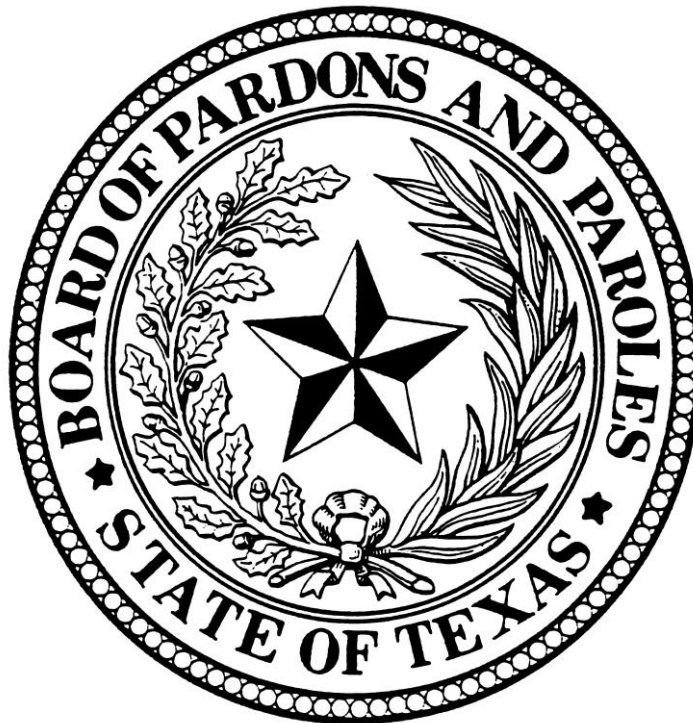


**TEXAS BOARD OF PARDONS AND PAROLES**

**MINUTES**

*Board Meeting No. 21-0715*



**July 15, 2021**

**Austin, Texas**



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## TEXAS BOARD OF PARDONS AND PAROLES

### Board Meeting

Thursday, July 15, 2021

Holiday Inn Austin Midtown  
(Hill Country AB Room)  
6000 Middle Fiskville Road  
Austin, Texas

10:30 AM

### Order of Business

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1. Call to Order
2. Convene Texas Board of Pardons and Paroles Open Meeting
3. Recognitions
4. Consent Items – Minutes for the April 15, 2021 Board Meeting
5. Chairman’s Report – David Gutiérrez, Chairman
6. Discussion and Consideration of Resolution Regarding Avoid Association
7. Discussion and Consideration of Board Policy, BPP-POL. 141.203 Use of Technology
8. Discussion and Consideration of Board Policy, BPP-POL. 141.300 Handgun Policy
9. Discussion and Consideration of Board Policy, BPP-POL. 145.209 Pre-Parole
10. Discussion and Consideration of Board Policy, BPP-POL. 145.203 Eligibility for Release; Consecutive (Cumulative) Felony Sentences
11. Discussion and Consideration of Board Policy, BPP-POL. 145.204 Medically Recommended Intensive Supervision (MRIS)
12. Discussion and Consideration of Board Policy, BPP-POL. 145.251 Special Condition “D” (Release to Detainer)
13. Discussion and Consideration of Board Policy, BPP-POL. 145.252 Special Condition “E” (Educational Skill Level and Vocational Training)
14. Discussion and Consideration of Board Policy, BPP-POL. 145.254 Special Condition “I” (Employer Notification)
15. Discussion and Consideration of Board Policy, BPP-POL. 145.256 Special Condition “M” (Sex Offender Registration Condition and DNA Submission)
16. Discussion and Consideration of Board Policy, BPP-POL. 145.258 Special Condition “R” (Restitution)
17. Discussion and Consideration of Board Policy, BPP-POL. 145.259 Special Condition “S” (Substance Abuse)
18. Discussion and Consideration of Board Policy, BPP-POL. 145.265 Special Condition “N” (Prohibition on Internet Access for Certain Sex Offenders)
19. Final Re-adoption without Amendments in 37 TAC, Chapter 141, Subchapter A

