

By: Gallego

H.B. No. 3584

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the wrongful imprisonment of a person and to procedures
3 for providing compensation for that imprisonment and for
4 exonerating a wrongfully imprisoned person who is deceased.

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

6 SECTION 1. This Act shall be known as the Tim Cole
7 Posthumous Exonerations Act.

8 SECTION 2. Section 103.001, Civil Practice and Remedies
9 Code, is amended by adding Subsection (c) to read as follows:

10 (c) If a deceased person would be entitled to compensation
11 under Subsection (a)(2)(A) if living, the person's surviving
12 spouse, child, or parent is entitled to compensation under this
13 chapter.

14 SECTION 3. Section 103.003, Civil Practice and Remedies
15 Code, is amended to read as follows:

16 Sec. 103.003. LIMITATION ON TIME TO FILE. Not later than
17 the third anniversary of the date the person on whose imprisonment
18 the claim is based received the pardon or was found not guilty as
19 required by Section 103.001, a person seeking compensation under
20 this chapter must:

21 (1) file an application with the comptroller for
22 compensation under Subchapter B; or

23 (2) file suit against the state for compensation under
24 Subchapter C.

1 SECTION 4. Section 103.051, Civil Practice and Remedies
2 Code, is amended by reenacting and amending Subsection (a), as
3 amended by Chapters 1190 (H.B. 814) and 1388 (S.B. 1719), Acts of
4 the 80th Legislature, Regular Session, 2007, and by amending
5 Subsection (b-1) to read as follows:

6 (a) To apply for compensation under this subchapter, the
7 claimant must file with the comptroller's judiciary section:

8 (1) an application for compensation provided for that
9 purpose by the comptroller;

10 (2) a verified copy of the pardon or court order
11 justifying the application for compensation; ~~and~~

12 (3) a statement provided by the Texas Department of
13 Criminal Justice verifying the length of imprisonment; and

14 (4) [incarceration (5)] if the claimant is applying
15 for compensation under Section 103.052(a)(2), a certified copy of
16 each child support order under which child support payments became
17 due during the time ~~[the claimant]~~ by the person on
18 whose imprisonment the claim is based and copies of the official
19 child support payment records described by Section 234.009, Family
20 Code, for that period.

21 (b-1) In determining the eligibility of a claimant, the
22 comptroller shall consider only the verified copy of the pardon or
23 court order filed by the claimant under Subsection (a). If the
24 pardon or court order does not clearly indicate on its face that the
25 pardon or the court order was granted or rendered on the basis of
26 ~~[the claimant's]~~ actual innocence ~~[of the crime for which the~~
27 ~~claimant was sentenced]~~, the comptroller shall deny the claim. The

1 comptroller's duty to determine the eligibility of a claimant under
2 this section is purely ministerial.

3 SECTION 5. Sections 103.052(a), (a-1), and (c), Civil
4 Practice and Remedies Code, are amended to read as follows:

5 (a) A person who meets the requirements of Section 103.001
6 is entitled to compensation in an amount equal to:

7 (1) \$50,000 multiplied by the number of years served
8 in prison, expressed as a fraction to reflect partial years; and

9 (2) compensation for child support payments owed by
10 the person on whose imprisonment the claim is based that became due
11 and interest on child support arrearages that accrued during the
12 time served in prison but were not paid.

13 (a-1) Notwithstanding Subsection (a)(1), a person sentenced
14 to death who meets the requirements of Section 103.001, or a
15 claimant whose claim is based on that person's imprisonment, is
16 entitled to compensation in an amount equal to \$100,000 multiplied
17 by the number of years served in prison, expressed as a fraction to
18 reflect partial years.

19 (c) If requested by a ~~[the]~~ claimant described by Section
20 103.001(a), the Texas Department of Mental Health and Mental
21 Retardation shall provide appropriate counseling for one year to
22 the claimant at a mutually agreed-on location at no charge to the
23 claimant.

24 SECTION 6. Section 103.103, Civil Practice and Remedies
25 Code, is amended to read as follows:

26 Sec. 103.103. INSUFFICIENT STATE DEFENSES. The following
27 are not defenses to an action brought under this chapter:

1 (1) the judgment of conviction in the trial that
2 resulted in the [~~claimant's~~] imprisonment on which the claim is
3 based; or

4 (2) an indictment, information, complaint, or other
5 formal accusation.

6 SECTION 7. Section 103.104(a), Civil Practice and Remedies
7 Code, is amended to read as follows:

8 (a) In the suit, the court may admit as evidence the record
9 of the trial at which the person on whose imprisonment the claim is
10 based [~~petitioner~~] was convicted and the pardon or proclamation
11 issued to [~~the petitioner~~] by the governor, if applicable.

