

BILL ANALYSIS

Senate Research Center
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H.B. 48
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has had more total exonerations (200) and DNA exonerations (57), than any other state in the country. The conviction of the innocent ruins lives, destroys public trust in our justice system, harms public safety as guilty culprits remain free, and denies victims justice.

Currently, when an innocent person is wrongfully convicted, Texas has no institutional mechanism to find out what went wrong and recommend reforms to address those issues in our criminal justice system to prevent such tragedies in the future. Texas would greatly benefit from a process to examine exonerations and recommend reforms to continuously improve the reliability of our justice system. It is important that we learn how through every stage of the process—from arrest through appeal—how and why the justice system makes such mistakes, and ways in which we can implement more reliable practices to improve public safety and prevent such mistakes moving forward.

H.B. 48 creates the Tim Cole Exoneration Review Commission to review proven wrongful convictions, identify the main causes of those convictions, and make recommendations to prevent such tragedies from reoccurring in the future.

The commission would review convictions of innocent people in much the same way as the National Transportation Safety Board investigates major accidents. When a major airplane, train, or space shuttle accident occurs, an in depth investigation begins within hours to identify the causes and possible remedies to ensure it is not repeated. The Tim Cole Exoneration Review Commission would provide similar safeguards to ensure justice is served in our state, make sure that we are locking up only the guilty and protecting the innocent, and continuing to make our justice system as reliable, fair, and effective as possible.

H.B. 48 amends current law relating to the creation of a commission to review convictions after exoneration and to prevent wrongful convictions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 43, Code of Criminal Procedure, by adding Article 43.27, as follows:

Art. 43.27. TIMOTHY COLE EXONERATION REVIEW COMMISSION

Sec. 1. CREATION. Creates the Timothy Cole Exoneration Review Commission.

Sec. 2. COMPOSITION. Provides that the commission is composed of the following nine members:

- (1) the presiding judge of the court of criminal appeals, or another judge of the court of criminal appeals appointed by the presiding judge;

- (2) the chief justice of the Texas Supreme Court, or another justice of the Texas Supreme Court appointed by the chief justice;
- (3) a district court judge, appointed by the presiding judge of the court of criminal appeals;
- (4) the presiding officer of the Texas Commission on Law Enforcement (TCOLE), or a member or employee of TCOLE appointed by the presiding officer;
- (5) the presiding officer of the Texas Indigent Defense Commission, or a member or employee of the Texas Indigent Defense Commission appointed by the presiding officer;
- (6) the presiding officer of the Texas Forensic Science Commission (FSC), or a member or employee of FSC who has significant experience in the field of forensic science appointed by the presiding officer;
- (7) the chair of the Senate Committee on Criminal Justice, or the chair's designee;
- (8) the chair of the House Committee on Criminal Jurisprudence, or the chair's designee; and
- (9) the president of the State Bar of Texas, or the president's designee.

Sec. 3. ADVISORY PANEL. Authorizes the commission to receive advice and guidance from an advisory panel composed of the following members:

- (1) the president of the Texas Criminal Defense Lawyers Association, or the president's designee;
- (2) the chairman of the board of the Texas District and County Attorneys Association, or the chairman's designee; and
- (3) the director of the Texas Center for Actual Innocence at The University of Texas School of Law, the director of the Texas Innocence Network at the University of Houston Law Center, the executive director of the Innocence Project of Texas, or the executive director of the Innocence Project at Thurgood Marshall School of Law, each serving on a rotating basis.

Sec. 4. TERMS; VACANCIES. (a) Provides that, if a member of the commission is appointed under Sections 2(1)-(6), the member serves for a six-year term.

- (b) Requires the presiding officer of the commission to be elected on an annual basis by the members of the commission.
- (c) Provides that, if a person appointed to the commission does not complete the person's term, the vacancy is filled for the unexpired portion of the term in the same manner as the original appointment.
- (d) Authorizes the presiding officer to appoint committees from the membership of the commission as needed to organize the commission or to perform the duties of the commission.
- (e) Authorizes the commission to hire a director and other necessary personnel to perform the duties of the commission.

Sec. 5. ADMINISTRATIVE ATTACHMENT. (a) Provides that the commission exists under the Texas Judicial Council created under Chapter 71 (Texas Judicial Council),

Government Code. Provides that the commission operates independently of the Texas Judicial Council.

(b) Provides that the commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(c) Requires the Office of Court Administration of the Texas Judicial System, notwithstanding any other law, and subject to available funding, to:

(1) provide administrative assistance and services to the commission, including budget planning and purchasing;

(2) accept, deposit, and disburse money made available to the commission;

(3) pay the salaries and benefits of the director and employees of the commission; and

(4) provide the commission with adequate computer equipment and support.

