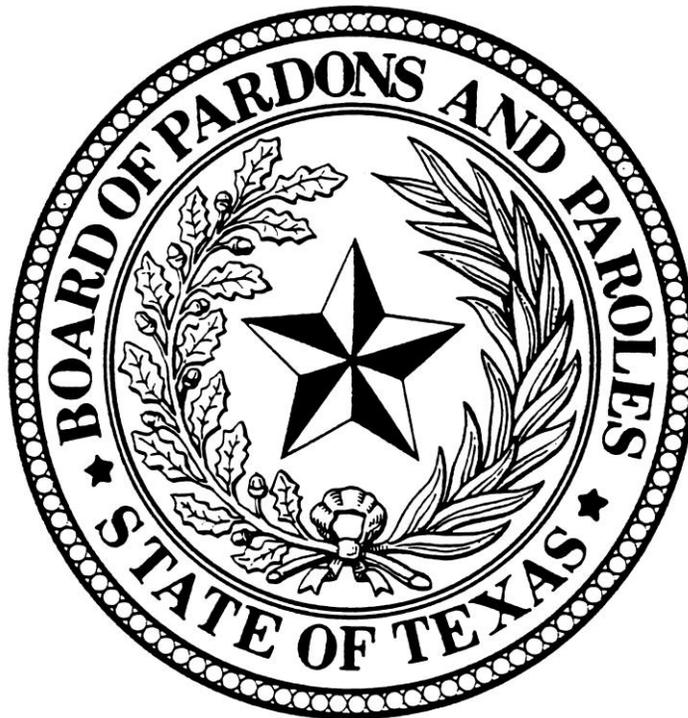


TEXAS BOARD OF PARDONS AND PAROLES

MINUTES

Board Meeting No. 20-1028



October 28, 2020

Austin, Texas

TEXAS BOARD OF PARDONS AND PAROLES

Board Meeting

Videoconference and Teleconference

8610 Shoal Creek Blvd.
BPP Conference Room
Austin, Texas

Other Locations:

Amarillo Board Office
5809 S. Western, Suite 200
Amarillo, Texas

Angleton Board Office
1212 N. Velasco, Suite 201
Angleton, Texas

Austin Board Office
4616 W. Howard Lane, Suite 200
Austin, Texas

Gatesville Board Office 545 State Hwy
36 Bypass N, Suite A
Gatesville, Texas

Huntsville Board Office
1022 Veterans Memorial Pkwy.
Huntsville, Texas

Palestine Board Office
133 E. Reagan St.
Palestine, Texas

San Antonio Board Office
2902 N. E. Loop 410, Suite 206
San Antonio, Texas

October 28, 2020

9:00 AM

Order of Business

1. Call to Order
2. Convene Texas Board of Pardons and Paroles Open Meeting
3. Recognitions
4. Consent Items – Minutes for the August 13, 2020 Board Meeting and Minutes for the September 24, 2020 Board Meeting
5. Discussion and Consideration of Parole Guidelines Offense Severity Rankings – Lee Ann Eck-Massingill, Parole Commissioner
6. Discussion and Consideration of Parole Guidelines Risk Assessment and Re-Validation Report – Lee Ann Eck-Massingill, Parole Commissioner
7. Discussion and Consideration of Board Policy, BPP-POL. 145.251 Special Condition “D” (Release to Detainer)
8. Discussion and Consideration of Board Policy, BPP-POL. 145.252 Special Condition “E” (Educational Skill Level and Vocational Training)
9. Discussion and Consideration of Board Policy, BPP-POL. 145.254 Special Condition “I” (Employer Notification)
10. Discussion and Consideration of Board Policy, BPP-POL. 145.256 Special Condition “M” (Sex Offender Registration Condition and DNA Submission)
11. Discussion and Consideration of Board Policy, BPP-POL. 145.258 Special Condition “R” (Restitution)

