforce composition to the state's minority work force goals is shown in the chart, *Equal Employment Opportunity Statistics, Fiscal Year 1995*.

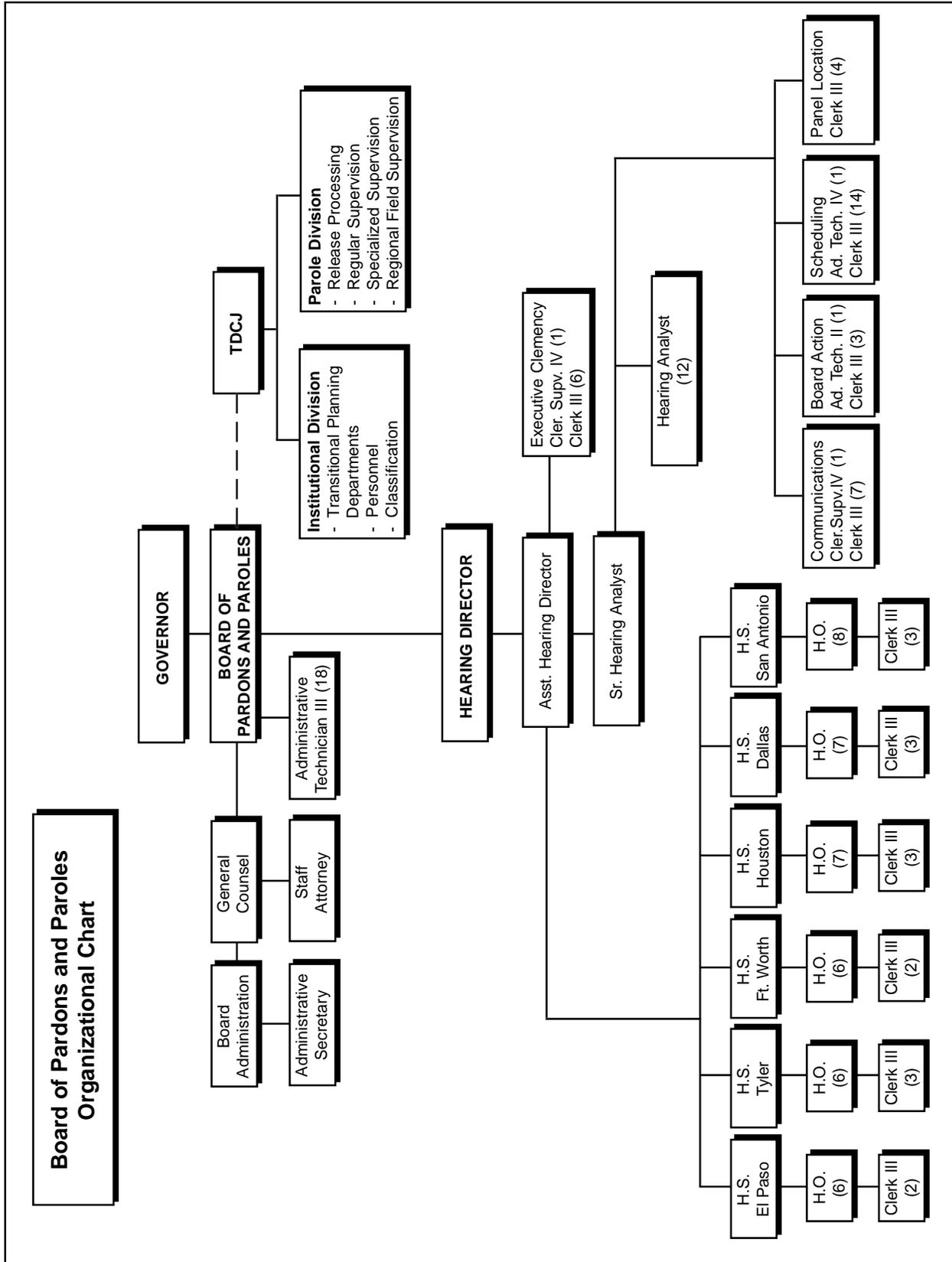
The statute specifies staff that the Board must employ and supervise, including a General Counsel and hearing officers, but not including an Executive Director. While the General Counsel and Hearings Director provide some of the day-to-day staff functions, the Board Chair basically doubles as the Board's chief executive officer.

Equal Employment Opportunity Statistics Fiscal Year 1995							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	21	29%	5%	24%	8%	38%	26%
Professional	59	19%	7%	10%	7%	41%	44%
Technical	-	-	13%	-	14%	-	41%
Protective Services	-	-	13%	-	18%	-	15%
Para-Professionals	-	-	25%	-	30%	-	55%
Administrative Support	71	15%	16%	21%	17%	90%	84%
Skilled Craft	-	-	11%	-	20%	-	8%
Service/Maintenance	-	-	19%	-	32%	-	27%

## Agency Operations

The Board of Pardons and Paroles does not have a strategic plan that describes its functions. Instead, it is included as part of the strategic plan for the Texas Department of Criminal Justice, which covers all Board activities relating to parole selection and revocation and executive clemency. TDCJ has authority for other aspects of the parole process, such as supervising parolees in the community.

