

House Bill 48
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 the following ~~nine~~ members:

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

(2) ~~the chief justice of the Texas Supreme Court, or another justice of the Texas Supreme Court appointed by the chief justice;~~

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

(4) ~~the presiding officer of the Texas Commission on Law Enforcement, or a member or employee of the Texas Commission on Law Enforcement appointed by the presiding officer;~~

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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 ~~11~~ members:

(1) ~~a member appointed by the governor;~~

(3) ~~the chair of the Senate Committee on State Affairs;~~

(5) ~~the chair of the House Committee on Judiciary and Civil Jurisprudence;~~

(6) ~~a member appointed by the chair of the Texas Judicial Council;~~

(7) ~~the presiding officer of the Texas Commission on Law Enforcement, or a member or employee of the Texas Commission on Law Enforcement appointed by the presiding officer;~~

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(5) the presiding officer of the Texas Indigent Defense Commission, or a member or employee of the Texas Indigent Defense Commission appointed by the presiding officer;

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

(7) the chair of the Senate Committee on Criminal Justice, or the chair's designee;

(8) the chair of the House Committee on Criminal Jurisprudence, or the chair's designee; and

(9) the president of the State Bar of Texas, or the president's designee.

Sec. 3. ADVISORY PANEL. The commission may receive advice and guidance from an advisory panel composed of the following members:

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(8) the presiding officer of the Texas Indigent Defense Commission, or a member or employee of the Texas Indigent Defense Commission appointed by the presiding officer;

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

(2) the chair of the Senate Committee on Criminal Justice;

(4) the chair of the House Committee on Criminal Jurisprudence;

(10) the president of the Texas Criminal Defense Lawyers Association, or the president's designee; and

(11) the chairman of the board of the Texas District and County Attorneys Association, or the chairman's designee.

(b) A person appointed under this section may not, while serving on the commission, be an active judge, as that term is defined by Section 74.041, Government Code.

(c) The following persons serve as advisory members to the commission:

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

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

(3) the director of the Texas Center for Actual Innocence at The University of Texas School of Law,
the director of the Texas Innocence Network at the University of Houston Law Center,
the executive director of the Innocence Project of Texas, or

the executive director of the Innocence Project at Thurgood Marshall School of Law, each serving on a rotating basis.

Sec. 4. TERMS; VACANCIES. (a) If a member of the commission is appointed under Sections 2(1)-(6), the member serves for a six-year term.

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

(c) If a person appointed to the commission does not complete the person's term, the vacancy is filled for the unexpired portion of the term in the same manner as the original appointment.

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

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(1) the director of the Texas Center for Actual Innocence at The University of Texas School of Law;

(2) the director of the Texas Innocence Network at the University of Houston Law Center;

(3) the executive director of the Innocence Project of Texas;
and

(4) the executive director of the Innocence Project at Thurgood Marshall School of Law.

Sec. 3. TERMS; VACANCIES. (a) A member of the commission serves until the commission is dissolved.

(b) The presiding officer of the commission shall be elected by the members of the commission.

(c) A vacancy on the commission is filled in the same manner as the original appointment.

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

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

Sec. 5. ADMINISTRATIVE ATTACHMENT. (a) The commission exists under the Texas Judicial Council created under Chapter 71, Government Code. The commission operates independently of the Texas Judicial Council.

(b) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(c) Notwithstanding any other law, and subject to available funding, the Office of Court Administration of the Texas Judicial System shall:

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

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

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

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

Sec. 6. MEETINGS. (a) The commission may hold its meetings, hearings, and other proceedings at a time and in a manner determined by the commission, but shall meet in Austin at least annually.

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

(c) Five members of the commission constitute a quorum.

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Sec. 4. ADMINISTRATIVE ATTACHMENT. (a) The commission exists under the Texas Judicial Council created under Chapter 71, Government Code. The commission operates independently of the Texas Judicial Council.

(b) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(c) Notwithstanding any other law, and subject to available funding, the Office of Court Administration of the Texas Judicial System shall:

(1) provide administrative assistance and services to the commission;

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

(3) provide the commission with adequate computer equipment and support.

Sec. 5. MEETINGS. (a) The commission may hold its hearing and meetings and other proceedings at a time and in a manner determined by the commission, but shall meet in Austin at least annually. The commission shall hold its first meeting on or before October 31, 2015.

