

By: McClendon

H.B. No. 115

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation of a commission to investigate convictions
3 after exoneration and to prevent wrongful convictions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The legislature finds that: (a) Whenever a
6 person convicted of a crime is found, through post-conviction DNA
7 testing or the discovery of other new evidence, to have been
8 innocent of that crime, a failure has occurred in the criminal
9 justice system which wrongly convicted an innocent person and
10 allowed the real perpetrator to remain undetected;

11 (b) Review of the causes of wrongful convictions enables the
12 state to identify potential weaknesses in the state's criminal
13 justice system, and the remedies that can strengthen the quality of
14 criminal justice in the state;

15 (c) There is not presently any governmental entity in the
16 state charged with conducting independent, expert reviews of
17 matters concerning the conviction of persons who have been
18 exonerated, necessary in order to identify the primary and
19 potential causes of wrongful convictions in the state;

20 (d) The establishment of the commission would further the
21 understanding of the particular and systemic causes of wrongful
22 convictions, promote the adoption of positive reforms to enhance
23 the accuracy of criminal investigations, strengthen the
24 reliability of criminal prosecutions, protect the innocent, and

1 enhance public safety;

2 (e) The people of the state would benefit from the creation
3 of an Innocence Commission charged with identifying the various
4 causes of wrongful convictions, identifying policies and
5 procedures demonstrated to minimize the likelihood of wrongful
6 convictions, proposing reforms to minimize the occurrence of
7 wrongful convictions in the state, and conducting its work in a
8 manner that is transparent, with the goal of keeping the public
9 informed; and

10 (f) The establishment of the Texas Innocence Commission
11 would bolster public confidence in the state's criminal justice
12 system and help ensure that the administration of criminal justice
13 in the state is fair, equitable, accurate and reliable.

14 SECTION 2. Chapter 43, Code of Criminal Procedure, is
15 amended by adding Article 43.27 to read as follows:

16 Art. 43.27. TEXAS INNOCENCE COMMISSION

17 Sec. 1. CREATION. The Texas Innocence Commission is
18 created.

19 Sec. 2. COMPOSITION. (a) The commission is composed of
20 nine members, to be appointed by the Governor. Appointments to the
21 commission shall be made without regard to the race, color,
22 disability, sex, religion, age, or national origin of the
23 appointees.

24 (b) The regular term of office of the commissioners shall be
25 four (4) years; but the initial members of each of three classes of
26 three members each shall be chosen respectively for terms of one
27 (1), two (2) and four (4) years. Interim vacancies shall be filled

1 in the same manner as vacancies due to expiration of a full term,
2 but only for the unexpired portion of the term in question.
3 Commissioners shall receive no compensation for their services as
4 such.

5 (c) The presiding officer of the commission shall be
6 elected on an annual basis by the members of the commission. The
7 commission may hold its meetings, hearings and other proceedings at
8 such times and places as it shall determine, but shall meet in
9 Austin at least once each year. A quorum shall consist of five (5)
10 members. Proceedings shall be by majority vote of those present.

11 Sec. 3. QUALIFICATIONS. (a) Each member must be a
12 registered voter of the state.

13 (b) A member of the commission may not hold any other public
14 office or be an employee of any state department or agency, or be an
15 employee or member of another state board or commission during the
16 member's tenure on the commission.

17 (c) An individual may not be a member of the commission or
18 act as the general counsel to the commission if the individual or
19 individual's spouse is required to register as a lobbyist under
20 Chapter 305, TEX. GOVT. CODE, because of the individual's
21 activities for compensation on behalf of a profession or entity
22 related to the operation of the commission.

23 (d) Appointments to the commission shall be made without
24 regard to the race, color, disability, sex, religion, age, or
25 national origin of the appointees.

26 Sec. 4. REMOVAL. (a) It is a ground for removal from the
27 commission that a member:

1 (1) does not have at the time of appointment the
2 qualifications required by this Article;

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

5 (3) violates the prohibition established by this
6 Article;

7 (4) is ineligible for membership under this Article;

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

11 (6) is absent from more than half of the regularly
12 scheduled meetings that the member is eligible to attend during a
13 calendar year, without an excuse approved by a majority vote of the
14 commission.

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

18 Sec. 5. COMMISSION MEMBER TRAINING. (a) A person who is
19 appointed to and qualifies for office as a member of the commission
20 shall complete a training program that complies with this section.

21 (b) The training program must provide the person with
22 information regarding:

23 (1) the legislation that created the commission;

24 (2) the programs operated by the commission;

25 (3) the role and functions of the commission;

26 (4) the rules of the commission with an emphasis on
27 the rules that relate to its investigatory authority;

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

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

6 Sec. 6. SUNSET PROVISION. The Texas Innocence Commission
7 is subject to review under the Texas Sunset Act and shall be
8 reviewed according to the periodic schedule for review of state
9 agencies under Chapter 325, TEX. GOVT. CODE.

