

Timothy Cole Exoneration Review Commission

- House Bill 48 was passed by the 84th Texas Legislature and became effective on June 1, 2015 upon Governor Abbott's signature.
House Author: Representative Ruth Jones McClendon, et al.
Senate Sponsor: Senator Rodney Ellis, et al.
- HB 48 creates the Timothy Cole Exoneration Review Commission (TCERC) under but independent from the Texas Judicial Council. It is also administratively attached to the Office of Court Administration (OCA).
 - OCA was also provided authority and funding for two positions to support the Commission. Interviews are occurring the week of September 14th to fill the researcher and a data analyst positions.
- TCERC is a study commission charged with reviewing “cases in this state in which an innocent defendant was convicted and then, on or after January 1, 2010, was exonerated” to identify the main causes of those convictions and make recommendations to prevent such tragedies from reoccurring in the future. The findings and recommendations are required to be submitted by December 1, 2016 and the TCERC is dissolved upon submission of the report.
- TCERC is made up of 11 members including four legislators, a gubernatorial appointee, representatives of various criminal justice government bodies and stakeholder organizations, and an appointment from the chair of the Texas Judicial Council.
 - The directors of the innocence projects at The University of Texas School of Law, the University of Houston, the Thurgood Marshall School of Law, and the Innocence Project of Texas. We anticipate support from the Innocence Project affiliated with the Cardozo School of Law in New York.

- Letters have been sent soliciting appointments from each of those with authority to designate members to serve on the Commission.
- First meeting of TCERC is tentatively planned for Friday, October 16th from 10 a.m. to 3 p.m. (depending on availability of a quorum of the members) where we anticipate getting direction for the work of the organization.

H.B. No. 48

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. (a) The commission is composed of the following 11 members:

- (1) a member appointed by the governor;
- (2) the chair of the Senate Committee on Criminal

Justice;

- (3) the chair of the Senate Committee on State

Affairs;

- (4) the chair of the House Committee on Criminal

Jurisprudence;

- (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;

- (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;

- (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:

- (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.

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 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 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. 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;

(3) consider suggestions to correct the identified errors and defects through legislation or procedural changes;

(4) identify procedures, programs, and educational or training opportunities designed to eliminate or minimize the identified causes of wrongful convictions;

(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;

(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.

(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.

(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. 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 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:

(1) the date the commission submits its report; or

(2) December 1, 2016.

SECTION 2. 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.

President of the Senate

Speaker of the House

I certify that H.B. No. 48 was passed by the House on May 1, 2015, by the following vote: Yeas 134, Nays 6, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 48 on May 28, 2015, by the following vote: Yeas 137, Nays 5, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 48 was passed by the Senate, with amendments, on May 26, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor