

By: McClendon

H.B. No. 59

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the creation of a commission to investigate and prevent  
3 the wrongful convictions of indigent defendants and to identify  
4 other related errors and defects in the criminal process.

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

6 SECTION 1. Chapter 43, Code of Criminal Procedure, is  
7 amended by adding Article 43.27 to read as follows:

8 Art. 43.27. TIMOTHY COLE EXONERATION REVIEW COMMISSION

9 Sec. 1. CREATION. The Timothy Cole Exoneration Review  
10 Commission is created.

11 Sec. 2. COMPOSITION. The commission is composed of nine  
12 members, at least one of whom must be a member of the law  
13 enforcement community, appointed by the governor. The governor  
14 shall make appointments to the commission without regard to the  
15 race, color, disability, sex, religion, age, or national origin of  
16 the appointee.

17 Sec. 3. TERMS; VACANCIES. (a) Members serve staggered  
18 six-year terms, with one-third of the members' terms expiring  
19 February 1 of each odd-numbered year.

20 (b) In the event of a vacancy, the governor shall appoint a  
21 replacement to fill the unexpired portion of the term.

22 (c) The presiding officer of the commission shall be elected  
23 on an annual basis by the members of the commission.

24 Sec. 4. MEETINGS. (a) The commission may hold its

1 meetings, hearings, and other proceedings at times and places as  
2 the commission shall determine, but shall meet in Austin at least  
3 once each year. Proceedings shall be by majority vote of those  
4 present.

5 (b) The commission shall conduct a public hearing at least  
6 once a year, the agenda of which must include a review of the work of  
7 the commission in reviewing and investigating matters considered by  
8 the commission under this article.

9 Sec. 5. QUALIFICATIONS. (a) Each member must be a  
10 registered voter of the state.

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

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

21 Sec. 6. GROUNDS FOR REMOVAL. (a) It is a ground for  
22 removal from the commission that a member:

23 (1) does not have at the time of appointment the  
24 qualifications required by this article;

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

27 (3) violates a prohibition established by this

1 article;

2 (4) is ineligible for membership under this article;

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

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

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

13 Sec. 7. COMMISSION MEMBER TRAINING. (a) A person who is  
14 appointed to and qualifies for office as a member of the commission  
15 shall complete a training program that meets the requirements of  
16 this section.

17 (b) The training program must provide the person with  
18 information regarding:

19 (1) the legislation that created the commission;

20 (2) the programs operated by the commission;

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

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

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

27 (6) any applicable ethics policies adopted by the

1 commission or the Texas Ethics Commission.

2 Sec. 8. SUNSET PROVISION. The Timothy Cole Exoneration  
3 Review Commission is subject to Chapter 325, Government Code (Texas  
4 Sunset Act). Unless continued in existence as provided by that  
5 chapter, the Timothy Cole Exoneration Review Commission is  
6 abolished and this article expires September 1, 2025.

7 Sec. 9. DUTIES. (a) The commission shall make thorough  
8 review or investigation of all cases in which an innocent indigent  
9 defendant was convicted and exonerated, including convictions  
10 vacated based on a plea to time served, to:

11 (1) identify the causes of wrongful convictions;

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

16 (3) identify errors and defects in the criminal  
17 justice process in this state generally, emphasizing  
18 identification of errors and defects related to indigent defense,  
19 using peer-reviewed research, expert analysis, and demographic  
20 data;

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

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

1 executions in indigent defense cases.

2 (b) The commission shall thoroughly review each application  
3 by an indigent defendant for writ of habeas corpus made to the court  
4 of criminal appeals for which the court has issued a final ruling  
5 to:

6 (1) identify any ethical violations or misconduct by  
7 attorneys or judges revealed in the course of the habeas review  
8 process;

9 (2) refer any ethical violations or misconduct  
10 discovered to the State Commission on Judicial Conduct, the State  
11 Bar of Texas, the office of the attorney general, or other  
12 appropriate agency or office to review the violations or misconduct  
13 and, if appropriate, initiate or take corrective disciplinary  
14 action;

15 (3) identify any patterns of ethical violations or  
16 misconduct by attorneys or judges or errors or defects in the  
17 criminal justice system in this state that impact the habeas review  
18 process;

19 (4) consider and develop solutions and methods to  
20 correct through legislation, rule, or procedural changes the  
21 patterns, errors, and defects identified under Subdivision (3); and

22 (5) identify procedures, programs, and educational or  
23 training opportunities demonstrated to eliminate or minimize the  
24 patterns, errors, and defects identified under Subdivision (3).

25 (c) The commission shall consider potential implementation  
26 plans, costs, cost savings, and the impact on the criminal justice  
27 system for each potential solution identified under Subsection (a)

1 or (b).