12. Discussion and Consideration of Board Policy, BPP-POL. 145.259 Special Condition “S” (Substance Abuse)
13. Discussion and Consideration of Board Policy, BPP-POL. 145.263 Special Condition “X” (Sex Offender Condition)
14. Discussion and Consideration of Board Policy, BPP-POL. 145.265 Special Condition “N” (Prohibition on Internet Access for Certain Sex Offenders)
15. Discussion and Consideration of Board Policy, BPP-POL. 145.266 Gang Affiliation
16. Initial Readoption with Non-Substantive Amendments in 37 TAC, Chapter 148
 - A. §148.45 Witnesses
 - B. §148.47 Evidence
 - C. §148.48 Record
 - D. §148.50 Procedure after Waiver of Hearing
17. Initial Readoption with Substantive Amendments in 37 TAC, Chapter 148
 - A. §148.52 Hearing
18. Public Comments
19. 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).
20. Reconvene Texas Board of Pardons and Paroles Open Meeting
21. Adjourn



**MINUTES OF THE
TEXAS BOARD OF PARDONS AND PAROLES
BOARD MEETING
(VIDEOCONFERENCE/TELECONFERENCE)
WEDNESDAY, OCTOBER 28, 2020**

REGULAR SESSION

The Texas Board of Pardons and Paroles (Board) met in open session on Wednesday, October 28, 2020 at 9:00 a.m. via videoconference and the public access to the meeting was made available through teleconference.

Central Office, 8610 Shoal Creek Blvd., Austin, Texas;
Amarillo Board Office, 5809 S. Western, Suite 200, Amarillo, Texas;
Angleton Board Office, 1212 N. Velasco, Suite 201, Angleton, Texas;
Austin Board Office, 4616 W. Howard Lane, Suite 200, Austin, Texas;
Gatesville Board Office, 36 Bypass N., Suite A, Gatesville, Texas;
Huntsville Board Office, 1022 Veterans Memorial Pkwy., Huntsville, Texas;
Palestine Board Office, 133 E. Reagan St., Palestine, Texas; and
San Antonio Board Office, 2902 N. E. Loop 410, Suite 206, San Antonio, Texas.

BOARD MEMBERS PRESENT

David Gutiérrez
D'Wayne Jernigan
Carmella Jones
Brian Long
Ed Robertson
Fred Solis

OTHERS PRESENT

Bettie Wells, General Counsel
Tim McDonnell, Chief of Staff
Jessica Dillard, Board Administrator
Rachel Alderete, Director, Support Operations

CONVENED – TEXAS BOARD OF PARDONS AND PAROLES

Presiding Officer (Chairman) David Gutiérrez convened the meeting of October 28, 2020 at 9:00 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 recognized the Board Members present.

NAMES OF BOARD RETIREES (ATTACHMENT A)

Chairman Gutiérrez recognized the employees that retired.

NAMES OF SERVICE AWARD RECIPIENTS (ATTACHMENT B)

Chairman Gutiérrez recognized the Board employees who have dedicated 10, 15, 20, 25, 30 and 35 years of service to the state of Texas. He expressed his deepest appreciation for their dedicated service.

CONSENT ITEMS

Chairman Gutiérrez stated the Board had an opportunity to review the Consent Items listed on the agenda prior to the meeting and asked if there were any objections. Hearing no objections, the Board approved the minutes from the August 13, 2020 Board Meeting and September 24, 2020 Board Meeting.

DISCUSSION AND CONSIDERATION OF PAROLE GUIDELINES OFFENSE SEVERITY RANKINGS LIST (ATTACHMENT C)

Chairman Gutiérrez introduced Parole Commissioner Lee Ann Massingill to present the Parole Guidelines Offense Severity Rankings List.

Ms. Massingill discussed the list of offenses the Parole Guidelines Committee reviewed, stating a list of the ranked offenses was provided to the Board. She reported 38 offenses were ranked and all were assigned interim rankings by the Committee Chair at the September 30th Parole Guidelines Committee Meeting. Of the 38 offenses, two were ranked Highest, four were ranked High, five were ranked Moderate and 27 were ranked Low. Ms. Massingill requested Board approval of the 38 ranked offenses.