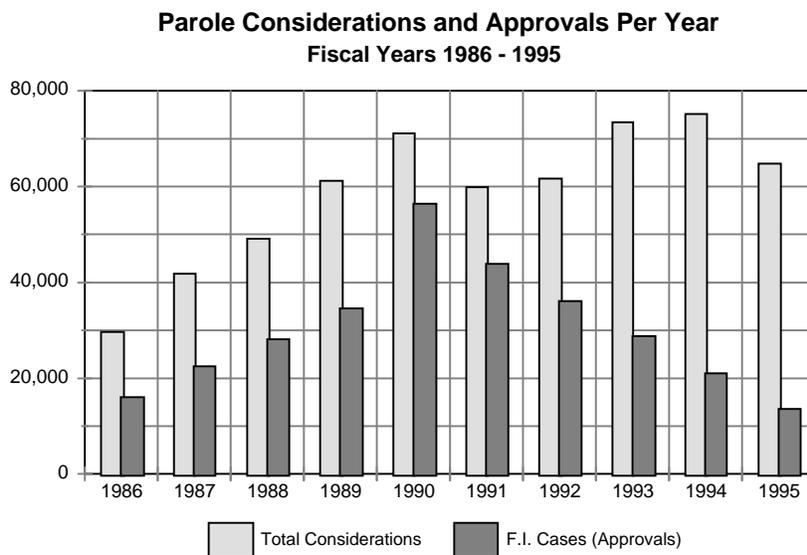
The following material describes the parole process chronologically, encompassing parole decision making, the supervision of releasees, and parole revocation. To fully describe the parole process, this material lays out the responsibilities of both the Board and TDCJ. A final section of this material describes the Board's activities relating to executive clemency.



## Parole Decision Making

### *THE PAROLE CONCEPT*

The Board of Pardons and Paroles has specific authority under law to decide which inmates may be released from prison on parole. Parole is the release of inmates from prison before the end of their sentence, which they fulfill under supervision in the community. It is not a reduction of sentence or pardon. Before inmates become eligible for parole, they must serve, as defined by law, a designated portion of their sentence in prison. Inmates released on parole remain within the legal custody of the state and live in the community under conditions the Board imposes on them. The chart, *Parole Considerations and Approvals Per Year, 1986 - 1995*, reflects the number of inmates considered for parole and the approvals for parole each year for the last ten years.



Percent Approved	
1986	54.0%
1987	53.6%
1988	57.2%
1989	56.4%
1990	79.4%
1991	73.3%
1992	58.5%
1993	39.2%
1994	28.0%
1995	19.5%

### *MANDATORY SUPERVISION RELEASE*

Different from parole, which is discretionary and always requires a decision of the Board, release to “mandatory supervision” may occur for certain inmates without a Board decision as a result of time served and additional time credit earned for good behavior while in prison. Under mandatory supervision, eligible inmates who committed crimes before September 1, 1996 must be released when actual time served and time earned for good conduct equal the length of their sentence. As with parolees, mandatorily released inmates are supervised in the community until they have fulfilled their sentences. Moreover, the Board sets conditions and terms of supervision for inmates mandatorily released just as it does for parolees.

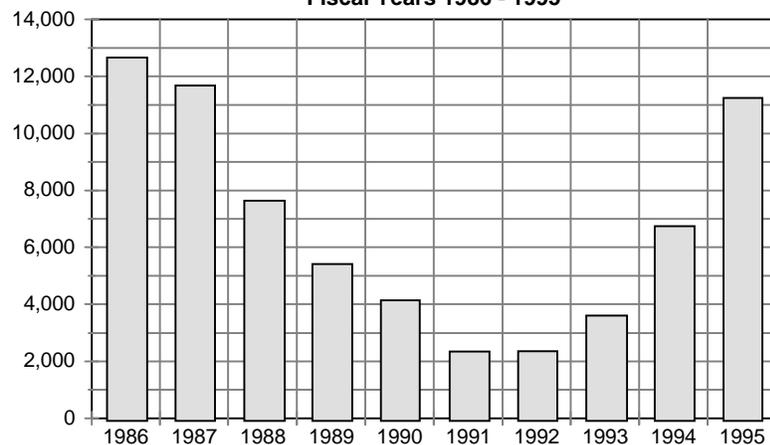
Since 1987, inmates convicted of aggravated or violent offenses under Section 3g, Article 42.12 of the Penal Code have not been eligible for mandatory release. These offenses, also known as “3g” offenses, include crimes such as murder, sexual assault, and aggravated assault.<sup>2</sup> Despite this change in law, TDCJ’s Parole Division estimates that about 10,000 inmates convicted of aggravated offenses before 1987 will be eligible for mandatory release in the next 15 years.<sup>3</sup>

Last session, the Legislature basically deferred to the Board decisions on release for inmates committing crimes on or after September 1, 1996. Under this change, the Board may deny an inmate’s release on mandatory supervision if it determines that the good time earned does not accurately reflect rehabilitation or diminished risk to public safety.

The chart, *Number of Inmates Released to Mandatory Supervision Per Year, 1986 - 1995*, shows the number of inmates released to mandatory supervision per year over the last ten years.

*An inmate's release on mandatory supervision will be subject to Board approval for crimes committed after September 1, 1996.*

**Number of Inmates Released to Mandatory Supervision Per Year  
Fiscal Years 1986 - 1995**



### ***PAROLE REVIEW DATES***

Prison officials calculate when inmates will first be eligible for parole, though the date may change depending on the amount of good time earned or lost. How much time an inmate must serve in prison to be eligible for parole is determined by the law in effect at the time the offense was committed.

