

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 48
By: McClendon et al. (Ellis)
State Affairs
5/22/2015
Committee Report (Substituted)

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.

C.S.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 we locking up only the guilty and protecting the innocent, and continuing to make our justice system as reliable, fair, and effective as possible.

C.S.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. (a) Provides that the commission is composed of the following 11 members:

(1) a member appointed by the governor;

- (2) the chair of the Senate Committee on Criminal Justice;
- (3) the chair of the Senate Committee on State Affairs;
- (4) the chair of the House Committee on Criminal Jurisprudence; and
- (5) the chair of the House Committee on Judiciary and Civil Jurisprudence;
- (6) a member appointed by the chair of the Texas Judicial Council;
- (7) the presiding officer of the Texas Commission on Law Enforcement (TCOLE), or a member or employee of TCOLE appointed by the presiding officer;
- (8) 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;
- (9) 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;
- (10) the president of the Texas Criminal Defense Lawyers Association, or the president's designee; and
- (11) the chairman of the board of the Texas District and County Attorneys Association, or the chairman's designee.

(b) Prohibits a person appointed under this section from, while serving on the commission, being an active judge, as that term is defined by Section 74.041 (Definitions), Government Code.

(c) Provides that the following persons serve as advisory members to the commission:

- (1) the director of the Texas Center for Actual Innocence at The University of Texas School of Law;
- (2) the director of the Texas Innocence Network at the University of Houston Law Center;
- (3) the executive director of the Innocence Project of Texas; and
- (4) the executive director of the Innocence Project at Thurgood Marshall School of Law.

Sec. 3. TERMS; VACANCIES. (a) Provides that a member of the commission serves until the commission is dissolved.

(b) Requires the presiding officer of the commission to be elected by the members of the commission.

(c) Provides that a vacancy is filled 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.

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

Sec. 5. MEETINGS. (a) Authorizes the commission to hold its hearings and meetings 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. Requires the commission to hold its first meeting on or before October 31, 2015.

(b) Requires the commission to conduct one public hearing. Authorizes advisory members to participate in a public hearing of the commission but provides that they do not count toward a quorum and are not entitled to vote on matters before the commission.

(c) Provides that six members of the commission constitute a quorum. Authorizes the commission to act only on the concurrence of six or more members. Authorizes the commission to issue a report under Section 9 only on the concurrence of seven members.

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

Sec. 6. 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 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. 7. 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 period; 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. 8. DUTIES. (a) Authorizes the commission to review and examine all cases in this state in which an innocent defendant was convicted and then, on or after January 1, 2010, was exonerated to, as applicable:

(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) consider suggestions to correct the identified errors and defects through legislation or procedural changes;

(4) identify procedures, programs, and educational or training opportunities designed to eliminate or minimize the identified causes of wrongful convictions; and

(5) 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 9;

(6) identify any patterns in errors or defects in the criminal justice system in this state that impact the pretrial, trial, appellate, or habeas review process; or

(7) consider and suggest legislative, training, or procedural changes to correct the patterns, errors, and defects in the criminal justice system that are identified through the work of the commission.

(b) 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.

(c) Requires the commission to review and update the research, reports, and recommendations of the Timothy Cole advisory panel established in the 81st Regular Session and to include in its report under Section 9 the degree to which the panel's recommendations were implemented.

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

Sec. 9. REPORTS AND RECORDS. (a) Requires the commission to compile and issue a detailed annual report of its findings and recommendations, including any legislation or policy changes the commission recommends to implement procedures and programs to prevent the causes and occurrence of future wrongful convictions. Requires that the

report also describe statutory, procedural, and evidentiary reforms that have already been implemented in this state to prevent the causes and occurrence of future wrongful convictions.

(b) Provides that the report may not include any recommendation regarding the use of the death penalty or related procedures.

(c) Requires that the official report issued by the commission be made available to the public on request.

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

(e) 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 8. Authorizes an entity, on the request of the commission, to provide information to the commission unless otherwise prohibited from disclosing that information.

(f) 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.

(g) Authorizes the commission, in carrying out its duties, to examine the public records of an entity of state government or a political subdivision that are provided under Subsection (e).

Sec. 10. ASSISTANCE OF STATE-SUPPORTED UNIVERSITIES. Authorizes the commission to request assistance from any state-supported university in performing the commission's duties.

Sec. 11. SUBMISSION. Requires the commission to submit the reports described by Section 9 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, 2016.

Sec. 12. EXPIRATION. (a) Provides that this article expires December 1, 2016.

(b) Provides that the commission is dissolved on the earlier of:

(1) the date the commission submits its report; or

(2) December 1, 2016.

SECTION 2. Effective date: upon passage or September 1, 2015.