

BILL ANALYSIS

C.S.H.B. 1274
By: Moody
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Advocates note that a juvenile often does not have the same capacity to appreciate the consequences of the juvenile's actions as an adult and contend that the likelihood of re-offending may decrease as a juvenile grows older. The goal of C.S.H.B. 1274 is to revise the time at which certain persons are considered for release on parole in order to account for a person's age and circumstances at the time of the offense.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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. 1274 amends the Government Code to require a parole panel, in determining whether to release on parole an inmate who is eligible for release on parole and who was younger than 18 years of age at the time the offense for which the inmate is so eligible was committed, to assess the growth and maturity of the inmate taking into consideration the diminished culpability of juveniles as compared to that of adults and the hallmark features of youth. The bill sets out the specific information about such an inmate that a parole panel is required to consider in assessing the inmate's growth and maturity. The bill authorizes the Board of Pardons and Paroles to employ a psychiatrist, psychologist, or psychiatric mental health advanced practice registered nurse who is qualified by education and clinical training to conduct a mental health evaluation of such an inmate regardless of whether the evaluation is also conducted by an expert unaffiliated with the board as provided under the bill's provisions or to assist a parole panel in performing its other duties under the bill's provisions. The bill requires the board to adopt a policy establishing factors for a parole panel to consider when reviewing such an inmate for release on parole to ensure that the inmate is provided a meaningful opportunity to obtain release on parole and requires the policy to allow persons having knowledge of the inmate before the inmate committed the offense for which the inmate is eligible for parole or having knowledge of the inmate's growth and maturity after the offense was committed to submit statements regarding the inmate to the parole panel. These provisions expressly do not affect the rights granted to a victim, guardian of a victim, or close relative of a deceased victim under Government Code provisions relating to parole and mandatory supervision or to Code of Criminal Procedure provisions relating to the rights of crime victims.

C.S.H.B. 1274 makes an inmate who is serving a sentence for one of the following offenses and

who was younger than 18 years of age at the time the offense was committed ineligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 20 calendar years, whichever is less, but in no event in less than two calendar years: a capital or first degree felony that is ineligible for judge-ordered community supervision, a continuous trafficking of persons offense, a continuous sexual abuse of a young child or children offense, a directing the activities of a criminal street gang offense, or a first degree felony offense for engaging in organized criminal activity. The bill repeals provisions establishing the parole eligibility of a person transferred to the Texas Department of Criminal Justice from the Texas Juvenile Justice Department or a post-adjudication secure correctional facility for the offense of capital murder and of an inmate serving a life sentence for a capital felony the inmate committed when younger than 18 years of age.

C.S.H.B. 1274 repeals Sections 499.053(d) and 508.145(b), Government Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1274 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 499.053(d), Government Code, is amended to read as follows:

(d) A person transferred from the Texas Juvenile Justice Department or a post-adjudication secure correctional facility for the offense of capital murder shall become eligible for parole as provided in Section 508.145(d-2) [~~508.145(d) for an offense listed in Article 42A.054, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made~~].

SECTION 2. Section 508.046, Government Code, is amended to read as follows:

Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on parole an inmate who was convicted of an offense under Section 20A.03, 21.02, 21.11(a)(1), or 22.021, Penal Code, or who is serving a sentence under Section 12.42(c)(2), Penal Code [~~required under Section 508.145(e) to serve 35 calendar years before becoming eligible for release on parole~~], all members of the board must vote on the release on parole of the inmate, and at least two-thirds of the members must vote in favor of the

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 508.046, Government Code, is amended to read as follows:

Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on parole an inmate who is serving a sentence for [~~was convicted of~~] an offense under Section 20A.03, 21.02, 21.11(a)(1), or 22.021, Penal Code, or who is serving a sentence under Section 12.42(c)(2), Penal Code [~~required under Section 508.145(e) to serve 35 calendar years before becoming eligible for release on parole~~], all members of the board must vote on the release on parole of the inmate, and at least two-thirds of the

release on parole. A member of the board may not vote on the release unless the member first receives a copy of a written report from the department on the probability that the inmate would commit an offense after being released on parole.

SECTION 3. Subchapter E, Chapter 508, Government Code, is amended by adding Section 508.1415 to read as follows:

Sec. 508.1415. ADDITIONAL PAROLE CONSIDERATIONS FOR YOUTHFUL OFFENDERS. (a) This section applies only to the consideration for release on parole of an inmate who:

(1) is eligible for release on parole; and
(2) was younger than 18 years of age at the time the offense for which the inmate is eligible for release on parole was committed.

(b) In determining whether to release an inmate described by Subsection (a) on parole, a parole panel shall assess the growth and maturity of the inmate, taking into consideration:

(1) the diminished culpability of juveniles as compared to that of adults; and
(2) the hallmark features of youth.

(c) In assessing an inmate's growth and maturity, a parole panel shall consider the following information about the inmate:

(1) age at the time of the offense;
(2) developmental stage at the time of the offense;
(3) family and community environment;
(4) ability to appreciate the risks and consequences of the conduct;
(5) intellectual capacity;
(6) if presented to the panel, the outcome of a comprehensive mental health evaluation that is conducted by a disinterested expert unaffiliated with the board, such as a psychiatrist or psychologist, who is qualified by education and clinical training in adolescent mental health issues and that includes:

(A) family interviews;
(B) family history;
(C) prenatal history;
(D) developmental history;
(E) medical history;
(F) history of treatment for substance use;
(G) social history; and

members must vote in favor of the release on parole. A member of the board may not vote on the release unless the member first receives a copy of a written report from the department on the probability that the inmate would commit an offense after being released on parole.

