88R21307 EAS-D

By:  Cook H.B. No. 4518

Substitute the following for H.B. No. 4518:

By:  Moody C.S.H.B. No. 4518

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 and to victims' rights regarding a motion to grant a commutation.

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. This chapter does not apply to an inmate who is serving a sentence for an offense listed in Article 42A.054(a) or for which the judgment contains an affirmative finding under Article 42A.054(c) or (d).

Art. 53.002.  MOTION TO GRANT COMMUTATION. (a) Notwithstanding any other law, on motion of the attorney representing the state a court may grant a commutation of punishment in accordance with this chapter for an inmate serving a term of imprisonment.

(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)  Until the court has granted the motion, the attorney representing the state may withdraw the motion. If the motion is withdrawn, the court is prohibited from granting a commutation in the case based on that motion.

Art. 53.003.  DECISION. (a) In determining whether to grant the motion, the court may consider:

(1)  the inmate's disciplinary record and record of rehabilitation while imprisoned;

(2)  evidence that reflects whether the inmate's age, time served, or diminished physical condition has reduced the inmate's risk for committing an offense in the future; and

(3)  evidence that reflects any change in the inmate's circumstances since the original sentencing such that the inmate's continued imprisonment is no longer in the interest of justice.

(b)  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, including by reducing the sentence to time served and ordering the inmate's immediate release.

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

Art. 53.004.  APPEAL. (a) Except as provided by this article, the Texas Rules of Appellate Procedure apply to all hearings and orders under this chapter.

(b)  Neither the attorney representing the state nor the inmate is entitled to appeal the court's decision to deny a motion under this chapter.

SECTION 2.  Article 56A.051, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a)  A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1)  the right to receive from a law enforcement agency adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2)  the right to have the magistrate consider the safety of the victim or the victim's family in setting the amount of bail for the defendant;

(3)  if requested, the right to be informed:

(A)  by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled before the event; and

(B)  by an appellate court of the court's decisions, after the decisions are entered but before the decisions are made public;

(4)  when requested, the right to be informed:

(A)  by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations; and

(B)  by the office of the attorney representing the state concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5)  the right to provide pertinent information to a community supervision and corrections department conducting a presentencing investigation concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before any sentencing of the defendant;

(6)  the right to receive information regarding compensation to victims of crime as provided by Chapter 56B, including information related to the costs that may be compensated under that chapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter, the payment for a forensic medical examination under Article 56A.252 for a victim of an alleged sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7)  the right to:

(A)  be informed, on request, of parole procedures;

(B)  participate in the parole process;

(C)  provide to the board for inclusion in the defendant's file information to be considered by the board before the parole of any defendant convicted of any offense subject to this chapter; and

(D)  be notified, if requested, of parole proceedings concerning a defendant in the victim's case and of the defendant's release;

(8)  the right to be provided with a waiting area, separate or secure from other witnesses, including the defendant and relatives of the defendant, before testifying in any proceeding concerning the defendant; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the defendant and the defendant's relatives and witnesses, before and during court proceedings;

(9)  the right to the prompt return of any of the victim's property that is held by a law enforcement agency or the attorney representing the state as evidence when the property is no longer required for that purpose;

(10)  the right to have the attorney representing the state notify the victim's employer, if requested, that the victim's cooperation and testimony is necessary in a proceeding that may require the victim to be absent from work for good cause;

(11)  the right to request victim-offender mediation coordinated by the victim services division of the department;

(12)  the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system as described by Subchapter D, to complete the victim impact statement, and to have the victim impact statement considered:

(A)  by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B)  by the board before a defendant is released on parole;

(13)  for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004, Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by the defendant's attorney, the court shall state on the record the reason for granting or denying the continuance; [~~and~~]

(14)  the right to be informed of any motion to grant a commutation filed under Chapter 53 and to be informed of any hearings or orders under that chapter; and

(15)  if the offense is a capital felony, the right to:

(A)  receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;

(B)  not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and

(C)  designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

(d)  If a victim notifies the attorney representing the state that the victim opposes a motion to grant a commutation filed by that attorney under Chapter 53, that attorney shall inform the court of the victim's objections.

SECTION 3.  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.