2 (d) The commission may enter into contracts for research and  
3 professional services as may be necessary or appropriate to  
4 facilitate the work and activities of the commission or complete  
5 the review or investigation of an indigent defense case in which  
6 there has been an exoneration or a final disposition of a writ of  
7 habeas corpus, including forensic testing and autopsies.

8 Sec. 10. REPORTS AND RECORDS. (a) The commission shall  
9 compile a detailed annual report of its findings and  
10 recommendations, including any proposed legislation, rule, or  
11 policy changes necessary or appropriate to implement procedures and  
12 programs to prevent the causes and occurrence of future wrongful  
13 convictions or wrongful executions of indigent defendants or of  
14 defects or errors in the habeas review process with respect to those  
15 defendants. The commission may also compile interim reports for  
16 the same or similar purposes.

17 (b) Official annual and interim reports issued by the  
18 commission must be made available to the public on request.

19 (c) The findings and recommendations contained in the  
20 official reports issued by the commission may be used as evidence in  
21 any subsequent civil or criminal proceeding, according to the  
22 applicable procedural and evidentiary rules for the tribunal in  
23 which a particular matter is or may be pending.

24 (d) Working papers and records, including all documentary  
25 or other information, prepared or maintained by the commission or  
26 members or staff of the commission in performing the commission's  
27 duties under this article or other law to conduct an evaluation and

1 prepare a report are excepted from the public disclosure  
2 requirements of Section 552.021, Government Code. A record held by  
3 another entity that is considered to be confidential by law and that  
4 the commission receives in connection with the performance of the  
5 commission's functions under this article or another law remains  
6 confidential and is excepted from the public disclosure  
7 requirements of Section 552.021, Government Code.

8 Sec. 11. SUBMISSION. The commission shall submit the  
9 reports described by Section 10 to the governor, the lieutenant  
10 governor, the speaker of the house of representatives, and the  
11 legislature not later than December 1 of each even-numbered year,  
12 or not later than the 60th day after the issuance of the report,  
13 whichever occurs first.

14 Sec. 12. GIFTS AND GRANTS. (a) The commission may apply  
15 for and accept gifts, grants, and donations from any organization  
16 described in Section 501(c)(3) or (4), Internal Revenue Code of  
17 1986, for the purpose of funding any activity of the commission  
18 under this article. The commission may apply for and accept grants  
19 under federal programs.

20 (b) The commission may also receive donations from private  
21 individuals or entities.

22 (c) All gifts, grants, and donations must be accepted in an  
23 open meeting by a majority of the members of the commission then  
24 present and voting, and must be reported in the public records of  
25 the commission with the name of the donor and purpose of the gift,  
26 grant, or donation accepted.

27 (d) The commission may authorize and disburse subgrants of

1 funds from those funds that the commission may accept from time to  
2 time under this section for appropriate programs, services, and  
3 activities related to and in accord with the purposes and  
4 activities of the commission.

5 Sec. 13. COMPENSATION; REIMBURSEMENT. A member of the  
6 commission may not receive compensation for the services provided  
7 as a member. A member is entitled to reimbursement by the  
8 commission for the member's actual and necessary expenses incurred  
9 in performing commission duties, subject to the availability of  
10 funds from general revenue that may be appropriated to the  
11 commission by the state. Reimbursements to members for actual and  
12 necessary expenses incurred may be authorized by the commission  
13 through funds received and administered by the commission from  
14 gifts, grants, and donations the commission accepts under Section  
15 12.

16 Sec. 14. ASSISTANCE OF STATE AGENCIES; ACCESS TO STATE  
17 AGENCIES. (a) The Legislative Budget Board and The University of  
18 Texas at Austin shall assist the commission in performing the  
19 commission's duties.

20 (b) The commission may also request the assistance of other  
21 state agencies and officers. When assistance is requested, a state  
22 agency or officer shall assist the commission in carrying out its  
23 functions under this article. The commission or its designee may  
24 inspect the records, documents, and files of any state agency in  
25 carrying out the commission's duties.

26 Sec. 15. OTHER LAW. The commission is not subject to  
27 Chapter 2110, Government Code.



1           SECTION 2. In appointing the initial members of the Timothy  
2 Cole Exoneration Review Commission, the governor shall appoint  
3 three persons to terms expiring February 1, 2015, three to terms  
4 expiring February 1, 2017, and three to terms expiring February 1,  
5 2019.

6           SECTION 3. The appointments to the Timothy Cole Exoneration  
7 Review Commission required by Article 43.27, Code of Criminal  
8 Procedure, as added by this Act, shall be made not later than the  
9 60th day after the effective date of this Act.

10          SECTION 4. This Act takes effect immediately if it receives  
11 a vote of two-thirds of all the members elected to each house, as  
12 provided by Section 39, Article III, Texas Constitution. If this  
13 Act does not receive the vote necessary for immediate effect, this  
14 Act takes effect on the 91st day after the last day of the  
15 legislative session.