

TEXAS BOARD OF PARDONS AND PAROLES

MINUTES

Board Meeting No. 22-1110



November 10, 2022

Austin, Texas

TEXAS BOARD OF PARDONS AND PAROLES

Board Meeting

Thursday, November 10, 2022

DoubleTree by Hilton Austin
(Phoenix South)
6505 North Interstate 35
Austin, Texas

8:30 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 18, 2022, Board Meeting
5. Chairman’s Report – David Gutiérrez, Chairman
6. Discussion and Consideration of Parole Guidelines Offense Severity Rankings – Lee Ann Eck-Massingill, Parole Commissioner
7. Discussion and Consideration of Board Policy, BPP-POL. 145.250 Special Condition “C” (Prohibited Financial Activities)
8. Discussion and Consideration of Board Policy, BPP-POL. 145.259 Special Condition “S” (Substance Abuse)
9. Discussion and Consideration of Board Policy, BPP-POL. 145.263 Special Condition “X” (Sex Offender Condition)
10. Discussion and Consideration of Board Policy, BPP-POL. 145.265 Special Condition “N” (Prohibition on Internet Access for Certain Sex Offenders)
11. Discussion and Consideration of Board Policy, BPP-POL.141.204 Negotiated Rulemaking
12. Discussion and Consideration of Board Policy, BPP-POL.141.400 Offender Transfer from TDCJ CID To Federal Custody
13. Discussion and Consideration of Board Policy, BPP-POL.145.200 Extraordinary Vote (SB 45)
14. Discussion and Consideration of Board Policy, BPP-POL.145.207 Extraordinary Vote (HB 1914)
15. Discussion and Consideration of Board Policy, BPP-POL. 145.209 Early Release on Parole
16. Discussion and Consideration of Board Policy, BPP-POL. 146.255 Revocation Hearings-Pending Criminal Charges
17. Initial Readoption without Amendments in 37 TAC, Chapter 145, Subchapter A
 - A. §145.9 Parole Interview
 - B. §145.11 Review Date Subject to Change

- C. §145.16 Action upon Special Review--Release Approved
 - D. §145.17 Action upon Special Review--Release Denied
 - E. §145.20 Parole Certificate
18. Initial Readoption with Non-Substantive Amendments in 37 TAC, Chapter 145, Subchapter A
- A. §145.1 Parole Decision-Maker
 - B. §145.2 Standard Parole Guidelines
 - C. §145.6 Notification of Parole Panel Decision
 - D. §145.7 Initial Review
 - E. §145.13 Action upon Review; Consecutive (Cumulative) Felony Sentencing
 - F. §145.14 Action upon Review; Release to Mandatory Supervision
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

THURSDAY, NOVEMBER 10, 2022

REGULAR SESSION

The Texas Board of Pardons and Paroles (Board) met in open session on Thursday, November 10, 2022, at 8:30 a.m., Double Tree by Hilton Austin, 6505 North Interstate 35, Austin, Texas.

BOARD MEMBERS PRESENT

David Gutiérrez
Elodia Brito
Carmella Jones
Brian Long
Marsha Moberley
Linda Molina
Ed Robertson

PAROLE COMMISSIONERS PRESENT

Michael Adams
Richard Aiello
Jacqueline Bishop
Edward Davila
Lee Anne Eck-Massingill
Ira Evans
Mary Farley
Sandra Fletcher
Troy Fox
Raymond Gonzalez
Paul Kiel
Jeffrey Marton
Anthony Ramirez
Roel Tejada

BOARD STAFF PRESENT

Bettie Wells, General Counsel
Carol Garcia, Assistant General Counsel
Timothy McDonnell, Chief of Staff
Jessica Dillard, Board Administrator
Rachel Alderete, Director, Support Operations
Kyle Britt, Budget Director
Eugene Stroud, Deputy Director, Financial Operations
Heather Penick, Manager of Business Operations
Wadella Murphy, Director, Hearing Operations
Barry Bertocki, Director, Clemency
Clinton Gunnels, Director, Institutional Parole Operations
Libby Hamilton, Manager, Victim Liaison
Jennifer Nieves, Manager
Jennifer Litschner, Parole Officer
Cielito Apolinar, Parole Officer
Pamela Pacher, Program Specialist
Terence Hall, Systems Analyst
Robert Detjen, Systems Analyst
Estela DeHoyos, Program Supervisor
Matthew Schlosser, Multimedia Technician

TDCJ STAFF PRESENT

Rene Hinojosa, TDCU Parole Division
Amanda Gage, Manager, TDCJ Victim Services
Matt Jug, OIG

CONVENED – TEXAS BOARD OF PARDONS AND PAROLES

Presiding Officer (Chairman) David Gutiérrez convened the meeting of November 10, 2022, at 8:30 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, Parole Commissioners and guests present.

