

## **BILL ANALYSIS**

C.S.H.B. 1346  
By: Alonzo  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, a judge has the discretion to appoint counsel to represent a defendant in a habeas corpus proceeding in a non-capital case. Interested parties contend that there are some limited circumstances where there arguably should be mandatory appointment of counsel to expedite a defendant's release and reduce incarceration expenditures, namely when a district attorney agrees that a defendant should be released because the defendant is actually innocent or guilty of a lesser offense or the law under which the defendant was convicted has been declared void. C.S.H.B. 1346 seeks to address this concern by requiring the appointment of counsel for certain indigent defendants.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1346 amends the Code of Criminal Procedure to require a convicting court, if at any time the state represents to the court that an eligible indigent defendant who was sentenced or had a sentence suspended by the court is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the U.S. Supreme Court, to appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if such an application has not been filed, or to otherwise represent the indigent defendant in a habeas corpus proceeding based on the application for the writ. The bill applies only to a felony or misdemeanor case in which the applicant seeks relief from a judgment of conviction that imposes a penalty other than death or orders community supervision. The bill requires an appointed attorney to be compensated as provided by statutory provisions regarding compensation of counsel appointed to defend.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1346 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 11.07, Code of Criminal Procedure, is amended by adding Section 3-a to read as follows:

Sec. 3-a. If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, the court shall appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding under this article. An attorney appointed under this section shall be compensated as provided by Article 26.05.

SECTION 2. Article 11.072, Code of Criminal Procedure, is amended by adding Section 3-a to read as follows:

Sec. 3-a. If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, the court shall appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding under this article. An attorney appointed under this section shall be compensated as provided by Article 26.05.

SECTION 3. The changes in law made by this Act relating to the application of writ of habeas corpus apply regardless of whether the offense for which the applicant is in custody was committed before, on, or after the effective date of this Act.

SECTION 4. This Act takes effect

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.074 to read as follows:

Art. 11.074. COURT-APPOINTED REPRESENTATION REQUIRED IN CERTAIN CASES. (a) This article applies only to a felony or misdemeanor case in which the applicant seeks relief on a writ of habeas corpus from a judgment of conviction that:

- (1) imposes a penalty other than death; or
- (2) orders community supervision.

(b) If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, the court shall appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding based on the application for the writ.

(c) An attorney appointed under this article shall be compensated as provided by Article 26.05.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

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.