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## TIME CUTS a/k/a SENTENCE REDUCTIONS

Thank you for contacting me about potential representation. The procedure for a commutation of sentence (also called a “time cut” or “sentence reduction”) is set out in §143.52 of Title 37 of the Texas Administrative Code. The Texas Board of Pardons and Paroles will consider recommending to the governor a commutation of sentence upon a request accompanied by the written recommendation of a majority of the trial officials. If the convicted person has the recommendation of two of the trial officials and no written communication is received from third trial official, the Board shall give the remaining trial official at least 10 days notice that such a clemency recommendation is being considered by the board (Texas Code of Criminal Procedure, Article 42.18, §8(i)).

In cases tried prior to the tenure of the present office-holders, the recommendation of persons holding such offices at the time of the trial of the case may be used to bolster and support the recommendation of the present trial officials, if in compliance with the requirements of subsection (d) of §143.52 of Title 37 of the Texas Administrative Code.

The requirements of a recommendation of trial officials for commutation of sentence must include the following:

- (1) a statement that the penalty now appears to be excessive;
- (2) a recommendation of a definite term now considered by the officials as just and proper; and
- (3) a statement of the reasons for the recommendation based upon facts directly related to the facts of the cases and in existence, but not available to, the court or jury at the time of the trial, or a statutory change in penalty for the crime which would appear to make the original penalty excessive.

Time cuts are very difficult. Often the trial officials are opposed to sentence reductions and will not provide letters of recommendation. Even if two of the three trial officials agree to recommend a time cut, the request still has to be approved by the Parole Board and then forwarded to the Governor for his approval. It is not a quick or easy process and there is no guarantee that you will prevail.

Statistics on time cut requests are as follows:

Description	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 **	2016	2017	2018 ***
Number of time cut applications the Board received from prisoners pursuant to §143.52 of the Texas Administrative Code	121	118	108	93	45	11	8	36	58	85	76	88	87	102	143	105	127	12
Number of applications that were in compliance with Texas Administrative Code §143.52 and were reviewed by the Board	4	6	1	1	2*	1	1	2	1	1	1	2	0	1	0	1	3	0
Number of applications that were not in compliance with Texas Administrative Code §143.52 and were therefore not reviewed by the Board	117	112	107	92	43	10	7	34	57	84	75	86	87	101	143	104	124	5
<b>Number of time cut requests that the Board recommended that the Governor grant</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>2*</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
Number of time cut requests that the Board recommended be denied or otherwise not granted	1	2	1	1	0	1	1	2	0	0	1	1	0	1	0	1	3	0
Number of compliant time cut applications currently pending before the Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0

\* One (1) Application received in calendar year 2004

\*\* As of December 23, 2015

\*\*\* As of February 28, 2018

According to the Office of the Governor, as of **June 3, 2016** the Governor’s statistics on time cut requests are as follows:

<b>Applicant</b>	<b>Date the Recommendation For a Time Cut Was Received from the Board</b>	<b>Governor’s Action On The Board’s Recommendation For a Time Cut</b>	
Emery Townsend	2001	Denied	2003
<b>Charles Garrett</b>	<b>2001</b>	<b>Granted</b>	<b>2002</b>
<b>Jack Glynn Smith</b>	<b>2001</b>	<b>Granted</b>	<b>2003</b>
Gilberto Flores	2002	Denied	2003
Yuri Townsend	2002	Denied	2003
Ronald Rust	2002	Denied	2003
Dana McCarty	2002	Denied	2003

According to the statistics, the Governor’s Office received seven (7) recommendations for Commutation of a Sentence pursuant to Section 143.52 of the Texas Administrative Code between the years 2001 and 2004.

The Governor received three (3) recommendations in 2001 and four (4) recommendations in 2002.

The Governor took two (2) years to deny Emery Townsend and one (1) year to deny Gilberto Flores, Yuri Townsend, Ronald Rust and Dana McCarty.

Of the two applications he granted, he took one (1) year to grant **Charles Garrett’s** application and two (2) years to grant **Jack Glynn Smith’s** application.