Currently, for example, most inmates who have not been convicted of an aggravated offense would become eligible for parole when their time served and good conduct time equals one-fourth of their sentence or 15

years, whichever is less. Inmates convicted of a capital felony who received a life sentence would be eligible for parole after serving 40 years flat — which means actual time — without good time credits. A capital felony generally is murder committed in the course of another felony. Other aggravated offenders have to serve half of their sentence flat, to a maximum of 30 or 35 years. The Board conducts initial parole reviews within the six-month period before the parole eligibility date.

If not released on parole by the first review, the inmate is subsequently reviewed at the discretion of the voting Board members. The Board, however, may not review an inmate more than once a year or less than every three years. To remain eligible for parole, an inmate must maintain a clean disciplinary record during the six months preceding the next review date.

### ***RELEASE PLAN AND PAROLE SUMMARY***

Several months before the Board reviews a parole case, a TDCJ Institutional Parole Officer interviews the inmate to develop a release plan, including living arrangements, prospective employment, and any plans for self-improvement, such as treatment for substance abuse. A parole officer in the field verifies the information.

The Institutional Parole Officer also prepares a parole summary for Board members including information about the inmate's offense, the inmate's criminal and social history, such as prior assaultive behavior or abuse of narcotics, and the inmate's prison record, including disciplinary sanctions.

### ***BOARD VOTING PROCEDURE***

Generally, panels of three Board members make parole decisions. For capital felonies and more serious sexual offenses, the Board may grant parole only on a two-thirds vote of the entire membership. The Board members are not required to meet as a body to perform these duties.

Board members, whether acting as a whole or a panel, do not meet together when reviewing parole cases. Rather, inmates' files are transported weekly to the seven sites throughout the state for the Board members who review them and decide individually. TDCJ delivers the boxes of inmate files to the Board members. The parole panels usually complete a review in seven to ten days and return the file to the Parole

### **Award of Good Conduct Time for Inmates**

The statute allows inmates to receive credit for good conduct time, or "good time," for behaving well and participating in work and self-improvement programs while in prison. For many—but not all—inmates, good time credits may be added to the actual time or "calendar time" they have served in prison to be used in determining eligibility for release on parole or mandatory supervision.

TDCJ is responsible for awarding good time credit to inmates based on the security level of the inmate and other work credits and bonuses. These awards may be for as much as 45 days of additional credit for each 30 days served. In other words, an inmate receiving maximum good time would receive 75 days of actual credit for each 30 days of calendar time served. Prison officials keep records on good time earned and, if cause is given, may take away all or part of an inmate's good-conduct time. Once forfeited, good time may not be restored by TDCJ.

Division for necessary action. A review by the full Board usually takes a month and a half to two months.

Board members may personally interview inmates eligible for parole, but according to the Board Chair, they do so in less than 10 percent of the cases.<sup>4</sup> Parole decisions are based primarily on reviews of inmates' files. When considering parole, Board members have the following records available in inmates' files:

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*Board members personally interview less than 10 percent of inmates eligible for parole.*

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- the release plan;
- the parole summary, with any updated supplements;
- information compiled by the county of conviction including:
  - a presentence or postsentence investigation report, describing the circumstances of the offense and the inmate's criminal and social history;
  - the judgment entered against the inmate;
  - a copy of the arrest record and indictment and a report on the nature and seriousness of each offense for which the inmate was convicted;
  - any information on the inmate's mental condition; and
  - any victim impact statements;
- an updated criminal history check;
- parole history, if any, including prior revocations;
- protest letters from the victim, the victim's surviving relatives, or trial officials opposing parole;
- favorable letters from the inmate's family, friends, clergy, or prospective employer supporting parole; and
- the parole guidelines score, which is described in the following section.

A recent federal court case, *Johnson v. Rodriguez*, has had an effect on the way the Board considers inmates for parole. The text box, *Johnson v. Rodriguez*, discusses this case and its impact on parole deliberations in greater detail.

### **Parole Guidelines**

By law, the Board is required to use parole guidelines to help make decisions to grant or deny parole. They are intended only as a guide and are not supposed to replace the Board's discretion in making parole decisions. Parole guidelines rank inmates according to several factors, including severity of their offense, risk of repeat offenses if released

### Johnson v. Rodriguez

In 1985, Daniel Johnson, an inmate of the Texas prison system, filed a lawsuit against the Board alleging that its members had violated his constitutional rights in denying him parole. In 1992, Johnson's lawsuit was certified as a class action on behalf of other inmates in the Texas prison system. Johnson claims the Board violated his and other inmates' rights in three ways:

- the Board retaliates against prison "writ writers," or litigious inmates, by denying them parole;
- in deciding parole cases, the Board considers unsubstantiated and retaliatory protest letters submitted by victims, judges, prosecutors, and law enforcement officials without giving inmates an opportunity to investigate and rebut the statements; and
- the Board discriminates against inmates who are not Texas residents.

The U.S. Magistrate Judge issued an order on November 1, 1995 prohibiting the Board from considering both these writ writing activities and protest letters in its parole deliberations.

Although the order is on appeal, portions of the order are already in effect. The Board must ensure that litigious inmates are not discriminated against. Specifically, board members may not consider inmates' legal activities in making parole decisions. In accordance with the decision, the Board has adopted a rule stating its policy prohibiting the Board from considering inmates' litigation activities and has set up a review procedure for aggrieved inmates. Also, the Board, through the Parole Division, must purge parole files of all references to inmates' legal activities.

(recidivism), and amount of sentence served in prison. Based on these factors, parole guidelines recommend ranges of time that an inmate should serve in prison before being paroled.

