

BILL ANALYSIS

C.S.S.B. 21
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The State Commission on Judicial Conduct (SCJC) was created to protect the public, promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and encourage judges to maintain high standards of conduct both on and off the bench. In recent years, there has been a lack of consistency surrounding reviewal timelines for complaints submitted to the SCJC. Additionally, the SCJC is currently limited in the types of complaints that it is allowed to review and the punishments that it may issue for judicial misconduct. C.S.S.B. 21 would expand the ability of the SCJC and the legislature to examine judicial decisions that have an immediate effect on public safety and individual liberties. The bill also makes changes to timelines for action on complaints filed with the SCJC and limits the eligibility of disciplined judges to be assigned as visiting judges.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Commission on Judicial Conduct in SECTION 8 of this bill.

ANALYSIS

C.S.S.B. 21 amends the Government Code to revise provisions establishing timelines for action on a complaint filed with the State Commission on Judicial Conduct (SCJC). The bill removes the requirement for SCJC staff, not later than the 120th day after the date a complaint is filed with the SCJC, to prepare and file with each SCJC member a report detailing the investigation of the complaint and recommendations for SCJC action regarding the complaint. The bill requires SCJC staff instead to do the following:

- as soon as practicable after a complaint is filed, conduct a preliminary investigation of the complaint and draft recommendations for SCJC action;
- not later than the 10th business day before a scheduled SCJC meeting, prepare and file with each SCJC member a report detailing the following:
 - each complaint for which a preliminary investigation has been conducted but for which the investigation report has not been finalized;
 - the results of the preliminary investigation of the complaint; and
 - the staff's recommendations for SCJC action regarding the complaint; and
- on completion of the preliminary investigation and submission of recommendations, provide to the judge who is the subject of the complaint written notice of the following:
 - the complaint, the results of the preliminary investigation, and the staff's recommendations for SCJC action regarding the complaint; and

- the judge's right to attend each SCJC meeting at which the complaint is included in the report filed with the SCJC members.

The bill changes the deadline by which the SCJC must determine any action to be taken regarding a complaint from not later than the 90th day following the date SCJC staff files the report to SCJC members required under current law to not later than the 120th day following the date of the first SCJC meeting at which the complaint is included in the report filed with the SCJC members as required by the bill. The bill also specifies that the SCJC must finalize the investigation report by that deadline.

C.S.S.B. 21 requires the SCJC, after the meeting at which an investigation report is finalized and an action is determined, to provide to the judge who is the subject of a complaint the following notice:

- written notice of the action to be taken regarding the complaint not more than five business days after the meeting; and
- as the SCJC determines appropriate, published notice of the action to be taken by posting the notice on the SCJC website not more than seven business days after the meeting.

C.S.S.B. 21 revises provisions allowing for extensions when action on a complaint is not timely taken because of extenuating circumstances. The bill removes language that does the following:

- requires SCJC staff, if the staff is unable to provide an investigation report and recommendation to the SCJC by the specified deadline, to notify the SCJC and propose the number of days required for the SCJC and staff to complete the report and recommendations and finalize the complaint;
- authorizes SCJC staff to request an extension of not more than 270 days from the date the complaint was filed and requires the SCJC to finalize the complaint by that 270th day;
- authorizes the executive director of the SCJC to request that the SCJC chairperson grant an additional 120 days to the time provided for the SCJC and staff to complete the investigation report and recommendations and finalize the complaint; and
- requires that the legislature be timely informed of any such extension granted by the chairperson.

The bill instead authorizes the SCJC, if it is unable to finalize an investigation report and determine the action to be taken by the deadline set by the bill, to order an extension of not more than 240 days from the date of the first SCJC meeting at which the complaint is included in the report filed with SCJC members and requires that the SCJC timely inform the legislature of any ordered extension.

With respect to complaints for which the SCJC receives notice of a related law enforcement agency investigation, C.S.S.B. 21 replaces the authorization for the SCJC to continue an investigation that would not jeopardize a law enforcement investigation with a requirement for the SCJC to continue an investigation that would not jeopardize a law enforcement investigation regarding the conduct subject to the complaint and authorizes the SCJC to issue a censure or sanction based on the complaint.

C.S.S.B. 21 replaces a provision entitling a judge who receives a sanction or censure issued by the SCJC under applicable provisions of the Texas Constitution to a review of the SCJC's decision with an authorization for the judge to request such a review. The bill removes language providing for review of sanction types other than those specified in the constitution.

