

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 662  
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Criminal Justice  
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As Filed

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

Sections 11.07 (Procedure After Conviction Without Death Penalty) and 11.072 (Procedure in Community Supervision Case) of the Code of Criminal Procedure give judges the discretion to appoint counsel to represent a defendant in habeas corpus proceedings in a non-capital case. Under certain circumstances, the defense and the district attorney agree that the defendant should be released, namely where the defendant is actually innocent, is guilty only of a lesser offense, or was convicted under a law subsequently declared void. Despite the agreement of prosecution and defense in such cases, some judges do not appoint counsel to assist the release of indigent defendants.

S.B. 662 amends Sections 11.07 and 11.072 to make the appointment of counsel mandatory for indigent defendants who are not guilty of the crime for which they were convicted or were convicted under a law that is now void. The appointment of counsel is only mandatory when the prosecution agrees that the defendant's status warrants the appointment of counsel. By requiring that defense counsel be appointed in these limited cases, persons entitled to relief can be released from prison and jail earlier, and the state and local governments can save on incarceration expenditures.

As proposed, S.B. 662 amends current law relating to the representation of certain indigent applicants for a writ of habeas corpus.

### **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 Article 11.07, Code of Criminal Procedure, by adding Section 3-a, as follows:

Sec. 3-a. Requires the court, if at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 (Right to Representation by Counsel) who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, to appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding under this article. Requires an attorney appointed under this section to be compensated as provided by Article 26.05 (Compensation of Counsel Appointed to Defend).

SECTION 2. Amends Article 11.072, Code of Criminal Procedure, by adding Section 3-a, as follows:

Sec. 3-a. Requires the court, if at any time the state represents to the court that an eligible indigent defendant under Article 1.051 who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law

that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, to appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding under this article. Requires an attorney appointed under this section to be compensated as provided by Article 26.05.

SECTION 3. Provides that the changes in law made by this Act relating to the application of writ of habeas corpus apply regardless of whether the offense for which the applicant is in custody was committed before, on, or after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2015.