Sec. 6. MEETINGS. (a) Authorizes the commission to hold its meetings, hearings, and other proceedings at a time and in a manner determined by the commission, but requires the commission to meet in Austin at least annually.

(b) Requires the commission to conduct a public hearing at least annually, the agenda of which must include a review of the work conducted by the commission in the preceding year. Authorizes the advisory committee to participate in a public hearing of the commission.

(c) Provides that five members of the commission constitute a quorum. Authorizes the commission to act only on the concurrence of five or more members. Authorizes the commission to issue a report under Section 13 only on the concurrence of six members.

(d) Entitles a member of the commission only to reimbursement for the member's travel expenses as provided by Section 10 of this article, Chapter 660 (Travel Expenses), Government Code, and the General Appropriations Act.

Sec. 7. QUALIFICATIONS. (a) Prohibits a member of the commission from participating in or voting on any matter before the commission if the matter directly concerns an individual related to the member within the second degree by affinity or consanguinity.

(b) Prohibits an individual from being a member of the commission or acting as the general counsel to the commission if the individual or individual's spouse is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the individual's activities for compensation on behalf of a profession or entity related to the operation of the commission.

Sec. 8. GROUNDS FOR REMOVAL. (a) Provides that it is a ground for removal from the commission that a member:

(1) if applicable, does not have at the time of appointment the qualifications required by this article;

(2) does not maintain during service on the commission the qualifications required by this article;

(3) violates a prohibition established by this article;

(4) is ineligible for membership under this article;

(5) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(6) is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the commission.

(b) Provides that the validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

Sec. 9. COMMISSION MEMBER TRAINING. (a) Requires a member of the commission to complete a training program that meets the requirements of this section.

(b) Requires that the training program provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to its examination authority;

(5) the requirements of laws relating to public officials and public meetings, including conflict-of-interest laws; and

(6) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Sec. 10. COMPENSATION; REIMBURSEMENT. Prohibits a member of the commission from receiving compensation for the services provided as a member. Entitles a member to reimbursement by the commission for the member's actual and necessary expenses incurred in performing commission duties, subject to the availability of funds that may be appropriated to the commission by the state. Authorizes reimbursements to members for actual and necessary expenses incurred to be authorized by the commission through funds received and administered by the commission from gifts, grants, and donations the commission accepts under Section 11.

Sec. 11. GIFTS, GRANTS, AND DONATIONS. (a) Authorizes the commission to request and accept gifts, grants, and donations from any source to carry out its functions, except that the commission may not request or accept gifts from:

(1) a law firm, as defined by Section 72.028 (Gifts, Grants, and Donations), Government Code;

(2) an attorney or the attorney's spouse; or

(3) an employee of the law firm or an attorney or the spouse of that employee.

(b) Requires that all gifts, grants, and donations be accepted in an open meeting by a majority of the members of the commission then present and voting, and be reported in the public records of the commission with the name of the donor and purpose of the gift, grant, or donation accepted.

(c) Authorizes the commission to authorize and disburse subgrants of funds from those funds that the commission may accept from time to time under this section for appropriate programs, services, and activities related to and in accord with the purposes and activities of the commission.

Sec. 12. DUTIES. (a) Requires the commission to thoroughly review and examine all cases in which an innocent defendant was convicted and exonerated, including convictions vacated based on a plea to time served, to:

- (1) identify the causes of wrongful convictions and suggest ways to prevent future wrongful convictions and improve the reliability and fairness of the criminal justice system;
- (2) ascertain errors and defects in the laws, evidence, and procedures applied or omitted in the defendant's case;
- (3) identify errors and defects in the criminal justice system in this state generally, using research, expert analysis, and demographic data;
- (4) consider suggestions to correct the identified errors and defects through legislation or procedural changes;
- (5) identify procedures, programs, and educational or training opportunities designed to eliminate or minimize the identified causes of wrongful convictions, including the identified errors and defects in the criminal justice system that contribute to wrongful convictions; and
- (6) collect and evaluate data and information from an actual innocence exoneration reported to the commission by a state-funded innocence project, for inclusion in the commission's reports under Section 13.

(b) Authorizes the commission, subject to available funding and applicable accreditation procedures, to assist with and suggest training and continuing education opportunities for persons involved in the investigation, prosecution, defense, trial, or appeal of matters in the criminal justice system.

(c) Requires the commission to review and examine each case in which a final ruling was made by the court of criminal appeals on a writ of habeas corpus granted for actual innocence on or after January 1, 1994, and each case in which a commutation of punishment or pardon was granted before January 1, 1994, based on a claim of actual innocence and to use relevant data and information to:

- (1) identify any apparent breach of professional responsibility or misconduct by attorneys, judges, or criminal justice system personnel that is revealed in the course of any habeas review process existing in the case;
- (2) refer any apparent breach of professional responsibility or misconduct to, as appropriate, the State Commission on Judicial Conduct, the State Bar of Texas, TCOLE, the office of the attorney general, or other appropriate agency or office, for their review of the apparent breach of professional responsibility or misconduct;
- (3) identify any patterns in:
 - (A) apparent breaches of professional responsibility or misconduct by attorneys, judges, or criminal justice system personnel; or
 - (B) errors or defects in the criminal justice system in this state that impact the pretrial, trial, appellate, or habeas review process; and

(4) consider and suggest legislative, training, or procedural changes to correct the patterns, errors, and defects identified through the work of the commission.

