

By: Swinford

H.B. No. 23

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the organization and duties of the Board of Pardons and
3 Paroles.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 508.001, Government Code, is amended by
6 amending Subdivision (8) and adding Subdivision (10) to read as
7 follows:

8 (8) "Parole commissioner" means a person employed by
9 the board to perform the duties described by Section 508.0441
10 ["Policy board" means the Board of Pardons and Paroles Policy
11 Board].

12 (10) "Presiding officer" means the presiding officer
13 of the Board of Pardons and Paroles.

14 SECTION 2. Section 508.031(a), Government Code, is amended
15 to read as follows:

16 (a) The board consists of seven [~~18~~] members appointed by
17 the governor with the advice and consent of the senate.

18 SECTION 3. Section 508.034, Government Code, is amended to
19 read as follows:

20 Sec. 508.034. GROUNDS FOR REMOVAL. (a) It is a ground for
21 removal from the board that a member:

22 (1) does not have at the time of taking office the
23 qualification required by Section 508.032(b) for appointment to the
24 board;

1 (2) is ineligible for membership under Section
2 508.033;

3 (3) is unable to discharge the member's duties for a
4 substantial part of the term for which the member is appointed
5 because of illness or disability; or

6 (4) is absent from more than half of the regularly
7 scheduled board or panel meetings that the member is eligible to
8 attend during each calendar year, except when the absence is
9 excused by ~~[majority vote of]~~ the presiding officer ~~[board]~~.

10 (b) ~~[It is a ground for removal from the board and the policy
11 board if a member of the policy board is absent from more than half
12 of the regularly scheduled policy board meetings that the member is
13 eligible to attend during each calendar year.]~~

14 ~~[(c)]~~ The board administrator or the board administrator's
15 designee shall provide to members of the board~~[, to members of the
16 policy board,]~~ and to employees, as often as necessary, information
17 regarding their qualification for office or employment under this
18 chapter and their responsibilities under applicable laws relating
19 to standards of conduct for state officers or employees.

20 (c) ~~[(d)]~~ The validity of an action of~~[+~~

21 ~~[(1)]~~ the board or panel is not affected by the fact
22 that the action is taken when a ground for removal of a board member
23 exists~~[, and~~

24 ~~[(2) the policy board is not affected by the fact that
25 the action is taken when a ground for removal of a member of the
26 policy board exists].~~

27 (d) ~~[(e)]~~ If the general counsel to the board has knowledge

1 that a potential ground for removal exists, the general counsel
2 shall notify the presiding officer of the board of the potential
3 ground. The presiding officer shall notify the governor and the
4 attorney general that a potential ground for removal exists. If the
5 potential ground for removal involves the presiding officer, the
6 general counsel to the board shall notify the governor and the
7 attorney general that a potential ground for removal exists.

8 (e) [~~(f)~~] It is a ground for removal from the board that a
9 member fails to comply with policies or rules adopted by the
10 [~~policy~~] board.

11 SECTION 4. Section 508.035, Government Code, is amended by
12 amending Subsection (c) and adding Subsection (d) to read as
13 follows:

14 (c) The presiding officer reports directly to the governor
15 and serves as the administrative head of the [~~policy board and the~~]
16 board.

17 (d) The presiding officer may:

18 (1) delegate responsibilities and authority to other
19 members of the board, to parole commissioners, or to employees of
20 the board;

21 (2) appoint advisory committees from the membership of
22 the board or from parole commissioners to further the efficient
23 administration of board business; and

24 (3) establish policies and procedures to further the
25 efficient administration of the business of the board.

26 SECTION 5. Section 508.036, Government Code, as amended by
27 Section 31.01, Senate Bill No. 287, Acts of the 78th Legislature,

1 Regular Session, 2003, is amended to read as follows:

2 Sec. 508.036. [~~POLICY BOARD: COMPOSITION,~~] GENERAL
3 ADMINISTRATIVE DUTIES. (a) The presiding officer [~~governor shall~~
4 ~~designate seven members of the board to serve as the Board of~~
5 ~~Pardons and Paroles Policy Board. The governor shall designate the~~
6 ~~presiding officer of the board as one of the seven members of the~~
7 ~~policy board, and the presiding officer of the board shall serve as~~
8 ~~presiding officer of the policy board. Service on the policy board~~
9 ~~is an additional duty of office for members appointed to the policy~~
10 ~~board.~~