Chairman Gutiérrez introduced Elodia Brito, the new Board Member and Edward Davila, the new Parole Commissioner for the Amarillo Board, Sandra Fletcher, new Parole Commissioner for the Angleton Board, and Jacqueline Bishop, the new Parole Commissioner for the Huntsville Board. He highlighted their careers.

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, 35, and 45 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 Richard Aiello and Jacqueline Bishop, for 30 years of state service, and Raymond Gonzalez for 45 years of state service. 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 Items listed on the agenda prior to the meeting and asked if there were any objections. Hearing no objections, the Board approved the minutes for the August 18, 2022, Board Meeting.

CHAIRMAN’S REPORT

Chairman Gutiérrez presented agenda item #5, highlighting agency initiatives from Fiscal Year 2022, which included Approval Rates, Legacy vs. Digital Cases, Staffing, Training, and Legislative Appropriations Request.

The Chairman stated approval rates have remained steady with 39% in FY21 and 40% in FY22.

Board offices are seeing legacy files diminishing, with an increase in electronic case voting.

The agency experienced staffing challenges especially in filling and sustaining administrative positions, while competing with the salaries of other agencies and companies. In response to this concern, several adjustments were made, including reclassification of numerous positions to allow the agency to fill them at a greater salary, continuation of hybrid work models, positions that can allow employees to work both remotely and, in the office, and addition of part time positions in certain areas.

The Board continues to pursue being mission minded, promoting and enhancing training and work towards retaining staff. The agency held the first Hearing Officer and Institutional Parole Summit with over 240 attendees. Another significant training for Board Assistants will be held.

In September, 5 exceptional items were presented to the Legislative Budget Board’s joint meeting on behalf of the agency, which included 1) 5% raise to parole officers, 2) 0% raise to administrative staff of the BPP, 3) IT upgrade to enhance remote work capabilities, 4) Vehicle capital, and 5) Funding to relocate the San Antonio Board & Hearing office.

PAROLE GUIDELINES OFFENSE SEVERITY RANKINGS (ATTACHMENT C)

Chairman Gutiérrez yielded the floor to Lee Anne Eck-Massingill to present agenda item #6.

Ms. Massingill discussed the offense severity rankings recently ranked by the the Parole Guidelines Committee, stating the number of offenses requiring ranking can be attributed to the recent legislative changes. She requested approval of the 17 newly ranked offenses and the 25 re-ranked offenses.

Motions

Ms. Molina moved to adopt the Parole Guidelines Offense Severity Rankings, as presented.

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

Ms. Massingill noted for the record the new offense severity rankings listing will be provided to all Institutional Parole Offices, Board Membership, and Information Technology.

Chairman Gutiérrez thanked Ms. Massingill and Parole Guidelines Committee for their work.

BOARD POLICIES (ATTACHMENT D)

Chairman Gutiérrez yielded the floor to Board Member Ed Robertson, Chair of the Special Conditions Workgroup to present agenda items #7 - #10 and Bettie Wells, General Counsel to present agenda items #11 - #16 for discussion and consideration.

DISCUSSION AND CONSIDERATION OF BOARD POLICY BPP-POL. 145.250 “C” (PROHIBITED FINANCIAL ACTIVITIES)

Mr. Robertson stated Board Policy 145.250 was reviewed by the Special Condition Workgroup, and in reviewing the policy, the Workgroup determined that non-substantive protocol revisions were appropriate.

Motions

Mr. Long moved to adopt the revisions to Board Policy, BPP-POL. 145.250 Special Condition “C” (Prohibited Financial Activities), as presented.

Ms. Molina 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)

The recommended amendments to Board Policy 145.259 include non-substantive protocol updates, as well as language related to an employment exemption.

Motions

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

Ms. Jones 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)

The recommended amendments to Board Policy 145.263 include non-substantive protocol updates.

Motions

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

Ms. Molina 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)

In reviewing Board Policy 145.265 Special Condition “N”, Mr. Robertson stated it was determined non-substantive protocol were appropriate.

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.

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 141.204 NEGOTIATED RULEMAKING

The recommended amendments to Board Policy 141.204 include non-substantive protocol, revisions.

Motions

Ms. Brito moved to adopt the revisions to Board Policy, BPP-POL.141.204 Negotiated Rulemaking, as presented.

