Texas commission to debate limits on jail informants

By Chuck Lindell clindell@statesman.com

The commission studying ways to prevent wrongful convictions is named for Tim Cole, found guilty in the 1985 rape of a Texas Tech student but cleared after dying in prison. AP 2008

EXPERT REPORTING

American-Statesman Capitol reporter Chuck Lindell has covered legal affairs for the past decade.

With jailhouse informants identified as a troubling factor in wrongful convictions, a unique commission created by the Legislature will meet Thursday in Austin to debate a list of proposed reforms for how courts, prosecutors, defense lawyers and jurors handle snitches.
The Timothy Cole Exoneration Review Commission, formed to study wrongful convictions and suggest ways to limit mistakes, is examining police interrogations, problems with eyewitness identifications and changes in forensic science.

This summer, it added jailhouse informants to its workload as the panel moves toward a comprehensive list of reforms to suggest in a report that is due to the Legislature by Dec. 1. The goal is to spark new laws that will protect innocent defendants and improve the integrity of criminal justice in Texas.

“Innocent people get convicted based on the state-sponsored testimony of jailhouse snitches,” said Mike Ware, executive director of the Innocence Project of Texas.

Texas law doesn’t provide adequate protection against informants who falsify testimony — usually about how a defendant confessed to a crime — in return for a lighter sentence, jail privileges or other benefits, said Ware, a Fort Worth defense lawyer who is as advisory member of the Cole commission.

“Unfortunately, what drives whether or not a prosecutor uses a jailhouse informant is how bad they need them. If it’s a high-profile case, and if evidence is lacking, they need them,” he said.

Prosecutors, however, caution that jailhouse informants can have an important role to play in criminal justice.

“I don’t think prosecutors ever like having to use them, but when you have evidence that you believe is reliable and truthful, you want to be able to use it,” said Shannon Edmonds with the Texas District and County Attorneys Association. “Prosecutors are always wary of new proposals that might exclude truthful and relevant evidence from the courtroom.”

Recommendations

According to the Innocence Project of New York, 17 percent of people exonerated by DNA tests nationwide were convicted based at least in part on the word of an
informant who was facing charges, awaiting trial or had some incentive for providing testimony. That’s 57 of 344 exonerated inmates.

Alexandra Natapoff, a Loyola Law School-Los Angeles professor and author of “Snitching: Criminal Informants and the Erosion of American Justice,” told the Cole commission at its June meeting that she had identified three now-exonerated Texans who were convicted of murder, and one who was convicted of aggravated robbery, who were snitched on by jailhouse informants since 2010.

“Jailhouse informants have become well-recognized as a major source of wrongful convictions in the United States,” Natapoff told the Cole commission, which is named for a Texas Tech student convicted of rape in 1986 and cleared by DNA tests in 2009 — 10 years after he had died in prison.

Natapoff provided many of the recommended reforms that the commission will discuss Thursday, including:

• Requiring judges to hold pretrial hearings to assess the reliability of jailhouse informants before they are allowed to testify.

• Allowing jurors to hear an informant’s complete criminal history, including charges that were reduced or dismissed under a plea bargain. Currently, jurors only learn about convictions for felonies and crimes that involve dishonesty or fraud.

• Instructing jurors that testimony from informants should be weighed carefully, taking into account whether they received a benefit in exchange for testifying, had testified as an informant in other cases or had ever changed their testimony.

• Creating a state system that tracks how often jail-house informants are used.

• Requiring district attorney offices to have written policies on what information must be disclosed to defense lawyers, including an informant’s criminal history, other cases the informant testified in and any benefits provided in exchange for testimony.

**Texas law**

Commission member Staley Heatly, the district attorney for Wilbarger, Foard and Hardeman counties in North Texas, said during the June meeting that the final recommendation wasn’t needed because prosecutors are already required to turn that information over to defense lawyers.
Ware replied that disclosure rules could be more specific and pointed to a 2009 Texas law that said nobody can be convicted based on the uncorroborated testimony of a jailhouse informant.

“Our Legislature has already recognized that they are a different kind of witness because they are all inherently unreliable,” Ware said. “The problem with the statute is that it really doesn’t have much effect.”

Jailhouse informants typically enter a case after charges have been filed, and the defendant has been incarcerated, based on other evidence, Ware added.

Heatly also said he opposed the jury instruction recommendation, but most of the proposed reforms weren’t discussed in June.

Thursday’s meeting will be in Room E1.030 of the Capitol Extension 1-4 p.m. Another meeting is likely for October as the panel begins drafting its report to the Legislature.

Contact Chuck Lindell at 512-912-2569.

Twitter: @chucklindell

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