(b) The commission shall conduct one public hearing. Advisory members may participate in the public hearing of the commission but do not count toward a quorum and are not entitled to vote on matters before the commission.

(c) Six members of the commission constitute a quorum. The

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The commission may act only on the concurrence of five or more members. The commission may issue a report under Section 13 only on the concurrence of six members.

(d) A member of the commission is entitled only to reimbursement for the member's travel expenses as provided by Section 10 of this article, Chapter 660, Government Code, and the General Appropriations Act.

Sec. 7. QUALIFICATIONS. (a) A member of the commission may not participate in or vote on any matter before the commission if the matter directly concerns an individual related to the member within the second degree by affinity or consanguinity.

(b) An individual may not be 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, 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. 8. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

- (1) if applicable, does not have at the time of appointment the qualifications required by this article;
- (2) does not maintain during service on the commission the qualifications required by this article;
- (3) violates a prohibition established by this article;
- (4) is ineligible for membership under this article;
- (5) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (6) is absent from more than half of the regularly scheduled

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commission may act only on the concurrence of six or more members. The commission may issue a report under Section 9 only on the concurrence of seven members.

(d) Subject to the availability of funds, a member of the commission is entitled only to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. QUALIFICATIONS. (a) A member of the commission may not participate in or vote on any matter before the commission if the matter directly concerns an individual related to the member within the second degree by affinity or consanguinity.

(b) An individual may not be a member of the commission if the individual or individual's spouse is required to register as a lobbyist under Chapter 305, 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. 7. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

- (1) if applicable, does not have at the time of appointment the qualifications required by this article;
- (2) does not maintain during service on the commission the qualifications required by this article;
- (3) violates a prohibition established by this article;
- (4) is ineligible for membership under this article;
- (5) cannot, because of illness or disability, discharge the member's duties for a substantial period; or
- (6) is absent from more than half of the regularly scheduled

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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) 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. 9. COMMISSION MEMBER TRAINING. (a) A member of the commission shall complete a training program that meets the requirements of this section.

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

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

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

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

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

Sec. 10. COMPENSATION; REIMBURSEMENT. A member of the commission may not receive compensation for the services provided as a member. A member is entitled to reimbursement by the commission for the member's actual and necessary expenses incurred in performing commission duties, subject to the availability of funds that may be appropriated to the commission by the state. Reimbursements to members for actual and necessary expenses incurred may be authorized by the commission through funds received and administered by the commission from gifts, grants, and donations the

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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) 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.

No equivalent provision

No equivalent provision

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commission accepts under Section 11.

Sec. 11. GIFTS, GRANTS, AND DONATIONS. (a) The commission may request and accept gifts, grants, and donations from any source to carry out its functions, except that the commission may not request or accept gifts from:

(1) a law firm, as defined by Section 72.028, Government Code;

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

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

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

(c) The commission may authorize and disburse subgrants of funds from those funds that the commission may 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. 12. DUTIES. (a) The commission shall thoroughly review and examine all cases in which an innocent defendant was convicted and exonerated, including convictions vacated based on a plea to time served, to:

(1) identify the causes of wrongful convictions and suggest ways to prevent future wrongful convictions and improve the reliability and fairness of the criminal justice system;

(2) ascertain errors and defects in the laws, evidence, and procedures applied or omitted in the defendant's case;

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No equivalent provision

Sec. 8. DUTIES. (a) The commission may review and examine all cases in this state in which an innocent defendant was convicted and then, on or after January 1, 2010, was exonerated to, as applicable:

(1) identify the causes of wrongful convictions and suggest ways to prevent future wrongful convictions and improve the reliability and fairness of the criminal justice system;

(2) ascertain errors and defects in the laws, evidence, and procedures applied or omitted in the defendant's case;

