

## **BILL ANALYSIS**

Senate Research Center

H.B. 498  
By: McClendon et al. (Ellis)  
Criminal Justice  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2001, the 78th Legislature enacted S.B. 3, authorizing a convicted person to request DNA testing, and since that year, 35 people have been exonerated. Currently, the Texas justice system does not have the institutional means to evaluate wrongful convictions or the factors contributing to those convictions. Wrongful convictions have been attributed to false eyewitness identifications, unreliable or limited science, false confessions, forensic science misconduct, government misconduct, unreliable informants, and ineffective legal representation for defendants. Wrongful convictions can lead to the loss of an innocent person's family, employment, and parental rights, and can also affect the families and friends of the innocent.

H.B. 498 creates the Timothy Cole Innocence Commission to investigate thoroughly all post-conviction exonerations to ascertain errors and defects in the criminal procedure used to prosecute the defendant's case at issue, to identify errors and defects in the criminal justice process in Texas generally, to develop solutions and methods to correct the identified errors and defects, and to identify procedures and programs to prevent future wrongful convictions.

H.B. 498 relates to the creation of a commission to investigate and prevent wrongful convictions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 43, Code of Criminal Procedure, by adding Article 43.27, as follows:

#### Art. 43.27. TIMOTHY COLE INNOCENCE COMMISSION

Sec. 1. CREATION. Provides that the Timothy Cole Innocence Commission (commission) is created.

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

- (1) two members appointed by the governor, one of whom is required to be a dean of a law school and one of whom is required to be a law enforcement officer;
- (2) one member appointed by the attorney general, who is required to 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 is authorized to be a member of the legislature;
- (4) one member appointed by the chair of the criminal jurisprudence committee of the house of representatives, who is authorized to be a member of the legislature;

- (5) one member appointed by the chief justice of the supreme court, who is required to be a member of the judiciary;
- (6) two members appointed by the chancellor of the Texas Tech University System, one of whom is required to be a law professor and one of whom is required to work in the forensic science field; and
- (7) one member appointed by the Texas Criminal Defense Lawyers Association, who is required to be a criminal defense lawyer.

(b) Provides that each member serves a two-year term.

(c) Requires the governor to designate a member to serve as presiding officer.

Sec. 3. DUTIES. (a) Requires the commission to investigate thoroughly all post-conviction exonerations, including convictions vacated based on a plea to time served, to ascertain errors and defects in the criminal procedure used to prosecute the defendant's case at issue; identify errors and defects in the criminal justice process in this state generally; develop solutions and methods to correct the identified errors and defects; and identify procedures and programs to prevent future wrongful convictions.

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

(c) Authorizes the commission to 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. Requires that a subpoena of the commission be served by a peace officer in the manner in which district court subpoenas are served. Requires a district court of Travis County, on application of the commission, to compel compliance with the subpoena in the same manner as for district court subpoenas.

Sec. 4. REPORT. (a) Requires the commission to 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) Requires that the report be made available to the public on request.

Sec. 5. SUBMISSION. Requires the commission to 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. Requires the governor, lieutenant governor, and speaker of the house of representatives, not later than the 60th day after the date of receipt of the report required by this article, singly or jointly, to issue a formal written response to the findings and recommendations of the commission.

Sec. 7. REIMBURSEMENT. Provides that 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 (Travel Expenses), Government Code, and the General Appropriations Act.

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

Sec. 9. OTHER LAW. Provides that the commission is not subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

SECTION 2. Requires that the appointments to the commission as required by Article 43.27, Code of Criminal Procedure, as added by this Act, be made not later than November 1, 2009.

SECTION 3. Effective date: September 1, 2009.