11 [~~(b) Members of the board designated as members of the~~
12 ~~policy board serve on the policy board for six-year terms that are~~
13 ~~concurrent with their six-year terms on the board, with the service~~
14 ~~of two or three members expiring February 1 of each odd-numbered~~
15 ~~year.~~

16 [~~(c) The policy board~~] shall:

17 (1) develop and implement policies that clearly
18 separate the policy-making responsibilities of the board and the
19 management responsibilities of the board administrator, parole
20 commissioners, and the staff of the board [~~adopt rules relating to~~
21 ~~the decision-making processes used by the board and parole panels];~~

22 (2) establish caseloads and required work hours for
23 members of the board and parole commissioners [~~assign duties to~~
24 ~~members of the policy board that are in addition to the duties those~~
25 ~~members have in handling a caseload];~~

26 (3) update parole guidelines, assign precedential
27 value to previous decisions of the board relating to the granting of

1 parole and the revocation of parole or mandatory supervision, and
2 develop policies to ensure that members of the board and parole
3 commissioners use guidelines and previous decisions of the board
4 and parole commissioners in making decisions under this chapter;

5 (4) require members of the board and parole
6 commissioners to file activity reports~~[, on forms provided by the~~
7 ~~policy board,~~] that provide information on release decisions made
8 by members of the board and parole commissioners, the workload and
9 hours worked of the members of the board and parole commissioners,
10 and the use of parole guidelines by members of the board and parole
11 commissioners; and

12 (5) report at least annually to the governor and the
13 legislature on the [board] activities of the board and parole
14 commissioners, parole release decisions, and the use of parole
15 guidelines by the board and parole commissioners.

16 (b) The board shall:

17 (1) adopt rules relating to the decision-making
18 processes used by the board and parole panels;

19 (2) prepare information of public interest describing
20 the functions of the board and make the information available to the
21 public and appropriate state agencies;

22 (3) comply with federal and state laws related to
23 program and facility accessibility; and

24 (4) prepare annually a complete and detailed written
25 report that meets the reporting requirements applicable to
26 financial reporting provided in the General Appropriations Act and
27 accounts for all funds received and disbursed by the board during

1 the preceding fiscal year.

2 (c) The board administrator shall prepare and maintain a
3 written plan that describes how a person who does not speak English
4 can be provided reasonable access to the board's programs and
5 services.

6 (d) The board, in performing its duties, is subject to the
7 open meetings law, Chapter 551, and the administrative procedure
8 law, Chapter 2001. This subsection does not affect the provisions
9 of Section 2001.223 exempting hearings and interviews conducted by
10 the board or the division from Section 2001.038 and Subchapters
11 C-H, Chapter 2001.

12 SECTION 6. Section 508.0362, Government Code, is amended to
13 read as follows:

14 Sec. 508.0362. TRAINING REQUIRED. (a)(1) A person who is
15 appointed to and qualifies for office as a member of the board [~~or~~
16 ~~the policy board~~] may not vote, deliberate, or be counted as a
17 member in attendance at a meeting of the board [~~or policy board~~]
18 until the person completes at least one course of a training program
19 that complies with this section.

20 (2) A parole commissioner employed by the board may
21 not vote or deliberate on a matter described by Section 508.0441
22 until the person completes at least one course of a training program
23 that complies with this section.

24 (b) A training program must provide information to the
25 person regarding:

26 (1) the enabling legislation that created the board
27 [~~and the policy board~~];

- 1 (2) the programs operated by the board;
- 2 (3) the role and functions of the board and parole
3 commissioners;
- 4 (4) the rules of the board;
- 5 (5) the current budget for the board;
- 6 (6) the results of the most recent formal audit of the
7 board;
- 8 (7) the requirements of the:
- 9 (A) open meetings law, Chapter 551;
- 10 (B) open records law, Chapter 552; and
- 11 (C) administrative procedure law, Chapter 2001;
- 12 (8) the requirements of the conflict of interest laws
13 and other laws relating to public officials; and
- 14 (9) any applicable ethics policies adopted by the
15 [~~policy~~] board or the Texas Ethics Commission.

16 (c) A person appointed to the board [~~or policy board~~] is
17 entitled to reimbursement, as provided by the General
18 Appropriations Act, for the travel expenses incurred in attending
19 the training program regardless of whether the attendance at the
20 program occurs before or after the person qualifies for office.

