

SUBJECT: Allowing writs of habeas corpus based on new non-scientific evidence

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; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleaseed; 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)

Against — None

On — (*Registered, but did not testify:* Edward Marshall, Office of the Attorney General)

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.

Concerns have been raised that while current law allows courts to grant

relief for writs of habeas corpus if certain scientific evidence was unavailable at the time of a trial, there is no such authorization for non-scientific evidence that was unavailable at the time of a trial.

DIGEST:

HB 225 would expand the circumstances under which courts could grant relief on an application for a writ of habeas corpus to include non-scientific evidence that was not available to be offered by a convicted person at the person's trial and that was material to the person's conviction.

Courts would be authorized to grant relief on an application for a writ of habeas corpus if the convicted person filed an application containing facts indicating that:

- evidence described by the bill was currently available and was not available at the time of the trial because it was not ascertainable through the exercise of reasonable diligence before or during the person's trial; and
- the evidence would be admissible under the Texas Rules of Evidence at a trial held on the date of the application.

In addition, the court would have to make findings described above and find that, had the evidence been presented at trial, on the preponderance of the evidence, the person would not have been convicted.

The bill would establish that a claim or issue could not have been presented previously in an original or previously considered application if it was based on unavailable and material evidence that was not ascertainable through the exercise of reasonable diligence by or before the date an original or a previously considered application was filed.

The bill would take effect September 1, 2021, and would apply only to applications for writs filed on or after that date.