

By: Ellis

S.B. No. 81

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a commission to examine and 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. (a) The commission is composed of the following 15 members:

(1) one employee of the office of the governor who has significant criminal justice legal experience, appointed by the governor;

(2) one person who works in law enforcement, appointed by the governor;

(3) the presiding judge of the court of criminal appeals, or another judge of the court of criminal appeals appointed by the presiding judge;

(4) the chief justice of the Texas Supreme Court, or an employee of the Texas Supreme Court who has significant legal experience, appointed by the chief justice;

(5) a district court judge, appointed by the presiding judge of the court of criminal appeals;

1           (6) a person with significant knowledge and experience  
2 in the issue areas under consideration by the commission, appointed  
3 by the chief justice of the Texas Supreme Court;

4           (7) the president of the Texas Criminal Defense  
5 Lawyers Association, or the president's designee;

6           (8) the head of a public defender office in Texas,  
7 appointed by the executive director of the Texas Criminal Defense  
8 Lawyers Association;

9           (9) the president of the Texas District and County  
10 Attorneys Association, or a district attorney appointed by the  
11 president;

12           (10) the chairman of the board of the Texas District  
13 and County Attorneys Association, or the chairman's designee;

14           (11) the presiding officer of the Texas Forensic  
15 Science Commission, or a member or employee of the Texas Forensic  
16 Science Commission who has significant experience in the field of  
17 forensic science, appointed by the presiding officer;

18           (12) the chair of the Senate Committee on Criminal  
19 Justice;

20           (13) the chair of the House Committee on Criminal  
21 Jurisprudence;

22           (14) the president of the Texas Center for Actual  
23 Innocence at The University of Texas School of Law, the director of  
24 the Texas Innocence Network at the University of Houston Law  
25 Center, or the executive director of the Innocence Project of  
26 Texas, each serving on a rotating basis; and

27           (15) the president of the State Bar of Texas, or the

1 president's designee.

2 (b) Each member serves a two-year term, unless the member  
3 ceases to hold an office or position that qualified the person for  
4 the appointment, and may serve multiple consecutive terms.

5 (c) A vacancy on the commission is filled for the unexpired  
6 portion of the term in the same manner as the original appointment.

7 (d) The governor shall designate a member to serve as the  
8 presiding officer.

9 (e) The commission exists under the Texas Judicial Council  
10 created under Chapter 71, Government Code. The commission operates  
11 independently of the Texas Judicial Council.

12 (f) The presiding officer may appoint committees from the  
13 membership of the commission as needed to organize the commission  
14 or to perform the duties of the commission.

15 (g) The commission may hire a director and other necessary  
16 personnel to perform the duties of the commission.

17 Sec. 3. MEETINGS. (a) The commission may hold its meetings  
18 in a time or manner determined by the commission, but shall meet in  
19 Austin at least annually.

20 (b) The commission shall conduct a public hearing at least  
21 annually, the agenda of which must include a review of the work  
22 conducted by the commission in the preceding year.

23 (c) Eight members of the commission constitute a quorum.  
24 The commission may act only on the concurrence of seven members or a  
25 majority of the members present, whichever number is greater. The  
26 commission may issue a report under Section 6 only on the  
27 concurrence of nine members.

1       Sec. 4. SUNSET PROVISION. The commission is subject to  
2 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
3 in existence as provided by that chapter, the commission is  
4 abolished and this article expires September 1, 2023.

5       Sec. 5. DUTIES. (a) The commission shall review and  
6 examine thoroughly postconviction exonerations occurring on or  
7 after September 1, 2015, that are based on:

8           (1) an explicit finding of actual innocence by the  
9 court of criminal appeals; or

10          (2) a pardon issued by the governor on the basis of  
11 actual innocence.

12          (b) In performing its duties under this section, the  
13 commission shall:

14           (1) identify areas needing improvement in statutes,  
15 rules, or procedures applicable to an exoneration reviewed by the  
16 commission;

17           (2) identify areas needing improvement in the criminal  
18 justice system in this state generally;

19           (3) in the areas identified in Subdivisions (1) and  
20 (2), develop solutions and methods to improve the reliability and  
21 fairness of the criminal justice system, including through  
22 statutory, rule, or procedural changes; and

23           (4) identify procedures and programs to prevent future  
24 wrongful convictions and to improve the reliability and fairness of  
25 the criminal justice system.

