

- SUBJECT:** Application for a writ of habeas corpus based on scientific evidence
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Hughes
- SENATE VOTE:** On final passage, March 25 — 28-3 (Birdwell, Nelson, Patrick)
- WITNESSES:** (*On House companion bill, HB 967:*)
For — Jeff Blackburn, Scott Henson, and Gary Udashen, Innocence Project of Texas; (*Registered but did not testify:* Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Kristin Etter, Texas Criminal Defense Lawyers Association; Kay Forth, American Civil Liberties Union of Texas; Andrea Marsh, Texas Fair Defense Project)
Against — None
On — Justin Wood, Harris County District Attorney’s Office
- BACKGROUND:** Code of Criminal Procedure, ch. 11 outlines procedures for filing applications for writs of habeas corpus. Art. 11.07 governs procedures for applying for a writ in a felony conviction where the death penalty was not imposed. Art. 11.071 governs procedures for applying for a writ in death penalty cases, and Art. 11.072 establishes procedures for writs in felony and misdemeanor cases in which the person was ordered into community supervision (probation).
- DIGEST:** SB 344 would authorize courts to grant relief on applications for writs of habeas corpus that, subject to criteria in the bill, contained specific facts indicating that:
- relevant scientific evidence was currently available and was not available at the time of the conviction because the evidence was

not ascertainable through reasonable diligence at the time of the trial; and

- the scientific evidence would be admissible under Texas Rules of Evidence at a trial held on the date of the application.

In addition, the court would have to find that if the scientific evidence had been presented at trial, on a preponderance of the evidence the person would not have been convicted.

The bill would apply to relevant scientific evidence that was not available to be offered by a convicted person at trial or that contradicted scientific evidence relied on by the state at trial.

A court, in deciding whether relevant scientific evidence was not ascertainable through the exercise of reasonable diligence on or before a specific date, would have to consider whether the scientific knowledge or method on which the relevant scientific evidence was based had changed since the trial date for an original application or since the date of a previously considered application for subsequent ones.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 344 would create a legal avenue for innocent defendants convicted based on false and discredited forensic testimony to seek relief under Texas' habeas corpus statute. The bill would establish a legal mechanism similar to Code of Criminal Procedure, ch. 64, which established grounds for post-conviction DNA testing.

The question of how to deal with convictions based on false and discredited forensic testimony has arisen more frequently as the forensic sciences in recent years have undergone extensive review, leading to correction and updating in various fields and sometimes discrediting certain forms of forensic testimony. Rather than establish additional chapters for arson, dog-scent lineups, and every discredited forensic method, SB 344 would establish a single standard for when this scenario arises.

Recent case law and judicial opinion have identified weaknesses in the current habeas corpus statute, noting issues that include the absence of statutory grounds upon which to grant relief, the speed of changing science that serves as the foundation of a conviction, and technical

testimony that may change with scientific discovery. In one case, recanted testimony by a medical examiner established the basis of the state's case with respect to the cause and manner of death, without which it would not have obtained a conviction. The Texas Court of Criminal Appeals voted against granting a new trial, with the majority finding no path to habeas relief under current law. The question was raised as to how the criminal justice system should address scenarios in which scientific experts sincerely thought something was true at the time they testified, but the science and the experts' understanding and opinions had changed.

The Timothy Cole Advisory Panel on Wrongful Convictions endorsed similar legislation, saying it would provide meaningful access to the courts to those with claims of actual innocence following a conviction based on science that had since been falsified. Creation of a dedicated writ and procedure would allow those with claims to be heard without opening all convictions up to scrutiny.

Opponents overstate the potential for the bill to flood the courts with appeals. The bill would include several well defined criteria that would have to be met in order for a court to grant relief. In addition, the Innocence Project of Texas sent letters to more than 1,000 inmates serving in the Texas Department of Criminal Justice for the offense of arson and received 175 replies, with only about 30 of those meriting further investigation.

While some claim that the bill contains vague language, courts routinely make a determination as to what constitutes "relevant scientific evidence," which is a term of art used in the rules of evidence, and this would be no different.

SB 344 would fill a gap in habeas corpus law, ensure that the law kept pace with science, and provide a path for relief where false and discredited forensics may have caused the false conviction of an innocent person.

**OPPONENTS
SAY:**

SB 344 could open the door for many unfounded applications for writ of habeas corpus relief that would overwhelm the courts with appeals every time a new scientific advancement was made.

The bill's language is too vague. The term "relevant scientific language" is too open to interpretation for what could trigger an appeal.

NOTES: The companion bill, HB 967 by Sylvester Turner, was left pending in the House Criminal Jurisprudence Committee on April 23.