Board members must use discretion to weigh other factors such as the notoriety of the inmate's offense, how well the inmate has behaved in prison, and the inmate's rehabilitation or improvement efforts. Further, the Board addresses some factors as a matter of policy. For instance, releasees whose parole have been revoked must serve a minimum amount of time in prison before they may be considered for parole again.

In addition to helping the Board make parole decisions, these guidelines are also intended to make Board members' votes more consistent and to ensure that inmates in similar circumstances spend the same length of time in prison.

Parole guidelines incorporate a number of factors the Board has found significant in making parole decisions and other factors that relate to recidivism. Each inmate receives a score based on severity of offense,

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*The Board is required to use parole guidelines to help make decisions to grant or deny parole.*

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criminal history, time served in prison, and additional factors that indicate the likelihood that the inmate would reoffend if let out of prison early. The Parole Division of TDCJ actually computes the score. The Board is responsible for periodically reviewing and updating the guidelines.

A Parole Score of 80 indicates that an inmate has served enough time to be eligible for parole at a certain date under the guidelines. This date is called the tentative parole date. The Board may refuse to parole an inmate who scores above 80, or it may decide to parole an inmate who scores below 80, but any decision outside the guidelines must be justified in writing.

A recent review of the Board's use of these guidelines by the Criminal Justice Policy Council found that Board members are generally not following the guidelines. Board members are not adequately trained in understanding or using the guidelines. Further, the Board has not updated the guideline's offense severity and risk factors, and the guidelines do not reflect 1993 sentencing reform policy changes. Finally, the Policy Council found that a lack of coordination between information systems at TDCJ and the Board discourage members from using the guidelines.

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*A recent review of the Board found that its members are not trained in understanding or using parole guidelines and generally do not follow them.*

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### **PAROLE DECISIONS**

When inmates become eligible for parole, the Board, generally through a panel of three members as mentioned earlier, votes either to deny or to approve the parole release. The Board has two voting options in denying parole. An inmate denied parole is given either a Set-Off date or a Serve-All. A Set-Off, or Next Review, vote means the Board has decided the inmate is not ready for parole but that another review will be conducted on a designated date within three years of the initial parole eligibility date or any subsequent review dates. A Serve-All means the Board does not believe the inmate will be ready for parole, given the length of sentence, and will not schedule any future reviews.

The Board may give a Serve-All only to inmates who have less than three years until their discharge or scheduled mandatory release.

A vote to approve parole is known technically as an "FI" vote, which stands for "Further Investigation." Under the FI vote, the approval of parole is tentative and awaits an update on the inmate's criminal history and prison disciplinary record as well as any eleventh-hour consideration of protests lodged against a proposed release. Tentative parole approval may be withdrawn and parole denied if further investigation uncovers one or more reasons against releasing the inmate. *The Votes to Approve*

*Parole Pending Further Investigation* text box shows the different FI voting options available to the Board.

In fiscal year 1995, the Board considered 64,794 cases for parole (not including releases to mandatory supervision) and approved 12,689 or 19.5 percent.<sup>5</sup> This rate is significantly less than the 79.4 percent of parole approval rate by the Board approved in fiscal year 1990, when 56,442 out of 71,074 inmates were approved for parole.<sup>6</sup>

<b>Votes to Approve Parole Pending Further Investigation</b>	
<b>FI 1</b>	Inmate released at first eligible date.
<b>FI 2</b>	Inmate released on a date specified by the Board. Release date must be within three years of first eligible parole date.
<b>FI 3</b>	Inmate transferred immediately to a pre-release facility. TDCJ decides how long inmate remains in the facility.
<b>FI 4</b>	Inmate transferred on a date specified by the Board to a pre-release facility. Transfer to a facility must be within three years of first eligible parole date. TDCJ decides how long inmate remains in the facility.
<b>FI 5</b>	Inmate placed in a substance abuse treatment program as space becomes available. Successful completion of the program is a precondition to release on parole. While on parole, the releasee must comply with aftercare programs.
<b>FI 6</b>	Inmate placed in a substance abuse treatment program on a date specified by the Board. Placement must be within three years of first parole eligible date. Successful completion of the program is a precondition to parole. While on parole, the releasee must comply with aftercare programs.

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*In 1995, the Board  
approved 19.5  
percent of the  
cases considered  
for parole.*

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The Board may also release, on special needs parole, inmates who have physical disabilities or are elderly, terminally ill, mentally ill, or mentally retarded. Special needs parole allows an earlier eligibility date related to the inmate's age or physical or mental condition and is decided on the basis that the inmate's condition has eliminated any future risk to society. In fiscal year 1995, the Board approved 78 inmates for special needs parole.<sup>7</sup>

The Board may also review for Parole in Absentia (PIA) inmates who become eligible for parole on their Texas sentences while they are incarcerated in non-TDCJ facilities. PIA is for inmates who serve sentences imposed by Texas courts while in the custody of federal, other states, county, or city authorities. The Parole Division's Review and

Release Processing Section helps the Board track PIA reviews and prepare the appropriate paperwork.

### **Parole Supervision**

Supervision serves public safety by monitoring released inmates and providing services to help releasees reintegrate into society. While the Board of Pardons and Paroles approves or denies parole, releasing inmates into the community, the Parole Division supervises inmates once they are released. In addition, the Parole Division supervises inmates released without Board action under mandatory supervision. Whether released on parole or mandatory supervision, inmates are in the legal custody of the Parole Division subject to rules and conditions of release, including those imposed by the Board.