10 Sec. 7. DUTIES. (a) The commission shall make thorough
11 review or investigation of all cases in which an innocent person was
12 convicted and exonerated, including convictions vacated based on a
13 plea to time served, to:

14 (1) identify the causes of wrongful convictions;

15 (2) ascertain errors and defects in the laws, rules,
16 proof and procedures applied in prosecuting the defendant's case at
17 issue or implicated by each identified cause of wrongful
18 convictions;

19 (3) identify errors and defects in the criminal
20 justice process in this state generally, utilizing peer-reviewed
21 research, expert analysis and demographic data;

22 (4) consider and develop solutions and methods to
23 correct the identified errors and defects through legislation,
24 rule, regulation or procedural changes; and

25 (5) identify procedures, programs and educational or
26 training opportunities demonstrated to eliminate or minimize the
27 causes of wrongful convictions and prevent the future occurrence

1 of wrongful convictions and resulting executions.

2 (b) The commission shall consider potential implementation
3 plans, costs, cost savings, and the impact on the criminal justice
4 system for each potential solution. The commission may receive
5 gifts, grants, donations, and contributions as further provided in
6 this Article and utilize said funds to implement the purposes of
7 this enactment, and may enter into contracts for research and
8 professional services as may be necessary or appropriate to
9 facilitate the work and activities of the commission or complete
10 the investigation of a particular post-exoneration case, including
11 forensic testing and autopsies.

12 (c) In fulfilling its duties, the commission shall conduct a
13 public hearing at least once annually, concerning but not limited
14 to the work of the agency in regard to its review or investigation
15 of specific and general matters being considered under this
16 Article.

17 Sec. 8. REPORTS AND RECORDS. (a) The commission shall
18 compile a detailed annual report of its findings and
19 recommendations, including any proposed legislation and rule or
20 policy changes necessary or appropriate to implement procedures and
21 programs to prevent the causes and occurrence of future wrongful
22 convictions or executions. The commission may also compile interim
23 reports for the same or similar purposes. Official annual and
24 interim reports issued by the commission shall be made available to
25 the public upon request.

26 (b) The findings and recommendations contained in the
27 official reports issued by the commission may be used as some

1 evidence in any subsequent civil or criminal proceeding, according
2 to the applicable procedural and evidentiary rules for the tribunal
3 in which a particular matter is or may be pending.

4 (c) Working papers and records, including all documentary
5 or other information, prepared or maintained by the commission,
6 members or staff in performing the commission's duties under this
7 article or other law to conduct an evaluation and prepare a report,
8 are excepted from the public disclosure requirements of Section
9 552.021, TEX. GOVT. CODE. A record held by another entity that is
10 considered to be confidential by law and that the commission
11 receives in connection with the performance of the commission's
12 functions under this article or another law remains confidential
13 and is excepted from the public disclosure requirements of Section
14 552.021, TEX. GOVT. CODE.

15 Sec. 9. SUBMISSION. The commission shall submit the
16 reports described by Sec. 8 to the governor, the lieutenant
17 governor, the speaker of the house of representatives, and to the
18 legislature not later than December 1 of each even-numbered year,
19 or within sixty (60) days following the issuance of the report,
20 whichever first occurs.

21 Sec. 10. GIFTS AND GRANTS. (a) The commission may apply
22 for and accept gifts, grants, and donations from any organization
23 described in Section 501(c) (3) or 501(c) (4) of the Internal
24 Revenue Code for the purpose of funding any activity of the
25 commission under this Article. The commission may apply for and
26 accept grants under federal programs.

27 (b) The commission may also receive contributions from

1 private individuals or entities.

2 (c) All gifts, grants, donations and contributions must be
3 accepted in an open meeting by a majority of the members of the
4 commission then present and voting, and shall be reported in the
5 public records of the commission with the name of the donor and
6 purpose of the gift, grant, contribution or donation accepted.

7 (d) The commission may authorize and disburse sub-grants of
8 funds from those funds which it may accept from time to time under
9 this Section for appropriate programs, services and activities
10 related to and in accord with the purposes and activities of the
11 commission.

12 Sec. 11. REIMBURSEMENT. A member of the commission shall
13 receive no compensation for the services provided by the member in
14 that capacity. A member is entitled to reimbursement by the
15 commission for the member's actual and necessary expenses incurred
16 in performing commission duties, subject to the availability of
17 funds from general revenue that may from time to time be
18 appropriated to the commission by the state; such reimbursements to
19 members for actual and necessary expenses incurred may be
20 authorized by the commission through funds received and
21 administered by the commission from gifts, grants, donations and
22 contributions it accepts under Sec. 10 of this Article.

23 Sec. 12. ASSISTANCE OF AND ACCESS TO STATE AGENCIES. (a)
24 The Texas Legislative Council, the Legislative Budget Board, and
25 the University of Texas at Austin shall assist the commission in
26 performing the commission's duties.

27 (b) The commission may also request the assistance of other

1 state agencies and officers. When assistance is requested, a state
2 agency or officer shall assist the commission in carrying out its
3 functions under this chapter. The commission or its designated
4 staff member may inspect the records, documents, and files of any
5 state agency in conjunction with its duties.

6 Sec. 13. OTHER LAW. The commission is not subject to
7 Chapter 2110, Government Code.

8 SECTION 3. The appointments to the Texas Innocence
9 Commission as required by Article 43.27, Code of Criminal
10 Procedure, as added by this Act, shall be made not later than the
11 sixtieth (60th) day after the effective date of this Act.

12 SECTION 4. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house,
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2011.