

By: Thompson

H.B. No. 3538

Substitute the following for H.B. No. 3538:

By: Cain

C.S.H.B. No. 3538

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the release of certain inmates on medically recommended  
3 intensive supervision or on super-intensive supervision parole.

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

5 SECTION 1. Subchapter E, Chapter 508, Government Code, is  
6 amended by adding Sections 508.1451 and 508.1459 to read as  
7 follows:

8 Sec. 508.1451. MANDATORY RELEASE OF CERTAIN ELDERLY  
9 INMATES. (a) A parole panel shall order the release of an inmate on  
10 super-intensive supervision parole under Section 508.317 not later  
11 than the first anniversary of the later of:

12 (1) the inmate's initial parole eligibility date  
13 computed under Section 508.145; or

14 (2) the date the inmate reaches 65 years of age.

15 (b) This section does not apply to an inmate who is serving a  
16 sentence for or has been previously convicted of:

17 (1) an offense described by Section 508.145(a);

18 (2) an offense listed in or described by Section  
19 3g(a), Article 42.12, Code of Criminal Procedure;

20 (3) an offense under Section 20.02, 21.11, 21.12,  
21 25.02, 29.02, 43.05, 43.26, 49.07, 49.08, 71.022, or 71.023, Penal  
22 Code; or

23 (4) an offense under Section 71.02, Penal Code, based  
24 on a conspiracy to commit an offense listed in or described by

1 Subdivision (1), (2), or (3).

2 (c) A parole panel may not release an otherwise eligible  
3 inmate under this section if the inmate:

4 (1) has been the subject of major disciplinary action  
5 within the 12-month period preceding the date the inmate would  
6 otherwise be eligible for release under this section;

7 (2) has been reclassified by the department based on  
8 the inmate's conduct, obedience, and industry and is in a less  
9 favorable classification than was originally determined by the  
10 department under Section 498.002; or

11 (3) is considered by the department to be at high risk  
12 or very high risk of unsuccessful reentry into the community  
13 following release from the department.

14 (d) The board shall adopt a policy establishing the date on  
15 which a parole panel may reconsider for release an inmate who has  
16 previously been denied release under Subsection (c). The policy  
17 must require the parole panel to at least annually reconsider the  
18 inmate for release as soon as practicable after each anniversary of  
19 the date of denial.

20 Sec. 508.1459. MANDATORY RELEASE OF CERTAIN INMATES ON  
21 MEDICALLY RECOMMENDED INTENSIVE SUPERVISION. (a) In this section:

22 (1) "Condition requiring long-term care" means a  
23 physical condition that persists for a sustained period of time and  
24 is unlikely to improve, results in an inability to provide  
25 sufficient self-care, and requires regular nursing care.

26 (2) "Organic brain syndrome" means any one of a group  
27 of acute or chronic syndromes involving temporary or permanent

1 impairment of brain function caused by trauma, infection, toxin,  
2 tumor, or tissue sclerosis, and resulting in mild to severe  
3 impairment of memory, orientation, judgment, intellectual  
4 functions, and emotional adjustment.

5 (3) "Persistent vegetative state" means a physical  
6 condition of profound nonresponsiveness in the wakeful state caused  
7 by brain damage at any level and characterized by a nonfunctioning  
8 cerebral cortex, absence of response to the external environment,  
9 akinesia, mutism, and inability to signal.

10 (4) "Terminal illness" means an incurable illness or  
11 condition that requires skilled nursing care, hospice care, or home  
12 health care, and is expected to result in death in six months or  
13 less regardless of life-sustaining treatment.

14 (b) A parole panel shall release on medically recommended  
15 intensive supervision any inmate, regardless of the inmate's  
16 initial parole eligibility date computed under Section 508.145, if  
17 on the basis of a medical examination approved by at least two  
18 physicians the Texas Correctional Office on Offenders with Medical  
19 or Mental Impairments identifies the inmate as:

20 (1) having a terminal illness;  
21 (2) having a condition requiring long-term care;  
22 (3) being in a persistent vegetative state; or  
23 (4) having an organic brain syndrome with significant  
24 to total mobility impairment.

25 (c) This section does not apply to an inmate:

26 (1) whose condition existed at the time of sentencing  
27 and has not deteriorated; or

1           (2) who is serving a sentence for or has been  
2 previously convicted of:

3                   (A) an offense described by Section 508.145(a);

4                   (B) an offense listed in or described by Section  
5 3g(a), Article 42.12, Code of Criminal Procedure;

6                   (C) an offense under Section 20.02, 21.11, 21.12,  
7 25.02, 29.02, 43.05, 43.26, 49.07, 49.08, 71.022, or 71.023, Penal  
8 Code; or

9                   (D) an offense under Section 71.02, Penal Code,  
10 based on a conspiracy to commit an offense listed in or described by  
11 Paragraph (A), (B), or (C).

12           (d) Before releasing an inmate under Subsection (b), the  
13 Texas Correctional Office on Offenders with Medical or Mental  
14 Impairments, in cooperation with the department, shall prepare for  
15 the inmate a medically recommended intensive supervision plan that  
16 requires the inmate to submit to electronic monitoring, places the  
17 inmate on super-intensive supervision, or otherwise ensures  
18 appropriate supervision of the inmate.

