

By: Deshotel

H.B. No. 3816

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the execution of an innocent person as the subject of a  
3 court of inquiry.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Articles 52.01 (a)-(c), Code of Criminal  
6 Procedure, are amended to read as follows:

7 (a) When a judge of any district court of this state, acting  
8 in the judge's [~~his~~] capacity as magistrate, has probable cause to  
9 believe that an offense has been committed against the laws of this  
10 state or that an innocent person has been executed by the state, the  
11 judge [~~he~~] may request that the presiding judge of the  
12 administrative judicial district appoint a district judge to  
13 commence a Court of Inquiry. The district judge, who shall be  
14 appointed in accordance with Subsection (b), may summon and examine  
15 any witness in relation to the offense in accordance with the rules  
16 hereinafter provided, which procedure is defined as a "Court of  
17 Inquiry".

18 (b)(1) Before requesting the presiding judge to appoint a  
19 district judge to commence a Court of Inquiry, a judge must enter  
20 into the minutes of the judge's [~~his~~] court a sworn affidavit  
21 stating the substantial facts establishing probable cause that a  
22 specific offense has been committed against the laws of this state  
23 or that an innocent person has been executed by the state.

24 (2) After the affidavit has been entered into the

1 minutes of the judge's [~~his~~] court and a copy filed with the  
2 district clerk, the judge shall request the presiding judge of the  
3 administrative judicial district in which the affidavit is filed to  
4 appoint a district judge to commence the Court of Inquiry. The  
5 district judge appointed to commence the Court of Inquiry shall  
6 issue a written order commencing the Court of Inquiry and stating  
7 its scope. The presiding judge shall not name the judge who requests  
8 the Court of Inquiry to preside over the Court of Inquiry.

9 (c) The district or county attorney of the district or  
10 county in which the Court of Inquiry is held shall assist the  
11 district judge in conducting the Court of Inquiry. The attorney  
12 shall examine witnesses and evidence admitted before the court to  
13 determine if an offense has been committed or if an innocent person  
14 has been executed by the state and shall render other assistance to  
15 the judge as is necessary in the proceeding.

16 SECTION 2. Article 52.04(b), Code of Criminal Procedure, is  
17 amended to read as follows:

18 (b) If the Court of Inquiry pertains to an allegation that  
19 an offense has been committed arising out of the activities of a  
20 state governmental entity or its officers or employees, the  
21 officers and employees of that state governmental entity shall be  
22 indemnified for attorney's fees incurred as a result of exercising  
23 the employees' or officers' right to counsel under Subsection (a)  
24 if:

25 (1) the officer or employee is found not guilty after a  
26 trial or appeal or the complaint, information, or indictment is  
27 dismissed without a plea of guilty or nolo contendere being

1 entered; and

2 (2) the judge commencing the Court of Inquiry, or the  
3 judge to whom the Court of Inquiry was transferred pursuant to  
4 Article 52.01(e), determines that the complaint, information, or  
5 indictment presented against the person was dismissed because:

6 (A) the presentment was made on mistake, false  
7 information, or other similar basis, indicating absence of probable  
8 cause to believe, at the time of dismissal, the person committed the  
9 offense; or

10 (B) the complaint, information, or indictment  
11 was void.

12 SECTION 3. Article 52.08, Code of Criminal Procedure, is  
13 amended to read as follows:

14 Art. 52.08. CRIMINAL PROSECUTIONS; EXECUTIONS. (a) If it  
15 appears [~~appear~~] from a Court of Inquiry or any testimony adduced  
16 therein, that an offense has been committed, the Judge shall issue a  
17 warrant for the arrest of the offender as if complaint had been made  
18 and filed.

19 (b) If it appears from a Court of Inquiry or any testimony  
20 adduced in the court that an innocent person has been executed, the  
21 judge shall notify the governor and attorney general of that fact.

22 SECTION 4. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2007.