



History of Texas Policy Reform Efforts Related to Wrongful Convictions

Indigent Defense

- Though difficult to quantify in its importance as a contributing factor to wrongful convictions, most criminal justice experts believe the most fundamental and important protection against wrongful conviction is access to a qualified attorney with appropriate investigative and expert resources in order to meaningfully test the evidence. In practice, defenders, especially those for the indigent, frequently go without these resources, and may lack training, skill and support, all factors that put innocent defendants at risk.
- Texas has made strides in recent years towards improving indigent defense, but we still fall dismally shy of providing our counties the funding they need to adequately fund indigent defense. Texas spent only \$6.14 per capita on indigent defense during 2005 -- last among the ten most populous states; 44th overall.
- **Recent Policy Reforms Efforts Implemented**
 - 2005, SB 1704 established a \$4 criminal conviction fee to increase juror pay, and any excess funds to the Fair Defense account to fund county indigent defense efforts.
 - 2007, HB 1267 was amended by Senator Ellis, adding a \$2 fee on criminal convictions to increase state funding for Indigent Defense and distributed by the Texas Task Force on Indigent Defense.
- **Recent Policy Reforms Efforts Not Implemented**
 - 2005, SB 1080 by Senator Ellis would have made substantial changes to the Texas Indigent Defense system.
 - 2007, SB 1823 by Senator Duncan and Senator Ellis, would have established a state Capitol Habeas Defender office to handle all capital habeas appeals.

Eyewitness Identification Reform

- *In 27 of the 33 Texas cases, eyewitness misidentification was a contributing factor in the wrongful conviction.*
- 83% of Texas's wrongful convictions proven through DNA testing, no law is in place that guides law enforcement to use scientifically supported procedures shown to reduce them. Based on more than twenty-five years of social science research, leading experts have called for a package of eyewitness identification reforms shown to improve the overall accuracy of eyewitness identification reforms, many of which have been enacted in other states like New Jersey, North Carolina and Wisconsin.



- **Recent Policy Efforts Not Implemented**

- 2005, SB 663, by Senator Ellis would have provided certain reforms to eyewitness identification in photograph and live lineup identification procedures.
- 2007, SB 799 by Senator Ellis would have created an eyewitness identification study group.

Reducing False Confessions Through the Electronic Recording of Custodial Interrogations

- *In approximately 9% of the Texas DNA exoneration cases, a false confession was obtained by law enforcement.*
- The electronic recording of custodial interrogations is a reform that has been shown to reduce false confessions. Although individual police departments such as Austin, Corpus Christi, Dallas, Plano and Houston have voluntarily opted to record interrogations, the statewide implementation of this reform has not come to pass. Only five of Texas's 200 county sheriff's offices and approximately fifteen local police departments voluntarily electronically record their custodial interrogations.
- Those jurisdictions around the country that do record custodial interrogations report a uniformly positive experience with the reform. Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report ("Police Experiences with Recording Custodial Interrogations." Report presented by Northwestern University School of Law's Center on Wrongful Convictions) detailing police experiences with the recording of custodial interrogations. Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform in 38 states, including Texas, and concluded, "virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."
- Illinois, Maine, and New Mexico, North Carolina and Wisconsin, all of which have passed statewide legislation mandating the recording of custodial interrogations.
- **Policy Reform Efforts Not Implemented**
 - 2005, SB 662 by Senator Ellis would have would have required that an electronic recording be made of custodial interrogations.

Proper Preservation, Cataloguing & Retention of Biological Evidence

- *The Innocence Project of New York recently conducted a preliminary analysis of its closed cases and found that 32% of its cases from across the nation were closed because evidence was lost or destroyed.*
- Texas law guiding the preservation of biological evidence (Article 38.43) calls for storage of evidence upon conviction. (This contrasts to other state statutes that create a window for premature disposition of evidence by mandating the preservation of evidence only upon petition to the court for post-conviction testing). Despite a fairly strong statute



in this regard, evidence custodians in most Texas jurisdictions simply do not have a standardized system in place that allows them to track the evidence in their possession. This is exacerbated by the fact that the law does not grant any remedies to the potentially innocent when evidence custodians lose or destroy evidence in violation of the law.

