

1-1 By: Hodge (Senate Sponsor - Whitmire) H.B. No. 1713
1-2 (In the Senate - Received from the House April 14, 2003;
1-3 April 22, 2003, read first time and referred to Committee on
1-4 Criminal Justice; May 20, 2003, reported favorably by the
1-5 following vote: Yeas 4, Nays 0; May 20, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to an application for a writ of habeas corpus to seek
1-9 relief related to community supervision.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 11, Code of Criminal Procedure, is
1-12 amended by adding Article 11.072 to read as follows:

1-13 Art. 11.072. PROCEDURE IN COMMUNITY SUPERVISION CASE

1-14 Sec. 1. This article establishes the procedures for an
1-15 application for a writ of habeas corpus in a felony or misdemeanor
1-16 case in which the applicant seeks relief from an order or a judgment
1-17 of conviction ordering community supervision.

1-18 Sec. 2. (a) An application for a writ of habeas corpus under
1-19 this article must be filed with the clerk of the court in which
1-20 community supervision was imposed.

1-21 (b) At the time the application is filed, the applicant must
1-22 be, or have been, on community supervision, and the application
1-23 must challenge the legal validity of:

1-24 (1) the conviction for which or order in which
1-25 community supervision was imposed; or

1-26 (2) the conditions of community supervision.

1-27 Sec. 3. (a) An application may not be filed under this
1-28 article if the applicant could obtain the requested relief by means
1-29 of an appeal under Article 44.02 and Rule 25.2, Texas Rules of
1-30 Appellate Procedure.

1-31 (b) An applicant seeking to challenge a particular
1-32 condition of community supervision but not the legality of the
1-33 conviction for which or the order in which community supervision
1-34 was imposed must first attempt to gain relief by filing a motion to
1-35 amend the conditions of community supervision.

1-36 (c) An applicant may challenge a condition of community
1-37 supervision under this article only on constitutional grounds.

1-38 Sec. 4. (a) When an application is filed under this article,
1-39 a writ of habeas corpus issues by operation of law.

1-40 (b) At the time the application is filed, the clerk of the
1-41 court shall assign the case a file number ancillary to that of the
1-42 judgment of conviction or order being challenged.

1-43 Sec. 5. (a) Immediately on filing an application, the
1-44 applicant shall serve a copy of the application on the attorney
1-45 representing the state, by either certified mail, return receipt
1-46 requested, or personal service.

1-47 (b) The state may file an answer within the period
1-48 established by Subsection (c), but is not required to file an
1-49 answer.

1-50 (c) The state may not file an answer after the 30th day after
1-51 the date of service, except that for good cause the convicting court
1-52 may grant the state one 30-day extension.

1-53 (d) Any answer, motion, or other document filed by the state
1-54 must be served on the applicant by certified mail, return receipt
1-55 requested, or by personal service.

1-56 (e) Matters alleged in the application not admitted by the
1-57 state are considered to have been denied.

1-58 Sec. 6. (a) Not later than the 60th day after the day on
1-59 which the state's answer is filed, the trial court shall enter a
1-60 written order granting or denying the relief sought in the
1-61 application.

1-62 (b) In making its determination, the court may order
1-63 affidavits, depositions, interrogatories, or a hearing, and may
1-64 rely on the court's personal recollection.

2-1 (c) If a hearing is ordered, the hearing may not be held
2-2 before the eighth day after the day on which the applicant and the
2-3 state are provided notice of the hearing.

2-4 (d) The court may appoint an attorney or magistrate to hold
2-5 a hearing ordered under this section and make findings of fact. An
2-6 attorney appointed under this subsection is entitled to
2-7 compensation as provided by Article 26.05.

2-8 Sec. 7. (a) If the court determines from the face of an
2-9 application or documents attached to the application that the
2-10 applicant is manifestly entitled to no relief, the court shall
2-11 enter a written order denying the application as frivolous. In any
2-12 other case, the court shall enter a written order including
2-13 findings of fact and conclusions of law. The court may require the
2-14 prevailing party to submit a proposed order.

2-15 (b) At the time an order is entered under this section, the
2-16 clerk of the court shall immediately, by certified mail, return
2-17 receipt requested, send a copy of the order to the applicant and to
2-18 the state.

2-19 Sec. 8. If the application is denied in whole or part, the
2-20 applicant may appeal under Article 44.02 and Rule 31, Texas Rules of
2-21 Appellate Procedure. If the application is granted in whole or
2-22 part, the state may appeal under Article 44.01 and Rule 31, Texas
2-23 Rules of Appellate Procedure.

2-24 Sec. 9. (a) If a subsequent application for a writ of habeas
2-25 corpus is filed after final disposition of an initial application
2-26 under this article, a court may not consider the merits of or grant
2-27 relief based on the subsequent application unless the application
2-28 contains sufficient specific facts establishing that the current
2-29 claims and issues have not been and could not have been presented
2-30 previously in an original application or in a previously considered
2-31 application filed under this article because the factual or legal
2-32 basis for the claim was unavailable on the date the applicant filed
2-33 the previous application.

2-34 (b) For purposes of Subsection (a), a legal basis of a claim
2-35 is unavailable on or before a date described by that subsection if
2-36 the legal basis was not recognized by and could not have been
2-37 reasonably formulated from a final decision of the United States
2-38 Supreme Court, a court of appeals of the United States, or a court
2-39 of appellate jurisdiction of this state on or before that date.

2-40 (c) For purposes of Subsection (a), a factual basis of a
2-41 claim is unavailable on or before a date described by that
2-42 subsection if the factual basis was not ascertainable through the
2-43 exercise of reasonable diligence on or before that date.

2-44 SECTION 2. Article 44.01, Code of Criminal Procedure, is
2-45 amended by adding Subsection (k) to read as follows:

2-46 (k) The state is entitled to appeal an order granting relief
2-47 to an applicant for a writ of habeas corpus under Article 11.072.

2-48 SECTION 3. This Act takes effect immediately if it receives
2-49 a vote of two-thirds of all the members elected to each house, as
2-50 provided by Section 39, Article III, Texas Constitution. If this
2-51 Act does not receive the vote necessary for immediate effect, this
2-52 Act takes effect September 1, 2003.

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