**Charles Garrett** was 60 years old when he was arrested in October 1998 on an outstanding warrant pending since 1970. He was convicted of possession of heroin and sentenced to life imprisonment, but he fled the state before being taken into custody. After fleeing, Garrett assumed a false identity, driver’s license and Social Security number. During the 28 years he was at large, he lived an otherwise model life. The Texas Board of Pardons and Paroles voted 14-4 to recommend Garrett’s sentence be commuted. In commuting the sentence to time served, Perry said: “Between the time he fled the state in 1970 and his arrest in 1998, Mr. Garrett remained drug free and was steadily employed, raised a family and paid taxes. Furthermore, had he been convicted for the same offense today, the maximum sentence he could have received is two years. Nonetheless, this state does not condone the fact that he left the state to avoid a criminal sentence and assumed a false identity – including obtaining a driver’s license and Social Security card under a false name.”

**Jack Glyn Smith** was serving a 10-year prison sentence after being convicted of aggravated robbery in 1994. He was one of three people who participated in the crime, but he cooperated with the police and prosecutors in the case. In exchange, Smith was offered a plea bargain that was to result in seven months in jail, two months in prison and 10 years on probation. After Smith's attorney missed the deadline for filing a motion for a new trial — as had been anticipated under the plea agreement — the trial court lost jurisdiction, and Smith began serving a straight 10-year sentence. The Texas Board of Pardons and Paroles voted 15-3 to recommend that the Governor approve Smith's commutation request. In addition, the judge in the case, Phillip Zeigler, Coryell County District Attorney Riley Simpson and Sheriff Roger Faught also urged the Governor to commute Smith's sentence to time served.

Governor Perry also commuted the sentence of **James Levi Byrd without a commutation recommendation from the Board of Pardons and Paroles**. Byrd was convicted of robbery and began serving a 30-year sentence in 1997. His older brother, Donnie Johnson, later confessed to the crime. Byrd and his brother both passed a polygraph examination and the **Texas Board of Pardons and Paroles voted 11-6 to recommend a full pardon based on innocence**. However Governor Perry exercised his option under law to grant a lesser form of clemency and instead commuted the sentence to "time served" which means that Byrd still has a felony conviction for robbery and, in the eyes of the law, is still guilty of the robbery.

The Governor defended his decision against granting a full pardon, as recommended by the Board, stating:

"The recommendations of the prosecutor, trial judge and sheriff for a pardon weighed heavily in my decision. I believe, however, that a full pardon for innocence must be supported by strong forensic evidence, such as DNA tests. There was no such evidence in this case."

# Texas Administrative Code

<b>Title 37</b>	<b>Public Safety and Corrections</b>
<b>Part 5</b>	<b>Texas Board of Pardons and Paroles</b>
<b>Chapter 143</b>	<b>Executive Clemency</b>
<b>Subchapter E</b>	<b>Commutation of Sentence</b>
<b>Rule 143.52</b>	<b>Commutation of Sentence, Felony or Misdemeanor</b>

- (a) The board will consider recommending to the governor a commutation of sentence upon a request accompanied by the written recommendation of a majority of the trial officials.
- (b) If the offender has the recommendation of two of the current trial officials and no written communication is received from the third trial official, the board shall give the remaining trial official notice that such a clemency recommendation is being considered by the board.
- (c) In cases tried prior to the tenure of the present office-holders, the recommendation of persons holding such offices at the time of the trial of the case may be used to bolster and support the recommendation of the current trial officials, if in compliance with the requirements of subsection (d) of this section.
- (d) The requirements of a recommendation of the current trial officials for commutation of sentence must include the following:
  - (1) a statement that the penalty now appears to be excessive;
  - (2) a recommendation of a definite term now considered by the officials as just and proper; and
  - (3) a statement of the reasons for the recommendation based upon facts directly related to the facts of the cases and in existence, but not available to, the court or jury at the time of the trial, or a statutory change in penalty for the crime which would appear to make the original penalty excessive.
- (e) If the offender is not confined in the TDCJ-CID, a certified copy of the judgment and sentence must be furnished.

Source Note: The provisions of this §143.52 adopted to be effective January 1, 1976; amended to be effective March 17, 1987, 12 TexReg 733; amended to be effective August 15, 1989, 14 TexReg 3812; amended to be effective February 18, 2009, 34 TexReg 1096; amended to be effective September 13, 2012, 37 TexReg 7191; **amended to be effective November 9, 2014, 39 TexReg 8599**