

RESOLUTION ANALYSIS

H.J.R. 148
By: Cook
Criminal Jurisprudence
Committee Report (Unamended)

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 resolution 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. H.J.R. 148 seeks to provide for the authority of a court to grant a commutation of punishment to certain individuals serving a term of imprisonment.

CRIMINAL JUSTICE IMPACT

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

ANALYSIS

H.J.R. 148 proposes an amendment to the Texas Constitution to authorize the legislature by general law to provide for a court to grant a commutation of punishment to certain individuals serving a term of imprisonment.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 4, 2025.