

BILL ANALYSIS

C.S.H.B. 3166
By: Cook
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas Attorney General Opinion No. GA-1000 (2013) states the following:

Article II, section 1 of the Constitution separates the powers of Texas government into the legislative, executive, and judicial branches. TEX. CONST. art. II, § 1. "[N]o person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others," except as expressly permitted by the Constitution. *Id.* Article IV, Section 11, provides that "[i]n all criminal cases, except treason and impeachment, the Governor shall have power, after conviction or successful completion of a term of deferred adjudication community supervision . . . to grant reprieves and commutations of punishment and pardons." TEX. CONST. art. IV, § 11(b). This power is limited only by the requirement that the Governor must exercise it upon the written recommendation and advice of the Texas Board of Pardons and Paroles. *Id.* Otherwise, courts have determined that the power belongs exclusively to the Governor and "cannot be exercised, directly or indirectly, either by the legislative or judicial department." *Snodgrass v. State*, 150 S.W. 162, 166 (Tex. Crim. App. 1912). Any statute that attempts to do so would be unconstitutional. *State ex rel. Smith*, 500 S.W.2d at 104.

Additionally, Texas Attorney General Opinion No. GA-1000 (2013) states the following:

For example, a statute that required a judge to resentence a defendant in a manner that resulted in a shorter sentence was held to be an unconstitutional extension by the Legislature of commutation "as a mere gift or a matter of clemency" because the defendant could receive a reduced sentence simply by filing a motion. *State ex rel. Smith*, 500 S.W.2d at 102-03. By contrast, the Court upheld the constitutionality of a statute that granted commutation only after a convict, "by his own good conduct, had earned it." *Ex Parte Anderson*, 192 S.W.2d at 282.

The bill author has informed the committee that several states provide the ability to recall or adjust the sentence of an individual in the interest of justice through the judiciary or general law but Texas lacks this particular tool to remedy circumstances in which information comes to light that a sentence is not serving the interest of justice but appeal is not procedurally possible or parole eligibility may be years away. C.S.H.B. 3166 seeks to provide for the authority of a court to grant a commutation of punishment to certain individuals serving a term of imprisonment and for victims' rights regarding a motion to grant a commutation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3166 amends the Code of Criminal Procedure to authorize a court, on motion of the state's attorney, to grant a commutation of punishment in accordance with the bill's provisions for an inmate serving a term of imprisonment, other than an inmate who is serving a sentence for an offense ineligible for judge-ordered community supervision or for which the judgment contains an affirmative finding regarding the use or exhibition of a deadly weapon, including a firearm, that renders the inmate ineligible for such community supervision.

C.S.H.B. 3166 establishes that a motion must be filed by the state's attorney for the jurisdiction in which the inmate was convicted but may be filed in any district court in the county in which the inmate was convicted. The bill requires the district clerk, immediately after a motion is filed, to deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sits. The bill requires the presiding judge of the administrative judicial region to assign the motion to a district court in the county in which the inmate was convicted. The bill authorizes the state's attorney to withdraw the motion until the court has granted the motion and prohibits the court from granting a commutation in the case based on that motion if the motion is withdrawn.

C.S.H.B. 3166 authorizes the court, in determining whether to grant the motion, to consider the following:

- the inmate's disciplinary record and record of rehabilitation while imprisoned;
- 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
- 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.

The bill authorizes the court, in granting relief under the bill's provisions, to 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. The bill prohibits a court from increasing a sentence under the bill's provisions.

C.S.H.B. 3166 makes the Texas Rules of Appellate Procedure applicable to all hearings and orders under the bill's provisions. The bill establishes that neither the state's attorney nor the inmate is entitled to appeal the court's decision to deny a motion under the bill's provisions.

C.S.H.B. 3166 includes among the rights within the criminal justice system to which a victim, guardian of a victim, or close relative of a deceased victim is entitled the right to be informed of any motion filed to grant a commutation and any hearings or orders under the bill's provisions. The bill requires the state's attorney to inform the court of a victim's objections if the victim notifies the attorney that the victim opposes a motion filed by that attorney to grant a commutation.

EFFECTIVE DATE

January 1, 2026, if the constitutional amendment 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.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3166 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions that did not appear in the introduced with respect to a motion to grant commutation:

- a requirement for the district clerk, immediately after such a motion is filed, to deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sits; and
- a requirement for the presiding judge of the administrative judicial region to assign the motion to a district court in the county in which the inmate was convicted.