

BILL ANALYSIS

Senate Research Center

H.B. 166
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A failure occurs in the criminal justice system when a person is convicted of a crime and is subsequently found to have been innocent of that crime. To address this issue, the Texas Legislature enacted legislation over a decade ago authorizing a convicted person to request a motion for DNA testing. Since the enactment of that legislation, the number of exonerations in Texas has been increasing.

Interested parties contend that the Texas criminal justice system currently does not have the institutional means to evaluate wrongful convictions or to analyze the factors contributing to those convictions. Wrongful convictions have been attributed to many factors, including false eyewitness identifications and confessions, forensic science misconduct, government misconduct, and ineffective legal representation for defendants. Wrongful convictions may lead to the loss of an innocent person's family, employment, and parental rights and ultimately shows that the person who is truly responsible for the crime has not been held accountable.

H.B. 166 creates the Timothy Cole Exoneration Review Commission to determine the causes of wrongful convictions, promote the adoption of positive reforms to enhance the accuracy of criminal investigations, strengthen the reliability of criminal prosecutions, protect innocent persons, and enhance public safety.

H.B. 166 amends current law relating to the creation of a commission to investigate 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 (commission).

Sec. 2. COMPOSITION. Provides that the commission is composed of nine members, at least one of whom is required to be a member of the law enforcement community, appointed by the governor. Requires the governor to make appointments to the commission without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

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

(b) Requires the governor, in the event of a vacancy, to appoint a replacement to fill the unexpired portion of the term.

(c) Requires the presiding officer of the commission to be elected on an annual basis by the members of the commission.

Sec. 4. MEETINGS. (a) Authorizes the commission to hold its meetings, hearings, and other proceedings at times and places as the commission is required to determine, but is required to meet in Austin at least once each year. Requires that proceedings be by majority vote of those present.

(b) Requires the commission to conduct a public hearing at least once a year, the agenda of which is required to include a review of the work of the commission in reviewing and investigating matters considered by the commission under this article.

Sec. 5. QUALIFICATIONS. (a) Requires each member to be a registered voter of the state.

(b) Prohibits a member of the commission from holding any other public office or being an employee of any state department or agency, or being an employee or member of another state board or commission during the member's tenure on the commission.

(c) Prohibits an individual from being a member of the commission or act 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. 6. GROUNDS FOR REMOVAL. (a) Provides that it is a ground for removal from the commission that a member does not have at the time of appointment the qualifications required by this article; does not maintain during service on the commission the qualifications required by this article; violates a prohibition established by this article; is ineligible for membership under this article; cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or 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. 7. COMMISSION MEMBER TRAINING. (a) Requires a person who is appointed to and qualifies for office as 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 the legislation that created the commission; the programs operated by the commission; the role and functions of the commission; the rules of the commission, with an emphasis on the rules that relate to its investigatory authority; the requirements of laws relating to public officials and public meetings, including conflict-of-interest laws; and any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Sec. 8. SUNSET PROVISION. Provides that the commission is subject to Chapter 325 (Sunset Law), Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the commission is abolished and this article expires September 1, 2017.

Sec. 9. DUTIES. (a) Requires the commission to make thorough review or investigation of all cases in which an innocent person was convicted and exonerated, including convictions vacated based on a plea to time served, to:

- (1) identify the causes of wrongful convictions;
- (2) ascertain errors and defects in the laws, rules, proof, and procedures applied in prosecuting the defendant's case at issue or implicated by each identified cause of wrongful convictions;
- (3) identify errors and defects in the criminal justice process in this state generally, using peer-reviewed research, expert analysis, and demographic data;
- (4) consider and develop solutions and methods to correct the identified errors and defects through legislation, rule, or procedural changes; and
- (5) identify procedures, programs, and educational or training opportunities demonstrated to eliminate or minimize the causes of wrongful convictions and prevent the future occurrence of wrongful convictions and resulting executions.

(b) Requires the commission to thoroughly review each application for writ of habeas corpus made to the court of criminal appeals for which the court has issued a final ruling to:

- (1) identify any ethical violations or misconduct by attorneys or judges revealed in the course of the habeas review process;
- (2) refer any ethical violations or misconduct discovered to the State Commission on Judicial Conduct, the State Bar of Texas, the office of the attorney general, or other appropriate agency or office to review the violations or misconduct and, if appropriate, initiate or take corrective disciplinary action;
- (3) identify any patterns of ethical violations or misconduct by attorneys or judges or errors or defects in the criminal justice system in this state that impact the habeas review process;
- (4) consider and develop solutions and methods to correct through legislation, rule, or procedural changes the patterns, errors, and defects identified under Subdivision (3); and
- (5) identify procedures, programs, and educational or training opportunities demonstrated to eliminate or minimize the patterns, errors, and defects identified under Subdivision (3).

(c) Requires the commission to consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution identified under Subsection (a) or (b).

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

Sec. 10. REPORTS AND RECORDS. (a) Requires the commission to compile a detailed annual report of its findings and recommendations, including any proposed legislation, rule, or policy changes necessary or appropriate to implement procedures and

programs to prevent the causes and occurrence of future wrongful convictions, wrongful executions, or defects or errors in the habeas review process. Authorizes the commission to also compile 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) Authorizes the findings and recommendations contained in the official reports issued by the commission to be used as evidence in any subsequent civil or criminal proceeding, according to the applicable procedural and evidentiary rules for the tribunal in which a particular matter is or may be pending.

(d) Provides that working papers and records, including all documentary or other information, prepared or maintained by the commission, members, or staff in performing the commission's duties under this article or other law to conduct an evaluation and prepare a report, are excepted from the public disclosure requirements of Section 552.021 (Availability of Public Information), Government Code. Provides that a record held by another entity that is considered to be confidential by law and that the commission receives in connection with the performance of the commission's functions under this article or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021, Government Code.

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

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

(b) Authorizes the commission to also receive donations from private individuals or entities.

(c) 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 to be reported in the public records of the commission with the name of the donor and purpose of the gift, grant, or donation accepted.

(d) Authorizes the commission to authorize and disburse subgrants of funds from those funds that the commission is authorized to 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. 13. 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 from general revenue 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 12.

Sec. 14. ASSISTANCE OF STATE AGENCIES; ACCESS TO STATE AGENCIES. (a) Requires the Legislative Budget Board and The University of Texas at Austin to assist the commission 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. Authorizes the commission or its designee to inspect the records, documents, and files of any state agency in carrying out the commission's duties.

Sec. 15. OTHER LAW. Provides that the commission is not subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

SECTION 2. Requires the governor, in appointing the initial members of the commission, to appoint three persons to terms expiring February 1, 2015, three to terms expiring February 1, 2017, and three to terms expiring February 1, 2019.

SECTION 3. Requires that the appointments to the commission required by Article 43.27, Code of Criminal Procedure, as added by this Act, be made not later than the 60th day after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2013.