Upon release on parole or mandatory supervision, the inmate comes under the supervision of a parole officer employed by the Parole Division. An inmate must contact a local parole office within 24 hours, which is extended if the release is on a weekend. The assigned parole officer interviews the releasee and, within 30 days of release, completes a risk and needs assessment.

The parole officer explains the release conditions to the releasee. The text box, *Rules and Special Conditions of Parole and Mandatory Supervision*, summarizes the general rules imposed on all releasees and the special requirements the Board may impose as circumstances dictate. Generally, the Board imposes these rules and special conditions on releasees, and the Parole Division assures compliance through supervision. However, the Parole Division may impose additional requirements, such as intensified supervision as part of its graduated sanctions. This process is designed to encourage compliance with conditions of release without resorting to revocation.

The parole officer also sets up an initial home visit, and establishes a regular reporting time. How often the releasee and the parole officer must be in contact varies from once to four times per month depending on whether the releasee has been placed on minimum, medium, or maximum level of supervision.

The statute requires releasees to pay monthly supervision and administrative fees. Releasees pay a base monthly fee of \$10 and any additional fees tied to their particular offense. For example, sex offenders pay an additional fee to reimburse local law enforcement authorities for publishing notice of their release in the newspaper. Releasees who are

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*When released, inmates are in the legal custody of TDCJ for supervision.*

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## RULES AND SPECIAL CONDITIONS OF PAROLE AND MANDATORY SUPERVISION

Inmates released on parole and mandatory supervision must abide by certain rules and conditions while in the community and are subject to revocation for violations of the conditions or rules. Rules of release may include, but are not limited to the following:

- report as instructed to the supervising parole officer;
- obey all municipal, county, state, and federal laws;
- obtain the parole officer's written permission before changing residence;
- obtain the parole officer's written permission before leaving the state;
- do not carry a gun or other dangerous weapon;
- avoid other criminals;
- do not act as an informer without permission from the Parole Division; and
- abide by any special conditions of release imposed by Board members or the Parole Division, whether executed upon release and listed on the release certificate or imposed later.

Releasees also agree to abide by all rules and laws relating to the revocation of parole or mandatory supervision, including appearing at any required hearings or proceedings.

In addition to the rules of release, the Board may add special release conditions for any inmate, whether released on parole or mandatory supervision. The most common special conditions include the following provisions:

**Halfway house placement** is typically made for releasees who need special services, such as substance abuse counseling or who lack family or friends to provide shelter. While the Board makes the decision to place an inmate in a halfway house, TDCJ is actually responsible for contracting with private vendors to provide halfway house services.

**Intensive supervision** provides a higher level of supervision for high-risk releasees and those who have problems adjusting to regular supervision.

**Electronic monitoring** augments a parole officer's supervision by maintaining surveillance over releasees on a more or less 24-hour basis. Again, while the Board decides to place a releasee on electronic monitoring, TDCJ actually pays for the devices.

**Drug monitoring** subjects releasees to urinalysis or drug testing whenever releasees show signs of current use.

**Treatment or educational programs or psychological counseling** are designed to improve the releasee's ability to cope with substance abuse or to address other special needs of releasees.

The Parole Division has developed a system of graduated sanctions designed to bring the violator back into compliance with the terms of release. These sanctions begin by intensifying the level of supervision or required treatment and become progressively tougher, ending with the revocation of the release by the Board.

The Board may also impose other conditions tailored to the individual and to protect the public. Special conditions shall include payment of court-ordered restitution to victims and establishment of child-safety zones into which sex offenders of children may not trespass.

unemployed can seek permission from the Board through their parole officers to defer payment of fees until they find a job.

Releasees must also make payments toward any outstanding fines, court costs, victim restitution, or fees assessed against them at the time of sentencing if ordered to do so by the Board. Offenders make such payments to the appropriate court clerk, providing documentation to their supervising parole officers.

In addition to these provisions for supervising releasees, the Board and the Parole Division coordinate in administering a program for supervising releasees from other states and for Texas releasees to relocate in other states through the Interstate Compact for the Supervision of Parolees and Probationers. Under the terms of the Compact, releasees must obey the rules of both Texas and the receiving or sending state or risk revocation by the parole authority of the sending state.

### **Parole Revocation**

Releasees who violate the rules or conditions of release face a range of sanctions, including having their parole revoked and being sent back to prison to serve the remainder of their sentence. TDCJ's Parole Division may impose less severe sanctions for parole violations, such as requiring more frequent reporting by releasees, but the Board imposes more severe sanctions, such as adding special conditions of release, sending the releasee to an alternative sanction facility, or revoking parole.

### ***REPORT OF VIOLATION***

For minor technical rule violations, the Parole Division may — at its discretion—meet with the releasee to discuss the problem or administer a minor disciplinary measure such as a reprimand or a case conference. The Parole Division may use graduated sanctions, increasing the level of supervision or severity of penalties for repeat or more serious violations until it feels the need to report the case to the Board for more serious action.

When the Parole Division discovers that releasees have violated the terms of release either by a technical violation or by allegedly committing a new offense, the Parole Division may issue warrants for their arrest if they have not already been arrested on the new offense. The Parole Division, not the Board, makes the decision to issue these warrants, known as “blue warrants,” and local law enforcement authorities execute them. Typically, the Parole Division will issue such a warrant where it believes it has probable cause that a violation has occurred that justifies consideration by

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*Releasees who violate conditions of parole face sanctions by TDCJ for minor problems and the possibility of revocation by the Board for severe violations.*

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the Board to revoke the release and return the person to prison. By policy, the Parole Division may refrain from issuing a warrant if the alleged new offense is a nonviolent misdemeanor and the releasee is not thought to constitute a risk to the community, but the violation must still be reported to the Board. The Parole Division can also issue a warrant for technical violations, such as failure to report to the parole officer.