- A. §141.1 Presiding Officer
  - B. §141.4 Meetings
  - C. §141.7 Composition of Parole Panels
20. Final Re-adoption without Amendments in 37 TAC, Chapter 141, Subchapter B, §141.51 Use and Effect of Rules
  21. Final Adoption with Substantive Amendments in 37 TAC, Chapter 143, Subchapter D, §143.43 Procedure in Capital Reprieve Cases
  22. Final Adoption with Substantive Amendments in 37 TAC, Chapter 143, Subchapter E, §143.57 Commutation of Death Sentence to Lesser Penalty
  23. Public Comments and Public Presentations
  24. Convene Texas Board of Pardons and Paroles Closed Meeting – Executive Session
    - A. Consultation with Legal Counsel Regarding Pending or Contemplated Litigation or Settlement Offers; to Receive Legal Advice on Items Posted on this Agenda (Closed in accordance with Section 551.071, Government Code).
    - B. Consultation with Legal Counsel on Matters Where the Texas Board of Pardons and Paroles Seeks the Advice of its Attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas (Closed in accordance with Section 551.071, Government Code).
    - C. Discussion of Personnel Matters Relating to the Parole Commissioners [Closed in accordance with Section 551.074, Government Code].
  25. Reconvene Texas Board of Pardons and Paroles Open Meeting
  26. Adjourn



# MINUTES OF THE TEXAS BOARD OF PARDONS AND PAROLES BOARD MEETING

THURSDAY, JULY 15, 2021

## REGULAR SESSION

The Texas Board of Pardons and Paroles (Board) met in open session on Thursday, July 15, 2021, at 11:03 a.m., Holiday Inn Austin Midtown, 6000 Middle Fiskville Road, Austin, Texas 78752.

## BOARD MEMBERS PRESENT

David Gutiérrez  
D'Wayne Jernigan  
Carmella Jones  
James LaFavers  
Brian Long  
Linda Molina  
Ed Robertson

## COMMISSIONERS PRESENT

Elodia Brito  
Lee Ann Eck-Massingill  
Ira Evans  
Mary Farley  
Troy Fox  
Raymond Gonzales  
Paul Kiel  
Tracy Long  
Jeffrey Marton  
Marsha Moberly  
Anthony Ramirez  
Wanda Saliagas  
Charles Speier  
Roel Tejada

**OTHERS PRESENT**

Bettie Wells, General Counsel  
Tim McDonnell, Chief of Staff  
Jessica Dillard, Board Administrator  
Rachel Alderete, Director, Support Operations  
Kyle Britt, Budget Director  
Michael Adams, Director of Hearing Operations  
Libby Hamilton, Victim Liaison  
Pamela Thielke, Governmental Affairs  
Terence Hall, Systems Analyst  
Estela DeHoyos, Program Supervisor

**CONVENED – TEXAS BOARD OF PARDONS AND PAROLES**

Presiding Officer (Chairman) David Gutiérrez convened the meeting of July 15, 2021, at 11:03 a.m. in accordance with Chapter 551, Texas Government Code, Open Meetings Act. After roll call, the Chairman stated a quorum was present and declared the meeting open.

**RECOGNITIONS**

Chairman Gutiérrez introduced the new Board Commissioner for the Amarillo Board Office, Jeffrey Marton. He highlighted his background.

***NAMES OF BOARD RETIREES (ATTACHMENT A)***

Chairman Gutiérrez recognized the employees that retired and stated the names of the retirees will be included as part of the official minutes of the meeting.

***NAMES OF SERVICE AWARD RECIPIENTS (ATTACHMENT B)***

Chairman Gutiérrez recognized the Board employees who have dedicated 5, 10, 15, 20, 25, 30, 40, and years of service to the state of Texas. He expressed his deepest appreciation for their dedicated service. He stated the names of the service award recipients will be included as part of the official minutes of the meeting.

Chairman Gutiérrez recognized Board Member James LaFavers, Parole Commissioners Lee Ann Eck-Massingill, James Kiel, and Tony Garcia for their years of service to the state of Texas. He highlighted their careers and thanked them for their years of service.

**CONSENT ITEMS**

Chairman Gutiérrez stated the Board had an opportunity to review the Consent Item listed on the agenda prior to the meeting and asked if there were any objections. Board Member D’Wayne Jernigan stated one minor correction was needed, the addition of his name to the minutes, under Board Members Present. Hearing no other objections, the Board approved the minutes, including the correction, from the January 21, 2021 Board Meeting.

## **CHAIRMAN’S REPORT**

Chairman Gutiérrez provided a brief agency report.

