

SUBJECT: Revising compensation of persons wrongfully imprisoned

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Gallego, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo

2 nays — Christian, Fletcher

1 absent — Riddle

WITNESSES: *(On original version:)*

For — Larry Casto, City of Dallas; Charles Chatman, Innocence Project of Texas; Kevin Glasheen, on behalf of exonerees James Woodard, Thomas McGowan, Billy Smith, et al; Ente Karage; Kristina Mahsler; Cory Session, Innocence Project of Texas, on behalf of Tim Cole; Billy Smith, Innocence Project of Texas; James Waller, Innocence Project of Texas; *(Registered, but did not testify: Edwin Colfax, The Justice Project; Alison Dieter, Texas Moratorium Network; Laura Martin, American Civil Liberties Union of Texas; Emily Shelton, Texas Impact; Ana Yañez-Correa, Texas Criminal Justice Coalition)*

Against — Ed Heimlich, Informed Citizens of Texas

BACKGROUND: Under Civil Practice and Remedies Code, ch. 103, a person is entitled to compensation if he was convicted and incarcerated under the laws of this state, has served all or part of his sentence, received a full pardon or been granted relief on the basis of actual innocence, and was not serving a concurrent sentence for another crime of which he was not exonerated. A person may make either an administrative application or file suit for compensation, and must do so no later than the third anniversary of the pardon or not guilty finding.

A person entitled to compensation is entitled to \$50,000, or \$100,000 if the person was sentenced to death, multiplied by the number of years served, expressed as a fraction to reflect partial years, and compensation for child support payments, interest, and arrearages due or accrued, but not paid, during prison.

A person owed \$50,000 or more is paid in two equal annual installments. The comptroller makes the first installment payment and entire child support payment no later than the 30th day after granting the application, and the second installment one year later. Compensation payment terminates upon the death of the applicant.

Upon request, the Texas Department of Mental Health and Mental Retardation will provide a claimant one year of counseling.

Texas has paid approximately \$9 million to 46 wrongfully convicted people.

In 1986, Tim Cole was wrongfully convicted of the sexual assault of a fellow Texas Tech University student. He maintained his innocence, making him ineligible for parole. Cole died in 1999 while serving a 25 year sentence. His family continued the struggle to clear his name, and, in 2009, Cole was posthumously exonerated.

**DIGEST:**

CSHB 1736, to be known as the Tim Cole Act, would entitle a posthumously pardoned person's heirs, legal representatives, and estate to lump-sum compensation, if the deceased person would have received a full pardon or been granted relief based on actual innocence had he lived.

A claimant would be entitled to \$80,000 multiplied by years incarcerated, whether or not he was on death row. A claimant released on parole or required to register as a sex offender would be entitled to \$25,000 multiplied by years on the registry or parole, expressed as a fraction to reflect partial years. These lump sums would not be paid in installments.

A living person entitled to compensation would be entitled to annuity payments, based on a present value sum equal to the amount to which he was entitled for the time imprisoned and time spent on parole or registration. Annuity payments would be payable in equal monthly installments for life and based on a five percent per annum interest rate. The payments could not be altered, nor could the applicant sell, mortgage, assign, or otherwise encumber the payments. The comptroller would begin making annuity payments one year after the date of the lump sum payment. Annuity payments would terminate upon the claimant's death.

A claimant could participate in the state Employee Retirement System group insurance program provided for government employees, with premiums paid for by the state, upon request.

Upon request, a claimant could receive up to 120 hours of tuition at a career center, community college, or state university, paid for by the state.

A person would no longer be able to file suit against the state to receive compensation.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

By increasing compensation, CSHB 1736 would recognize that wrongfully convicted persons deserve more than the state currently provides, and so would compensate them more adequately. Exonerated persons need everything from clothing, housing, transportation, and medical care. Unlike parolees, exonerated persons receive little to no help from the state.

Annuity payments would ensure a lifetime income, unlike a lump sum that could be spent quickly. Exonerated persons with little or no money-management experience might be unable to make a lump sum last.

By allowing the heirs of posthumously exonerated persons to receive lump sum payments, CSHB 1736 would recognize, and compensate for, the impact wrongful convictions have on families.

Providing health insurance to exonerated persons would be crucial in allowing them to receive the care they need but are otherwise unable to attain. Wrongfully convicted persons often develop mental and physical health problems while incarcerated but are unable to pay into Medicare, and are therefore ineligible for benefits upon release.

Wrongfully convicted persons are released without training, work history, or preparation for the future. Tuition hours would help exonerated persons learn skills and support themselves.

CSHB 1736 would save local jurisdictions money, as those who receive compensation would forfeit rights to a lawsuit.

To date, only 46 administrative claims have been filed for wrongful imprisonment. If the state's judicial system is working as it should, the state should not see many more claims. Where the state's judicial system has failed and effectively taken years of a person's life, the state should bear the responsibility of compensating them.

OPPONENTS  
SAY:

Increasing compensation would cost the state more money than is fiscally responsible to spend. Texas already offers one of the highest levels of wrongful conviction compensation in the nation. Taking on the additional costs posed by this bill would be imprudent in the current economic climate.

OTHER  
OPPONENTS  
SAY:

The increased compensation is enough to be considered fair, but is not as much as it should be. A wrongful conviction destroys the lives of the innocent person and their loved ones, and tears apart families. The stigma of conviction remains even after exoneration. There is no real way to make a wrongfully convicted person whole again.

NOTES:

The committee substitute differs from the bill as filed by naming it the Tim Cole Act, and adding a provision that would allow lump sum compensation to heirs, legal representatives, and the estate of a person posthumously exonerated. The substitute also would provide that the child support compensation applies to the person on whose imprisonment the claim is based and that a claimant eligible for insurance would be the one who was wrongfully imprisoned. Finally, the substitute removes a provision stating that insurance eligibility does not extend to the claimant's dependents.

The comptroller estimates the bill would result in approximately \$680,000 in additional payments annually, depending on actual claimants, and their utilization of the additional benefits. The Employee Retirement System estimates that in the future an average of five claimants would be eligible for the Group Benefits Program (GBP), which would result in additional costs of approximately \$424,000 for fiscal 2010-11, but would not result in an increase in the state contribution to the GBP.

The companion bill, SB 2014 by Duncan, was reported favorably, as substituted, by the Senate State Affairs Committee on April 9.