26          (c) The commission shall consider potential implementation  
27 plans, costs, cost savings, and the impact on the criminal justice

1 system for each potential solution identified in the course of its  
2 review.

3 (d) In its first biennium of operation the commission shall  
4 give particular attention to:

5 (1) reviewing and updating the research, reports, and  
6 recommendations of the Timothy Cole advisory panel established in  
7 the 81st Regular Session and the degree to which the panel's  
8 recommendations were implemented;

9 (2) making recommendations related to improving the  
10 process for and review of postconviction writs of habeas corpus;

11 (3) reviewing and making recommendations regarding  
12 the use of forensic science in the criminal justice system, with an  
13 emphasis on the standards used in criminal proceedings, and  
14 recommending improvements in those standards to improve the  
15 reliability and fairness of the criminal justice system;

16 (4) making recommendations as to how best to require  
17 and implement the electronic recording of witness statements to  
18 ensure their reliability and accuracy; and

19 (5) reviewing and making recommendations regarding  
20 the effects of the quality of legal representation in relation to  
21 the likelihood of conviction, with an emphasis on indigent defense.

22 (e) Following the initial biennium, in each subsequent  
23 biennium the commission shall:

24 (1) continue to monitor the progress and  
25 implementation of the recommendations made in the first biennium;  
26 and

27 (2) determine its agenda by identifying not more than

1 10 prominent criminal justice issues to consider studying, of which  
2 the chief justice of the Texas Supreme Court and the presiding judge  
3 of the court of criminal appeals biennially shall choose not more  
4 than six to be studied by the commission in the applicable biennium.

5 (f) The commission additionally shall consider submitting  
6 an annual report to the Texas Indigent Defense Commission in the  
7 manner required of legal clinics and programs under Section 79.039,  
8 Government Code.

9 (g) The commission may request that an entity of state  
10 government or of a political subdivision provide information  
11 related to the commission's duties under this section. On the  
12 request of the commission, an entity may provide information to the  
13 commission unless otherwise prohibited from disclosing that  
14 information.

15 Sec. 6. REPORT. (a) The commission shall compile a  
16 detailed annual report of its findings and recommendations,  
17 including any proposed legislation to implement procedures and  
18 programs to prevent future wrongful convictions.

19 (b) The report shall be made available to the public on  
20 request.

21 (c) The commission shall submit the report to the governor,  
22 the lieutenant governor, and the speaker of the house of  
23 representatives not later than December 1 of each year.

24 Sec. 7. COMPENSATION. A member of the commission is not  
25 entitled to compensation for serving on the commission but may  
26 receive reimbursement for necessary expenses incurred in the course  
27 of performing the duties of the commission if the expense is

1 approved by the executive director of the Texas Judicial Council.

2 Sec. 8. ADMINISTRATIVE ATTACHMENT. (a) The commission is  
3 administratively attached to the Office of Court Administration of  
4 the Texas Judicial System.

5 (b) Notwithstanding any other law, the Office of Court  
6 Administration of the Texas Judicial System shall:

7 (1) provide administrative assistance and services to  
8 the commission, including budget planning and purchasing;

9 (2) accept, deposit, and disburse money made available  
10 to the commission;

11 (3) pay the salaries and benefits of the director and  
12 employees of the commission; and

13 (4) provide the commission with adequate computer  
14 equipment and support.

15 Sec. 9. GIFTS, GRANTS, AND DONATIONS. The commission may  
16 request and accept gifts, grants, and donations from any source to  
17 carry out its functions, except that the commission may not request  
18 or accept gifts from:

19 (1) a law firm, as defined by Section [72.028](#),  
20 Government Code;

21 (2) an attorney or the attorney's spouse; or

22 (3) an employee of the law firm or an attorney or the  
23 spouse of that employee.

24 SECTION 2. The appointments to the Timothy Cole Exoneration  
25 Review Commission as required by Article 43.27, Code of Criminal  
26 Procedure, as added by this Act, shall be made not later than  
27 October 31, 2015.

1           SECTION 3. Notwithstanding Section 6(c), Article 43.27,  
2 Code of Criminal Procedure, as added by this Act, the Timothy Cole  
3 Exoneration Review Commission, as created by this Act, shall submit  
4 the first report required by Section 6 not later than December 1,  
5 2016.

6           SECTION 4. This Act takes effect September 1, 2015.