

**SUBJECT:** Providing court-appointed counsel for certain writs of habeas corpus

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Herrero, Moody, Canales, Hunter, Leach, Simpson

0 nays

1 absent — Shaheen

**WITNESSES:** For — Alex Bunin, Harris County Public Defender; Elizabeth Henneke, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Charles Reed, Dallas County Commissioners Court; Thomas Ratliff, Harris/Ft. Bend County Criminal Lawyers Association; Kristin Etter, Texas Criminal Defense Lawyers Association; Scott Henson, Texas Criminal Justice Coalition)

Against — None

On — Wesley Shackelford, Texas Indigent Defense Commission

**BACKGROUND:** 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. Code of Criminal Procedure, art. 11.071 provides for court-appointed counsel to assist with applications for writs of habeas corpus for indigent defendants who desire counsel and have been sentenced to death. No such provision exists for defendants convicted in non-death penalty cases.

Code of Criminal Procedure, art. 1.051 defines “indigent” as someone who is not financially able to employ counsel, and art. 26.04(m) lists factors that courts may consider when determining indigency, including income, assets, outstanding obligations, dependents, and spousal income.

Under Code of Criminal Procedure, art. 26.05, attorneys appointed to represent criminal defendants receive compensation based on the time and

labor required of them, the complexity of the case, and the experience and ability of appointed counsel. Judges of county courts, statutory county courts, and district courts are required to adopt fee schedules for payments to court-appointed attorneys.

DIGEST:

CSHB 1346 would require courts to appoint attorneys to represent indigent defendants who sought relief on writs of habeas corpus from convictions that imposed penalties other than death or that ordered community supervision if the state represented to the convicting court that the defendant:

- was not guilty;
- was guilty of only a lesser offense; or
- was convicted or sentenced under a law that had been found unconstitutional by the court of criminal appeals or the U.S. Supreme Court.

Attorneys could be appointed to represent defendants in the process of filing writs of habeas corpus or in proceedings based on the applications for writs. Attorneys appointed under this bill would be compensated at the same rate as attorneys appointed to represent criminal defendants at trial.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply to a writ application regardless of when the offense for which the applicant was in custody was committed.