88R3647 EAS-F

By:  Moody H.B. No. 909

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.

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

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

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

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

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

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

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

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

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

(D)  any record of good behavior while imprisoned;

(E)  any evidence of maturity or rehabilitation; or

(F)  any other recommendations regarding the inmate's suitability for release under this chapter.

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

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

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

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

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

(1)  is not eligible under Article 53.001; or

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

(A)  discharges the inmate's sentence; or

(B)  becomes eligible for release to mandatory supervision under Section 508.147, Government Code.

(b)  Subject to any extension granted under Article 53.003(b), any hearing required under this article must be held not later than the 90th day after the date the motion is filed.

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

Art. 53.005.  DECISION. (a) A court shall grant a motion filed under this chapter unless the court finds by clear and convincing evidence that the inmate's release would result in an unreasonable risk to the physical safety of the community. The court shall either state in open court or file in writing the court's reasons for granting or denying the motion.

(b)  The court shall issue the court's decision not later than the 30th day after the date of the hearing, or, if no hearing is held, not later than the 60th day after the date of filing the motion, subject to any extension granted under Article 53.003(b).

(c)  An inmate who is 50 years of age or older is presumed to be suitable for release under this chapter. This presumption may be rebutted by clear and convincing evidence that the inmate poses an unreasonable risk to the physical safety of the community. The presumption may not be rebutted solely by facts related to the offense for which the inmate was convicted.

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

(1)  the inmate's age at the time of the offense and the diminished culpability of people under 26 years of age, as compared to that of older adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences;

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

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

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

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

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

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

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

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

(10)  whether the sentence was disproportionate to the sentence the inmate would have received had the inmate been sentenced under the laws in effect on the date the motion was filed;

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

(12)  any available victim impact statement; and

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

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

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

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

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

(g)  Notwithstanding any other law, the court may, in granting relief under this chapter, reduce an inmate's sentence to a term that is less than the statutory minimum for the offense that existed at the time of the offense.

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

Art. 53.006.  APPEAL. (a)  Except as provided by this article, the Texas Rules of Appellate Procedure apply to all hearings and orders under this chapter.

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

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

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

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

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

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

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

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

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

(4)  the total number of pending motions.

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

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

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

SECTION 2.  This Act takes effect January 1, 2024, but only if the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, authorizing the legislature to enact laws providing for a court to grant a commutation of punishment to certain individuals serving a term of imprisonment is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.