12 SECTION 8. Section 103.1041, Civil Practice and Remedies
13 Code, is amended to read as follows:

14 Sec. 103.1041. REQUIRED EVIDENCE. A claimant who brings a
15 suit under this subchapter for compensation under Section
16 103.052(a)(2) must submit to the court as evidence a certified copy
17 of each child support order under which child support payments
18 became due during the time the person on whose imprisonment the
19 claim is based [~~claimant~~] served in prison and copies of the
20 official child support payment records described by Section
21 234.009, Family Code, for that period.

22 SECTION 9. Sections 103.105(a) and (b), Civil Practice and
23 Remedies Code, are amended to read as follows:

24 (a) If the trier of fact finds that the petitioner is
25 entitled to compensation, the petitioner is entitled to:

26 (1) expenses incurred by the imprisoned person
27 [~~petitioner~~] in connection with all associated criminal

1 proceedings and appeals and in connection with obtaining the
2 person's [~~petitioner's~~] discharge from imprisonment, including any
3 fine or court costs paid and reasonable attorney's fees, including
4 reasonable attorney's fees for prosecuting the lawsuit under this
5 subchapter;

6 (2) wages, salary, or other earned income of the
7 imprisoned person that was lost as a direct result of the arrest,
8 prosecution, conviction, or wrongful imprisonment;

9 (3) medical and counseling expenses incurred by the
10 imprisoned person [~~petitioner~~] as a direct result of the arrest,
11 prosecution, conviction, or wrongful imprisonment; and

12 (4) child support payments owed by the imprisoned
13 person [~~petitioner~~] that became due and interest on child support
14 arrearages that accrued during the time served in prison but were
15 not paid.

16 (b) In determining the sum of money owed to the petitioner,
17 the trier of fact may not deduct any expenses incurred by the state
18 or any of its political subdivisions in connection with the arrest,
19 prosecution, conviction, and wrongful imprisonment of the person on
20 whose imprisonment the claim is based [~~petitioner~~], including
21 expenses for food, clothing, shelter, and medical services.

22 SECTION 10. Section 103.152(c), Civil Practice and Remedies
23 Code, is amended to read as follows:

24 (c) The amount of compensation awarded under Section
25 103.105(a)(4) must be paid on the imprisoned person's [~~claimant's~~]
26 behalf in a lump-sum payment to the state disbursement unit, as
27 defined by Section 101.0302, Family Code, for distribution to the

1 obligee under the child support order.

2 SECTION 11. Section 103.153(b), Civil Practice and Remedies
3 Code, is amended to read as follows:

4 (b) A person who receives compensation under this chapter
5 may not bring any action involving the same subject matter,
6 including an action involving the ~~[person's]~~ arrest, conviction, or
7 length of confinement of the person on whose imprisonment the claim
8 is based, against any governmental unit or an employee of any
9 governmental unit.

10 SECTION 12. Section 103.154, Civil Practice and Remedies
11 Code, is amended by amending Subsection (b) and adding Subsection
12 (b-1) to read as follows:

13 (b) Compensation ~~[Except as provided by Subsection (c),~~
14 ~~compensation]~~ payments to a person described by Section 103.001(a)
15 continue after ~~[under this chapter terminate on]~~ the date of the
16 person's death. Any payments scheduled to be paid after that date
17 shall be paid to ~~[are credited to the state and may not be paid to~~
18 ~~any other person, including]~~ the person's surviving spouse, heirs,
19 devisees, or beneficiaries under the person's will, or to the
20 person's estate.

21 (b-1) Except as provided by Subsection (c), compensation
22 payments to a person entitled to compensation under Section
23 103.001(c) terminate on the date of the person's death. Any
24 payments scheduled to be paid after that date are credited to the
25 state and may not be paid to any other person, including the
26 person's surviving spouse, heirs, devisees, or beneficiaries under
27 the person's will, or to the person's estate.

