

By: Moody

H.B. No. 3392

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a court to grant a commutation of punishment to certain individuals serving a term of imprisonment.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. JUDICIAL COMMUTATION

Art. 53.001. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies only to an inmate confined in the Texas Department of Criminal Justice who:

(1) is 50 years of age or older and has served at least 15 years of a term of imprisonment for a felony; or

(2) is 35 years of age or older but younger than 50 years of age and has served at least 20 years of a term of imprisonment for a felony.

(b) This chapter does not apply to an inmate who is:

(1) serving a sentence for a capital felony, other than a life sentence under Section 12.31(a)(1), Penal Code; or

(2) serving a sentence for an offense under Section 21.02 or 22.021, Penal Code.

Art. 53.002. MOTION TO ADJUST SENTENCE.

(a) Notwithstanding any other law, on motion of the attorney representing the state a court may grant a commutation of punishment for an inmate in accordance with this chapter.

1       (b) A motion under this chapter must be filed by the  
2 attorney representing the state for the jurisdiction in which the  
3 inmate was convicted. The motion may be filed in any district court  
4 in the county in which the inmate was convicted.

5       (c) A motion filed under this article must include:

6           (1) the cause number for the inmate's case;

7           (2) the name of the sentencing judge and date of  
8 sentencing;

9           (3) the name of the agency responsible for the  
10 prosecution; and

11           (4) a declaration of the reasons the attorney  
12 representing the state believes the inmate is entitled to relief,  
13 including any reason the attorney believes the inmate, if released,  
14 would be able to safely return to the community, such as:

15                   (A) the inmate's age at the time of the offense;

16                   (B) any mitigating factors from the time of the  
17 offense;

18                   (C) any completed courses, treatment, or  
19 achievements while imprisoned;

20                   (D) any record of good behavior while imprisoned;

21                   (E) any evidence of maturity or rehabilitation;

22 or

23                   (F) any other recommendations as to the inmate's  
24 suitability for release.

25       (d) A motion filed under this article may include  
26 affidavits, documents, or other written material supporting the  
27 inmate's motion.

1       (e) Once filed, the presiding judge of the administrative  
2 judicial region shall assign the motion to a judge of a court in the  
3 county that has jurisdiction over the category of offense of which  
4 the inmate was convicted. The motion may not be assigned to the  
5 original sentencing judge.

6       Art. 53.003. APPOINTMENT OF COUNSEL. (a) Not later than  
7 the 15th day after the date a motion is filed under Article 53.002,  
8 the court shall appoint counsel for the inmate unless the inmate has  
9 previously retained counsel for this motion. Counsel shall  
10 represent the inmate for all proceedings under this chapter,  
11 including any appeal, unless the inmate expressly waives the right  
12 to counsel after being fully advised by the court of the inmate's  
13 rights.

14       (b) Not later than the 15th day after appointment, inmate's  
15 counsel may file a motion for an extension of time to prepare a  
16 supplement to the motion filed under Article 53.002. The court  
17 shall grant counsel's motion for an extension of time unless the  
18 court finds that there is good cause not to grant the motion.

19       Art. 53.004. HEARING. (a) A court may grant a motion filed  
20 under this chapter without holding a hearing but may not deny a  
21 motion without a hearing unless the inmate:

22               (1) is not eligible under Article 53.001; or

23               (2) has 12 months or less remaining before the inmate:

24                       (A) discharges the inmate's sentence; or

25                       (B) becomes eligible for release to mandatory  
26 supervision under Section [508.147](#), Government Code.

27       (b) Subject to any extension granted under Article

1 53.003(b), any hearing required under this article must be held not  
2 later than the 90th day after the date the motion is filed.

3 (c) At a hearing under this article, the court shall allow  
4 parties to present additional evidence, including hearsay  
5 evidence.

6 Art. 53.005. DECISION. (a) The court shall either state  
7 in open court or file in writing the court's reasons for granting or  
8 denying a motion under this chapter. The court shall issue the  
9 court's decision not later than the 30th day after the date of the  
10 hearing, or, if no hearing is held, not later than the 60th day  
11 after the date of filing the motion, subject to any extension  
12 granted under Article 53.003(b).

13 (b) The court shall grant the motion unless the court finds  
14 by clear and convincing evidence that the inmate's release would  
15 result in an unreasonable risk to the physical safety of the  
16 community.

17 (c) There is a presumption that an inmate who is 50 years of  
18 age or older is suitable for relief under this chapter. This  
19 presumption may be rebutted by clear and convincing evidence that  
20 the inmate poses an unreasonable risk to the physical safety of the  
21 community. The presumption may not be rebutted solely by facts  
22 related to the offense for which the inmate was convicted.