- Throughout Texas, the crime-solving potential of evidence is squandered because of a failure to preserve it in a manner that allows its ready retrieval. Other jurisdictions, recognizing the crime-solving potential of old evidence for cold cases and observing the miscarriages of justice likely to occur when innocence claims cannot be addressed, have undertaken efforts to overhaul their evidence preservation systems.
- Simple readily available reforms that help evidence custodians properly identify, collect, retain, catalogue, store and access evidence can enable Texas to capture the incredible crime-solving potential of DNA.
- The unique concentration of exoneration in Dallas County owes the good the good evidence reservation practices

Post-conviction Access to DNA Testing

- Texas grants statutory access to DNA testing. Texas Code (Article 64) indicates that “A convicted person may submit to the convicting court a motion for forensic DNA testing of evidence containing biological material...only of evidence that was secured in relation to the offense that is the basis of the challenged conviction and was in the possession of the state during the trial of the offense, but: (1) was not previously subjected to DNA testing because DNA testing was not available; or available, but not technologically capable of providing probative results; or through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing; or although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test.”
- **Recent Policy Reform Efforts Implemented**
 - 2007, HB 681, by Rep Hochberg and Rep Miles, and sponsored by Senator Duncan, became law and provided a number of statutory fixes to some of the limitations present in the existing post-conviction testing law. Although this legislation provided many significant fixes to the restrictions in the existing law, it does not compel that the court respond to a petition within a particular timeframe.

Incentivised Informant Testimony

- **Informant or accomplice testimony** from witnesses with incentive to lie found in 5 Texas cases, 15%.
- **Recent Policy Reform Efforts Not Implemented**
 - 2005, SB 659 by Senator Ellis, Would have required disclosure of whether a state's witnesses testimony had been procured by certain methods of inducement



Forensic Oversight

- Although crime lab errors, both inadvertent and intentional, are leading contributors to the nation's wrongful convictions, most states historically have lacked the independent, external forensic laboratory oversight necessary to identify and remedy any serious negligence or misconduct that may threaten the integrity of forensic results.
- However, in 2005 Texas created the Texas Forensic Science Commission and charged that body with independent oversight of the state's crime laboratories. It received its first funding this past legislative session and has held numerous organizational meetings since then, hoping to begin reviewing cases in the near future.
- **Recent Policy Reform Efforts Implemented**
 - 2005, SB 1263 creating the Texas Forensic Science Commission by Senator John Whitmire, which was ultimately became part of HB 1068 by Rep Driver, through efforts of Both Senator Whitmire and Senator Juan Hinojosa, established the Texas Forensic Science Commission.

Suppression of Exculpatory Evidence or Other Misconduct

- **Suppression of exculpatory evidence** or other misconduct was found in 4 cases, 12%.
- **Recent Policy Reform Efforts Not Implemented**
 - In both the 2005(SB 560) and 2007(SB 643) legislative sessions, Senator Carona filed bills that would have reformed the criminal discovery process to give criminal defense attorneys access to the offense reports of the defendants they represent

Innocence Commissions

- There are a number of states that have commissions authorized to study and/or investigate the causes and remedies of wrongful convictions—California, Connecticut, Illinois, North Carolina, Pennsylvania and Wisconsin. They all differ in their formation, and mandate.
- **Recent Policy Reforms Not Implemented**
 - 2003, 2005, 2007 -- Senate Bills were proposed by Senator Ellis to establish an Innocence Commission in the past three legislative sessions to study to causes of wrongful convictions and propose reforms to prevent future wrongful convictions.

Compensating the Wrongfully Convicted

- Texas is one of the 23 states with a statute that articulates a compensation scheme for the wrongfully convicted (Texas Code §103). As a result of recent efforts, Texas currently ranks as one of the best states in terms monetary compensation available under the law. Many other states also provide resources to exonorees such as: counseling services, education grant aid, workforce development training; transitional housing.



- **Recent Policy Reform Efforts Implemented**

- 2007, House Bill 814 by Representative Dutton was amended by Senator Ellis to allow for easier access to compensation by removing the District Attorney's approval as well as increasing the monetary amount to \$50,000 per year of incarceration, \$100,000 per yr on death row.