

BILL ANALYSIS

C.S.H.B. 115
By: McClendon
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A failure occurs in the criminal justice system when a person convicted of a crime is determined through post-conviction DNA testing or the discovery of new evidence to have been innocent of the crime. The number of exonerations in Texas has increased since a previous legislature enacted legislation authorizing a convicted person to request a motion for DNA testing in the person's case. Currently, the Texas criminal justice system does not have the institutional means to adequately evaluate wrongful convictions or the factors contributing to those convictions. Wrongful convictions have been attributed to false eyewitness identifications, unreliable or limited science, false confessions, forensic science misconduct, government misconduct, unreliable informants, and ineffective legal representation for defendants. A wrongful conviction can lead to the loss of an innocent person's family, employment, and parental rights and can also affect the families and friends of the innocent individual.

C.S.H.B. 115 creates the Texas Innocence Commission to thoroughly investigate all post-conviction exonerations to ascertain errors and defects in the criminal procedures used to prosecute the defendant's case at issue, identify errors and defects in the criminal justice process in Texas generally, develop solutions and methods to correct the identified errors and defects, and identify procedures and programs to prevent future wrongful convictions. The establishment of this commission will cast light on the causes of wrongful convictions, promote the adoption of positive reforms to enhance the accuracy of criminal investigations, strengthen the reliability of criminal prosecutions, protect the innocent, and enhance public safety.

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. 115 amends the Code of Criminal Procedure to create the Texas Innocence Commission. The bill specifies that the commission is composed of nine members to be appointed by the governor not later than the 60th day after the bill's effective date. The bill requires appointments to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. The bill provides for staggered six-year terms of office for commissioners with one-third of the commissioners' terms expiring February 1 of each odd-numbered year, sets out procedures for filling vacancies, and provides for annual election of the presiding officer and for the location, time, and procedures of the commission's meetings, hearings, and other proceedings. The bill requires the governor to appoint three initial commission members to terms expiring February 1, 2013, three to terms expiring February 1, 2015, and three to terms expiring February 1, 2017.

C.S.H.B. 115 sets out member qualifications, provides grounds for the removal of a commission member, lists information to be provided in the required training program for commission members, and subjects the commission to review under the Texas Sunset Act and to abolishment

on September 1, 2023, unless continued in existence by that act.

C.S.H.B. 115 requires the commission to make thorough review or investigation of all cases in which an innocent person was convicted and exonerated, including convictions vacated based on a plea to time served, in order to identify the causes of wrongful convictions; ascertain errors and defects in the laws, rules, proof, and procedures applied in prosecuting the defendant's case at issue or implicated by each identified cause of wrongful convictions; identify errors and defects in the criminal justice process in Texas generally, using peer-reviewed research, expert analysis, and demographic data; consider and develop solutions and methods to correct the identified errors and defects through legislation, rule, regulation, or procedural changes; and identify procedures, programs, and educational or training opportunities demonstrated to eliminate or minimize the causes of wrongful convictions and prevent the future occurrence of wrongful convictions and resulting executions. The bill requires the commission to consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution. The bill authorizes the commission to enter into contracts for research and professional services to facilitate the work and activities of the commission or complete the investigation of a particular post-exoneration case, including forensic testing and autopsies.

C.S.H.B. 115 requires the commission to compile a detailed annual report of its findings and recommendations, including any proposed legislation and rule or policy changes necessary or appropriate to implement procedures and programs to prevent the causes and occurrence of future wrongful convictions or executions, and authorizes the commission to compile interim reports for the same or similar purpose. The bill requires official annual and interim reports to be made available to the public on request and to be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature not later than December 1 of each even-numbered year, or not later than the 60th day after the issuance of the report, whichever occurs first. The bill authorizes the findings and recommendations contained in the commission's official reports to be used as evidence in any subsequent civil or criminal proceeding, according to the applicable procedural and evidentiary rules for the tribunal in which a particular matter is or may be pending. The bill exempts from public disclosure requirements under the public information law working papers and records prepared or maintained by the commission, members, or staff in performing the commission's duties and certain other records that are held by another entity, considered confidential, and received by the commission in connection with the performance of its functions.

C.S.H.B. 115 authorizes the commission to apply for and accept gifts, grants, and donations from certain charitable organizations, federal programs, and private individuals or entities, as applicable, sets out requirements for the acceptance and reporting of the gifts, grants, and donations, and authorizes the commission to authorize and disburse subgrants of funds from those funds for purposes relating to the commission's activities. The bill prohibits a member of the commission from receiving compensation for the services provided as a member and entitles a member to reimbursement by the commission for the member's actual and necessary expenses incurred in performing commission duties, subject to the availability of general revenue funds authorized to be appropriated to the commission.

C.S.H.B. 115 requires the Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin to assist the commission in performing its duties and authorizes the commission to request the assistance of other state agencies and officers in carrying out its functions. The bill authorizes the commission or its designee to inspect the records, documents, and files of any state agency in carrying out its duties.

C.S.H.B. 115 exempts the commission from general provisions of law regarding state agency advisory committees.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 115 omits provisions in the original establishing legislative findings. The substitute differs from the original by providing for staggered six-year terms of office for Texas Innocence Commission members with one-third of the members' terms expiring February 1 of each odd-numbered year, whereas the original provides for four-year regular terms of office with the initial members of each of three classes of three members being chosen respectively for terms of one, two, and four years. The substitute differs from the original by requiring the governor to appoint a replacement to fill the unexpired portion of a commissioner's term in the event of a vacancy, whereas the original provides for interim vacancies to be filled in the same manner as vacancies due to expiration of a full term, but only for the unexpired portion. The substitute omits a provision in the original specifying that a quorum for purposes of the commission's proceedings consists of five commission members. The substitute differs from the original in the bill provision subjecting the commission to review under the Texas Sunset Act by providing for the abolishment date of the commission under the act, whereas the original provides no such date. The substitute differs from the original by authorizing the commission to receive donations from private individuals and entities, whereas the original authorizes the commission to receive contributions from those entities. The substitute contains a provision not included in the original requiring the governor to appoint the initial members of the commission to terms expiring in February of certain odd-numbered years. The substitute differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.