

SUBJECT: Creating a procedure to request a new criminal trial if all parties agree

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Ann Johnson, Murr, Vasut

0 nays

WITNESSES: For — Becky Haigler, Texas Inmate Families Association (TIFA); Nicolas Hughes; Amanda Marzullo; (*Registered, but did not testify*: Lauren Johnson and Matt Simpson, ACLU of Texas; M. Paige Williams, Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Emily Gerrick, Texas Fair Defense Project; Rebecca Bernhardt, The Innocence Project of Texas; Jennifer Allmon, The Texas Catholic Conference of Bishops; Theresa Laumann)

Against — (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Ray Hunt, Houston Police Officers' Union; Brian Hawthorne, Sheriffs' Association of Texas; John Wilkerson, Texas Municipal Police Association)

On — Shannon Edmonds, Texas District and County Attorneys Association (TDCAA)

BACKGROUND: Under the Texas Rules of Appellate Procedure, Rule 21, a motion for a new trial (MNT) in criminal cases must be granted for certain reasons, including for a verdict contrary to the law and evidence, error in jury instructions, jury misconduct, forcible exclusion of a defense witness or destruction of evidence, or the defendant being tried in absentia or being denied counsel. An MNT must be filed within 30 days after the date a trial court imposes or suspends sentence in open court.

DIGEST: HB 1293 would establish a procedure for requesting a new criminal trial

in certain cases if all parties agreed to the request. The bill would allow defendants to file a motion for a new trial with the convicting court at any time during a prison term if the defendant had the written consent of the district attorney or criminal district attorney. The motion would have to include an agreed statement of facts for the court to consider.

After a hearing, the court could grant the defendant a new trial in the interest of justice. The court could rely on the agreed statement in granting a new trial, and the agreed statement of facts could constitute the entire record in the cause.

A decision to grant a new trial could be appealed, but neither the prosecutor nor the defendant could appeal a decision to deny a motion for a new trial. The prosecutor could condition consent to a motion for a new trial on any appropriate reason, including a requirement that the defendant plead guilty and accept a specific punishment, waive parole eligibility, or waive the right to appeal.

Until the trial court granted the motion for a new trial, the defendant could withdraw the motion or the prosecutor could withdraw consent to the motion. If the motion or consent was withdrawn, the court would be prohibited from granting a new trial in the case based on that motion.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

HB 1293 would provide relief for certain wrongful convictions that had already occurred in limited cases by establishing a mechanism to request a new criminal trial by motion when the defendant, the state, and the trial court all agree that it is in the interest of justice for a new trial to be granted. Recent efforts to bring attention to individuals wrongfully convicted of crimes or serving inappropriate sentences have led to improvements in the criminal justice system in Texas, and HB 1293 would provide another necessary tool to ensure just outcomes within the system.

Currently in Texas, a motion for a new trial (MNT) in criminal cases must

be granted only under limited circumstances, and the MNT must be filed within 30 days after sentencing of the defendant. Habeas relief is permitted only after appeals have been exhausted, and then, only if actual innocence or a constitutional violation can be shown. Because of these procedural hurdles and narrow standards, defendants can be in prison for months or years awaiting habeas relief even after the state and the trial court have agreed that a new trial was appropriate in the case. Clemency by courts and by the governor is limited as well in the types of situations it can cover and the relief that it can grant. Allowing requests for a new criminal trial in the interest of justice when all parties agree with the request would fill this gap, providing a streamlined process that could decrease costly periods of imprisonment for defendants.

HB 1293 also would provide Texas with a needed safety valve for justice that other states have adopted. Prosecutors and judges could act in the interests of justice to ensure that defendants who were confined in prison, but who are innocent or inappropriately punished, could quickly receive a new trial, even after the 30 days typically allotted for an MNT had expired. By tying the MNT to the term of imprisonment of the person filing the motion, the bill would ensure that overlooked errors could be addressed so a person was not unjustly deprived of liberty for any longer than necessary.

The bill's required agreement by all parties provides a sufficient check, as district attorneys and judges should be trusted in determinations on granting a new trial in the interests of justice. Further safeguards are provided through the judge's discretion and through the bill allowing a district attorney to condition consent to the MNT on any appropriate reason; however, should any concerns still exist on the bill's "interest of justice" language, they could be addressed in a floor amendment.

HB 1293 is drawn to exclude providing relief through an MNT in death penalty cases by specifically saying the bill applies during the period of a term of imprisonment.

CRITICS

The criminal justice system is already equipped to correct injustices in

SAY: past cases using the relief provided through writs of habeas corpus, the process of which provides necessary oversight and limitations that would not be similarly present in HB 1293 provisions establishing a motion for a new trial (MNT) in the interests of justice. Motions for a new criminal trial already must be granted under specific circumstances after being filed within 30 days of sentencing. Allowing an MNT to be filed at any time during the period of a term of imprisonment, along with allowing a judge to grant an MNT in the "interest of justice" could cause a flood of litigation, ultimately undoing years of work. The current remedies available to a defendant provide adequate access to justice, while ensuring the criminal justice system is not overburdened with unnecessary cases brought under an overly broad standard.

HB 1293 may not explicitly exclude defendants serving capital sentences from filing an MNT agreed on by all parties in the interests of justice.

NOTES: The bill's author intends to offer a floor amendment that would specify the reasons that a court could grant the defendant a new trial in the interest of justice, which would include:

- the discovery of exculpatory, mitigating, or impeachment evidence that established that the defendant's conviction or sentence was against the weight of the evidence;
- a change in law that provided a new legal basis for a defense to criminal prosecution for the offense of which the defendant was convicted or a ruling of the U.S. Supreme Court or the Texas Court of Criminal Appeals that the law under which the defendant was convicted or sentenced was unconstitutional;
- that material evidence was improperly admitted or withheld from the jury; or
- that the agreed statement of facts established a ground for which a new trial would have to be granted under the Texas Rules of Appellate Procedure.

The floor amendment also would include county attorneys with criminal jurisdiction in the parties that could give a defendant written consent to

file a motion for a new trial.