C.S.S.B. 21 includes persistent or wilful violation of statutory rules for setting the amount and conditions of bail among the conduct that constitutes "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" for purposes of provisions of the Texas Constitution making such conduct grounds for removal, discipline, or censure and requires the SCJC, as soon as practicable after the bill's effective date, to adopt rules to implement that change. The bill also includes persistent or wilful violation of those statutory rules among the conduct that constitutes "incompetency" and is a cause for removal of a person

from public office on the address of two-thirds of each house of the legislature. These changes apply only to an allegation of judicial misconduct received by the SCJC or the legislature on or after the bill's effective date, regardless of whether the conduct or act that is the subject of the allegation occurred or was committed before, on, or after that date.

C.S.S.B. 21 requires SCJC, on issuing a public reprimand of a judge based on the judge's persistent or wilful violation of statutory rules for setting the amount and conditions of bail, to send notice of the reprimand to the following entities:

- the governor;
- the lieutenant governor;
- the speaker of the house of representatives;
- the presiding officers of each legislative standing committee with jurisdiction over the judiciary;
- the chief justice of the Texas Supreme Court;
- the Office of Court Administration of the Texas Judicial System; and
- the presiding judge of the administrative judicial region in which the court the reprimanded judge serves is located.

The bill requires the SCJC, not later than the 21st day after the date the SCJC initiates formal proceedings against a judge based on the judge's persistent or wilful violation of such rules, to recommend to the supreme court that the judge be suspended from office.

C.S.S.B. 21 revises the requirements for a retired or former judge to be eligible for inclusion on a list of retired and former judges subject to assignment as a visiting judge in an administrative judicial region, as follows:

- excludes from the requirement for the judge to certify under oath to the presiding judge of the region that the judge has never been publicly reprimanded or censured by the SCJC any reprimand or censure that was reviewed and rescinded by a special court of review; and
- requires the judge also to certify under oath that the judge has not received more than one of any other type of public sanction, excluding any sanction that was reviewed and rescinded by a special court of review.

The bill requires a former or retired judge on such a list who becomes ineligible under the new criteria to be struck from the list on the bill's effective date and prohibits the judge from being assigned to any court on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 21 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The engrossed and the substitute both revise an existing provision entitling a judge to review of a sanction or censure issued by the SCJC. However, while the engrossed limited that entitlement to a public sanction or censure that makes the judge ineligible for assignment as a visiting judge, the substitute replaces the entitlement with an authorization for a judge to request a review of a sanction or censure, regardless of whether it is public or whether it affects the judge's eligibility for a visiting judge assignment.

The engrossed required the SCJC, if it issues a public reprimand of a judge based on the judge's persistent or wilful violation of statutory rules for setting the amount and conditions of bail, to suspend the judge from office without pay for 60 days and send notice of the suspension to certain entities. The substitute does not include that requirement and instead requires the SCJC,

not later than the 21st day after the date the SCJC initiates formal proceedings against a judge for such conduct to recommend to the supreme court that the judge be suspended from office. The substitute retains the engrossed version's requirement for the SCJC to send notice of a public reprimand of a judge for such conduct to certain entities but omits the comptroller of public accounts as a recipient of that notice.

The substitute omits a provision from the engrossed that required the SCJC, if it initiates formal proceedings against a judge, to suspend the judge from office without pay not later than the 30th day after the date a special master is appointed and pending final disposition of the formal proceedings unless the special master determines the suspension is unwarranted.

Both the engrossed and the substitute revise the requirement for a retired or former judge, as a condition of eligibility for inclusion on a list of retired and former judges subject to assignment as a visiting judge, to certify under oath that the judge has never been publicly reprimanded or censured by the SCJC. However, the versions differ as follows:

- the engrossed replaced the existing requirement with a requirement for the judge to certify under oath that the judge has never been either:
 - publicly reprimanded or censured by the SCJC; or
 - publicly reprimanded, sanctioned, or censured, or any combination of those punishments, more than once, unless the reprimand, sanction, or censure has been reviewed and rescinded by a special court of review; and
- the substitute instead does the following:
 - excludes reprimands or censures that were reviewed and rescinded by a special court of review from the existing requirement to certify that the judge has never been publicly reprimanded or censured; and
 - requires the judge to additionally certify under oath that the judge has not received more than one of any other type of public sanction, excluding any sanction that was reviewed and rescinded by a special court of review.