

By: McClendon

H.B. No. 48

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a commission to review convictions after exoneration and to prevent wrongful convictions.

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

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

Art. 43.27. TIMOTHY COLE EXONERATION REVIEW COMMISSION

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

Sec. 2. COMPOSITION. The commission is composed of nine members, at least one of whom must be a member of the law enforcement community, appointed by the governor. The governor shall 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) Members serve staggered six-year terms, with one-third of the members' terms expiring February 1 of each odd-numbered year.

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

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

Sec. 4. MEETINGS. (a) The commission may hold its meetings, hearings, and other proceedings at times and places as

1 the commission shall determine, but shall meet in Austin at least  
2 once each year. Proceedings shall be conducted by majority vote of  
3 those present.

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

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

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

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

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

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

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

26 (3) violates a prohibition established by this  
27 article;

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

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

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

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

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

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

18                   (1) the legislation that created the commission;

19                   (2) the programs operated by the commission;

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

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

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

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

1       Sec. 8. SUNSET PROVISION. The Timothy Cole Exoneration  
2 Review Commission is subject to Chapter 325, Government Code (Texas  
3 Sunset Act). Unless continued in existence as provided by that  
4 chapter, the Timothy Cole Exoneration Review Commission is  
5 abolished and this article expires September 1, 2027.

6       Sec. 9. DUTIES. (a) The commission shall thoroughly  
7 review and examine all cases in which an innocent defendant was  
8 convicted and exonerated, including convictions vacated based on a  
9 plea to time served, to:

10             (1) identify the causes of wrongful convictions;

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

15             (3) identify errors and defects in the criminal  
16 justice system in this state generally, using peer-reviewed  
17 research, expert analysis, and demographic data;

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

21             (5) identify procedures, programs, and educational or  
22 training opportunities demonstrated to eliminate or minimize the  
23 causes of wrongful convictions and prevent the future occurrence of  
24 wrongful convictions and any related wrongful executions.

25       (b) The commission shall thoroughly review and examine each  
26 application for writ of habeas corpus made to the court of criminal  
27 appeals, and for which the court has issued a final ruling, to:

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

4           (2) refer any ethical violations or misconduct  
5 discovered to the State Commission on Judicial Conduct, the State  
6 Bar of Texas, the office of the attorney general, or other  
7 appropriate agency or office to review the violations or misconduct  
8 and, if appropriate, initiate or take corrective disciplinary  
9 action;

10          (3) identify any patterns of ethical violations or  
11 misconduct by attorneys or judges or errors or defects in the  
12 criminal justice system in this state that impact the habeas review  
13 process;

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

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

20          (c) The commission shall consider potential implementation  
21 plans, costs, cost savings, and the impact on the criminal justice  
22 system for each potential solution identified under Subsection (a)  
23 or (b).

24          (d) The commission may enter into contracts for research and  
25 professional services, including forensic testing and autopsies,  
26 as may be necessary or appropriate to facilitate the work and  
27 activities of the commission or to complete the review and

1 examination of a case in which there has been an exoneration or a  
2 final ruling on an application for a writ of habeas corpus.

3 Sec. 10. REPORTS AND RECORDS. (a) The commission shall  
4 compile a detailed annual report of its findings and  
5 recommendations, including any proposed legislation, rule, or  
6 policy changes necessary or appropriate to implement procedures and  
7 programs to prevent the causes and occurrence of future wrongful  
8 convictions, wrongful executions, or errors or defects in the  
9 habeas review process. The commission may also compile interim  
10 reports for the same or similar purposes.

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

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

18 (d) Working papers and records, including all documentary  
19 or other information, prepared or maintained by the commission or  
20 members or staff of the commission in performing the commission's  
21 duties under this article or other law to conduct an evaluation and  
22 prepare a report, are excepted from the public disclosure  
23 requirements of Section 552.021, Government Code. A record held by  
24 another entity that is considered to be confidential by law and that  
25 the commission receives in connection with the performance of the  
26 commission's functions under this article or other law remains  
27 confidential and is excepted from the public disclosure

1 requirements of Section 552.021, Government Code.

2 Sec. 11. SUBMISSION. The commission shall submit the  
3 reports described by Section 10 to the governor, the lieutenant  
4 governor, the speaker of the house of representatives, and the  
5 legislature not later than December 1 of each even-numbered year,  
6 or not later than the 60th day after the date the report is issued,  
7 whichever occurs first.

8 Sec. 12. GIFTS AND GRANTS. (a) The commission may apply  
9 for and accept gifts, grants, and donations from any organization  
10 described in Section 501(c)(3) or (4), Internal Revenue Code of  
11 1986, for the purpose of funding any activity of the commission  
12 under this article. The commission may apply for and accept grants  
13 under federal programs.

14 (b) The commission may receive donations from private  
15 individuals or entities.

16 (c) All gifts, grants, and donations must be accepted in an  
17 open meeting by a majority of the members of the commission then  
18 present and voting, and must be reported in the public records of  
19 the commission with the name of the donor and purpose of the gift,  
20 grant, or donation accepted.

21 (d) The commission may authorize and disburse subgrants of  
22 funds from those funds that the commission may accept from time to  
23 time under this section for appropriate programs, services, and  
24 activities related to and in accord with the purposes and  
25 activities of the commission.

26 Sec. 13. COMPENSATION; REIMBURSEMENT. A member of the  
27 commission may not receive compensation for the services provided

1 as a member. A member is entitled to reimbursement by the  
2 commission for the member's actual and necessary expenses incurred  
3 in performing commission duties, subject to the availability of  
4 funds from general revenue that may be appropriated to the  
5 commission by the state. Reimbursements to members for actual and  
6 necessary expenses incurred may be authorized by the commission  
7 through funds received and administered by the commission from  
8 gifts, grants, and donations the commission accepts under Section  
9 12.

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

14 (b) The commission may also request the assistance of other  
15 state agencies and officers. When assistance is requested, a state  
16 agency or officer shall assist the commission in carrying out its  
17 functions under this article. The commission or its designee may  
18 inspect the records, documents, and files of any state agency in  
19 carrying out the commission's duties.

20 SECTION 2. In appointing the initial members of the Timothy  
21 Cole Exoneration Review Commission, the governor shall appoint  
22 three persons to terms expiring February 1, 2017, three to terms  
23 expiring February 1, 2019, and three to terms expiring February 1,  
24 2021.

25 SECTION 3. The appointments to the Timothy Cole Exoneration  
26 Review Commission required by Article 43.27, Code of Criminal  
27 Procedure, as added by this Act, shall be made not later than the



1 60th day after the effective date of this Act.

2       SECTION 4. This Act takes effect immediately if it receives  
3 a vote of two-thirds of all the members elected to each house, as  
4 provided by Section 39, Article III, Texas Constitution. If this  
5 Act does not receive the vote necessary for immediate effect, this  
6 Act takes effect September 1, 2015.