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<p><u>(3) identify errors and defects in the criminal justice system in this state generally, using research, expert analysis, and demographic data;</u></p> <p><u>(4) consider suggestions to correct the identified errors and defects through legislation or procedural changes;</u></p> <p><u>(5) identify procedures, programs, and educational or training opportunities designed to eliminate or minimize the identified causes of wrongful convictions, including the identified errors and defects in the criminal justice system that contribute to wrongful convictions; and</u></p> <p><u>(6) collect and evaluate data and information from an actual innocence exoneration reported to the commission by a state-funded innocence project, for inclusion in the commission's reports under Section 13.</u></p> <p><u>(b) Subject to available funding and applicable accreditation procedures, the commission may assist with and suggest training and continuing education opportunities for persons involved in the investigation, prosecution, defense, trial, or appeal of matters in the criminal justice system.</u></p> <p><u>(c) The commission shall review and examine each case in which a final ruling was made by the court of criminal appeals on a writ of habeas corpus granted for actual innocence on or after January 1, 1994, and each case in which a commutation of punishment or pardon was granted before January 1, 1994, based on a claim of actual innocence and shall use relevant data and information to:</u></p> <p><u>(1) identify any apparent breach of professional responsibility or misconduct by attorneys, judges, or criminal justice system personnel that is revealed in the course of any habeas review</u></p>	<p><u>(3) consider suggestions to correct the identified errors and defects through legislation or procedural changes;</u></p> <p><u>(4) identify procedures, programs, and educational or training opportunities designed to eliminate or minimize the identified causes of wrongful convictions;</u></p> <p><u>(5) collect and evaluate data and information from an actual innocence exoneration reported to the commission by a state-funded innocence project, for inclusion in the commission's report under Section 9;</u></p> <p>No equivalent provision</p> <p>No equivalent provision</p>	

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process existing in the case;

(2) refer any apparent breach of professional responsibility or misconduct to, as appropriate, the State Commission on Judicial Conduct, the State Bar of Texas, the Texas Commission on Law Enforcement, the office of the attorney general, or other appropriate agency or office, for their review of the apparent breach of professional responsibility or misconduct;

(3) identify any patterns in:

(A) apparent breaches of professional responsibility or misconduct by attorneys, judges, or criminal justice system personnel; or

(B) errors or defects in the criminal justice system in this state that impact the pretrial, trial, appellate, or habeas review process; and

(4) consider and suggest legislative, training, or procedural changes to correct the patterns, errors, and defects identified through the work of the commission.

(d) The commission shall consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution identified through the work of the commission.

(e) The commission may, subject to available funding, enter into contracts for research, analysis, and professional services as may be necessary or appropriate to facilitate the work and activities of the commission or to complete the review and examination of a case in which there has been a commutation of punishment, a pardon, or a final ruling of actual innocence on an application for a writ of habeas corpus.

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(6) identify any patterns in

errors or defects in the criminal justice system in this state that impact the pretrial, trial, appellate, or habeas review process; or

(7) consider and suggest legislative, training, or procedural changes to correct the patterns, errors, and defects in the criminal justice system that are identified through the work of the commission.

(b) The commission shall consider potential implementation plans, costs, cost savings, and the impact on the criminal justice system for each potential solution identified through the work of the commission.

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(f) In its first biennium of operation the commission shall give particular attention to reviewing and updating the research, reports, and recommendations of the Timothy Cole advisory panel established in the 81st Regular Session and the degree to which the panel's recommendations were implemented.

(g) Following the initial biennium, in each subsequent biennium the commission shall:

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

(2) determine future items for study by identifying not more than 10 prominent criminal justice issues to consider, of which the chief justice of the Texas Supreme Court and the presiding judge of the court of criminal appeals biennially shall choose not more than six to be studied by the commission in the applicable biennium.

(h) The commission may solicit input from innocence projects, bar associations, judicial entities, law enforcement agencies, prosecutor associations, public defender or criminal defense associations, and advocacy organizations.

Sec. 13. REPORTS AND RECORDS. (a) The commission shall compile and issue a detailed annual report of its findings and recommendations, including any proposed legislation or policy changes necessary or appropriate to implement procedures and programs to prevent the causes and occurrence of future wrongful convictions, wrongful executions, or errors or defects in the habeas review process.

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(c) The commission shall review and update the research, reports, and recommendations of the Timothy Cole advisory panel established in the 81st Regular Session and shall include in its report under Section 9 the degree to which the panel's recommendations were implemented.

No equivalent provision

(d) The commission may solicit input from innocence projects, bar associations, judicial entities, law enforcement agencies, prosecutor associations, public defender or criminal defense associations, public and private universities, and advocacy organizations.