1 SECTION 13. Article 38.43(d), Code of Criminal Procedure,
2 is amended to read as follows:

3 (d) The attorney representing the state, clerk, or other
4 officer in possession of evidence described by Subsection (b) may
5 destroy the evidence, but only if the attorney, clerk, or officer:

6 (1) by mail notifies the following persons or entities
7 of the decision to destroy the evidence:

8 (A) the defendant or, if the defendant is
9 deceased, the surviving spouse of the defendant, if any, and each
10 surviving child or parent, if any, of the defendant;

11 (B) [~~7~~] the last attorney of record for the
12 defendant; [~~7~~] and

13 (C) the convicting court; [~~of the decision to~~
14 ~~destroy the evidence~~] and

15 (2) does not receive [~~a written objection is not~~
16 ~~received by the attorney, clerk, or officer~~] from a person or entity
17 entitled to notice under Subdivision (1) a written objection [~~the~~
18 ~~defendant, attorney of record, or court~~] before the 91st day after
19 the later of the following dates:

20 (A) [~~(1)~~] the date on which the attorney
21 representing the state, clerk, or other officer receives proof that
22 the defendant or, if applicable, the surviving spouse, child, and
23 parent of the defendant, received notice of the planned destruction
24 of evidence; or

25 (B) [~~(2)~~] the date on which notice of the planned
26 destruction of evidence is mailed to the last attorney of record for
27 the defendant.

1 SECTION 14. Chapter 48, Code of Criminal Procedure, is
2 amended by adding Article 48.06 to read as follows:

3 Art. 48.06. APPLICATION FOR POSTHUMOUS PARDON FOR ACTUAL
4 INNOCENCE. (a) An application for a pardon under this article may
5 be submitted by the surviving spouse, if any, or a surviving child
6 or parent of an individual who:

7 (1) has been convicted of a criminal offense under the
8 laws of this state; and

9 (2) at the time of application is deceased.

10 (b) On receipt of an application under this article
11 accompanied by a sworn affidavit described by Subsection (c), the
12 Board of Pardons and Paroles shall consider recommending to the
13 governor a posthumous pardon for actual innocence for the
14 individual on whose behalf the application is filed.

15 (c) A sworn affidavit accompanying an application for a
16 posthumous pardon under this article must be signed by an applicant
17 described by Subsection (a) and must contain:

18 (1) specific facts regarding the offense of which the
19 individual on whose behalf the application is filed was convicted
20 that:

21 (A) were not admitted into evidence during the
22 individual's trial; and

23 (B) if proven, establish the individual's actual
24 innocence of the offense; or

25 (2) a statement that the convicting court has made a
26 finding under Article 64.04 that, had the results of forensic DNA
27 testing performed under Chapter 64 been available during the trial

1 of the offense of which the individual on whose behalf the
2 application is filed was convicted, it is reasonably probable that
3 the individual would not have been convicted.

4 SECTION 15. Chapter 55, Code of Criminal Procedure, is
5 amended by adding Article 55.011 to read as follows:

6 Art. 55.011. EXPUNCTION FOLLOWING POSTHUMOUS PARDON FOR
7 ACTUAL INNOCENCE. An individual who obtains for a deceased
8 individual a posthumous pardon for actual innocence as described by
9 Article 48.06 may file on behalf of that deceased individual an ex
10 parte petition for expunction under Section 2 or 2a, Article 55.02.
11 If the court finds that the deceased individual would be entitled to
12 expunction of any record or file that is the subject of the
13 petition, the court shall enter an order directing expunction.

14 SECTION 16. Articles 64.01(a) and (c), Code of Criminal
15 Procedure, are amended to read as follows:

16 (a) A convicted person or, if the convicted person is
17 deceased, the surviving spouse of the deceased person, if any, or a
18 surviving child or parent of the deceased person, may submit to the
19 convicting court a motion for forensic DNA testing of evidence
20 containing biological material. The motion must be accompanied by
21 an affidavit, sworn to by the [~~convicted~~] person submitting the
22 motion, containing statements of fact in support of the motion.

23 (c) A convicted person, other than a convicted person who is
24 deceased, is entitled to counsel during a proceeding under this
25 chapter. The convicting court shall appoint counsel for the
26 convicted person if the person informs the court that the person
27 wishes to submit a motion under this chapter, the court finds

1 reasonable grounds for a motion to be filed, and the court
2 determines that the person is indigent. Counsel must be appointed
3 under this subsection not later than the 45th day after the date the
4 court finds reasonable grounds or the date the court determines
5 that the person is indigent, whichever is later. Compensation of
6 counsel is provided in the same manner as is required by:

7 (1) Article 11.071 for the representation of a
8 petitioner convicted of a capital felony; and

9 (2) Chapter 26 for the representation in a habeas
10 corpus hearing of an indigent defendant convicted of a felony other
11 than a capital felony.

