

House Bill 498
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 INNOCENCE COMMISSION

Sec. 1. CREATION. The Timothy Cole Innocence Commission is created.

Sec. 2. COMPOSITION. (a) The commission is composed of the following nine members:

(1) two members appointed by the governor, one of whom must be a dean of a law school and one of whom must be a law enforcement officer;

(2) one member appointed by the attorney general, who must be an attorney who represents the state in the prosecution of felonies;

(3) one member appointed by the chair of the criminal justice committee of the senate, who may be a member of the legislature;

(4) one member appointed by the chair of the criminal jurisprudence committee of the house of representatives, who may be a member of the legislature;

(5) one member appointed by the chief justice of the supreme court, who must be a member of the judiciary;

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SECTION 1.

(a) An advisory panel is established to assist the Task Force on Indigent Defense established under Subchapter D, Chapter 71, Government Code, in conducting a study and preparing a report regarding the prevention of wrongful convictions as provided by this section.

(b) The advisory panel is composed of the following members:

(10) one employee of the office of the governor, appointed by the governor.

(1) the director of the Task Force on Indigent Defense;

(2) the chair of the criminal justice committee of the senate or a member of the senate designated by the chair;

(3) the chair of the jurisprudence committee of the senate or a member of the senate designated by the chair;

(4) the chair of the criminal jurisprudence committee of the house of representatives or a member of the house of representatives designated by the chair;

(5) the chair of the corrections committee of the house of representatives or a member of the house of representatives designated by the chair;

(8) the presiding judge of the court of criminal appeals or a representative who is designated by the presiding

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(6) two members appointed by the chancellor of the Texas Tech University System, one of whom must be a law professor and one of whom must work in the forensic science field; and

(7) one member appointed by the Texas Criminal Defense Lawyers Association, who must be a criminal defense lawyer.

(b) Each member serves a two-year term.

(c) The governor shall designate a member to serve as presiding officer.

Sec. 3. DUTIES. (a) The commission shall investigate thoroughly all post-conviction exonerations, including convictions vacated based on a plea to time served, to:

(1) ascertain errors and defects in the criminal procedure used to prosecute the defendant's case at issue;

(2) identify errors and defects in the criminal justice process in this state generally;

(3) develop solutions and methods to correct the identified errors and defects; and

(4) identify procedures and programs to prevent future

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judge and who is a judge of the court of criminal appeals;
(9) one representative of a public law school in this state, chosen by the deans of the public law schools in this state;

(6) the executive director of the Texas Criminal Defense Lawyers Association or a representative designated by the executive director;

(7) the president of the Texas District and County Attorneys Association or a representative designated by the president;

(c) The director of the Task Force on Indigent Defense is the presiding officer of the advisory panel. The advisory panel shall meet at the call of the presiding officer but not less than three times in person and as needed by telephone conference call.

(d) The Task Force on Indigent Defense, with the advice and assistance of the advisory panel, shall conduct a study regarding:

(1) the causes of wrongful convictions;

(3) the effects of state law on wrongful convictions, as determined based on state statutes regarding eyewitness identification procedures, the recording of custodial interrogations, postconviction DNA testing, and writs of habeas corpus based on relevant scientific evidence; and

(2) procedures and programs that may be implemented

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wrongful convictions.

(b) The commission may enter into contracts for research services as considered necessary to complete the investigation of a particular case, including forensic testing and autopsies.

(c) The commission may administer oaths and issue subpoenas, signed by the presiding officer, to compel the production of documents and the attendance of witnesses as considered necessary to conduct a thorough investigation. A subpoena of the commission shall be served by a peace officer in the manner in which district court subpoenas are served. On application of the commission, a district court of Travis County shall compel compliance with the subpoena in the same manner as for district court subpoenas.

Sec. 4. REPORT. (a) The commission shall compile a detailed annual report of its findings and recommendations, including any proposed legislation to implement procedures and programs to prevent future wrongful convictions.

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

Sec. 5. SUBMISSION. The commission shall submit the report described by Section 4 to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

Sec. 6. RESPONSE. Not later than the 60th day after

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to prevent future wrongful convictions;

(4) whether the creation of an innocence commission to investigate wrongful convictions would be appropriate.

