SUBJECT: Allowing habeas corpus writs for certain types of new scientific evidence

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 11 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

SENATE VOTE: On final passage, April 20 — 30-0

WITNESSES: For — Jeff Blackburn, Scott Henson, Innocence Project of Texas; (*Registered, but did not testify:* Edwin Colfax, The Justice Project; Amanda Marzullo, Texas Fair Defense Project; Matt Simpson, The ACLU of Texas)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Persons convicted of felony crimes may challenge their convictions in two ways: with a direct appeal, which deals with errors of law in the original trial, or with a habeas corpus appeal, which can raise issues outside of the trial record. Habeas appeals typically center on constitutional rights, such as the effectiveness of counsel or the satisfactory disclosure of evidence by prosecutors, and may be filed in both state and federal court.

Code of Criminal Procedure, ch. 11 outlines procedures for filing applications for writs of habeas corpus. Art. 11.07 governs procedures for applying for a writ in a felony conviction where the death penalty was not imposed. Art. 11.071 governs procedures for applying for a writ in death penalty cases, and Art. 11.072 establishes procedures for writs in felony and misdemeanor cases in which the person was ordered into community supervision (probation). In general, these sections seek to limit a defendant to one application for a writ of habeas corpus per conviction unless specific conditions are met.

Under art. 11.07 and art. 11.071 courts may not consider or grant relief on a subsequent application for a writ unless the application contains sufficient specific facts establishing that:

- the claims had not been and could not have been presented in an original application or in a previously considered application because the factual or legal basis for them was unavailable at the time the previous application was filed; or
- by a preponderance of the evidence, but for a violation of the U.S. Constitution, no rational juror could have found the applicant guilty beyond a reasonable doubt.

Art. 11.072 establishes similar criteria for cases in which persons seek relief from orders of community supervision. Art. 11.071, which deals with death penalty cases, establishes additional criteria for accepting writs relating to the special issues submitted during sentencing in death penalty cases.

DIGEST:

CSSB 1976 would authorize courts to grant relief on writs of habeas corpus that, subject to criteria in the bill, raised relevant scientific evidence that was not available at the time of a trial or that discredited scientific evidence relied on by the prosecution at a trial.

Courts would be authorized to grant relief on an application for a writ of habeas corpus if a writ filed under the procedures in current law contained sufficient specific facts indicating that:

- relevant scientific evidence was available and had not been available at the time of the trial because it was not ascertainable through reasonable diligence by the defendant before or during the trial;
- the scientific evidence would be admissible under the Texas Rules of Evidence at a trial; and
- the court found that, had the evidence been presented at trial, it was reasonably probable that the person would not have been convicted.

Claims could be presented in writs under CSSB 1976 if they could not have been presented in an original application or in a previous application because they were based on relevant scientific evidence that was not ascertainable through reasonable diligence by the convicted person on or before the date that the original or previous application was filed.

When deciding whether evidence was not ascertainable on a specific date, courts would have to consider whether the scientific knowledge or method on which the evidence was based had changed since the trial or the filing of the original or previous writ.

The bill would take effect September 1, 2009, and would apply to applications for writs of habeas corpus filed on or after that date.

SUPPORTERS SAY:

CSSB 1976 is needed to give innocent people who have been falsely convicted of crimes a way to bring their cases before a court when new scientific evidence that was unavailable at their trial surfaces. Generally, defendants are allowed only one post-conviction habeas corpus writ to appeal their conviction. Many of these are filed without an attorney or soon after a conviction. In addition, courts are restricted from considering or granting relief on subsequent writs unless specific criteria are met. Although there is a procedure for inmates to request to have DNA evidence tested, there is no such provision for other types of scientific evidence. Taken together these restrictions often preclude persons who were convicted years ago and have long-since filed their allowable writ of habeas corpus from bringing new, non-DNA scientific evidence before a court.

For example, the science surrounding arson investigations has changed dramatically in recent years, and past investigations often relied on pseudo-scientific folklore that has been discredited. Also, a technique used by the FBI to match the chemical signature of bullets has been discredited. Defendants who were wrongfully convicted using these and any debunked science deserve a way to raise their claim before a court.

CSSB 1976 would remedy this unfair situation by establishing narrow, well-defined circumstances for allowing post-convictions writs of habeas corpus to be raised to accommodate improvements in forensic science. To be raised, scientific evidence would have to have been unavailable at the time of a trial and would have to discredit scientific evidence relied on by prosecutors at trial. The Legislature has established a way for inmates to request forensic DNA testing after a conviction, and CSSB 1976 would make accommodations for convicted persons wanting to raise non-DNA evidence.

Although it may be possible for some offenders to raise a claim described by CSSB 1976 under current law, it is clear that the current procedure is

inadequate. Hundreds of defendants may remain in prison convicted on old, flawed forensics and without a way to file a writ of habeas corpus. It would be best to establish clear, uniform procedure for these cases so that there is fair access to the courts and consistent consideration of these issues throughout the state for all defendants.

OPPONENTS SAY:

CSSB 1976 is unnecessary. The current system for filing and considering writs of habeas corpus is well established. It might be better to consider establishing a procedure for new scientific evidence that would be similar to the one in Code of Criminal Procedure Chapter 64 for DNA evidence. This chapter allows convicted persons to submit motions to the court requesting forensic DNA testing of biological material under certain circumstances. This evidence then can be submitted in a writ if it meets the current criteria allowing subsequent writs for a claims that had not been and could not have been presented previously because the factual or legal basis for the claim was unavailable.

NOTES:

The committee substitute made several changes to the Senate-passed version of the bill, including establishing a new section of the Code of Criminal Procedure with the procedures and criteria to file a writ of habeas corpus. The Senate version would have amended current law to allow writs of habeas corpus for claims that scientific evidence presented at the trial had been discredited.