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL 141.400 OFFENDER TRANSFER FROM TDCJ CID TO FEDERAL CUSTODY

The recommended amendment to Board Policy 141.400 includes grammar revisions.

Motions

Mr. Long moved to adopt the revisions to Board Policy, BPP-POL. 141.400 Offender Transfer From TDCJ CID To Federal Custody, as presented.

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.200 EXTRAORDINARY VOTE (SB 45)

The recommended amendments to Board Policy 145.200 include non-substantive protocol updates, and grammatical revisions.

Motions

Ms. Moberley moved to adopt the revisions to Board Policy, BPP-POL. 145.200 Extraordinary Vote (SB 45), as presented.

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 145.207 EXTRAORDINARY VOTE (SB 1914)

The recommended amendments to Board Policy 145.207 include non-substantive amendments, protocol updates and language revisions for clarity.

Motions

Ms. Molina moved to adopt revisions to Board Policy, BPP-POL. 145.207 Extraordinary Vote (SB 1914), 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 EARLY RELEASE ON PAROLE

The recommended amendments to Board Policy 145.209 include non-substantive amendments.

Motions

Ms. Brito moved to adopt the revisions to Board Policy, BPP-POL. 145.209 Early On Release Parole, as presented.

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

DISCUSSION AND CONSIDERATION OF BOARD POLICY, BPP-POL. 146.255 REVOCATION HEARINGS - PENDING CRIMINAL CHARGES

The recommended amendment to Board Policy 146.255 includes protocol updates, revised the Policy section to reflect the change in the Board and TDCJ policies related to disposition of charges by the 41st day.

Motions

Ms. Molina moved to adopt the revisions to Board Policy, BPP-POL. 146.255 Revocation Hearings-Pending Criminal Charges, as presented.

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

BOARD RULES (ATTACHMENT E)

Chairman Gutiérrez yielded the floor to Linda Molina, Chair of the Rules Committee, to present the rules listed in agenda items #17 - #18.

INITIAL READOPTION WITHOUT AMENDMENTS IN 37 TAC, CHAPTER 145, SUBCHAPTER A

Ms. Molina presented the rules in agenda item #17, stating on October 5th the Rules Committee met and considered the rules in Chapter 145. The Rules Committee, by unanimous vote, recommended the initial readoption of Chapter 145, Parole, without amendments to the rules in agenda item #17. The proposed rule review of Chapter 145 was published in the Texas Register on May 20, 2022. The General Counsel reports that no comments were received. The Rules Committee is recommending the initial readoption without amendments to the rules listed in agenda item #17.

Motions

Ms. Moberley moved for the Initial Readoption without Amendments of Chapter 145, General Provisions, Subchapter A, Board of Pardons and Paroles, §145.9 Parole Interview, §145.11 Review Date Subject to Change, §145.16 Action Upon Special Review- -Release Approved, §145.17 Action Upon Special Review- - Release Denied, and §145.20 Parole Certificate.

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

INITIAL READOPTION WITH NON-SUBSTANTIVE AMENDMENTS IN 37 TAC, CHAPTER 145, SUBCHAPTER A

Ms. Molina presented the rules in agenda item #18, stating the Rules Committee, by unanimous vote, recommended the initial readoption of Chapter 145 Parole, Subchapter A Parole Process, with non-substantive amendments to the rules listed in Agenda item #18. The proposed rule review of Chapter 145 was published in the Texas Register on May 20, 2022. The non-substantive amendments include correction of grammatical errors and edits for clarity, uniformity, and consistency. The Rules Committee is recommending Initial Readoption with Non-substantive Amendments to the rules listed in agenda item #18.

Motions

Ms. Moberley moved for the Initial Readoption with Non-substantive Amendments of Chapter 145, General Provisions, Subchapter A, Rulemaking, §145.1 Parole Decision-Maker, §145.2 Standard Parole Guidelines, §145.6 Notification of Parole Panel Decision, §145.7 Initial Review, §145.13 Action upon Review; Consecutive (Cumulative) Felony Sentencing, and §145.14 Action upon Review; Release to Mandatory Supervision.

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

EXECUTIVE SESSION

Chairman Gutiérrez recessed the Regular Session at 9:19 a.m. and convened the Board into Executive Session (closed under Section 551.071, Government Code).

RECONVENE TEXAS BOARD OF PARDONS AND PAROLES

Chairman Gutiérrez convened the Board back into Regular Session at 10:35 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 10:36 a.m.

ADOPTED BY UNANIMOUS CONSENT OF THE BOARD ON THE 19th DAY OF JANUARY 2023.


DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)