The Parole Division reports alleged violations to the Board and makes recommendations about what action to take. Upon learning of an alleged parole violation the Board, through a panel of three members, reviews the information provided by the Parole Division and may:

- initiate the revocation process by requesting that the Parole Division issue a “blue warrant” for the arrest of the releasee, pending an administrative hearing to determine whether a violation has occurred;
- initiate the revocation process by requesting the Parole Division to issue a summons for the releasee to appear at the administrative revocation hearing;
- continue supervision of a releasee alleged to have committed a new criminal offense until disposition of the charge and then continue parole or initiate revocation proceedings; or
- continue supervision under modified parole conditions.

### **REVOCATION HEARINGS**

Upon arrest for a parole violation, a releasee is placed in the county jail to await hearing. If the releasee is already in custody for a subsequent offense committed during the parole period, the Parole Division may issue a detainer advising the county jail authorities that the releasee is wanted and to hold the offender without bail after adjudication of the offense. Generally, the Board waits until after adjudication of the new offense before it will consider revoking such a releasee. No revocation hearing is needed for newly-convicted releasees sentenced to a new term of incarceration, except to consider mitigating circumstances.

The Parole Division and the Board have established a process to inform the Board about adjudicated offenses, avoiding a potential problem where newly-convicted releasees could be sentenced to community supervision while they are also under parole supervision. The Board will typically revoke these releasees. A recent survey of Harris County, with approximately 17,000 persons under Parole Division supervision, found that only 281 or 1.7 percent were under so-called “dual supervision.”<sup>8</sup> In addition, these cases had occurred before the new process was established.

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*TDCJ's Parole Division, not the Board, issues "blue warrants" to have alleged violators arrested.*

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Because of concerns that releasees awaiting possible revocation could pose a burden on county jails where they are held, the Legislature in 1991 added a requirement that revocation hearings must be held within 120 days after the arrest on the blue warrant. If the revocation hearing is not held within 120 days, the Parole Division must withdraw the warrant. However, this time limit may be extended for circumstances, such as pending criminal charges that have not been adjudicated or a continuance granted by the hearings officer, not to exceed 180 days from the date of the releasee's arrest.

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*Once detained, a releasee generally must receive a revocation hearing within 120 days.*

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Once in custody, releasees must be given written notice of the alleged violation and advised of their right to a preliminary and/or revocation hearing. These hearings are civil administrative proceedings designed to afford the releasee due process of law before the Board makes a decision to revoke. Both hearings are conducted by a hearings officer employed by the Board's Hearings Section and are generally conducted where the releasee is being held in custody on the blue warrant or detainer.

The minimum requirements of these hearings are based mainly on U. S. Supreme Court opinions that set forth a releasee's rights when the state seeks to revoke parole. In *Morrissey v. Brewer*, the Supreme Court specified the minimum due process requirements in proceedings to revoke paroles or mandatory releases. *Gagnon v. Scarpelli* established the releasees' conditional right to be represented by counsel in revocation hearings.

In these hearings, releasees also have the right to be represented by retained counsel and the conditional right to an appointed attorney if they are indigent. Releasees may waive the preliminary and/or revocation hearing, but they are advised that to do so would most likely result in the revocation of parole. In the preliminary hearing, the hearing officer seeks to determine whether probable cause exists to support an allegation of parole violation, pending a full revocation hearing. This hearing considers factual, not legal, issues related to the alleged parole violation. This hearing must be held within 15 days of the parole officer's interview of the releasee or execution of the summons to appear at the hearing. A releasee who has received new convictions — including deferred adjudication and deferred disposition—is not entitled to a preliminary hearing.

At the close of the preliminary hearing, the hearing officer collects and summarizes the evidence and makes a recommendation to the Board to:

- free the releasee from custody and continue supervision with the same or modified conditions;
- place the releasee in a secured facility overseen by the Board, such as an Intermediate Sanction Facility (ISF) ; or
- keep the releasee in custody or issue a blue warrant if the releasee is not already in custody and proceed to revocation.

Before a revocation hearing, the hearings officer may hold a pre-revocation conference as needed to prepare for the full hearing. The pre-revocation conference basically helps the hearing officer determine if witness subpoenas will be needed and focus the issues that need to be developed at the hearing. It also helps the parties preview the evidence and to challenge the neutrality of the hearing officer.

The revocation hearing is designed to determine if a parole violation has occurred and to allow the releasee to present any extenuating reasons for the violation. The hearing is conducted in two parts — a fact-finding and an adjustment phase.

The standard of proof during the fact-finding phase of the revocation hearing is whether a preponderance of credible evidence shows that the releasee has violated parole. The rules of evidence used in non-jury civil cases in state district courts apply to revocation hearings. Consequently, the hearing is an informal proceeding, and the hearing officer may give more leeway in admitting evidence than a judge would in a case tried to a jury. Parties to the hearing, however, may object to offers of proof, and the hearing officer may exclude irrelevant or questionable evidence.

If the hearing officer finds that the releasee has violated parole, then the hearing moves into the adjustment phase in which the releasee or his attorney presents evidence of circumstances mitigating the violation.