### **COVID-19**

Chairman Gutiérrez stated the COVID-19 pandemic created doubt, uncertainty, fear, sickness and even death, but there is light at the end of the tunnel. Communities are reopening, people are traveling, workers are returning to their offices and there is a feeling of optimism. He thanked the Board Members for the leadership displayed over the past year. He also thanked the Executive Team, Division Directors, Program Supervisors, and Unit Supervisors for their unwavering commitment to ensuring the safety of their employees and being innovative to confront constantly changing work environment, while committed to the mission of the agency. Staff worked together and made the necessary adjustments. The agency will embrace the positive changes that came as a result of the pandemic.

### **Association of Paroling Authorities (APAI) Conference**

In June, Texas hosted the Association of Paroling Authorities International Conference in Arlington. This year agencies had the ability to participate virtually. As a result, the conference had the highest number of participants ever attend. Chairman Gutiérrez thanked the staff who helped organize the conference. As the agency moves into the next fiscal year, the Chairman conveyed his optimism about the direction of the agency and stated that while we should be proud of the hard work displayed, and advancements made, we should not be content or complacent, but remain innovative, become more efficient and continue to be servants to the citizens of this great state of Texas.

## **DISCUSSION AND CONSIDERATION OF RESOLUTION REGARDING AVOID ASSOCIATION (ATTACHMENT C)**

Chairman Gutiérrez yielded the floor to Bettie Wells, General Counsel, to present for discussion and consideration agenda item #6, Resolution Regarding Avoid Association.

Ms. Wells discussed the Resolution, stating House Bill 385 repealed the avoid association condition in the community supervision statute, specifically the language in the basic conditions for community supervision. The recommendation is to rescind the Board of Pardons and Paroles condition that requires the offender’s release on parole or mandatory supervision to avoid persons or places of disreputable or harmful character.

### ***Motions***

***Mr. Long moved to adopt the Board Resolution, BPP-RES.21-07.01, as presented.***

***Ms. Jones seconded the motion, which prevailed when called for a voice vote.***

## **DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL.141.203 USE OF TECHNOLOGY (ATTACHMENT D)**

Chairman Gutiérrez yielded the floor to Bettie Wells, General Counsel, to present for discussion and consideration agenda item #7, Board Policy, BPP-POL.141.203 Use of Technology.

Ms. Wells stated Senate Bill 475 requires a state agency with more than 150 full-time employees to designate a full-time employee of the agency to serve as a data management officer. Since TDCJ is required to provide the Board with access to all data maintained by TDCJ to perform the duties and responsibilities of the Board, the recommended update to BPP-POL.141.203 is to designate the TDCJ Data Management Officer to perform all of the statutory duties and responsibilities of the new law.

***Motions***

***Mr. LaFavers moved to adopt the revisions to Board Policy, BPP-POL. 141.203 Use of Technology, as presented.***

***Mr. Jernigan seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 141.300 HANDGUN POLICY (ATTACHMENT E)**

Chairman Gutiérrez yielded the floor to Bettie Wells to present for discussion and consideration BPP-POL. 141.300 Handgun Policy.

Ms. Wells discussed the recommended amendments to Board Policy, BPP-POL. 141.300, which include revised language in accordance with House Bill 1927, authorizing certain individuals to carry a handgun without a license to carry.

***Motions***

***Ms. Jones moved to adopt the revisions to Board Policy, BPP-POL. 141.300 Handgun Policy, as presented.***

***Mr. Long seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.209 PRE-PAROLE (ATTACHMENT F)**

Chairman Gutiérrez yielded the floor to Bettie Wells to present for discussion and consideration BPP-POL. 145.209 Pre-Parole.

Ms. Wells stated Board Policy 145.209 is a new policy being recommended in light of House Bill 2352, which authorizes the Board to release someone who is currently incarcerated 180 days prior to their parole eligibility date. The new policy will provide procedures for voting members of the Texas Board of Pardons and Paroles to decide to approve or deny an offender's pre-parole release.

***Motions***

***Mr. Long moved to adopt the revisions to Board Policy, BPP-POL. 145.209, as presented.***

***Mr. LaFavers seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.203 ELIGIBILITY FOR RELEASE; CONSECUTIVE (CUMULATIVE) FELONY SENTENCES (ATTACHMENT G)**

Chairman Gutiérrez yielded the floor to Bettie Wells to present for discussion and consideration BPP-POL. 145.203 Eligibility for Release Consecutive Cumulative Felony Sentences.

