

- SUBJECT:** Appointing attorneys for indigent defendants for writ of habeas corpus
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut
- 0 nays
- WITNESSES:** For — Mike Ware, Innocence Project of Texas; Cynthia Garza, for John Creuzot Dallas County District Attorney; (*Registered, but did not testify:* Lauren Johnson, ACLU of Texas; Melissa Shannon, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; M Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Alycia Castillo, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Rebecca Bernhardt, The Innocence Project)
- Against — None
- On — Benjamin Wolff, Office of Capital and Forensic Writs; Scott Ehlers, Texas Indigent Defense Commission
- BACKGROUND:** Code of Criminal Procedure art. 11.074 establishes circumstances under which courts must appoint attorneys for indigent criminal defendants filing writs of habeas corpus in non-death penalty cases that do not involve sentences of community supervision. Applications for writs of habeas corpus are a way to challenge the constitutionality of a criminal conviction or the process that resulted in a conviction or sentence.
- Under these circumstances, courts are required to appoint attorneys for indigent defendants if the prosecutor represents to the convicting court that an eligible indigent defendant 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 U.S. Supreme Court.

DIGEST: HB 372 would revise the circumstances under which courts must appoint attorneys for certain indigent criminal defendants filing writs of habeas corpus. Under the bill, if a prosecutor notified the convicting court that an indigent defendant had a potentially meritorious claim for relief under a writ of habeas corpus, the court would have to appoint an attorney to investigate the claim and represent the defendant.

The bill would define a potentially meritorious claim as any claim the court determined was likely to provide relief, including claims that the defendant:

- was or might be actually innocent of the offense;
- was or might be guilty of only a lesser offense;
- was or might have been convicted or sentenced under a law that had been found unconstitutional by the Court of Criminal Appeals or the U.S. Supreme Court; or
- was or might have been convicted or sentenced in violation of the constitution of this state or the United States.

The bill would take effect September 1, 2021, and would apply to applications for writs of habeas corpus regardless of whether the offense for which the defendant was in custody occurred before, on, or after that date.

SUPPORTERS SAY: HB 372 would ensure that indigent criminal defendants had effective legal representation for certain appeals through writs of habeas corpus by expanding the circumstances under which a court would have to appoint an attorney when the prosecutor felt it was necessary. Requiring attorneys to be appointed in these cases would ensure the state had a fair criminal

justice system for all Texans.

Current law requires the appointment of attorneys to represent indigent defendants for potential applications for writs of habeas corpus only in limited circumstances. For example, prosecutors must believe that a defendant is not guilty or is guilty of only a lesser offense. These circumstances do not include situations in which prosecutors believe that someone might be innocent or guilty of a lesser offense but more investigation is needed. In these situations it would be inappropriate for a prosecutor's office to investigate the case further, and potentially meritorious claims may not be addressed.

It is important that defendants have an attorney to effectively represent them because in most cases defendants have only one chance to make a habeas claim, and the cases are complicated. HB 372 would address this by expanding the types of claims that would require courts to appoint attorneys for indigent defendants at the behest of prosecutors. The bill would allow appointments for potentially meritorious claims and would allow appointed attorneys to investigate these claims along with representing the defendant. The bill also would establish a logical extension of current law by allowing appointments for claims that a defendant was or may have been convicted in violation of the Texas Constitution or U.S. Constitution.

The bill would not result in a significant expansion of these writs because prosecutors would continue to be required to bring the cases to the court. Because these situations would remain limited and continue to be rare, counties would not see a significant increase in their costs to provide attorneys to indigent defendants and may see some cost efficiencies if cases are better handled.

CRITICS
SAY:

No concerns identified.