

## **BILL ANALYSIS**

C.S.H.B. 1736  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Thirty-eight individuals have been exonerated in Texas for crimes they did not commit. Although Texas law authorizes these individuals to be compensated \$50,000 per year served in prison, many who are exonerated do not receive the full benefit of this compensation. According to the Innocence Project, of those who are exonerated after being wrongfully imprisoned, most leave prison without immediate financial support; it can take months or years before restitution is forthcoming and some exonerees are never compensated. Those who do receive some financial compensation for their wrongful imprisonment often must live on a small amount of their compensation because of the legal expenses from the proceedings required to prove their innocence.

C.S.H.B. 1736 increases the lump-sum compensation for persons wrongfully convicted from \$50,000 to \$80,000 per year of incarceration. The bill sets the lump-sum compensation for persons wrongfully placed on probation or registered as sex offenders at \$25,000 per year. The bill includes time spent in city or county jail in the calculation of the lump sum, provides for annuity payments, and entitles the heirs, legal representatives, and estate of a deceased claimant to lump-sum compensation. The bill requires the state to provide the exonerees with health care and higher education.

### **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. 1736, the Tim Cole Act, amends the Civil Practice and Remedies Code to entitle the heirs, legal representatives, and estate of a deceased person who would be entitled to compensation for wrongful imprisonment because the person received a full pardon on the basis of innocence for the crime for which the person was sentenced or was granted relief on the basis of actual innocence of the crime for which the person was sentenced, if living, including a person who received a posthumous pardon, to lump-sum compensation due under provisions relating to compensation for wrongful imprisonment. The bill makes conforming changes to reflect the entitlement.

C.S.H.B. 1736 increases the lump-sum compensation to which a person found to be wrongfully imprisoned is entitled from \$50,000 multiplied by the number of years served in prison to \$80,000 multiplied by the number of years served in prison expressed as a fraction to reflect partial years. The bill entitles a person found to be wrongfully imprisoned who, after serving a sentence in a Texas prison, was released on parole or required to register as a sex offender under the sex offender registration program to compensation in an amount equal to \$25,000 multiplied by the number of years served either on parole or as a registered sex offender, expressed as a fraction to reflect partial years. The bill entitles a claimant for compensation for wrongful imprisonment, if requested by the claimant, to payment for up to 120 hours of tuition at a career center, community college, or state university. The bill removes language entitling a person wrongfully imprisoned and sentenced to death to compensation in an amount equal to \$100,000

multiplied by the number of years served in prison, expressed as a fraction to reflect partial years. The bill removes the requirement that a person who is owed compensation for wrongful imprisonment equal to or greater than \$50,000 be paid that compensation in two equal annual installments. The bill authorizes a claimant who is entitled to compensation because the person has served in whole or in part a sentence in prison under Texas law and either received a pardon or was granted relief on the basis of innocence for the crime for which the person was sentenced, to participate in the group benefits program under the Texas Employees Group Benefits Act on application by the claimant in a manner prescribed by the board of trustees of the Employee Retirement System of Texas and provides that the claimant is automatically covered by the basic coverage for annuities provided under that act. The bill entitles a claimant who participates in the group benefits program to receive state contributions for the full cost of the premiums. The bill removes the requirement that the Department of Aging and Disability Services provide appropriate counseling for one year to a claimant at a mutually agreed location at no charge to the claimant, if requested by the claimant.

C.S.H.B. 1736 entitles a person who is entitled to compensation because of wrongful imprisonment to annuity payments for that compensation based on a present value sum equal to the amount of lump-sum compensation to which the person is entitled. The bill provides that these annuity payments are payable in equal monthly installments for the life of the claimant and must be based on a five percent per annum interest rate and other actuarial factors within the discretion of the comptroller of public accounts. The bill prohibits the acceleration, deferment, increase, or decrease of the annuity payments and prohibits the applicant for compensation from selling, mortgaging, or otherwise encumbering or anticipating the payments, wholly or partly, by assignment or otherwise.

C.S.H.B. 1736 requires a claim for lump-sum compensation payable because of wrongful imprisonment to survive the death of the claimant in favor of the heirs, legal representatives, and estate of the claimant. The bill requires the comptroller to begin making annuity payments to a claimant on the first anniversary of the date of payment of the compensation due. The bill removes the requirement that the comptroller pay the lump-sum compensation amount in two installments by specified dates. The bill specifies that annuity payments, rather than payments for compensation other than compensation for child support, being made to a person because of wrongful imprisonment terminate on the date of the person's death.

C.S.H.B. 1736 repeals provisions authorizing a person to bring a suit against the state for compensation for wrongful imprisonment. The bill requires the comptroller to begin making payments to a claimant not later than the 30th day after the date the comptroller determines the claimant is eligible to receive compensation for wrongful imprisonment. The bill makes its provisions regarding annuity payments applicable to a person who received compensation for wrongful imprisonment before September 1, 2009, if the person were to receive such compensation on September 1, 2009.

C.S.H.B. 1736 reenacts and amends Section 103.051(a), Civil Practice and Remedies Code, as amended by Chapters 1190 (H.B. 814) and 1388 (S.B. 1719), Acts of the 80th Legislature, Regular Session, 2007, to include in the documents a claimant for compensation for wrongful imprisonment is required to file with the comptroller's judiciary section a statement provided by a county or municipality that incarcerated the person on whose imprisonment the claim is based in connection with the relevant sentence verifying the length of the incarceration, a statement from the Department of Public Safety verifying registration as a sex offender and length of registration, if applicable, and a statement from the Texas Department of Criminal Justice verifying the length of time spent on parole, if applicable.

C.S.H.B. 1736 repeals the following provisions of the Civil Practice and Remedies Code:

- Section 103.002
- Subchapter C, Chapter 103

- Section 103.152(c)

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1736 differs from the original by referencing the provisions of the substitute as the Tim Cole Act. The substitute adds a provision not in the original entitling the heirs, legal representatives, and estate of a deceased person who would be entitled to compensation for wrongful imprisonment if living, including a person who received a posthumous pardon, to lump-sum compensation and makes conforming changes and clarifying changes to reflect the addition.

C.S.H.B. 1736 differs from the original by clarifying that the compensation for child support payments that a wrongfully imprisoned person is entitled to applies to the person on whose imprisonment the claim is based. The substitute differs from the original by clarifying that a claimant's authorization to participate in the group benefits program under the Texas Employees Group Benefits Act on application by the claimant in a manner prescribed by the board of trustees of the Employee Retirement System of Texas applies to a claimant who is entitled to compensation if the person has been wrongfully imprisoned. The substitute removes a provision from the original specifying that eligibility to participate in the group benefits program does not extend to the claimant's dependents.

C.S.H.B. 1736 differs from the original by entitling a person entitled to compensation for the person's wrongful imprisonment, rather than a person entitled to lump-sum and certain other compensation for wrongful imprisonment as in the original, to annuity payments.