21 SECTION 7. Section 508.040(a), Government Code, is amended
22 to read as follows:

23 (a) The presiding officer is responsible for the employment
24 and supervision of [~~policy board shall employ and supervise~~]:

- 25 (1) parole commissioners;
- 26 (2) a general counsel to the board;
- 27 (3) [~~(2)~~] a board administrator to manage the

1 day-to-day activities of the board;

2 (4) [~~(3)~~] hearing officers;

3 (5) [~~(4)~~] personnel to assist in clemency and hearing
4 matters; and

5 (6) [~~(5)~~] secretarial or clerical personnel.

6 SECTION 8. Section 508.041, Government Code, is amended to
7 read as follows:

8 Sec. 508.041. DESIGNEE TRAINING; HANDBOOK. (a) The
9 [~~policy~~] board shall develop and implement:

10 (1) a training program that each newly hired employee
11 of the board designated to conduct hearings under Section 508.281
12 must complete before conducting a hearing without the assistance of
13 a board member or experienced parole commissioner or designee; and

14 (2) a training program to provide an annual update to
15 designees of the board on issues and procedures relating to the
16 revocation process.

17 (b) The [~~policy~~] board shall prepare and biennially update a
18 procedural manual to be used by designees of the board. The
19 [~~policy~~] board shall include in the manual:

20 (1) descriptions of decisions in previous hearings
21 determined by the [~~policy~~] board to have value as precedents for
22 decisions in subsequent hearings;

23 (2) laws and court decisions relevant to decision
24 making in hearings; and

25 (3) case studies useful in decision making in
26 hearings.

27 (c) The [~~policy~~] board shall prepare and update as necessary

1 a handbook to be made available to participants in hearings under
2 Section 508.281, such as defense attorneys, persons released on
3 parole or mandatory supervision, and witnesses. The handbook must
4 describe in plain language the procedures used in a hearing under
5 Section 508.281.

6 SECTION 9. Section 508.042, Government Code, is amended to
7 read as follows:

8 Sec. 508.042. TRAINING PROGRAM FOR MEMBERS AND PAROLE
9 COMMISSIONERS. (a) The [~~policy~~] board shall develop for board
10 members and parole commissioners a comprehensive training and
11 education program on the criminal justice system, with special
12 emphasis on the parole process.

13 (b) (1) A new member may not participate in a vote of the
14 board or a panel, deliberate, or be counted as a member in
15 attendance at a meeting of the board [~~or policy board~~] until the
16 member completes the program.

17 (2) A new parole commissioner may not participate in a
18 vote of a panel until the commissioner completes the program. This
19 subdivision does not apply to a new parole commissioner who as a
20 board member completed the program.

21 SECTION 10. Subchapter B, Chapter 508, Government Code, is
22 amended by amending Section 508.044 and adding Section 508.0441 to
23 read as follows:

24 Sec. 508.044. POWERS AND DUTIES OF BOARD. [~~(a)~~] A board
25 member shall give full time to the duties of the member's office,
26 including [~~-~~

27 [~~(b) In addition to performing the~~] duties imposed on the

1 board by the Texas Constitution and other law.

2 Sec. 508.0441. RELEASE AND REVOCATION DUTIES. (a) Board~~board~~
3 ~~board~~ members and parole commissioners shall determine:

4 (1) which inmates are to be released on parole or
5 mandatory supervision;

6 (2) conditions of parole or mandatory supervision,
7 including special conditions;

8 (3) the modification and withdrawal of conditions of
9 parole or mandatory supervision;

10 (4) which releasees may be released from supervision
11 and reporting; and

12 (5) the continuation, modification, and revocation of
13 parole or mandatory supervision.

14 (b) ~~[(c)]~~ The ~~[policy]~~ board shall develop and implement a
15 policy that clearly defines circumstances under which a board
16 member or parole commissioner should disqualify himself or herself
17 from voting on:

18 (1) a parole decision; or

19 (2) a decision to revoke parole or mandatory
20 supervision.

21 (c) ~~[(d)]~~ The ~~[policy]~~ board may adopt reasonable rules as
22 ~~[the policy board considers]~~ proper or necessary relating to:

23 (1) the eligibility of an inmate for release on parole
24 or release to mandatory supervision;

25 (2) the conduct of a parole or mandatory supervision
26 hearing; or

27 (3) conditions to be imposed on a releasee.