Ms. Wells discussed the recommended amendments to Board Policy 145.203, which include some non-substantive revisions and a substantive change to provide clarification specifically on the imposition of a consecutive sentence before an offender is revoked.

***Motions***

***Mr. LaFavers moved to adopt the revisions to Board Policy, BPP-POL. 145.203 Eligibility for Release; Consecutive (Cumulative) Felony Sentences, as presented.***

***Mr. Jernigan seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.204 MEDICALLY RECOMMENDED INTENSIVE SUPERVISION (MRIS) (ATTACHMENT H)**

Chairman Gutiérrez yielded the floor to Bettie Wells to present for discussion and consideration BPP-POL. 145.204 Medically Recommended Intensive Supervision (MRIS).

Ms. Wells discussed the recommended amendments to Board Policy 145.204, which include non-substantive changes and a substantive change, which includes added language regarding the authority to withdraw an MRIS release approval decision.

***Motions***

***Ms. Jones moved to adopt the revisions to Board Policy, BPP-POL. 145.204 Medically Recommended Intensive Supervision (MRIS), as presented.***

***Mr. Long seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.251 SPECIAL “D” RELEASE TO DETAINDER (ATTACHMENT I)**

Chairman Gutiérrez yielded the floor to Ed Robertson, Chair of the Special Conditions Workgroup, to present for discussion and consideration BPP-POL. 145.251 Special Condition “D”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.251, which include non-substantive protocol updates and substantive changes that include reformatting the general condition language throughout the policy.

***Motions***

***Ms. Molina moved to adopt the revisions to Board Policy, BPP-POL. 145.251 Special Condition “D” (Release to Detainer), as presented.***

***Ms. Jones seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.252 SPECIAL CONDITION “E” (EDUCATIONAL SKILL LEVEL AND VOCATIONAL TRAINING) (ATTACHMENT J)**

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145.252 Special Condition “E”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.252, which include non-substantive protocol updates and sentence structure changes. The substantive change includes removal of the acknowledgment requirement.

***Motions***

***Ms. Molina moved to adopt the revisions to Board Policy, BPP-POL. 145.252 Special Condition “E” (Educational Skill Level and Vocational Training), as presented.***

***Mr. LaFavers seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.254 SPECIAL CONDITION “I” (EMPLOYER NOTIFICATION) (ATTACHMENT K)**

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145.254 Special Condition “I”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.254, which include a substantive change, including the phrase “theft or fraud.”

***Motions***

***Mr. Long moved to adopt the revisions to Board Policy, BPP-POL. 145.254 Special Condition “I” (Employer Notification), as presented.***

***Mr. Jernigan seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.256 SPECIAL CONDITION “M” (SEX OFFENDER REGISTRATION AND DNA SUBMISSION) (ATTACHMENT L)**

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145.256 Special Condition “M”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.256, which include non-substantive protocol updates.

***Motions***

***Ms. Molina moved to adopt the revisions to Board Policy, BPP-POL. 145.256 Special Condition “M” (Sex Offender Registration and DNA Submission), as presented.***

***Mr. LaFavers seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.258 SPECIAL CONDITION “R” (RESTITUTION) (ATTACHMENT M)**

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145.258 Special Condition “R”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.258, which include non-substantive protocol and statutory reference changes as well as substantive changes which include removing property restoration language and including factors for consideration when restitution is not paid.

***Motions***

***Ms. Jones moved to adopt the revisions to Board Policy, BPP-POL. 145.258 Special Condition “R” (Restitution), as presented.***

***Mr. Long seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.259 SPECIAL CONDITION “S” (SUBSTANCE ABUSE) (ATTACHMENT N)**

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145.259 Special Condition “S”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.259, which include non-substantive protocol and statutory reference updates as well as substantive changes which include removing the acknowledgment requirement and form.

***Motions***

***Mr. Long moved to adopt the revisions to Board Policy, BPP-POL. 145.259 Special Condition “S” (Substance Abuse), as presented.***

***Mr. LaFavers seconded the motion, which prevailed when called for a voice vote.***

**DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.265 SPECIAL CONDITION “N” (PROHIBITION ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS) (ATTACHMENT O)**

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145.265 Special Condition “N”.

Mr. Robertson discussed the recommended amendments to Board Policy 145.265, which include non-substantive protocol updates and a substantive change, to include language related to warrantless searches.

