

BILL ANALYSIS

Senate Research Center
84R3079 AJZ-D

S.B. 1743
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Criminal Justice
4/24/2015
As Filed

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 It allows a court to grant a convicted person a new trial if the science that convicted the person is no longer valid.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.

As proposed, 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 Texas office of post-conviction defender.

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 the heading to Chapter 78, Government Code, to read as follows:

CHAPTER 78. CAPITAL WRITS COMMITTEE AND TEXAS OFFICE OF POST-
CONVICTION DEFENDER

SECTION 2. Amends the heading to Subchapter B, Chapter 78, Government Code, to read as follows:

SUBCHAPTER B. TEXAS OFFICE OF POST-CONVICTION DEFENDER

SECTION 3. Amends Section 78.051(2), Government Code, to redefine "office."

SECTION 4. Amends Section 78.052(a), Government Code, to provide that the Texas office of post-conviction defender (office), rather than the office of capital writs, is established and operates under the direction and supervision of the director of the office.

SECTION 5. Amends Section 78.053(b), Government Code, as follows:

(b) Requires the director of the office (director) 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 6. 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) or 11.073 (Procedure Related to Certain Scientific Evidence), Code of Criminal Procedure;

(2) is collateral to the preparation of an application under Article 11.071 or 11.073, Code of Criminal Procedure;

(3) Makes no change to this subdivision; or

(4) concerns any other post-conviction matter in a case that involves a forensic science issue.

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 7. Effective date: September 1, 2015.