

## **BILL ANALYSIS**

H.B. 166  
By: McClendon  
Criminal Jurisprudence  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

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 seeks to prevent future wrongful convictions by creating 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.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Timothy Cole Exoneration Review Commission in SECTION 1 of this bill.

### **ANALYSIS**

H.B. 166 amends the Code of Criminal Procedure to create the Timothy Cole Exoneration Review Commission, subjects the commission to the Texas Sunset Act, and abolishes the commission on September 1, 2025, unless continued in existence by the legislature.

H.B. 166 requires the governor to appoint nine members to the commission who serve staggered six-year terms, with one-third of the members' terms expiring February 1 of each odd-numbered year. The bill requires the governor, in appointing the initial members of the commission, to appoint not later than the 60th day after the bill's effective date three persons to terms expiring February 1, 2015, three to terms expiring February 1, 2017, and three to terms expiring February 1, 2019. The bill sets out provisions relating to vacancies on the commission, the commission's presiding officer, and commission meetings. The bill requires the commission to conduct a public hearing at least once a year, the agenda of which must include a review of the work of the commission in reviewing and investigating matters considered by the commission under the bill's provisions.

H.B. 166 requires each commission member to be a registered Texas voter and prohibits a member from holding any other public office or being a state department or agency employee or

an employee or member of another state board or commission during the member's tenure on the commission. The bill sets out provisions relating to prohibitions on conflicts of interest, grounds for removal of a commission member, and commission member training.

H.B. 166 requires the commission to thoroughly review or investigate all cases in which an innocent person was convicted and exonerated, including convictions vacated based on a plea to time served, to:

- identify the causes of wrongful convictions;
- 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;
- identify errors and defects in the criminal justice process in Texas generally, using peer-reviewed research, expert analysis, and demographic data;
- consider and develop solutions and methods to correct the identified errors and defects through legislation, rule, or procedural changes; and
- 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.

H.B. 166 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:

- identify any ethical violations or misconduct by attorneys or judges revealed in the course of the habeas review process;
- 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;
- identify any patterns of ethical violations or misconduct by attorneys or judges or errors or defects in the criminal justice system in Texas that impact the habeas review process;
- consider and develop solutions and methods to correct through legislation, rule, or procedural changes the identified patterns, errors, and defects; and
- identify procedures, programs, and educational or training opportunities demonstrated to eliminate or minimize the identified patterns, errors, and defects.

H.B. 166 requires the commission to consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution identified and authorizes the commission to enter into contracts for research and professional services as may be necessary or appropriate to facilitate the commission's work and activities or complete the review or investigation of a particular case, including forensic testing and autopsies. The bill sets out provisions relating to reports the commission is required and authorized to compile and authorizes the findings and recommendations contained in the official reports 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. The bill exempts from state public information law working papers and records prepared or maintained by the commission, members, or staff in performing the commission's duties and exempts from this law 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. The bill establishes deadlines by which the commission must submit the required reports to specified

state and legislative officers and the legislature.

H.B. 166 sets out provisions relating to gifts, grants, and donations to the commission and commission member compensation and reimbursement. The bill requires the Legislative Budget Board and The University of Texas at Austin to assist the commission in performing the commission's duties, authorizes the commission to request the assistance of other state agencies and officers, and requires a state agency or officer to assist the commission in carrying out its functions when assistance is requested. The bill authorizes the commission or its designee to inspect the records, documents, and files of any state agency in carrying out the commission's duties. The bill exempts the commission from certain statutory provisions relating to state agency advisory committees.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

#### **EXPLANATION OF AMENDMENTS**

##### **Committee Amendment No. 1**

Committee Amendment No. 1 makes the Timothy Cole Exoneration Review Commission's authority to enter into contracts for research and professional services as necessary or appropriate to complete the review or investigation of a case apply to a case in which there has been an exoneration or a final adjudication of a habeas corpus.