***Motions***

***Ms. Molina moved to adopt the revisions to Board Policy, BPP-POL. 145.265 Special Condition “N” (Prohibition on Internet Access for Certain Sex Offenders), as presented.***

***Mr. LaFavers seconded the motion, which prevailed when called for a voice vote.***

**BOARD RULES (ATTACHMENT P)**

Chairman Gutiérrez yielded the floor to James LaFavers, Chair of the Rules Committee to present the rules listed in agenda items #19 - #22.

**FINAL READOPTION WITHOUT AMENDMENTS IN 37 TAC, CHAPTER 141, SUBCHAPTER A**

Mr. LaFavers, Chair of the Rules Committee, presented the rules in agenda item #19, stating the Rules Committee previously approved the initial re-adoption without amendments of the rules and it has been more than 30 days since they were posted to the Texas Register. The General Counsel reports that no comments were received. The Rules Committee is recommending final re-adoption without amendments to the rules listed in agenda item #19.

*Motions*

*Mr. Jernigan moved for the Final Re-adoption without Amendments of Chapter 141, General Provisions, Subchapter A, Board of Pardons and Paroles, §141.1 Presiding Officer; §141.4 Meetings; 141.7 Composition of Parole Panels.*

*Mr. Robertson seconded the motion, which prevailed when called for a voice vote.*

**FINAL READOPTION WITHOUT AMENDMENTS IN 37 TAC, CHAPTER 141, SUBCHAPTER B, §141.51 USE AND EFFECT OF RULES**

Mr. LaFavers presented the rule in agenda item #20, stating the Rules Committee previously approved initial re-adoption without amendments to the rule. The Rules Committee is recommending final re-adoption without amendments to the rule listed in agenda item #20.

*Motions*

*Mr. Jernigan moved for the Final Re-adoption without Amendments of Chapter 141 General Provisions, Subchapter B, Rulemaking, §141.51 Use and Effect of Rules.*

*Mr. Robertson seconded the motion, which prevailed when called for a voice vote.*

**FINAL ADOPTION WITH SUBSTANTIVE AMENDMENTS IN 37 TAC, CHAPTER 143, SUBCHAPTER D, §143.43 PROCEDURE IN CAPITAL REPRIEVE CASES**

Mr. LaFavers stated the Board previously approved the initial adoption of the rule listed in agenda item #21 and it has been more than 30 days since it was posted to the Texas Register. The Rules Committee is recommending final adoption with substantive amendments to the rule listed in agenda item #21.

*Motions*

*Mr. Jernigan moved for the Final Adoption with Substantive Amendments of Chapter 143, Executive Clemency, Subchapter D, Reprieve from Execution, §143.43 Procedure in Capital Reprieve Cases.*

*Mr. Long seconded the motion, which prevailed when called for a voice vote.*

**FINAL ADOPTION WITH SUBSTANTIVE AMENDMENTS IN 37 TAC, CHAPTER 143, SUBCHAPTER E, §143.57 COMMUTATION OF DEATH SENTENCE TO LESSER PENALTY**

Mr. LaFavers presented the rule in agenda item #22, stating the Board previously approved the initial adoption of the rule, and it has been more than 30 days since it was posted to the Texas Register. The

*General Counsel reports no comments were received. The Rules Committee is recommending final adoption with substantive amendments to the rule listed in agenda item #22.*

***Motions***

*Ms. Molina moved for the Final Adoption with Substantive Amendments of Chapter 143, Subchapter E, §143.57 Commutation of Death Sentence to Lesser Penalty.*

*Mr. Robertson seconded the motion, which prevailed when called for a voice vote.*

**PUBLIC COMMENTS**

Chairman Gutiérrez noted for the record efforts were made to contact the two individuals who registered to present and speak before the Board by telephone, but attempts were unsuccessful.

**EXECUTIVE SESSION**

Chairman Gutiérrez recessed the Regular Session at 11:57 a.m. and convened the Board into Executive Session (closed under Section 551.071 and 551.074, Government Code).


**RECONVENE TEXAS BOARD OF PARDONS AND PAROLES**

Chairman Gutiérrez convened the Board back into Regular Session at 1:20 p.m. and proceeded with the order of business.

**ADJOURNMENT**

Having completed all posted items on the agenda, Chairman Gutiérrez adjourned the Board Meeting at 1:21 p.m.

**ADOPTED BY UNANIMOUS CONSENT OF THE BOARD ON THE 21<sup>st</sup> DAY OF OCTOBER 2021.**

  
**DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)**