

## **BILL ANALYSIS**

H.B. 3247  
By: Cain  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The issue of prosecutorial misconduct has gained national attention in recent years as a growing number of wrongful convictions have been overturned due to the actions of prosecutors. According to the National Registry of Exonerations, prosecutorial misconduct was a factor in 54 percent of wrongful convictions that were later overturned between 1989 and 2019. Examples of prosecutorial misconduct include withholding exculpatory evidence, coercing witnesses to testify falsely, and using false or misleading evidence. H.B. 3247 aims to hold prosecutors accountable for wrongful actions and provide a legal mechanism for innocent defendants to seek justice by creating a new criminal offense specifically for prosecutorial misconduct.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

H.B. 3247 amends the Penal Code to create the second degree felony offense of prosecutorial misconduct for the following:

- a person who is an attorney representing the state in a criminal action or working on behalf of such an attorney in a criminal action and the following conditions exist:
  - the person intentionally destroys, withholds from the defendant, or otherwise fails to disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information that is in the possession, custody, or control of the state, tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged that the person is required under state discovery law to disclose;
  - the defendant is actually innocent of the offense with which the defendant is charged; and
  - the previously described criminal conduct was a substantial contributing factor to the wrongful conviction of the defendant; or
- a person who is an attorney representing the state in a criminal action and intentionally obstructs the exoneration of a defendant for an offense of which the person knows the defendant was actually innocent and wrongfully convicted.

If conduct constituting the bill's offense also constitutes another Penal Code offense, the actor may be prosecuted for either offense or both offenses.

**EFFECTIVE DATE**

September 1, 2023.