Sec. 9. REPORT AND RECORDS. (a) The commission shall compile and issue a detailed report of its findings and recommendations, including any legislation or policy changes the commission recommends to implement procedures and programs to prevent the causes and occurrence of future wrongful convictions.

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The commission may also compile and issue interim reports for the same or similar purposes.

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

(c) Working papers and records, including all documentary or other information, collected, received, prepared, or maintained by the commission or members or staff of the commission in performing the commission's duties under this article or other law to conduct an evaluation and prepare a report, are confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The commission may request that an entity of state government or of a political subdivision provide information related to the commission's duties under Section 12. On the request of the commission, an entity shall provide information to the commission unless otherwise prohibited from disclosing that information.

The commission may examine the public records, documents, and files of an entity of state government or a political subdivision in carrying out the commission's duties.

(e) Information held by an entity of state government or of a

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The report must also describe statutory, procedural, and evidentiary reforms that have already been implemented in this state to prevent the causes and occurrence of future wrongful convictions.

(b) The report may not include any recommendation regarding the use of the death penalty or related procedures.

(c) The official report issued by the commission must be made available to the public on request.

(d) Working papers and records, including all documentary or other information, collected, received, prepared, or maintained by the commission or members of the commission in performing under this article or other law the commission's duties to conduct an evaluation and prepare a report, are confidential and not subject to disclosure under Chapter 552, Government Code.

(e) The commission may request that an entity of state government or of a political subdivision provide information related to the commission's duties under Section 8. On the request of the commission, an entity may provide information to the commission unless otherwise prohibited from disclosing that information.

(f) Information held by an entity of state government or of a

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political subdivision that is confidential and that the commission receives in connection with the performance of the commission's functions under this article or other law remains confidential and is not subject to disclosure under Chapter 552, Government Code.

No equivalent provision

Sec. 14. ASSISTANCE OF STATE AGENCIES; ACCESS TO STATE AGENCIES. (a) Subject to available funding, the commission may request assistance from the Legislative Budget Board and any state-supported university in performing the commission's duties.

(b) The commission may also request the assistance of other state agencies and officers. When assistance is requested, a state agency or officer shall assist the commission in carrying out its functions under this article.

Sec. 15. SUBMISSION. The commission shall submit the reports described by Section 13 to the governor, the lieutenant governor, the speaker of the house of representatives, the legislature, and the Texas Judicial Council not later than December 1 of each even-numbered year, or not later than the 60th day after the date the report is issued, whichever occurs first.

No equivalent provision.

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political subdivision that is confidential and that the commission receives in connection with the performance of the commission's functions under this article or other law remains confidential and is not subject to disclosure under Chapter 552, Government Code.

(g) In carrying out its duties, the commission may examine the public records of an entity of state government or a political subdivision that are provided under Subsection (e).

Sec. 10. ASSISTANCE OF STATE-SUPPORTED UNIVERSITIES. The commission may request assistance from any state-supported university in performing the commission's duties.

Sec. 11. SUBMISSION. The commission shall submit the report described by Section 9 to the governor, the lieutenant governor, the speaker of the house of representatives, the legislature, and the Texas Judicial Council not later than December 1, 2016.

Sec. 12. EXPIRATION. (a) This article expires December 1, 2016.

(b) The commission is dissolved on the earlier of:

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	<u>(1) the date the commission submits its report; or</u> <u>(2) December 1, 2016.</u>	
SECTION 2. The heading to Section 79.039, Government Code, is amended to read as follows: Sec. 79.039. EXONERATION <u>REPORTS</u> [REPORT].	No equivalent provision.	
SECTION 3. Section 79.039, Government Code, is amended by adding Subsection (c) to read as follows: <u>(c) At the same time the legal clinic or program submits a report under Subsection (a), the clinic or program shall submit a comprehensive report to the Timothy Cole Exoneration Review Commission that:</u> <u>(1) contains all information included in the report submitted under Subsection (a); and</u> <u>(2) provides a narrative describing the services and work performed by the clinic or program during the previous fiscal year that includes the number of innocence claims the clinic or program handled in that year, including a summary of each claim, the legal remedies pursued, and the type of relief granted in the case, if any.</u>	No equivalent provision.	
SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.	SECTION 2. Same as House version.	