(e) The Task Force on Indigent Defense may request that an entity in the legislative, judicial, or executive branch of state government or a political subdivision provide to the advisory panel information related to the advisory panel's duties under this section. On the request of the Task Force on Indigent Defense under this subsection, an entity may provide information to the advisory panel unless the entity is otherwise prohibited from disclosing the information.

(f) Not later than January 1, 2011, the Task Force on Indigent Defense shall prepare a report regarding the results of the study conducted under this section and submit the report, after consulting with the advisory panel, to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of each house of the legislature with a representative serving on the advisory panel.

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the date of receipt of the report required by this article, the governor, lieutenant governor, and speaker of the house of representatives shall, singly or jointly, issue a formal written response to the findings and recommendations of the commission.

Sec. 7. REIMBURSEMENT. A member of the commission is not entitled to compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 8. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and the Texas Tech University System shall assist the commission in performing the commission's duties.

Sec. 9. OTHER LAW. The commission is not subject to Chapter 2110, Government Code.

(g) This section expires October 1, 2011.

SECTION 2. The appointments to the Timothy Cole Innocence Commission as required by Article 43.27, Code of Criminal Procedure, as added by this Act, shall be made not later than November 1, 2009.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2009.

Same as House version.

The following rows were presented as Senate Bill 1976,

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relating to procedures for applications for writs of habeas corpus based on relevant evidence discrediting scientific evidence presented at trial.

No equivalent provision.

SECTION __. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.073 to read as follows:
Art. 11.073. PROCEDURES RELATED TO CERTAIN SCIENTIFIC EVIDENCE. (a) This article applies to relevant scientific evidence that:
(1) was not offered by the convicted person at the convicted person's trial; or
(2) discredits scientific evidence presented by the state at trial.
(b) For purposes of Section 4(a)(1), Article 11.07, Section 5(a)(1), Article 11.071, and Section 9(a), Article 11.072, a claim in a subsequent application could not have been presented previously in a timely initial application or in a previously considered application if the convicting court determines that the claim is based on relevant scientific evidence that was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of trial.
(c) In determining whether relevant scientific evidence was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of trial, the convicting court or, in a proceeding under Article 11.071, the Court of Criminal Appeals, shall consider whether the scientific knowledge or technique on which the relevant scientific evidence is based has changed, in a manner that is material to the person's conviction, in the

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period between the date of the convicted person's trial and the date of the subsequent application.

No equivalent provision.

SECTION __. The change in law made by this Act applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application for a writ of habeas corpus filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

No equivalent provision

SECTION __. This Act takes effect September 1, 2009.

The following rows were presented as identical to language in Senate Bill 1864, relating to postconviction forensic DNA analysis.

No equivalent provision.

SECTION __. Subsection (b), Article 64.01, Code of Criminal Procedure, is amended to read as follows:
(b) The motion may request forensic DNA testing only of evidence described by Subsection (a) that was secured in relation to the offense that is the basis of the challenged conviction and was in the possession of the state during the trial of the offense, but:
(1) was not previously subjected to DNA testing[:
~~[(A) because DNA testing was:~~
~~[(i) not available; or~~

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~~[(ii) available, but not technologically capable of providing probative results; or
[(B) through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing]; or
(2) although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test.~~

No equivalent provision.

SECTION __. Chapter 64, Code of Criminal Procedure, is amended by adding Article 64.035 to read as follows:
Art. 64.035. UNIDENTIFIED DNA PROFILES. On completion of the testing under Article 64.03, the convicting court shall order any unidentified DNA profile to be compared with the DNA profiles in the CODIS DNA database established by the Federal Bureau of Investigation.

No equivalent provision.

SECTION __. Article 64.04, Code of Criminal Procedure, is amended to read as follows:
Art. 64.04. FINDING. After examining the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035, the convicting court shall hold a hearing and make a finding as to whether, had the results been available during the trial of the offense, it is reasonably probable that the person would

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not have been convicted.

No equivalent provision.

SECTION __. Articles 64.01(b) and 64.04, Code of Criminal Procedure, as amended by this Act, and Article 64.035, Code of Criminal Procedure, as added by this Act, apply to a motion for forensic DNA testing filed on or after the effective date of this Act. A motion for forensic DNA testing filed before the effective date of this Act is covered by the law in effect at the time the motion was filed, and the former law is continued in effect for that purpose.