Motions

Mr. Solis moved to adopt the Parole Guidelines Offense Severity Rankings List, as presented.

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

DISCUSSION AND CONSIDERATION OF PAROLE GUIDELINES RISK ASSESSMENT AND RE-VALIDATION REPORT (*ATTACHMENT D*)

Chairman Gutiérrez stated by statute the Board is required to annually review the Parole Guidelines and if needed, hire an outside expert. As a result of the 86th Legislature, the Board was not approved the exceptional item to fund the re-validation process; however, a grant was obtained to assist with the re-validation and Dr. James Austin was hired as the expert consultant to re-validate the risk assessment and parole guidelines. Chairman Gutiérrez introduced Parole Commissioner Lee Ann Massingill to present the Parole Guidelines Risk Assessment and Re-validation Report.

Ms. Massingill presented the final Parole Guidelines Risk Assessment and Re-validation Report Dr. Austin submitted to the Board, which included historical information and details on how the study was conducted. She discussed the items the Board requested be reviewed and analyzed, including re-validation of the parole guidelines; male/female DWI risk instrument; range of recommended approval rates to include individual voting member's approval votes; parole guidelines score, risk level one; offender's age at the time of the instant offense, with a focus on juveniles; impact of the offender's mental health; and lastly review of offenders with low level drug offenses.

Chairman Gutiérrez stated the Board had an opportunity to review the report Dr. Austin submitted prior to the meeting and asked if there were any questions or comments. The Board had no further questions, comments or recommendations.

Motions

Mr. Long moved to adopt the Parole Guidelines Annual Risk Assessment and Re-Validation Report, which includes updates to the guidelines, as presented.

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

Chairman Gutiérrez stated as it relates specifically to the risk assessment instrument adjustments and the discontinued use of the DWI risk assessment instrument, the updates to the risk assessment and the discontinued use of the DWI risk assessment instrument will require changes to the computer programming which calculates the parole guidelines score and identifies cases for the DWI risk instrument. As such, the effective implementation date of the changes to the risk assessment instruments will be delayed.

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

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

Mr. Robertson discussed the Special Condition Workgroup's responsibility, and the recommended amendments to Special Condition “D” which include non-substantive protocol updates and grammatical revisions.

Motions

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

Mr. Long 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 F)

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL. 145.252 Special Condition “E” (Educational Skill Level and Vocational Training).

Mr. Robertson discussed the recommended amendments to Special Condition “E”, which include non-substantive protocol updates and grammatical revisions.

Motions

Mr. Long moved to adopt the revisions to Board Policy, BPP-POL. 145.251 Special Condition “E”, (Educational Skill Level and Vocational Training), as presented.

Ms. Jones 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 G)

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

Mr. Robertson discussed the recommended amendments to Special Condition “I”, which include non-substantive protocol updates and substantive change to the policy section to include the penal code chapters.

Motions

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

Ms. Jones 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 CONDITION AND DNA SUBMISSION) (ATTACHMENT H)

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL. 145.256 Special Condition “M” (Sex Offender Registration Condition and DNA Submission).

Mr. Robertson discussed the recommended amendment to Special Condition “M”, which include non-substantive protocol updates, grammatical and sentence structure revisions, and a substantive change to the procedure section to clarify the circumstances under which Special Condition “M” should not be imposed on an offender adjudicated of a sex offense.

Motions

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

Mr. Jernigan 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 I)

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

Mr. Robertson discussed the recommended amendments to Special Condition “R”, which include non-substantive protocol updates and grammatical revisions.

Motions

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

Mr. Jernigan 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 J)

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

Mr. Robertson discussed the recommended amendments to Special Condition “S”, which include non-substantive protocol and grammatical revisions.

Motions

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

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.263 SPECIAL CONDITION “X”, (SEX OFFENDER CONDITION) (ATTACHMENT K)

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL.145. 263 Special Condition “X” (Sex Offender Condition).

Mr. Robertson discussed the recommended amendments to Special Condition “X”, which include non-substantive protocol and grammatical revisions, formatting and sentence structure changes.

