

Fort Worth
Star-Telegram JAN 29 2007
Repairing the system

Every time an individual walks free from prison because it turns out that he or she didn't actually commit the crime, the system has failed.

If it hadn't failed, the wrong person wouldn't have been convicted. If it hadn't failed, the real guilty party wouldn't have evaded detection.

And because the system failed, everyone involved and the public at large are entitled to know why. Everyone involved and the public at large are entitled to a reliable system that doesn't continue repeating mistakes.

Was it error by people acting in good faith? Was it prosecutorial misconduct? Inept defense representation? Sloppiness or malfeasance? Inadequate police investigation? Flawed lab work? Unreliable witnesses? Deliberate deception?

And, perhaps most important, what changes should state and local governments make to prevent the future waste of money on wrongful prosecutions and erroneous incarcerations -- not to mention the human toll?

The innocence commission proposed by Texas Sen. Rodney Ellis, D-Houston, in SB 263 is designed to find those answers. It has the potential to push crucial improvements to the state criminal justice system.

The commission would examine cases in which convicted defendants were later exonerated. The goal would be to have an independent body determine what led to the improper conviction and to recommend corrections that would guard against similar blunders.

This shouldn't be a hard sell for a state in which, according to a Star-Telegram news report, two dozen inmates or former inmates have been exonerated by DNA testing after conviction and imprisonment. Twelve exonerations have occurred in Dallas alone, the most recent a man who spent 10 years in prison for a child rape he didn't commit.

Nationwide since 1989, DNA has been used to prove that 192 inmates were wrongly convicted, ac-

ording to the Innocence Project, a New York-based legal clinic. In 75 percent of those cases, erroneous eyewitness testimony was a key factor.

In 2006, North Carolina became the first state to set up an Innocence Inquiry Commission that will review evidence to determine whether inmates were wrongly convicted.

But Ellis' proposed innocence commission doesn't go that far. Instead, it would examine cases after exoneration and focus on systemic weaknesses.

It also would focus on specific cases, unlike the Criminal Justice Advisory Council that Gov. Rick Perry established in 2005 to recommend a broad array of improvements in dealing with crime labs, sex offender supervision and law enforcement technology.

In January 2006, the council, among other things, recommended following federal standards for compensating individuals who are wrongly convicted in Texas courts. Ellis' SB 262 would make that change.

Texas currently pays \$25,000 per year of wrongful imprisonment, with a \$500,000 cap.

However, the 2004 Justice for All Act provides for \$50,000 per year on incarceration in federal non-capital cases and \$100,000 per year in federal capital cases. The council estimated that the increase would cost the state about \$500,000 a year.

The Legislature might decide that Texas can't afford that kind of increase, though lawmakers should bear in mind the damage that a mistaken conviction causes to the defendant's life.

They also should consider that convicting the wrong person carries a range of costs, not just to the individual but to the victim who gets a false sense of closure, to potential victims if the perpetrator remains free, to the public's trust in the system and to taxpayers who must foot the bill for redoing what wasn't handled properly in the first place.