

[Print This Article](#)

Monday, Oct 1, 2007

Posted on Sun, Sep. 30, 2007

## Push for innocence panel is renewed

By MAX B. BAKER

Star-Telegram staff writer

A state lawmaker is making a renewed push for a Texas Innocence Commission to investigate cases of wrongful conviction after the 14th exoneration of a prison inmate by the Dallas County district attorney's office.

Sen. Rodney Ellis said he hopes the Dallas County situation will help revive his plan to create a nine-member commission to examine innocence claims, identify problems in the criminal justice system and recommend reforms. Ellis' bill creating such a commission died in this year's legislative session.

"I think the exonerations are clear and convincing evidence that the system is broken," said Ellis, a Houston Democrat. "In no other sphere of public policy would rational people see this many exonerations and not be willing to be able to pull together a panel of experts to ask what went wrong and what can be learned from those cases."

This month, Dallas County prosecutors said DNA evidence proved that Steven Phillips, who served 25 years in prison, did not rape a Dallas woman in 1982. Since 2001, Dallas County has had more DNA exonerations than any other county in the United States.

Ellis is talking to his Senate colleagues about an innocence commission. He has also asked Lt. Gov. David Dewhurst to order an interim study on the need for an innocence commission during the Legislature's hiatus.

Texas Supreme Court Chief Justice Wallace Jefferson and Ellis have also talked about reforms. Jefferson said he agrees that the state should create some type of innocence commission but added that he is still studying the issue.

"We can't open up every conviction in the state. We've got to be careful how we do this," Jefferson said. But he added that "to me, it is unthinkable that you and I would be sitting in jail for a crime we did not commit. It shows that something didn't work."

For people who have been exonerated after spending years behind bars, an innocence commission is long overdue. "We badly need some reconstruction in the criminal justice system," said James Giles of Dallas, who was exonerated last year after serving 10 years on a rape conviction. "We ought to be able to come together and get this thing right."

### The details

Ellis' bill would have allowed the governor, the lieutenant governor and the speaker of the House to make appointments to the commission, among others. The commission would have had the power to investigate individual cases, identify defects in the system and suggest reforms to the Legislature.

Ellis compared the commission to the National Transportation Safety Board, which sends in teams of experts to investigate airplane crashes.

"We are talking about looking at cases where it is undeniable that the system made a mistake," said Ellis, who also serves on the board of directors of the Innocence Project in New York.

Ellis' bill passed the Senate 20-10 but failed in the House. It was opposed by the state's prosecutors, and some lawmakers said the state has adequate systems for this kind of review, including the state and federal judicial appeal process as well as the Texas Board of Pardons and Paroles.

### 'Prime time'

Sen. Kim Brimer, R-Fort Worth, said he voted against Ellis' bill because he didn't think that the issue had been studied enough or that the bill offered much improvement. He added, however, that it is a "prime time" to do an interim committee report on a commission.

"At that time it just looked like another level of bureaucracy to me that needed more study," Brimer said.

Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, is not convinced the commission is necessary, saying the state already has a progressive attitude toward innocence claims. The Court of Criminal Appeals is the state's highest criminal court.

"I think that the system is working fairly well right now and evidence of that are the exonerations in Dallas," Keller said. "I don't know what an innocence commission would add."

Six states have already created similar commissions, according to the Innocence Project in New York.

North Carolina was first when it approved an eight-member Innocence Inquiry Commission last year after several long-term inmates were exonerated. The commission has received requests to review more than 200 cases.

"It is forward-thinking for this state. People are open to watching what we give them," said Kendra Montgomery-Blinn, the commission's executive director. "It doesn't matter where you fall on the political

scale, you don't want innocent people in prison."

Texas Sen. John Whitmire, D-Houston, chairman of the Senate Criminal Justice Committee, said any proposed reforms will have to be supported by stakeholders in the state's criminal justice system.

Whitmire said he is more hopeful about getting an innocence commission approved after the Dallas County exonerations. Whitmire said he will encourage Dewhurst to let legislators study the idea.

He said prosecutors and judges have expressed concern that an innocence commission would give rise to political retaliation and not an honest effort to clean up the system.

"It can't be about 'I gotcha!' It ought to be about going forward and not repeating the same mistakes," Whitmire said. Honest judges and prosecutors will welcome outside review of their cases, he said.

But clearly, after what has happened in Dallas County, Whitmire said, there is room for improvement in the criminal justice system.

"What we don't know should scare the hell out of us," he said.

#### **Commissions across the United States**

At least six other states have created innocence or criminal justice reform commissions.

**California:** Lawmakers created the California Commission on the Fair Administration of Justice in 2004. The 18-member agency includes prosecutors, defense attorneys and a member of the judiciary. In 2006, the commission began looking into wrongful convictions.

**Connecticut:** Created in 2003, the Connecticut Innocence Commission has 12 members, including a chief administrative judge, a police chief and a state representative. It does not review individual cases but adopted a broader reform mandate.

**Illinois:** After then-Gov. George Ryan issued a moratorium on executions in 2000, he created a commission to study capital punishment that made 85 recommendations for additional safeguards. In 2007, lawmakers considered a permanent innocence commission.

**North Carolina:** The Innocence Inquiry Commission, created in 2006, grew out of a study of the state's criminal justice system. It has eight members and eight alternates representing judges, prosecutors, defense attorneys and the public.

**Wisconsin:** After a high-profile exoneration, lawmakers created the Criminal Justice Reform Package, which produced recommendations aimed at minimizing factors in wrongful convictions, including preservation of biological evidence.

**Pennsylvania:** In 2006, the state Senate approved an advisory committee for wrongful prosecutions after nine DNA exonerations. The committee, with about 30 members, is scheduled to make recommendations to the Senate by 2008.

Source: The Innocence Project

#### **Innocence commission**

Under a bill sponsored by state Sens. Rodney Ellis and Leticia Van de Putte in the last session, a Texas Innocence Commission would be composed of nine members:

Two gubernatorial appointees, one of whom must be the dean of a law school and the other a law officer.

One appointee by the lieutenant governor, who may be a member of the Legislature.

One appointee by the speaker of the House, possibly a member of the Legislature.

A member of the judiciary appointed by the presiding judge of the Texas Court of Criminal Appeals.

A forensic scientist picked by the Texas Forensic Science Commission.

A prosecutor named by the Texas District and County Attorneys Association.

A criminal-defense attorney picked by the Texas Criminal Defense Lawyers Association.

An attorney with appellate experience representing one of the three innocence projects at three state law schools.

Source: Senate Bill 263