

## **BILL ANALYSIS**

Senate Research Center  
88R19383 TSS-F

C.S.S.B. 21  
By: Huffman  
State Affairs  
3/28/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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, interested parties have noted a lack of consistency surrounding review timelines for complaints submitted to SCJC. Additionally, SCJC is limited in the types of complaints it is allowed to review and the punishments that can be handed down for judicial misconduct.

S.B. 21 would expand SCJC and the legislature's ability to examine judicial decisions that have immediate effects on public safety and individual liberties. The bill also makes changes to timelines surrounding complaints to SCJC. Additionally, it creates new suspension without pay mechanisms for certain judicial misconduct and limits the eligibility of disciplined judges to become a visiting judge.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 21 amends current law relating to the discipline of judges by the State Commission on Judicial Conduct and the legislature.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to State Commission on Judicial Conduct in SECTION 7 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Section 33.001(b), Government Code, as follows:

(b) Provides that "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties," for purposes of Section 1-a (Retirement, Compensation, Discipline, and Removal of Justices and Judges; State Commission on Judicial Conduct), Article V (Judicial Department), Texas Constitution, includes:

(1)-(4) makes no change to these subdivisions;

(5)-(6) makes nonsubstantive changes to these subdivisions; or

(7) persistent or wilful violation of Article 17.15 (Rules for Setting Amount of Bail), Code of Criminal Procedure.

SECTION 2. Amends Sections 33.0212, Government Code, as follows:

Sec. 33.0212. REPORT AND RECOMMENDATIONS ON FILED COMPLAINTS. (a) Requires the State Commission on Judicial Conduct (SCJC) staff, as soon as practicable after a complaint is filed with SCJC, to conduct a preliminary investigation of the filed complaint and draft recommendations for SCJC action.

(a-1) Requires SCJC staff, on completion of the preliminary investigation and submission of recommendations under Subsection (a), to provide to the judge who is the subject of the complaint written notice of the complaint, the results of the preliminary investigation, and SCJC 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 SCJC members under Subsection (a-2).

(a-2) Requires SCJC staff, not later than the 10th business day before a scheduled SCJC meeting, rather than not later than the 120th day after the date a complaint is filed with SCJC, to prepare and file with each member of SCJC a report detailing each complaint for which a preliminary investigation has been conducted under Subsection (a) but for which the investigation report has not been finalized under Subsection (b), the results of the preliminary investigation of the complaint, and SCJC staff's recommendations for SCJC action regarding the complaint.

(b) Requires SCJC, not later than the 120th day following the date of the first SCJC meeting at which a complaint is included in the report filed with SCJC under Subsection (a-2), rather than not later than the 90th following the date SCJC staff files with SCJC the report required by Subsection (a), to finalize the investigation report and determine any action to be taken regarding the complaint, including certain penalties.

(b-1) Requires SCJC, after the SCJC meeting at which an investigation report is finalized and an action is determined under Subsection (b), to provide to the judge who is the subject of a complaint written notice of the action to be taken regarding the complaint not more than five business days after the SCJC meeting and, as SCJC determines appropriate, notice of the action to be taken published on SCJC's Internet website not more than seven business days after the SCJC meeting.

(c) Authorizes SCJC, if, because of extenuating circumstances, SCJC is unable to finalize an investigation report and determine the action to be taken regarding a complaint under Subsection (b) before the 120th day following the date of the first SCJC meeting at which a complaint is included in the report filed with SCJC under Subsection (a-2), to order an extension of not more than 240 days from the date of the first SCJC meeting at which a complaint is included in the report filed with SCJC under Subsection (a-2). Deletes existing text requiring SCJC staff, if, because of extenuating circumstances, SCJC staff is unable to provide an investigation report and recommendation to SCJC before the 120th day following the date the complaint was filed with SCJC, to notify SCJC and propose the number of days required for SCJC and SCJC staff to complete the investigation report and recommendations and finalize the complaint. Deletes existing text authorizing SCJC staff to request an extension of not more than 270 days from the date the complaint was filed with SCJC. Deletes existing text requiring SCJC to finalize the complaint not later than the 270th day following the date the complaint was filed with SCJC.

(d) Requires SCJC, if SCJC orders an extension of time under Subsection (c), rather than if the chairperson grants additional time under Subsection (d), to timely inform the legislature of the extension. Deletes existing text authorizing the executive director of SCJC to request that the chairperson grant an additional 120 days to the time provided under Subsection (c) for SCJC and SCJC staff to complete the investigation report and recommendations and finalize the complaint.

SECTION 3. Amends Section 33.034(a), Government Code, as follows:

(a) Provides that a judge who receives from SCJC a public sanction or censure issued by SCJC under Section 1-a(8) (relating to authorizing SCJC, after necessary investigation, in its discretion to issue a private or public admonition, warning, reprimand, or requirement that the person obtain additional training or education, or if SCJC determines that the situation merits such action, to institute certain formal proceedings, as a penalty), Article V, Texas Constitution, that makes the judge ineligible for assignment under Section 74.055 (List of Retired and Former Judges Subject to Assignment), rather than or any other type of sanction, is entitled to a review of SCJC's decision as provided by Section 33.034 (Review of Commission Decision).

SECTION 4. Amends Section 33.037, Government Code, as follows:

Sec. 33.037. New heading: **SUSPENSION FROM OFFICE.** (a) Creates this subsection from existing text.

(b) Requires SCJC to suspend the judge from office without pay not later than the 15th 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 if SCJC initiates formal proceedings against a judge.

(c) Requires SCJC, if SCJC issues a public reprimand of a judge based on the judge's persistent or wilful violation of Article 17.15, Code of Criminal Procedure, to:

(1) suspend the judge from office without pay for 60 days; and

(2) send notice of the reprimand and suspension to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives;

(D) the presiding officers of each legislative standing committee with jurisdiction over the judiciary; and

(E) the Comptroller of Public Accounts of the State of Texas.

SECTION 5. Amends Section 74.055(c), Government Code, as follows:

(c) Requires a retired or former judge, to be eligible to be named on the list to:

(1)-(3) makes no change to these subdivisions;

(4) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has never been either publicly reprimanded or censured by 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 under Section 33.034; and

(B) makes no changes to this paragraph; and

(5)-(6) makes no change to these subdivisions.

SECTION 6. Amends Section 665.052(b), Government Code, as follows:

(b) Provides that "incompetency," in Section 665.052 (Causes for Removal), means:

(1)-(3) makes nonsubstantive changes to these subdivisions; or

(4) persistent or wilful violation of Article 17.15, Code of Criminal Procedure.

SECTION 7. Requires SCJC, as soon as practicable after the effective date of this Act, to adopt rules to implement Section 33.001(b), Government Code, as amended by this Act.

SECTION 8. Provides that Sections 33.001(b) and 665.052(b), Government Code, as amended by this Act, apply only to an allegation of judicial misconduct received by SCJC or the legislature on or after the effective date of this Act, regardless of whether the conduct or act that is the subject of the allegation occurred or was committed before, on, or after the effective date of this Act.

SECTION 9. Makes application of Section 33.037, Government Code, as amended by this Act, prospective.

SECTION 10. Provides that a former or retired judge on a list maintained by a presiding judge under Section 74.055(a), Government Code, who is ineligible to be named on the list under Section 74.055(c), Government Code, as amended by this Act, is required to be struck from the list on the effective date of this Act and is prohibited from being assigned to any court on or after the effective date of this Act.

SECTION 11. Effective date: September 1, 2023.