

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 344  
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Criminal Justice  
3/13/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.S.B. 344 amends the Code of Criminal Procedure relating to procedures for applications for writs of habeas corpus based on relevant scientific evidence of false and discredited forensic testimony utilized in trial to convict an individual. The bill specifies that evidence to contradict scientific evidence presented at trial is among the types of claims or issues that can affect court consideration of an application for a writ of habeas corpus. Recent examples of such evidence include dog-scent lineups, misinterpreted indicators of arson, and infant trauma. To the extent that the bill modifies claims that can be considered by the Court of Criminal Appeals, the rule change is not anticipated to increase the workload of that court.

C.S.S.B. 344 requires a court to grant a convicted person relief, on a properly filed application for a writ of habeas corpus, containing sufficient specific facts. This legislation prohibits a convicting court from denying relief on an authorized application based solely on the applicant's plea, confession, or admission. The bill authorizes a court to grant relief on the basis of relevant scientific evidence not available at the time of the convicted person's trial.

C.S.S.B. 344 amends current law relating to the procedure for an application for a writ of habeas corpus based on relevant scientific evidence.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 11, Code of Criminal Procedure, by adding Article 11.073, as follows:

Art. 11.073. PROCEDURE RELATED TO CERTAIN SCIENTIFIC EVIDENCE. (a) Provides that this article applies to relevant scientific evidence that was not available to be offered by a convicted person at the convicted person's trial or contradicts scientific evidence relied on by the state at trial.

(b) Authorizes a court to grant a convicted person relief on an application for a writ of habeas corpus if:

(1) the convicted person files an application, in the manner provided by Article 11.07 (Procedure After Conviction Without Death Penalty), 11.071 (Procedure in Death Penalty Case), or 11.072 (Procedure in Community Supervision Case), containing specific facts indicating that:

(A) relevant scientific evidence is currently available and was not available at the time of the convicted person's trial because the evidence was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of or during the convicted person's trial; and

(B) the scientific evidence would be admissible under the Texas Rules of Evidence at a trial held on the date of the application; and

(2) the court makes the findings described by Subdivisions (1)(A) and (B) and also finds that, had the scientific evidence been presented at trial, upon preponderance of the evidence, the person would not have been convicted.

(c) Provides that, for purposes of Section 4(a)(1) (relating to prohibiting a court from considering the merits of or granting relief based on a subsequent application for a writ of habeas corpus unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously because the factual or legal basis for the claim was unavailable), Article 11.07, Section 5(a)(1) (relating to prohibiting a court from considering the merits of or granting relief based on the subsequent application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously because the factual or legal basis for the claim was unavailable), Article 11.071, and Section 9(a) (relating to prohibiting a court from considering the merits of or granting relief based on the subsequent application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously because the factual or legal basis for the claim was unavailable), Article 11.072, a claim or issue could not have been presented previously in an original application or in a previously considered application if the claim or issue is based on relevant scientific evidence that was not ascertainable through the exercise of reasonable diligence by the convicted person on or before the date on which the original application or a previously considered application, as applicable, was filed.

(d) Requires the court, in making a finding as to whether relevant scientific evidence was not ascertainable through the exercise of reasonable diligence on or before a specific date, to consider whether the scientific knowledge or method on which the relevant scientific evidence is based has changed since:

(1) the applicable trial date or dates, for a determination made with respect to an original application; or

(2) the date on which the original application or a previously considered application, as applicable, was filed, for a determination made with respect to a subsequent application.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2013.