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(c) In assessing an inmate's growth and maturity, a parole panel shall consider the following information about the inmate:

(1) age at the time of the offense;
(2) developmental stage at the time of the offense;
(3) family and community environment;
(4) ability to appreciate the risks and consequences of the conduct;
(5) intellectual capacity;
(6) if presented to the panel, the outcome of a comprehensive mental health evaluation that is conducted by an expert unaffiliated with the board, such as a psychiatrist, psychologist, or psychiatric mental health advanced practice registered nurse, who is qualified by education and clinical training in adolescent mental health issues and that may include:

(A) family interviews;
(B) family history;
(C) prenatal history;
(D) developmental history;
(E) medical history;
(F) history of treatment for substance use;
(G) social history; and

(H) a psychological evaluation;
(7) peer or familial pressure;
(8) level of participation in the offense;
(9) inability to effectively communicate with defense counsel or to participate meaningfully in the defense of the case;
(10) capacity for rehabilitation;

(11) school records and special education evaluations;
(12) trauma history;
(13) faith and community involvement;
(14) involvement in the child welfare system; and
(15) any other mitigating factor or circumstance.

(d) The board may employ a psychiatrist or psychologist who is qualified by education and clinical training to:

(1) conduct an evaluation described by Subsection (c)(6), regardless of whether the evaluation is also conducted by a disinterested expert under that subdivision;
or

(2) assist a parole panel in performing its other duties under this section.

(e) The board shall adopt a policy to ensure that an inmate to whom this section applies is provided a meaningful opportunity to obtain release on parole. The policy must allow the following persons having knowledge of the inmate before the inmate committed the offense for which the inmate is eligible for parole or having knowledge of the inmate's growth and maturity after the offense was committed to submit statements regarding the inmate to the parole panel:

(1) family members and friends of the inmate;
(2) school personnel;
(3) faith leaders; and
(4) representatives of community-based organizations.

SECTION 4. Section 508.145, Government

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Substitute Document Number: 85R 18352

(H) a psychological evaluation;
(7) peer or familial pressure;
(8) level of participation in the offense;
(9) inability to effectively communicate with defense counsel or to participate meaningfully in the defense of the case;
(10) capacity for or demonstrations of rehabilitation;

(11) school records and special education evaluations;
(12) trauma history;
(13) faith and community involvement;
(14) involvement in the child welfare system; and
(15) any other mitigating factor or circumstance.

(d) The board may employ a psychiatrist, psychologist, or psychiatric mental health advanced practice registered nurse who is qualified by education and clinical training in adolescent mental health issues to:

(1) conduct an evaluation described by Subsection (c)(6), regardless of whether the evaluation is also conducted by an expert unaffiliated with the board under that subdivision; or

(2) assist a parole panel in performing its other duties under this section.

(e) The board shall adopt a policy establishing factors for a parole panel to consider when reviewing for release on parole an inmate to whom this section applies to ensure that the inmate is provided a meaningful opportunity to obtain release. The policy must allow persons having knowledge of the inmate before the inmate committed the offense for which the inmate is eligible for parole or having knowledge of the inmate's growth and maturity after the offense was committed to submit statements regarding the inmate to the parole panel, including:

(1) family members and friends of the inmate;
(2) school personnel;
(3) faith leaders; and
(4) representatives of community-based organizations.

(f) This section does not affect the rights granted under this chapter or Article 56.02, Code of Criminal Procedure, to a victim, guardian of a victim, or close relative of a deceased victim.

SECTION 3. Section 508.145, Government

17.122.908

Code, is amended by adding Subsection (d-2) to read as follows:

(d-2)(1) This subsection applies only to an inmate who:

(A) is serving a sentence for:

(i) an offense described by Article 42A.054(a), Code of Criminal Procedure;

(ii) an offense for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure;

(iii) an offense for which the punishment is increased under Section 481.134, Health and Safety Code; or

(iv) an offense under Section 20A.03, 21.02, 71.02, or 71.023, Penal Code; and

(B) was younger than 18 years of age at the time the offense was committed.

(2) Notwithstanding any other subsection of this section, an inmate described by Subdivision (1) is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 20 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

SECTION 5. Section 508.145(b), Government Code, is repealed.

SECTION 6. The change in law made by this Act applies to any inmate who is confined in a facility operated by or under contract with the Texas Department of Criminal Justice on or after the effective date of this Act, regardless of whether the offense for which the inmate is confined occurred before, on, or after the effective date of this Act.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

Code, is amended by adding Subsection (d-2) to read as follows:

(d-2)(1) This subsection applies only to an inmate who:

(A) is serving a sentence for:

(i) a capital or first degree felony described by Article 42A.054(a), Code of Criminal Procedure;

(ii) an offense under Section 20A.03, 21.02, or 71.023, Penal Code; or

(iii) a first degree felony under Section 71.02, Penal Code; and

(B) was younger than 18 years of age at the time the offense was committed.

(2) Notwithstanding any other subsection of this section, an inmate described by Subdivision (1) is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 20 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

SECTION 4. Sections 499.053(d) and 508.145(b), Government Code, are repealed.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.