1 (d) [~~(e)~~] The presiding officer [~~policy board~~] may provide
2 a written plan for the administrative review of actions taken by a
3 parole panel by a review panel [~~the entire membership or by a subset~~
4 ~~of the entire membership of the board~~].

5 (e) [~~(f)~~] Board members and parole commissioners shall, at
6 the direction of the presiding officer, file activity reports on
7 duties performed under this chapter.

8 SECTION 11. Sections 508.045(a) and (b), Government Code,
9 are amended to read as follows:

10 (a) Except as provided by Section 508.046, board members and
11 parole commissioners shall act in panels composed of three [~~persons~~
12 ~~each~~] in matters of:

- 13 (1) release on parole;
- 14 (2) release to mandatory supervision; and
- 15 (3) revocation of parole or mandatory supervision.

16 (b) The presiding officer [~~of the board~~] shall designate the
17 composition of each panel, and may designate panels composed only
18 of board members, composed only of parole commissioners, or
19 composed of any combination of members and parole commissioners.

20 SECTION 12. Sections 508.047(a) and (b), Government Code,
21 are amended to read as follows:

22 (a) The members of the [~~policy~~] board shall meet at least
23 once in each quarter of the calendar year at a site determined by
24 the presiding officer.

25 (b) Except as provided by Article 48.011, Code of Criminal
26 Procedure, the [~~The~~] members of the board are not required to meet
27 as a body to perform the members' duties in clemency matters.

1 SECTION 13. Section 508.049, Government Code, is amended to
2 read as follows:

3 Sec. 508.049. MISSION STATEMENT. (a) The [~~policy~~] board,
4 after consultation with the governor and the Texas Board of
5 Criminal Justice, shall adopt a mission statement that reflects the
6 responsibilities for the operation of the parole process that are
7 assigned to the [~~policy board, the~~] board, the division, the
8 department, or the Texas Board of Criminal Justice.

9 (b) The [~~policy~~] board shall include in the mission
10 statement a description of specific locations at which the board
11 intends to conduct business related to the operation of the parole
12 process.

13 SECTION 14. Section 508.082, Government Code, is amended to
14 read as follows:

15 Sec. 508.082. RULES. The [~~policy~~] board shall adopt rules
16 relating to:

17 (1) the submission and presentation of information and
18 arguments to the board, a parole panel, and the department for and
19 in behalf of an inmate; and

20 (2) the time, place, and manner of contact between a
21 person representing an inmate and:

22 (A) a member of the board or a parole
23 commissioner;

24 (B) an employee of the board; or

25 (C) an employee of the department.

26 SECTION 15. Section 508.141(g), Government Code, as added
27 by Senate Bill No. 917, Acts of the 78th Legislature, Regular

1 Session, 2003, is amended to read as follows:

2 (g) The [~~policy~~] board shall adopt a policy establishing the
3 date on which the board may reconsider for release an inmate who has
4 previously been denied release. The policy must require the board
5 to reconsider for release an inmate serving a sentence for an
6 offense listed in Section 508.149(a) during a month designated by
7 the parole panel that denied release. The designated month must
8 begin after the first anniversary of the date of the denial and end
9 before the fifth anniversary of the date of the denial. The policy
10 must require the board to reconsider for release an inmate other
11 than an inmate serving a sentence for an offense listed in Section
12 508.149(a) as soon as practicable after the first anniversary of
13 the date of the denial.

14 SECTION 16. Section 508.144(b), Government Code, is amended
15 to read as follows:

16 (b) If a board member or parole commissioner deviates from
17 the parole guidelines in voting on a parole decision, the member or
18 parole commissioner shall:

19 (1) produce a brief written statement describing the
20 circumstances regarding the departure from the guidelines; and

21 (2) place a copy of the statement in the file of the
22 inmate for whom the parole decision was made.

23 SECTION 17. Section 508.153(b), Government Code, is amended
24 to read as follows:

25 (b) If more than one person is entitled to appear in person
26 before the board members or parole commissioners, only the person
27 chosen by all persons entitled to appear as the persons' sole

1 representative may appear [~~before the board members~~].

2 SECTION 18. Section 508.281(a), Government Code, is amended
3 to read as follows:

4 (a) A releasee, a person released although ineligible for
5 release, or a person granted a conditional pardon is entitled to a
6 hearing before a parole panel or a designated agent of the board
7 under the rules adopted by the [~~policy~~] board and within a period
8 that permits a parole panel, a designee of the board, or the
9 department to dispose of the charges within the periods established
10 by Sections 508.282(a) and (b) if the releasee or person:

11 (1) is accused of a violation of the releasee's parole
12 or mandatory supervision or the person's conditional pardon, on
13 information and complaint by a peace officer or parole officer; or

14 (2) is arrested after an ineligible release.

