

BILL ANALYSIS

Senate Research Center

S.B. 1743
By: Hinojosa
Criminal Justice
6/17/2015
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 344, 83rd Legislature, Regular Session, 2013, added Article 11.073 to the Code of Criminal Procedure. It allows a court to grant a convicted person a new trial if the science that convicted the person is no longer valid. Relief may only be granted if the scientific evidence was not available at the time of trial because it was not ascertainable through the exercise of reasonable diligence by the convicted person. This statute is widely regarded as the national model for forensic science writ reform.

As noted in the 2009 National Academy of Sciences Report entitled “Strengthening Forensic Science in the United States: A Path Forward,” the adversarial process relating to scientific evidence is not well suited to the task of finding scientific truth. Most criminal defense lawyers know very little about science and therefore do not necessarily know how to spot forensic science errors and challenge them effectively through the writ process.

This bill allows the Office of Capital Writs (OCW), which has been an excellent steward of state resources in its representation of capital defendants, to create a division dedicated to forensic writs in non-capital cases. It makes good sense from an efficiency standpoint to include Article 11.073 writs in the OCW’s mandate because they already have experience dealing with a specialized and highly technical area of the law (capital cases). The state will realize tremendous administrative efficiencies by including Article 11.073 non-capital cases under the OCW’s authority instead of creating a separate administrative entity for that purpose.

S.B. 1743 changes the name of the Office of Capital Writs to the Office of Post-Conviction Defender with two divisions: capital cases and forensic writ cases.

The forensic division would be built slowly and thoughtfully over time to ensure a deliberate approach to representing clients in the most compelling cases, whether it be cases involving misconduct by a forensic examiner or forensic disciplines facing national scrutiny due to questions about validity and application in criminal convictions (examples: bite mark cases, hair microscopy, dog scent line-ups, et cetera).

It is important to note that the forensic division of the office will not be the sole answer to indigent representation for forensic science cases, and the private bar will still be engaged in this area. But it will provide a much-needed resource for members of the private criminal defense bar who are also interested in taking these cases. (Original Author's / Sponsor's Statement of Intent)

S.B. 1743 amends current law relating to expanding the powers and duties of the office of capital writs and renaming the office of capital writs the office of capital and forensic writs.

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 Sections 2(b), (c) and (f), Article 11.071, Code of Criminal Procedure, to change references to the office of capital writs to the office of capital and forensic writs.

SECTION 2. Amends Section 2A(a), Article 11.071, Code of Criminal Procedure, to change references to the office of capital writs to the office of capital and forensic writs.

SECTION 3. Amends Section 3(f), Article 11.071, Code of Criminal Procedure, to change a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 4. Amends Sections 4A(e) and (f), Article 11.071, Code of Criminal Procedure, to change references to the office of capital writs to the office of capital and forensic writs.

SECTION 5. Amends Section 6(b-1), Article 11.071, Code of Criminal Procedure, to change references to the office of capital writs to the office of capital and forensic writs.

SECTION 6. Amends Article 26.044(a)(2), Code of Criminal Procedure, to define "office of capital and forensic writs."

SECTION 7. Amends Article 26.05(a), Code of Criminal Procedure, to change a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 8. Amends Section 2, Article 38.01, Code of Criminal Procedure, by adding Subdivision (5) to define "office of capital and forensic writs."

SECTION 9. Amends Section 4, Article 38.01, Code of Criminal Procedure, by adding Subsection (h), to authorize the Texas Forensic Science Commission to review and refer cases that are the subject of an investigation under Subsection (a)(3) or (a-1) to the office of capital and forensic writs in accordance with Section 78.054(b), Government Code.

SECTION 10. Amends the heading to Chapter 78, Government Code, to read as follows:

CHAPTER 78. CAPITAL AND FORENSIC WRITS COMMITTEE AND OFFICE OF CAPITAL AND FORENSIC WRITS

SECTION 11. Amends the heading to Subchapter A, Chapter 78, Government Code, to read as follows:

SUBCHAPTER A. CAPITAL AND FORENSIC WRITS COMMITTEE

SECTION 12. Amends Section 78.001, Government Code, to redefine "committee" to mean the capital and forensic writs committee established under this subchapter and to define "office of capital and forensic writs" to mean the office of capital and forensic writs established under Subchapter B.

SECTION 13. Amends Section 78.002, Government Code, to change a reference to the capital writs committee to the capital and forensic writs committee and to change a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 14. Amends the heading to Section 78.004, Government Code, to read as follows:

Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF OFFICE OF CAPITAL AND FORENSIC WRITS.

SECTION 15. Amends Section 78.004, Government Code, as follows:

**Sec. 78.004. New heading: RECOMMENDATION AND APPOINTMENT OF
DIRECTOR OF OFFICE OF CAPITAL AND FORENSIC WRITS. (a) Changes
references to the office of capital writs to the office of capital and forensic writs.**

(b) Provides that each person recommended to the court of criminal appeals by the committee under Subsection (a):

(1) Makes no change to this subdivision;

(2) may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a criminal case, rather than of a death penalty case.

(c) Changes a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 16. Amends the heading to Subchapter B, Chapter 78, Government Code, to read as follows:

SUBCHAPTER B. OFFICE OF CAPITAL AND FORENSIC WRITS

SECTION 17. Amends Section 78.051, Government Code, to redefine "committee" and "office."

SECTION 18. Amends Section 78.052(a), Government Code, to change a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 19. Amends Section 78.053(b), Government Code, as follows:

(b) Requires the director of the office of capital and forensic writs (director) (office) to employ attorneys and employ or retain licensed investigators, experts, and other personnel necessary to perform the duties of the office. Prohibits an attorney, to be employed by the director, from having been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a criminal case, rather than of a death penalty case.

SECTION 20. Amends Section 78.054, Government Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Prohibits the office from representing a defendant in an action or proceeding in state court other than an action or proceeding that:

(1) is conducted under Article 11.071 (Procedure in Death Penalty Case), Code of Criminal Procedure;

(2) is collateral to the preparation of an application under Article 11.071, Code of Criminal Procedure;

(3) Makes no change to this subdivision; or

(4) is conducted under Article 11.073 (Procedure Related to Certain Scientific Evidence), Code of Criminal Procedure, or is collateral to the preparation of an application under Article 11.073, Code of Criminal Procedure, if the case was referred in writing to the office by the Texas Forensic Science Commission under Section 4(h), Article 38.01, Code of Criminal Procedure.

Makes a nonsubstantive change.

(d) Authorizes the office to consult with law school clinics with applicable knowledge and experience and with other experts as necessary to investigate the facts of a particular case.

SECTION 21. Amends Section 79.001(12), Government Code, to define "office of capital and forensic writs."

SECTION 22. Amends Section 79.031, Government Code, to change a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 23. Amends Section 411.082(5), Government Code, to define "office of capital and forensic writs."

SECTION 24. Amends Section 411.088(a-1), Government Code, to change a reference to the office of capital writs to the office of capital and forensic writs.

SECTION 25. Amends Section 411.1272, Government Code, as follows:

Sec. 411.1271. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS AND PUBLIC DEFENDER'S OFFICES. Changes references to the office of capital writs to the office of capital and forensic writs.

SECTION 26. Effective date: September 1, 2015.