

SUBJECT: Allowing writs of habeas corpus based on evidence affecting punishment

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Ann Johnson, Murr

0 nays

1 absent — Vasut

WITNESSES: For — (*Registered, but did not testify:* Lauren Johnson, ACLU of Texas; M. Paige Williams, Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Rachana Chhin, Texas Catholic Conference of Bishops; Shea Place, Texas Criminal Defense Lawyers Association; Alycia Castillo, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Rebecca Bernhardt, The Innocence Project of Texas)

Against — None

On — Ben Wolff, Office of Capital and Forensic Writs

BACKGROUND: Code of Criminal Procedure ch. 11 outlines procedures for filing applications for writs of habeas corpus, which is a way to challenge the constitutionality of a criminal conviction or the process that resulted in a conviction or sentence.

Under art. 11.073, courts are authorized to grant a convicted person relief for such writs if they meet certain conditions, including if scientific evidence currently is available and was not available at the time of a trial and, had the scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted.

DIGEST: HB 275 would expand the situations in which relief on an application for a writ of habeas corpus based on scientific evidence could be granted to

include situations in which a court found that, had the scientific evidence been presented at trial, on a preponderance of the evidence the person would have received a different punishment.

The bill would take effect December 1, 2021, and would apply to writs filed on or after that date.

**SUPPORTERS
SAY:**

HB 275 would allow for relief in habeas cases in which an applicant showed that new, admissible scientific evidence that was unavailable at trial would have resulted in the applicant receiving a different punishment, addressing a limitation in current law.

Currently, a person may obtain relief in a habeas case if a court finds by a preponderance of the evidence that, had the new, admissible scientific evidence been presented at trial, the person would not have been convicted. This leaves a gap in cases in which the new scientific evidence would not have changed the conviction but would have resulted in a different punishment.

While the number of cases that would be affected is modest, the bill's expansion becomes especially important in death penalty cases in which the convicted person's guilt is not in dispute but the punishment is, making consideration of the punishment the entirety of the case. The bill also would address issues related to "prior bad act" evidence, which can be used during the sentencing phase of a case to show that a person may be a future danger to society even if the prior bad act did not result in a criminal conviction. A court could consider whether unreliable forensic science tainted prior bad act evidence used for sentencing, which then could warrant relief on an application for a writ of habeas corpus.

Texas has made significant strides recently on concerns involving forensic science, in which the science previously relied upon has been disproven or changed. The bill would work as a modest expansion of the court's ability to continue redressing the use of unreliable forensic science that taints not only convictions, but also sentences.

CRITICS
SAY:

No concerns identified.