15 SECTION 19. Section 508.313(c), Government Code, as amended
16 by Section 3, Senate Bill No. 519, Acts of the 78th Legislature,
17 Regular Session, 2003, is amended to read as follows:

18 (c) The department, on request or in the normal course of
19 official business, shall provide information that is confidential
20 and privileged under Subsection (a) to:

21 (1) the governor;

22 (2) a member of the board or a parole commissioner;

23 (3) the Criminal Justice Policy Council in performing
24 duties of the council under Section 413.017; or

25 (4) an eligible entity requesting information for a
26 law enforcement, prosecutorial, correctional, clemency, or
27 treatment purpose.

1 SECTION 20. Section 492.0131, Government Code, is amended
2 to read as follows:

3 Sec. 492.0131. PAROLE RULES, POLICIES, PROCEDURES. The
4 board and the presiding officer of the Board of Pardons and Paroles
5 [~~Policy Board~~] shall jointly review all rules, policies, and
6 procedures of the department and the Board of Pardons and Paroles
7 that relate to or affect the operation of the parole process. The
8 board and the presiding officer of the Board of Pardons and Paroles
9 [~~policy board~~] shall identify areas of inconsistency between the
10 department and the Board of Pardons and Paroles and shall amend
11 rules or change policies and procedures as necessary for consistent
12 operation of the parole process.

13 SECTION 21. Section 508.0361, Government Code, is repealed.

14 SECTION 22. Section 551.124, Government Code, is amended to
15 read as follows:

16 Sec. 551.124. BOARD OF PARDONS AND PAROLES. At the call of
17 the presiding officer of the Board of Pardons and Paroles, the board
18 may hold a hearing on clemency matters by telephone conference
19 call. Other than the deliberations of the board, the proceedings at
20 the telephone conference call hearing shall be recorded and made
21 available to the public in the same manner as if the members of the
22 board had met as a body to hold the hearing.

23 SECTION 23. Chapter 48, Code of Criminal Procedure, is
24 amended by adding Article 48.011 to read as follows:

25 Art. 48.011. MEETINGS: CAPITAL CASE. (a) In a capital
26 case, the members of the Board of Pardons and Paroles shall perform
27 the members' duties in clemency matters by meeting as a body or by

1 participating in a telephone conference call as permitted by
2 Section 551.124, Government Code.

3 (b) The Board of Pardons and Paroles shall deliberate
4 privately, but at the conclusion of deliberations each board member
5 shall announce publicly the member's individual decision as to
6 whether to recommend clemency and shall sign the member's name with
7 the member's written recommendation and reasons for that
8 recommendation.

9 (c) The Board of Pardons and Paroles shall adopt rules as
10 necessary to implement the requirements of this article.

11 SECTION 24. (a) The changes in law made by this Act in
12 amending Sections 508.047(b) and 551.124, Government Code, and in
13 adding Article 48.011, Code of Criminal Procedure, apply only to a
14 consideration by the Board of Pardons and Paroles regarding a
15 clemency matter in a capital case that occurs on or after December
16 1, 2004.

17 (b) The Board of Pardons and Paroles shall adopt the rules
18 required by Article 48.011(c), Code of Criminal Procedure, as added
19 by this Act, not later than December 1, 2004.

20 SECTION 25. (a) The governor shall appoint new members to
21 the Board of Pardons and Paroles on or before January 1, 2004, and
22 the terms of members serving on December 31, 2003, expire on the
23 appointment of the new members. The governor may appoint but is
24 not required to appoint as new members persons who served on the
25 board before January 1, 2004.

26 (b) Of the new members of the Board of Pardons and Paroles,
27 the governor shall appoint two to serve terms expiring February 1,

1 2005, two to serve terms expiring February 1, 2007, and three to
2 serve terms expiring February 1, 2009. On the expiration of the
3 terms of the initial members of the new board, the term of a member
4 appointed by the governor is six years.

5 (c) On December 1, 2003, a rule of the Board of Pardons and
6 Paroles Policy Board is a rule of the Board of Pardons and Paroles.

7 SECTION 26. This Act takes effect December 1, 2003.