Following the revocation hearing, the hearings officer forwards to the Board the record of the hearing and a summary report, including findings of fact and conclusions of law and the hearing officer's recommendations for final disposition of the case. These recommendations may be to:

- free the releasee from custody and continue supervision with the same or modified conditions;
- not revoke parole but place the releasee in a an Intermediate Sanction Facility (ISF) or Substance Abuse Felony Punishment (SAFP) facility; or
- revoke parole.

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*The burden of proof in a revocation hearing is preponderance of credible evidence that shows a violation occurred.*

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The text box, *Options Available to the Board in Lieu of Revocation*, more fully describes ISF and SAFP facilities.

### **BOARD ACTION ON REVOCATIONS**

The record of the hearing and the hearing officer's summary report are delivered to the Board's field office in the region where the hearing was held. A Board panel analyst in the field office reviews the materials and either concurs with the hearing officer's findings and recommendations and presents the case to the three-member Board panel for final disposition or refers the case back to the hearing officer to further develop factual or legal issues, with or without reopening the hearing.

The Board panel must make its decision concerning the releasee's parole no later than the 30th day after the date the hearing is concluded. Decisions of the Board panel require a majority, or two votes, to take action. The Board panel may dispose of the case by:

- revoking the release and sending the person back to prison;
- not revoking and sending to prison but ordering the releasee to serve time in an ISF or SAFP;
- continuing supervision with the same conditions or imposing special conditions or sanctions deemed necessary;
- continue supervision, allowing discharge if the sentence has expired during the course of the revocation process; or
- referring the case back to the hearing officer to further develop factual or legal issues, with or without reopening the hearing.

If the Board panel decides to revoke parole, the releasees or their attorneys must be notified in writing and given a copy of the hearing officer's report and a notice of the right to move for a reopening of the hearing. The

#### **Options Available to the Board in Lieu of Revocation**

***Intermediate Sanction Facility (ISF)***  
- TDCJ contracts with private vendors to provide this kind of jail which the Board may use as an alternative to revoking a persons' parole or mandatory supervision. Typically, the Board sends releasees to an ISF for a 90-day period. In fiscal year 1995, the state had five ISFs, with 1,626 beds.

***Substance Abuse Felony Punishment (SAFP) Facilities*** - These are TDCJ-contracted lockups that offer chemical dependency treatment for current former In-Prison Therapeutic Community clients who have violated the condition of release, either with a technical infraction or an adjudicated misdemeanor. The Board may send violators to a SAFP facility instead of sending them back to prison. SAFP programs typically last nine months, followed by 12 to 15 months of aftercare. In fiscal year 1995, TDCJ contracted for 688 SAFP beds at four facilities, providing treatment to 724 releasees.

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*Board decisions on revocation require a vote of two of the three panel members reviewing the case.*

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motion to reopen the hearing must be made within 30 days of the Board panel's decision to revoke.

In revoking parole or mandatory supervision, the Board panel also issues a Proclamation of Revocation ("white warrant") to transfer the releasee to prison. Revoked releasees may be required to serve the portion remaining of the sentence on which they were released, without credit for the time spent under supervision. For example, releasees with five years left on a sentence when paroled would still have five years to serve if revoked and sent back to prison. In addition, revocation results in the loss of good-conduct time credits previously earned while in prison, and this good time cannot be reinstated. Further, revoked releasees must serve at least 12 months in prison before becoming eligible for parole again.

### **Executive Clemency**

In addition to its responsibilities regarding paroles and parole revocation, the Board makes recommendations to the Governor regarding requests for clemency for persons convicted of criminal offenses. Acts of clemency include pardons, restoration of civil rights, commutation of sentence, and reprieves, such as a stay of execution.

Under the Texas Constitution, only the Governor may grant executive clemency but may do so only upon the recommendation of the Board of Pardons and Paroles, with the exception of a stay of execution. The Governor can grant only one 30-day reprieve without the recommendation of the Board. The Board administers this process through its Executive Clemency Unit (the Unit), which processes clemency requests and provides public information about executive clemency. Specifically, the Unit mails out pardon application packets, analyzes and researches clemency requests, and prepares clemency files for consideration by the Board. Clemency recommendations to the Governor require a ten-vote majority in a vote of all 18 Board members. The following material summarizes each type of clemency.

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*Except for stays of execution, the Governor may grant executive clemency only upon the recommendation of the Board.*

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### ***PARDONS***

Other than a pardon based on innocence, a pardon does not declare the innocence of a person found guilty of the crime nor does it wipe the offense from the person's criminal record. In fact, the persons's guilt is generally not at issue in these requests. People seek pardons for other reasons than to establish their innocence. The various types of pardons are described below.

*Full Pardon.* A full pardon restores certain citizenship rights forfeited by law as the result of a criminal conviction, such as the rights to vote, to serve on a jury, to bear arms, and to hold public office. Even without a pardon, however, the Election Code provides for automatically restoring voting rights two years after completing a felony sentence, provided the individual is otherwise eligible to register.

A full pardon also removes some barriers to employment and professional licensing. However, each licensing board has its own rules as to whether a pardon is necessary or sufficient to restore licensing eligibility in a particular field. A pardon will not restore eligibility to be a licensed peace officer.

A full pardon does not absolve an offender of the legal consequences of his or her crime. A full pardon can be received while an offender is on parole or mandatory supervision. The requestor must have been reporting to the supervising office for one year without incident. If the requestor received community supervision, the sentence must be discharged in order to apply. Further, a full pardon does not relieve an offender from paying whatever costs or fines the court has assessed.

