

## **BILL ANALYSIS**

C.S.H.B. 4338  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Community supervision and corrections departments (CSCDs) are defended by the Office of the Attorney General for all suits against them, except for writs of habeas corpus in which a person under the CSCD supervision challenges the fact or duration of the supervision. When a county or district attorney refuses a habeas corpus case, the named individual bears the cost of counsel whose expertise is litigating those cases. Relying on individual CSCD employees to hire private counsel, who rarely practice in the public habeas docket, creates an ineffective and unjust system. C.S.H.B. 4338 seeks to address this issue by providing for the representation of a CSCD or its employees in cases in which a person under the supervision of the CSCD challenges the fact or duration of the supervision.

### **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. 4338 amends the Government Code to require the attorney general or the district or county attorney with jurisdiction over the offense for which a person is under the supervision of a community supervision and corrections department (CSCD) to defend the CSCD or its employees in a case in which the person challenges the fact or duration of the supervision. The bill authorizes the attorney general, at the request of a district or county attorney, to provide assistance to the district or county attorney in defending a CSCD or its employees in such a case and requires the attorney general to defend the CSCD or its employees if the district or county attorney is unable to do so.

### **EFFECTIVE DATE**

September 1, 2021.

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

While C.S.H.B. 4338 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the original required the attorney general to defend the CSCD or its employees in a habeas corpus proceeding in which a supervised person challenges the fact or duration of the supervision only if the attorney representing the state in the prosecution of the applicable offense does not agree to do so, the substitute requires the attorney general to defend the CSCD or its employees under those circumstances if the district or county attorney with jurisdiction over the offense is unable to do so, but without specifying that the required defense is in a habeas corpus proceeding.

The substitute includes an authorization absent from the original for the attorney general to provide assistance to the district or county attorney in defending a CSCD or its employees at the district or county attorney's request.