

BILL ANALYSIS

Senate Research Center
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H.B. 3078
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many persons are prosecuted for crimes they commit as a result of coercion or duress related to human trafficking or family violence. Although this is an affirmative defense under current law, many defendants do not have access to adequate legal representation and do not present this defense. Such persons are not only incarcerated improperly, but also are barred from appealing their case on these grounds because the issue was not raised at the trial court level. Accordingly, their only available recourse is being granted clemency by the governor.

H.B. 3078 would direct the governor to appoint a panel of experts within the Board of Pardons and Paroles to develop an application process for incarcerated persons seeking a pardon for a criminal act they would not have committed but for coercion or duress related to human trafficking or family violence. The panel would review such applications and make recommendations to the governor regarding survivors who should be granted of clemency. This would allow the governor to make informed decisions based on the opinions of persons with an expertise regarding trafficking and family violence, thereby creating a fair process for persons convicted of crimes in situations where they were the victim, not the perpetrator, to seek justice.

H.B. 3078 amends current law relating to the review of clemency applications from certain persons who were victims of human trafficking or family violence.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 48, Code of Criminal Procedure, by adding Article 48.015, as follows:

Art. 48.015. CLEMENCY REVIEW PANEL FOR CERTAIN OFFENSES. (a) Defines "board" to mean the Board of Pardons and Paroles (BPP) and defines "family violence" for purposes of this article.

(b) Requires BPP, in consultation with the governor, to appoint a panel of experts (panel) to review an application for clemency submitted under this article from a person who was convicted of an offense committed while under duress or coercion as a result of being the victim of an offense under Chapter 20A (Trafficking of Persons), Penal Code, or an offense punishable under Section 22.01(b)(2) (relating to a certain offense being a Class A misdemeanor if the offense is committed against a certain person), Penal Code.

(c) Provides that the panel consists of the following members:

(1) a person who is a survivor of an offense under Chapter 20A, Penal Code, or an offense punishable under Section 22.01(b)(2), Penal Code, and who has previous involvement in the criminal justice system as a result of one or more of those offenses;

(2) a behavioral health care specialist who represents the interests of survivors of human trafficking or family violence;

(3) a social worker licensed in this state who has experience in counseling survivors of human trafficking or family violence;

(4) a representative of certain entities;

(5) a current or former prosecutor who has experience in prosecuting cases involving human trafficking or family violence;

(6) a current or former defense attorney who has experience representing survivors of human trafficking or family violence; and

(7) a member of BPP who has experience in addressing the needs of survivors of human trafficking or family violence.

(d) Requires BPP, in appointing a member described by Subsection (c)(2), to give priority to a specialist who has experience in developing or administering a screening tool for survivors of human trafficking or family violence.

(e) Requires BPP, in consultation with the panel, to develop an application process and form for persons described by Subsection (b) to apply for clemency. Requires BPP to publish the application form on the its Internet website. Authorizes an application for clemency to include written recommendations from a majority of trial officials, as defined by rule by BPP, currently serving in the county in which the person was convicted.

(f) Requires BPP, on receipt of an application for clemency under this article, to immediately submit the application to the panel for review. Requires the panel to review the application and, not later than six months after the date the panel received the application, advise BPP on making a recommendation to the governor regarding whether to grant clemency to the applicant.

SECTION 2. Requires BPP, in consultation with the governor, not later than December 1, 2019, to appoint the panel described by Article 48.015, Code of Criminal Procedure, as added by this Act.

SECTION 3. Effective date: September 1, 2019.