*Restoration of Civil Rights.* Effective September 1, 1993, individuals convicted of nonviolent, non-drug related federal offenses may apply to the Board for the restoration of civil rights. This action is a form of pardon that restores all civil rights forfeited under Texas law as a result of the federal conviction.

To restore their civil rights, applicants must have completed the sentence for the federal offense and not have been convicted of any other crime anywhere else at any other time.

*Conditional Pardon.* A conditional pardon releases an inmate from prison, but it does not discharge the sentence. This action is often used to release an inmate to another country or to immigration officials for deportation. To be eligible for conditional pardon, inmates must have reached their minimum parole eligibility date. Offenders who have been released out of country on a conditional pardon may not reenter the United States without prior written permission of the Board. Persons coming back into the country without permission would be subject to returning to prison to complete the sentence that they had been serving.

*Full Pardon Based on Innocence.* Different from a full or conditional pardon, an application for an innocence pardon must be initiated by a unanimous recommendation of the present trial officials in the county

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*Pardons do not generally declare a person's innocence for crimes committed.*

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where the applicant was convicted. The trial officials are the sheriff, prosecuting attorney, and judge. The Board may also consider a court order with fact findings and witness affidavits that support the person's innocence. An innocence pardon fully serves as the basis for expunging the offense from the person's criminal record.

*Commutation of Sentence.* Commuting a sentence is changing or reducing the penalty assessed by a court and is available for any misdemeanor, felony, or even death-penalty sentence. For example, a death penalty sentence may be commuted to life imprisonment. A commutation must be recommended by at least two of the three current trial officials in the county where the inmate was convicted. However, it must still be granted by the Governor on the recommendation of the Board.

*Remission of a Fine or Forfeiture Resulting from a Criminal Conviction.* The Board will consider a request and make a recommendation to remit, or forgive, a fine or bond forfeiture upon the unanimous written consent of the current trial officials from the county of conviction. Persons may also seek the remission of a fine for medical reasons or financial hardship, such as the loss of a home or business or the inability to support a family, if they produce verifying documentation. As with other acts of clemency, the Board makes a recommendation, and the Governor makes the final decision.

*Emergency Medical Reprieves.* The Governor may also grant an emergency medical reprieve upon Board recommendation. A reprieve is a delay or temporary suspension of punishment which is available to inmates who are terminally ill, have a total disability, or require medical treatment unavailable in prison, but are ineligible for Special Needs Parole due to the nature of the offense or the failure of the requestor to meet the Special Needs Parole program criteria. Such a reprieve is not a matter of right. The Board considers each request in light of the merits of the case and the security risk involved.

The Board generally does not handle other emergency reprieve requests, such as to attend funerals, or to visit critically ill relatives. Rather, prison officials may grant inmates furloughs for such special circumstances.

*Thirty Day Reprieve of Execution.* In death penalty cases, the Texas Constitution allows the Governor to grant only one reprieve, or stay, of execution of up to 30 days without the Board's recommendation. Upon the majority vote of all members, the Board may recommend to the Governor one or more reprieves of any length. In addition, the Board may hold a hearing on a request for an execution reprieve. A decision to

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*The Governor may grant one 30-day stay of execution without the Board's recommendation.*

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recommend a reprieve following a hearing, however, requires a majority vote of the Board.

*Clemency for Victims of Domestic Violence.* In 1991, the Legislature directed the Board to give certain homicide cases involving domestic violence special consideration for clemency recommendations. Senate Concurrent Resolution 26 requires the Board to investigate all murder and manslaughter convictions in which the perpetrator was a victim of abuse. A companion law passed during the same legislative session, Senate Bill 275, now allows evidence of prior domestic violence into homicide trials. The main goal of the S.C.R. 26 review, then, is to find those inmates who did not have the benefit of presenting such mitigating evidence during their trials. The Board is currently reviewing all imprisoned inmates who qualify for clemency under S.C.R. 26 and S.B. 275.

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<sup>1</sup> The Governor can grant one 30-day reprieve without Board recommendation.

<sup>2</sup> Felons who have committed certain violent or sexual offenses are ineligible for mandatory release. [Tex. Code Crim. Proc. Ann. art. 42.18, sec. 8(c) (Vernon Supplement 1997).] The Code of Criminal Procedure identifies 12 crimes for which mandatory release is denied, but the list does not include the second-degree felony of indecency with a child. [Ibid.] To carry out the Legislature's intent, however, the Texas Attorney General has construed the statute to read as though indecency with a child were included in the list of ineligible crimes. [Office of the Attorney General, State of Texas, Letter Opinion 96-126 (Austin, Tex., November 7, 1996).] Accordingly, inmates convicted of indecency with a child cannot qualify for mandatory release. [Ibid.]

<sup>3</sup> Memorandum from Melinda Bozarth, Director, TDCJ Parole Division to Wayne Scott, Executive Director, TDCJ, July 15, 1996.

<sup>4</sup> Interview by Sunset staff with Victor Rodriguez, Chairman, Board of Pardons and Paroles, July, 1996.

<sup>5</sup> Memorandum from Robert L. Young, Audit Budget Office, TDCJ, Pardons and Parole Division, to Laura McElroy, General Counsel, Board of Pardons and Paroles, October, 22, 1996.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Memorandum from Melinda Bozarth, Director, TDCJ Parole Division to Dan Junell, Sunset staff, September 12, 1996.

**BOARD OF PARDONS AND PAROLES**

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