

By: Collier

H.B. No. 4337

A BILL TO BE ENTITLED

AN ACT

relating to authority of a court to reduce or modify a defendant's sentence.

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

SECTION 1. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.26 to read as follows:

Art. 44.26. SENTENCE REDUCTION OR MODIFICATION FOR CERTAIN DEFENDANTS. (a) This article applies only to a defendant who has served not less than 10 years of a term of imprisonment for an offense other than an offense listed in Article 42A.054(a).

(b) The court in which a defendant was convicted may, on motion of the defendant and with the consent of the attorney representing the state, reduce or modify the defendant's sentence in accordance with Subsection (d) if the court finds that:

(1) the defendant:

(A) is not a danger to the community or any person;

(B) presents no credible risk of criminal conduct; or

(C) demonstrates a readiness for reentry; and

(2) the interests of justice support the reduction or modification.

(c) In determining whether to grant a motion under this article, the court shall consider the following:

1 (1) the defendant's current age and age at the time of
2 the offense;

3 (2) relevant data on increasing age as correlated with
4 declining criminality;

5 (3) whether the defendant has demonstrated levels of
6 maturity, rehabilitation, and fitness to reenter society that are
7 sufficient to justify a sentence reduction or modification;

8 (4) the family and community circumstances of the
9 defendant at the time of the offense, including any history of abuse
10 or involvement in the child protective services system, and the
11 potential benefits to the defendant's children and other family
12 members of a reunification with the defendant;

13 (5) the extent of the defendant's role in the offense;

14 (6) if the defendant was a juvenile at the time of the
15 offense:

16 (A) the diminished culpability of juveniles
17 compared to adults; and

18 (B) whether and to what extent an adult was
19 involved in the commission of the offense;

20 (7) if available:

21 (A) any report and recommendation of the Board of
22 Pardons and Paroles, including information on the defendant's
23 completion of any educational, vocational, or other programs while
24 confined in the Texas Department of Criminal Justice;

25 (B) any report and recommendation of the attorney
26 representing the state in the county in which the defendant was
27 convicted;

1 (C) any statement from the victim of the offense
2 or a family member of the victim, if the victim is deceased; and

3 (D) any physical or mental examination of the
4 defendant; and

5 (8) any other relevant information.

6 (d) The authority of the court in granting a motion under
7 this article is limited to:

8 (1) reducing the number of years of imprisonment
9 remaining on the defendant's sentence; or

10 (2) modifying the defendant's sentence to require the
11 defendant to serve the remaining sentence or a reduced sentence
12 under any combination of imprisonment or community supervision
13 under Chapter 42A, except that any term of community supervision
14 required may not exceed five years.

15 (e) There is a rebuttable presumption that a defendant who
16 is 50 years of age or older satisfies the conditions described by
17 Subsection (b) that are necessary for the court to grant the motion
18 filed by the defendant.

19 (f) The court may hold a hearing to consider a motion filed
20 under this article. If the court holds a hearing, the court shall
21 provide notice of the hearing to the attorney representing the
22 state. The attorney representing the state shall provide notice of
23 the hearing to any victim of the defendant's offense who as a result
24 of the offense suffered bodily injury, as that term is defined by
25 Section 1.07, Penal Code.

26 (g) The court is not required to hold a hearing before
27 granting a motion if:

1 (1) the attorney representing the state consents in
2 writing to granting the motion; and

3 (2) the defendant has waived in writing the
4 defendant's right to be present when the motion is considered.

5 (h) If the court grants the motion, the court shall issue a
6 written order stating the court's reasons for entering the findings
7 described by this article. The court may deny the motion without
8 holding a hearing or without specifying in writing the reasons for
9 the denial.

10 (i) If the court denies the motion, the defendant may file
11 additional motions under this article only as follows:

12 (1) subject to Subsection (j), a second motion may be
13 filed on or after the fifth anniversary of the court's order denying
14 the motion;

15 (2) a third motion may be filed on or after the second
16 anniversary of, as applicable:

17 (A) the court's order denying the second motion;
18 or

19 (B) the disposition of the defendant's appeal of
20 the order denying the defendant's first motion; and

21 (3) a defendant who is 50 years of age or older may
22 file a fourth and final motion at any time after the court has
23 denied the third motion.

24 (j) The defendant or the attorney representing the state may
25 appeal an order of the court under this article only with respect to
26 a defendant's first motion or a final motion. For purposes of
27 Subsection (i), an appeal of a first motion by a defendant is

1 considered to be the defendant's second motion filed under this
2 article.

3 (k) A defendant may not waive the right to file a motion
4 under this article as part of a plea agreement. A waiver in
5 violation of this subsection is unenforceable. This subsection does
6 not prohibit the court from denying a defendant's motion based on
7 other grounds, including the failure of the defendant to comply
8 with the requirements of this article.

9 SECTION 2. The change in law made by this Act applies to a
10 defendant serving a sentence described by Article 44.26(a), Code of
11 Criminal Procedure, as added by this Act, regardless of whether the
12 offense for which the defendant is serving the sentence occurred
13 before, on, or after the effective date of this Act.

14 SECTION 3. This Act takes effect December 1, 2021, but only
15 if the constitutional amendment proposed by the 87th Legislature,
16 Regular Session, 2021, authorizing the legislature to enact laws
17 providing for a district court to reduce or modify a sentence
18 imposing a term of imprisonment for a person who has served not less
19 than 10 years of the term is approved by the voters. If that
20 amendment is not approved by the voters, this Act has no effect.