Motions

Ms. Jones moved to adopt the revisions to Board Policy, BPP-POL. 145.263 Special Condition “X” (Sex Offender Condition), as presented.

Mr. Jernigan 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 L)

Chairman Gutiérrez yielded the floor to Ed Robertson to present for discussion and consideration BPP-POL. 145.265 Special Condition “N” (Prohibition on Internet Access for Certain Sex Offenders).

Mr. Robertson discussed the recommended amendments to Special Condition “N”, which include non-substantive protocol and sentence structure revisions, and a sentence structure change to the policy section regarding offender access to social networking websites pursuant to their first amendment rights.

Motions

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.266 GANG AFFILIATION (ATTACHMENT M)

Chairman Gutiérrez yielded the floor to Bettie Wells, General Counsel, to present for discussion and consideration Board Policy, BPP-POL. 145.266 Gang Affiliation.

Ms. Wells discussed the recommended amendments to Board Policy 145.266, which include a substantive update, changing the policy from Gang Affiliation to Gang Renunciation and Disassociation, defining those terms in the Board’s policy, and making a policy statement that the Board will consider and recognize the renunciation programs. Offenders who complete the programs are no longer considered gang members.

Motions

Mr. Robertson moved to adopt the revisions to Board Policy, BPP-POL. 145.266 Gang Affiliation, as presented.

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

BOARD RULES (ATTACHMENT N)

Chairman Gutiérrez yielded the floor to General Counsel Bettie Wells to present the rules listed in agenda item #16 and #17.

INITIAL RE-ADOPTION WITH NON-SUBSTANTIVE AMENDMENTS IN 37 TAC, CHAPTER 148

Ms. Wells, on behalf of Mr. LaFavers, Chair of the Rules Committee, presented the rules in agenda item #16, stating the Rules Committee met July 9, 2020, and considered the rules in Chapter 148, Sex Offender Conditions of Parole or Mandatory Supervision. The Rules Committee by unanimous vote recommended the initial re-adoption with non-substantive amendments to the rules listed in Chapter 148, agenda item #16. The non-substantive amendments include grammatical errors and edits for clarity, uniformity and consistency.

Motions

Mr. Jernigan moved for the Initial Re-adoption with Non-substantive Amendments of Chapter 148, Sex Offender Conditions of Parole or Mandatory Supervision, § 148.45 Witnesses; §148.47 Evidence; §148.48 Record; and §148.50 Procedure after Waiver of Hearing.

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

RE-ADOPTION WITHOUT AMENDMENTS IN 37 TAC, CHAPTER 148

Ms. Wells presented the rule in agenda item #17, stating the Rules Committee by unanimous vote recommended Initial Re-adoption of Chapter 148 Sex Offender Conditions of Parole or Mandatory Supervision with Substantive Amendments to §148.52 Hearing. The substantive amendments in agenda item #17 include changes related to responsibilities in the hearing process.

Motions

Mr. Jernigan moved for the Initial Re-adoption with Substantive Amendments of Chapter 148, § 148.52 Hearing.

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

PUBLIC COMMENTS

Chairman Gutiérrez reviewed the procedure for public comments as authorized by Board Policy 141.202, noting three speaker registrations were received for the public comment period. Efforts were made by Board staff, without success, to reach two individuals that registered. A voicemail message was left for the unanswered calls. The third speaker registration did not meet the requirements for public comment.

EXECUTIVE SESSION

Chairman Gutiérrez recessed the Regular Session at 10:13 a.m. and convened the Board into Executive Session (closed under Section 551.071 and 508.144b Government Code).

RECONVENE TEXAS BOARD OF PARDONS AND PAROLES

Chairman Gutiérrez convened the Board back into Regular Session at 11:47 a.m. and proceeded with the order of business.

ADJOURNMENT

Having completed all posted items on the agenda, Chairman Gutiérrez adjourned the Board Meeting at 11:47 a.m.

ADOPTED BY UNANIMOUS CONSENT OF THE BOARD ON THE 21ST DAY OF JANUARY, 2021.



DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)