23 (d) In determining whether to grant the motion, the court  
24 shall consider:

25 (1) the inmate's age at the time of the offense and the  
26 diminished culpability of people under 26 years of age, as compared  
27 to that of older adults, and the hallmark features of youth,

1 including immaturity, impetuosity, and failure to appreciate risks  
2 and consequences;

3 (2) the inmate's current age and relevant data  
4 regarding the decline in criminality as people age;

5 (3) any argument or evidence presented by the parties;

6 (4) any report and recommendation of the Texas  
7 Department of Criminal Justice or the Board of Pardons and Paroles,  
8 including information on the inmate's behavior while imprisoned,  
9 specifically focusing on the five-year period preceding the date of  
10 the motion;

11 (5) whether the inmate has demonstrated maturity,  
12 rehabilitation, and fitness to reenter society sufficient to  
13 justify a sentence reduction;

14 (6) any report from a physical, mental, or psychiatric  
15 examination of the inmate conducted by a licensed health care  
16 professional;

17 (7) mitigating evidence such as the family and  
18 community circumstances of the inmate at the time of the offense,  
19 including any history of abuse, trauma, or involvement in the child  
20 protective services system;

21 (8) the role of the inmate in the offense and whether,  
22 and to what extent, the inmate was influenced or encouraged by  
23 others to commit the offense;

24 (9) the nature and circumstances of the offense and  
25 whether the sentence imposed was disproportionate to the offense  
26 committed;

27 (10) whether the sentence was disproportionate to the

1 sentence the inmate would have received had the inmate been  
2 sentenced under the laws in effect on the date the motion is filed;

3 (11) whether there is evidence of racial disparities  
4 in the length of sentence imposed for similar conduct;

5 (12) any available victim impact statement; and

6 (13) any other information the court considers  
7 relevant to its decision.

8 (e) In considering an inmate's behavior under Subsection  
9 (d)(4), the judge may consider whether the inmate has completed any  
10 educational, vocational, or other programs that were available to  
11 the inmate while confined, including any substance abuse or mental  
12 health treatment.

13 (f) If the court grants the motion, the court shall reduce  
14 the sentence:

15 (1) to time served and order the inmate's immediate  
16 release; or

17 (2) as necessary to provide that the inmate is  
18 confined only as long as is necessary for the Texas Department of  
19 Criminal Justice to provide for a sufficient transition and release  
20 plan.

21 (g) Notwithstanding any other law, the court may, in  
22 granting relief under this chapter, reduce an inmate's sentence to  
23 be below the statutory minimum for the offense that existed at the  
24 time of the offense.

25 (h) The court may not increase a sentence under this  
26 chapter.

27 Art. 53.006. APPEAL. (a) Except as provided by this

1 article, the Texas Rules of Appellate Procedure apply to all  
2 hearings and orders under this chapter.

3 (b) Unless a court denies a motion filed under this chapter  
4 on the sole grounds that the inmate is not eligible under Article  
5 53.001, the inmate may appeal the denial.

6 (c) The appeal must be filed not later than the 30th day  
7 after the date of the court's denial. The inmate must provide  
8 notice of the appeal to the attorney representing the state.

9 (d) An appellate court, in reviewing a court's decision to  
10 deny a motion under this chapter, shall accept the court's findings  
11 of fact unless clearly erroneous while reviewing the legal judgment  
12 de novo.

13 Art. 53.007. SUBSEQUENT MOTIONS. (a) An attorney  
14 representing the state may file subsequent motions regarding an  
15 inmate under this chapter on or after the fifth anniversary of the  
16 date on which the previous motion was denied. An appeal by an inmate  
17 does not affect the timeline for filing a subsequent motion.

18 (b) An attorney representing the state may file an unlimited  
19 number of motions under this chapter.

20 Art. 53.008. DATA COLLECTION. (a) Each court shall  
21 maintain the following information, disaggregated by age, race, and  
22 gender:

23 (1) the total number of inmates for whom motions were  
24 filed under this chapter;

25 (2) the total number of motions the court granted;

26 (3) the total number of motions the court denied; and

27 (4) the total number of pending motions.

1       (b) Each facility operated by or under contract with the  
2 Texas Department of Criminal Justice shall maintain information on  
3 the total number of inmates who meet the eligibility requirements  
4 of Article 53.001.

5       (c) Not later than February 1 of each year, each court and  
6 the Texas Department of Criminal Justice shall submit the  
7 information maintained under this article for the preceding  
8 calendar year to the Office of Court Administration of the Texas  
9 Judicial System.

10       (d) Not later than March 1 of each year, the Office of Court  
11 Administration of the Texas Judicial System shall analyze the  
12 information submitted under Subsection (c) and submit a report  
13 containing the results of the analysis to the governor, the  
14 lieutenant governor, the speaker of the house of representatives,  
15 and each standing committee of the legislature with primary  
16 jurisdiction over criminal justice matters.

17       SECTION 2. This Act takes effect January 1, 2022, but only  
18 if the constitutional amendment proposed by the 87th Legislature,  
19 Regular Session, 2021, authorizing the legislature to enact laws  
20 providing for a court to grant a commutation of punishment to  
21 certain individuals serving a term of imprisonment is approved by  
22 the voters. If that amendment is not approved by the voters, this  
23 Act has no effect.