

SUBJECT: Creating a criminal sentencing policy, accountability, and review council

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Toth

1 nay — Schaefer

1 absent — Hughes

WITNESSES: For — Caitlin Dunklee , Texas Criminal Justice Coalition; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; John Dahill, Texas Conference of Urban Counties; Kristin Etter, Texas Criminal Defense Lawyers Association; Patricia Gonzales and Jesse Romero, William C. Velasquez Institute; Leah Gonzalez, National Association of Social Workers; Sandra Martinez, Methodist Healthcare Ministries of South Texas; Brian McGiverin , Texas Civil Rights Project; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court; Kandice Sanaie, Texas Association of Business; Gyl Switzer, Mental health America of Texas)

Against — None

On — Yolanda Davila, Legislative Budget Board

DIGEST: HB 990 would create the Texas Sentencing Policy, Accountability, and Review Council. The purpose of the council would be to develop means to promote a more balanced and cost-effective criminal justice system.

The council would have 20 members, who, subject to state funding, would be appointed by January 31 every 10 years from the date of the most recent appointments. The commission would be composed of:

- four member of the Senate, appointed by the lieutenant governor;
- four members of the House of Representatives, appointed by the speaker; and
- 12 members appointed by the governor.

The governor's appointees would have to be: a member of the court of

criminal appeals; a current or former criminal trial judge; a prosecutor; a defense attorney; a crime victims' rights advocate; a defendants' rights advocate; a statewide corrections systems administrator; a county jail administrator; a law professor or former law professor; and a representative of law enforcement. The governor would designate the presiding officer.

Council members would serve terms that expired on the date of adjournment sine die of the next regular legislative session that initially convened following the date of their appointment.

Members would not be compensated but would be entitled to reimbursement for travel expenses as provided by Government Code statutes governing state officer and employee travel expenses and the general appropriations act.

The council would be required to:

- conduct an in-depth analysis of sentencing practices used in the Texas criminal justice system;
- identify disparities between the severity of offenses and their penalties and determine appropriate adjustments;
- ascertain other means to enhance consistency and reduce disparity in sentencing;
- compare Texas' community supervision (probation), parole, and sentencing terms to other states;
- determine means to balance state and county criminal justice responsibilities with resources; and
- devise an approach to allow the state to balance state and county criminal justice responsibilities with resources.

The Legislative Budget Board (LBB) would be required to assist the council.

The council would be required to submit a report, including proposed legislation, to the Legislature. The council could contract with a governmental or non-governmental entity to complete the report. The council's first report would have to be submitted by January 1, 2015.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2013. Initial appointments would have to be made by the 30th day after the bill's effective date. The terms of the initial council members would expire on sine die adjournment of the 84th regular legislative session. The next appointments would have to be made by January 31, 2023.

**SUPPORTERS
SAY:**

HB 990 would create a mechanism for the state to periodically review its criminal sentencing structure. This review would help ensure the integrity of the criminal justice system, promote fairness and equity in the system, protect public resources, and increase public safety. The bill would implement a recommendation from the LBB's January 2013 report on Texas State Government Effectiveness and Efficiency.

Texas last reviewed and made wholesale changes to the Penal Code 20 years ago, and the Legislature has made innumerable changes since then. These changes often have ripple effects through the system and wide ranging impacts, and they have not been systematically studied.

HB 990 would address this situation by creating a commission, like the one used 20 years ago, to review sentencing laws and their effects. This would give the Legislature the necessary information to make changes that could streamline and simplify the Penal Code and offenses in other codes and balance sentencing practices, fairness, and budget constraints. The commission's duties would be broad to ensure that it could take into consideration all necessary factors. HB 990 could lead to savings and other efficiencies, as it has in other states.

The Legislature needs to create a new entity to examine sentencing because currently there is no adequate mechanism for doing so. Legislative committees do not have the singular focus of a specialized commission to examine sentencing in a systemic way and would not have the extensive expertise of members of the commission.

The commission's appointed members, limited mission, and legislative oversight would help ensure that it did not become an unwieldy bureaucracy. The Legislature would have the power to make changes to the commission's duties or existence. Under HB 990, the commission would reform only once a decade and would not be a permanent bureaucracy.

Under HB 990, eight of the commission members would be legislators

appointed by legislative leaders, ensuring that the governor would not have exclusive power over the committee appointments. Having the governor appoint the remaining members would be in keeping with other state bodies. HB 990 requires most commission members to have specific qualifications, ensuring that the commission would have the necessary expertise and that stakeholders were represented.

The cost of a sentencing commission could be recouped by savings that resulted from its recommendations.

OPPONENTS
SAY:

Texas' criminal sentencing practices could be studied without creating a new governmental entity. For example, an interim study could be conducted by a legislative committee or the criminal justice legislative oversight committee established in the Government Code. The commission created by HB 990 would give too much power to the governor, who would appoint the majority of its members, and it could be used as a political tool.

Creating a sentencing commission unnecessarily would add to state bureaucracy and to demands for state funding. According to the fiscal note, HB 990 would cost \$1.1 million and require three new employees for fiscal 2014-15. A sentencing commission could be hard to abolish because governmental entities traditionally are difficult to eliminate and tend to grow in scope to justify their continued existence

OTHER
OPPONENTS
SAY:

If Texas needs to revise the Penal Code, a commission could be created with that specific task, as opposed to the one in HB 990 whose authority and duties would be overly broad.

NOTES:

HB 990 would cost about \$1.1 million for fiscal 2014-15, according to the fiscal note. The costs would be for three council personnel, office expenses, travel and housing, and resources to support the 20 council members.