19           (e) A parole panel releasing an inmate under Subsection (b)  
20 shall require as a condition of release that the releasee remain  
21 under the care of a physician and in a medically suitable placement.  
22 At least once each calendar quarter, the Texas Correctional Office  
23 on Offenders with Medical or Mental Impairments shall report to the  
24 parole panel on the releasee's medical and placement status. On the  
25 basis of the report, the parole panel may modify conditions of  
26 release and impose any condition on the releasee that the panel  
27 could impose on a releasee released under Section 508.145.

1        (f) Section 508.146(d) applies to a request for proposals to  
2 provide under contract services for inmates released on medically  
3 recommended intensive supervision under this section.

4        SECTION 2. The heading to Section 508.146, Government Code,  
5 is amended to read as follows:

6        Sec. 508.146. DISCRETIONARY RELEASE OF CERTAIN INMATES ON  
7 MEDICALLY RECOMMENDED INTENSIVE SUPERVISION.

8        SECTION 3. Section 508.146, Government Code, is amended by  
9 amending Subsections (a), (b), and (e) and adding Subsection (a-1)  
10 to read as follows:

11        (a) An inmate other than an inmate who is serving a sentence  
12 of death or life without parole may be released on medically  
13 recommended intensive supervision on a date designated by a parole  
14 panel described by Subsection (e) [~~, except that an inmate with an~~  
15 ~~instant offense that is an offense described in Section 3g, Article~~  
16 ~~42.12, Code of Criminal Procedure, or an inmate who has a reportable~~  
17 ~~conviction or adjudication under Chapter 62, Code of Criminal~~  
18 ~~Procedure, may only be considered if a medical condition of~~  
19 ~~terminal illness or long-term care has been diagnosed by a~~  
20 ~~physician,~~] if:

21            (1) the Texas Correctional Office on Offenders with  
22 Medical or Mental Impairments, in cooperation with the Correctional  
23 Managed Health Care Committee, identifies the inmate as:

24                    (A) being 65 years of age or older [~~+~~  
25                    [~~(A) elderly~~], physically disabled, mentally  
26 ill, [~~terminally ill~~], or mentally retarded; or

27                    (B) having been diagnosed by a physician as:

1                    (i) having a medical condition of terminal  
2 illness or requiring long-term care, if the inmate is an inmate with  
3 an instant offense that is described in Section 3g, Article 42.12,  
4 Code of Criminal Procedure, or is an inmate who has a reportable  
5 conviction or adjudication under Chapter 62, Code of Criminal  
6 Procedure; and~~[, or]~~

7                    (ii) being [~~(B)~~] in a persistent vegetative  
8 state or being a person with an organic brain syndrome with  
9 significant to total mobility impairment, if the inmate is an  
10 inmate who has a reportable conviction or adjudication under  
11 Chapter 62, Code of Criminal Procedure;

12                    (2) the suitability of the inmate for release on  
13 medically recommended intensive supervision, based on a medical  
14 examination of the inmate, has been approved by a panel of at least  
15 two physicians;

16                    (3) the parole panel determines that, based on the  
17 inmate's condition and a medical evaluation, the inmate does not  
18 constitute a threat to public safety; and

19                    (4) [~~(3)~~] the Texas Correctional Office on Offenders  
20 with Medical or Mental Impairments, in cooperation with the pardons  
21 and paroles division, has prepared for the inmate a medically  
22 recommended intensive supervision plan that requires the inmate to  
23 submit to electronic monitoring, places the inmate on  
24 super-intensive supervision, or otherwise ensures appropriate  
25 supervision of the inmate.

26                    (a-1) For purposes of Subsection (a), "condition requiring  
27 long-term care," "organic brain syndrome," "persistent vegetative

1 state," and "terminal illness" have the meanings assigned by  
2 Section 508.1459.

3 (b) An inmate may be released on medically recommended  
4 intensive supervision only if the inmate's medically recommended  
5 intensive supervision plan under Subsection (a)(4) [~~(a)(3)~~] is  
6 approved by the Texas Correctional Office on Offenders with Medical  
7 or Mental Impairments.

8 (e) Only parole panels composed of the presiding officer of  
9 the board and two members appointed to the panel by the presiding  
10 officer may make determinations regarding the release of inmates on  
11 medically recommended intensive supervision under Subsection (a)  
12 or of inmates released pending deportation. If the Texas Council on  
13 Offenders with Mental Impairments identifies an inmate as a  
14 candidate for release under the guidelines established by  
15 Subsection (a) [~~(a)(1)~~], the council shall present to a parole  
16 panel described by this subsection relevant information concerning  
17 the inmate and the inmate's potential for release under this  
18 section.

19 SECTION 4. Not later than January 1, 2012, the Texas  
20 Department of Criminal Justice shall release on supervision:

21 (1) any elderly inmate eligible for release under  
22 Section 508.1451, Government Code, as added by this Act, with  
23 respect to whom a parole panel has not denied release on parole  
24 under that section; and

25 (2) any inmate identified for release under Section  
26 508.1459, Government Code, as added by this Act.

27 SECTION 5. Section 508.146, Government Code, as amended by

1 this Act, applies to the release of an inmate under that section on  
2 or after the effective date of this Act, regardless of when the  
3 offense for which the inmate is serving a sentence was committed.

4 SECTION 6. This Act takes effect September 1, 2011.