(d) Requires the commission to consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution identified through the work of the commission.

(e) Authorizes the commission to, subject to available funding, enter into contracts for research, analysis, and professional services as may be necessary or appropriate to facilitate the work and activities of the commission or to complete the review and examination of a case in which there has been a commutation of punishment, a pardon, or a final ruling of actual innocence on an application for a writ of habeas corpus.

(f) Requires the commission, in its first biennium of operation to give particular attention to reviewing and updating the research, reports, and recommendations of the Timothy Cole advisory panel established in the 81st Regular Session and the degree to which the panel's recommendations were implemented.

(g) Requires the commission, following the initial biennium, in each subsequent biennium, to:

(1) continue to monitor the progress and implementation of the recommendations made in the first biennium; and

(2) determine future items for study by identifying not more than 10 prominent criminal justice issues to consider, of which the chief justice of the Texas Supreme Court and the presiding judge of the court of criminal appeals biennially shall choose not more than six to be studied by the commission in the applicable biennium.

(h) Authorizes the commission to solicit input from innocence projects, bar associations, judicial entities, law enforcement agencies, prosecutor associations, public defender or criminal defense associations, and advocacy organizations.

Sec. 13. REPORTS AND RECORDS. (a) Requires the commission to compile and issue a detailed annual report of its findings and recommendations, including any proposed legislation or policy changes necessary or appropriate to implement procedures and programs to prevent the causes and occurrence of future wrongful convictions, wrongful executions, or errors or defects in the habeas review process. Authorizes the commission to also compile and issue interim reports for the same or similar purposes.

(b) Requires that official annual and interim reports issued by the commission be made available to the public on request.

(c) Provides that working papers and records, including all documentary or other information, collected, received, prepared, or maintained by the commission or members or staff of the commission in performing the commission's duties under this article or other law to conduct an evaluation and prepare a report, are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(d) Authorizes the commission to request that an entity of state government or of a political subdivision provide information related to the commission's duties under Section 12. Requires an entity, on the request of the commission, to provide information to the commission unless otherwise prohibited from disclosing that information. Authorizes the commission to examine the public records, documents, and files of an entity of state government or a political subdivision in carrying out the commission's duties.

(e) Provides that information held by an entity of state government or of a political subdivision that is confidential and that the commission receives in connection with the performance of the commission's functions under this article or other law remains confidential and is not subject to disclosure under Chapter 552, Government Code.

Sec. 14. ASSISTANCE OF STATE AGENCIES; ACCESS TO STATE AGENCIES. (a) Authorizes the commission, subject to available funding, to request assistance from the Legislative Budget Board and any state-supported university in performing the commission's duties.

(b) Authorizes the commission to also request the assistance of other state agencies and officers. Requires a state agency or officer, when assistance is requested, to assist the commission in carrying out its functions under this article.

Sec. 15. SUBMISSION. Requires the commission to submit the reports described by Section 13 to the governor, the lieutenant governor, the speaker of the house of representatives, the legislature, and the Texas Judicial Council not later than December 1 of each even-numbered year, or not later than the 60th day after the date the report is issued, whichever occurs first.

SECTION 2. Amends the heading to Section 79.039, Government Code, to read as follows:

Sec. 79.039. EXONERATION REPORTS.

SECTION 3. Amends Section 79.039, Government Code, by adding Subsection (c), as follows:

(c) Requires the clinic or program, at the same time the legal clinic or program submits a report under Subsection (a) (requires each legal clinic or program in this state that is operated by a law school and that receives financial support from the Texas Indigent Defense Commission to submit to the Texas Indigent Defense Commission an annual report regarding criminal cases in which the clinic or program has provided legal services to an indigent defendant during the preceding calendar year; and in which, based on a finding of actual innocence, the court of criminal appeals overturns a conviction, or the governor issues a pardon based on actual innocence), to submit a comprehensive report to the Timothy Cole Exoneration Review Commission that:

(1) contains all information included in the report submitted under Subsection (a); and

(2) provides a narrative describing the services and work performed by the clinic or program during the previous fiscal year that includes the number of innocence claims the clinic or program handled in that year, including a summary of each claim, the legal remedies pursued, and the type of relief granted in the case, if any.

SECTION 4. Effective date: upon passage or September 1, 2015.