

PUBLIC COMMENTS

HB 841

HOUSE COMMITTEE ON CORRECTIONS

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Hearing Date: April 7, 2021 8:00 AM

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Richard Burr

Burr and Welch, Attorneys at Law

Livingston, TX

I am writing on behalf of my law partner Mandy Welch and myself in support of HB 841.

For the past 30 years, we have devoted our entire practice to the representation of death-sentenced clients in state and federal habeas corpus proceedings in Texas. On occasion, we have been involved in the retrials of clients whose convictions or sentences have been set aside by the courts, and in original trials of some clients. However, the vast majority of our practice has been devoted to the representation of clients in habeas corpus proceedings.

Over this time, we have represented at least a dozen of our clients in clemency proceedings before the Board.

In all these cases, we have requested hearings. None has been granted. We have also tried to meet with individual Board members about our clients' cases. No meeting has been held. The closest we have come is a meeting with the Board's general counsel. Because of this, we have never felt that we had the opportunity to represent our clients adequately in the clemency process.

In the more than 40 years we have been practicing law, we have learned repeatedly that hearings before decision-makers are the critical step in gaining meaningful consideration of our clients' cases. Neither of us has ever gained relief for a client without having had a hearing somewhere along the way. The reason is that hearings are the means by which decision-makers come to understand a case better. Only in a hearing can they ask us to address concerns they have from having read our written submissions. There is no doubt: Hearings are literally the prerequisite to being truly heard.

Recently, we represented for the first time a non-capital client in an initial parole proceeding in Texas. Our client had been convicted and sentenced to 35 years for drug-related offenses. We requested and were granted a hearing before the Commissioner to whom the case had been assigned. The Commissioner asked questions related to why we believed our client would be able to stay free from drug usage and trafficking if he were paroled. Within a month, the Board granted parole conditioned on our client's successful completion of a TDCJ drug rehabilitation program. That decision likely would not have been made without the hearing.

In closing, we want to emphasize the importance of another provision in HB 841 -- the requirement that Board members perform their duties in clemency matters by meeting. The present practice, members considering a clemency application separately, without conferring with other members, deprives members of each other's experience and insights and, for that reason, is inherently less reliable. It is tantamount to having jurors go to separate offices at the end of the trial and call in their individual verdicts. The process of deliberation together is the time-tested process for reliable decision-making. That process must be required in capital clemency proceedings.

Natalie Meadlin

Self

Boerne, TX

Vote against. This country needs to be tougher on criminals to make them think twice about committing a crime.

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Judith Cherry, Dr.

Self

Fort Worth, TX

April 6, 2021

Dr. Judith Cherry

Comments for the Corrections Committee in consideration of HB 841:

Thank you for the opportunity to provide commentary regarding the proposed legislation that would require the Texas Board of Pardons and Paroles to meet in person, or via video conference or telephone.

I regret that we cannot join the hearing in person but would like to submit this written testimony in support of House Bill 841. My husband, Glenn Cherry and I live in Fort Worth Texas. Our son, Jonas Paul Cherry, who was our only child, was murdered on October 16, 2006 by Paul Storey and Mark Porter. Paul Storey received the death penalty as his sentence for his crime and Mark Porter received the sentence of Life in Prison without possibility of parole.

My husband and I both have a long-held opposition to capital punishment. Reasons for our opposition to the death penalty are informed by the very painful firsthand knowledge what it is like to have a child killed, and not wanting to impose on inmate's families the nearly unbearable pain of having a loved one executed. The family is innocent of the crime.

Other factors informing our opposition to capital punishment include the adequacy of life imprisonment as an impactful and severe punishment. Additionally, the death penalty sends a deleterious message to society regarding the sanctity of human life. The use of the death penalty, when there exists an honorable and legitimate way to exact justice in the form of life imprisonment, is inconsistent with the true morals of our society, undermining regard for the sanctity of life.

When Paul Storey faced an execution date in 2017, my husband and I met informally with some members of the Board of Pardons and Paroles for the purpose of making our convictions and sentencing preferences known to the Board members. The meeting was handled well by the Board participants in attendance in terms of respectful listening and a welcoming attitude.

However, my husband and I recall being quite surprised and somewhat dismayed that there were several Board members who not in attendance either in person or via other electronic means. Also, there was no apparent means for the Board to gather as a committee to discuss a decision, an outcome, or to discuss our concerns. The Texas Court of Criminal appeals granted a stay of execution to Storey before the Board ruled on his application for clemency, so we do not know what impact our views made on the members with whom we spoke.

In our view, in dealing with our son's death, the murder victim of an egregious crime, or with other families in similar conditions, the clemency process clearly merits the interest and full attention of the complete and entire Board of Pardons and Paroles and the opportunity for the voices of family members to be heard.

Again, thank you for the opportunity to provide commentary in support of House Bill 841.

Sincerely,

Judith Cherry

Ernesto Hawkins Coleman

self

Waxahachie, TX

I am a voter and resident of Waxahachie, TX, and I urge you to adopt HR 841 relating to hearings by the BOPP regarding

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clemency matters. Having in person or telephone/video conference meetings in capital cases is a small but important step for people facing capital sentences.

Jennifer Laurin, Professor

self/Professor of Law at the University of Texas School of Law

Austin, TX

From 2011 to 2013 I served as chair of the Texas Capital Punishment Assessment Team, a bipartisan group of former judges, elected officials, prosecutors, practitioners, and legal scholars organized by the American Bar Association (“ABA”) to review Texas’s capital punishment laws, procedures, and practices. Our review evaluated every stage of capital punishment proceedings, from arrest through post-conviction and clemency proceedings, against the ABA’s protocols for fair administration of the death penalty. In September 2013 we released a 500-page report of our findings. Among those findings was that Texas's clemency procedures did not reflect a process that enabled those charged with final review of a death sentence to fully and fairly evaluate all of the factors bearing on the appropriateness of a death sentence. In particular, we found that Texas was the only state in the country that permits the Board of Pardons and Paroles to make clemency decisions without first meeting as a body, a procedure that did not comply with the ABA's protocols for fair administration of the death penalty. Our report also criticized the failure of Texas's clemency procedures to provide a meaningful opportunity for the death-sentenced individual, through counsel, to present a case for clemency. Ameliorating these deficiencies by requiring some form of real-time meeting and an opportunity for the death-sentenced individual to be heard through counsel - as HB 841 does - are important steps to bring Texas in line with other death penalty jurisdictions and to ensure that clemency actually serves, and appears to serve, as a "fail safe" against wrongful execution.

Cynthia Nitzsche

self

Deer Park, TX

I am for this bill in that it relates to video conference meetings for clemency reviews. This actually a good bill for expediting TDCJ and BPP business via teleconferencing. Thank you, Mr. Moody, for filing this bill. Thank you for the committee's consideration of my testimony.

Amite Dominick, Dr.

Texas Prison Air Conditioning Advocates

Rockport, TX

I am FOR this bill. The parole process is in need of more transparency. This level of transparency is needed for both the incarcerated individual and the victims.

Maribel Martinez

Self

Houston, TX

My brother Roberto Espinosa Jr has been incarcerated for 27 years this month. He was sentenced to 35 years. His parole keeps getting denied due to the type of crime but that’s why he’s serving time. I believe he should be eligible for parole.

Natalie Herrera

Self

Houston, TX

Hello,

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My uncle, Roberto Espinoza JR has been serving more than half his sentence and qualifies for parole. With God and his family by his side we are hoping he gets the opportunity to be out of prison. He has his families full support.

Very Respectfully,

Natalie Herrera