12 SECTION 17. Articles 64.03(a), (b), (c), and (d), Code of
13 Criminal Procedure, are amended to read as follows:

14 (a) A convicting court may order forensic DNA testing under
15 this chapter only if:

16 (1) the court finds that:

17 (A) the evidence:

18 (i) still exists and is in a condition
19 making DNA testing possible; and

20 (ii) has been subjected to a chain of
21 custody sufficient to establish that it has not been substituted,
22 tampered with, replaced, or altered in any material respect; and

23 (B) identity was or is an issue in the case; and

24 (2) the [~~convicted~~] person submitting the motion
25 establishes by a preponderance of the evidence that:

26 (A) the convicted person would not have been
27 convicted if exculpatory results had been obtained through DNA

1 testing; and

2 (B) the request for the proposed DNA testing is
3 not made to unreasonably delay the execution of sentence or
4 administration of justice.

5 (b) If a [A] convicted person [~~who~~] pleaded guilty or nolo
6 contendere or, whether before or after conviction, made a
7 confession or similar admission in the case:

8 (1) any person authorized to submit a motion under
9 this chapter may submit the [~~a~~] motion; and

10 (2) [~~under this chapter, and~~] the convicting court is
11 prohibited from finding that identity was not an issue in the case
12 solely on the basis of that plea, confession, or admission, as
13 applicable.

14 (c) If the convicting court finds in the affirmative the
15 issues listed in Subsection (a)(1) and the [~~convicted~~] person
16 submitting the motion meets the requirements of Subsection (a)(2),
17 the court shall order that the requested forensic DNA testing be
18 conducted. The court may order the test to be conducted by:

19 (1) the Department of Public Safety;

20 (2) a laboratory operating under a contract with the
21 department; or

22 (3) on the request of the [~~convicted~~] person
23 submitting the motion, another laboratory if that laboratory is
24 accredited under Section 411.0205, Government Code.

25 (d) If the convicting court orders that the forensic DNA
26 testing be conducted by a laboratory other than a Department of
27 Public Safety laboratory or a laboratory under contract with the

1 department, the State of Texas is not liable for the cost of testing
2 under this subsection unless good cause for payment of that cost has
3 been shown. A political subdivision of the state is not liable for
4 the cost of testing under this subsection, regardless of whether
5 good cause for payment of that cost has been shown. If the court
6 orders that the testing be conducted by a laboratory described by
7 this subsection, the court shall include in the order requirements
8 that:

9 (1) the DNA testing be conducted in a timely and
10 efficient manner under reasonable conditions designed to protect
11 the integrity of the evidence and the testing process;

12 (2) the DNA testing employ a scientific method
13 sufficiently reliable and relevant to be admissible under Rule 702,
14 Texas Rules of Evidence; and

15 (3) on completion of the DNA testing, the results of
16 the testing and all data related to the testing required for an
17 evaluation of the test results be immediately filed with the court
18 and copies of the results and data be served on the [~~convicted~~]
19 person submitting the motion and the attorney representing the
20 state.

21 SECTION 18. Article 64.04, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 64.04. FINDING. After examining the results of testing
24 under Article 64.03, the convicting court shall hold a hearing and
25 make a finding as to whether, had the results been available during
26 the trial of the offense, it is reasonably probable that the
27 convicted person would not have been convicted.

1 SECTION 19. (a) Except as provided by this section, Chapter
2 103, Civil Practice and Remedies Code, as amended by this Act,
3 applies only to an application or action for compensation under
4 that chapter filed on or after the effective date of this Act. An
5 application or action filed before the effective date of this Act is
6 governed by the law in effect immediately before that date, and the
7 former law is continued in effect for that purpose.

8 (b) Section 103.001(c), Civil Practice and Remedies Code,
9 as added by this Act, applies only to an application or action for
10 compensation under Chapter 103, Civil Practice and Remedies Code,
11 as amended by this Act, based on a pardon issued on or after the
12 effective date of this Act.

13 SECTION 20. (a) Article 38.43(d), Code of Criminal
14 Procedure, as amended by this Act, applies only to the destruction
15 of evidence that occurs on or after the effective date of this Act.
16 The destruction of evidence that occurs before the effective date
17 of this Act is governed by the law in effect when the evidence was
18 destroyed, and the former law is continued in effect for that
19 purpose.

20 (b) Chapter 64, Code of Criminal Procedure, as amended by
21 this Act, applies only to a motion for forensic DNA testing filed on
22 or after the effective date of this Act. A motion filed before the
23 effective date of this Act is covered by the law in effect when the
24 motion was filed, and the former law is continued in effect for that
25 purpose.

26 SECTION 21. This Act takes effect September 1, 2009.