

1-1 By: Carona S.B. No. 1116  
1-2 (In the Senate - Filed March 5, 2007; March 14, 2007, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 26, 2007, reported favorably by the following vote: Yeas 5,  
1-5 Nays 0; April 26, 2007, sent to printer.)

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

1-8 relating to the appeal of certain hearings related to a grant of  
1-9 deferred adjudication community supervision and to certain related  
1-10 applications for a writ of habeas corpus.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 11.07, Code of Criminal Procedure, is  
1-13 amended by adding Section 4A and amending Section 5 to read as  
1-14 follows:

1-15 Sec. 4A. If an application for a writ of habeas corpus is  
1-16 filed in a cause in which the applicant previously sought review on  
1-17 direct appeal of a determination made under Section 5(b), Article  
1-18 42.12, the Court of Criminal Appeals shall direct that the cause be  
1-19 docketed and heard under Section 5 if review of the cause on direct  
1-20 appeal was denied by the appellate court on the grounds that the  
1-21 court lacked jurisdiction.

1-22 Sec. 5. Except as provided by Section 4A, the [The] Court of  
1-23 Criminal Appeals may deny relief upon the findings and conclusions  
1-24 of the hearing judge without docketing the cause, or may direct that  
1-25 the cause be docketed and heard as though originally presented to  
1-26 said court or as an appeal. Upon reviewing the record the court  
1-27 shall enter its judgment remanding the applicant to custody or  
1-28 ordering his release, as the law and facts may justify. The mandate  
1-29 of the court shall issue to the court issuing the writ, as in other  
1-30 criminal cases. After conviction the procedure outlined in this  
1-31 Act shall be exclusive and any other proceeding shall be void and of  
1-32 no force and effect in discharging the prisoner.

1-33 SECTION 2. Subsection (b), Section 5, Article 42.12, Code  
1-34 of Criminal Procedure, is amended to read as follows:

1-35 (b) On violation of a condition of community supervision  
1-36 imposed under Subsection (a) of this section, the defendant may be  
1-37 arrested and detained as provided in Section 21 of this article.  
1-38 The defendant is entitled to a hearing limited to the determination  
1-39 by the court of whether it proceeds with an adjudication of guilt on  
1-40 the original charge. This determination is reviewable in the same  
1-41 manner as a revocation hearing conducted under Section 21 in a case  
1-42 in which an adjudication of guilt had not been deferred [No appeal  
1-43 may be taken from this determination]. After an adjudication of  
1-44 guilt, all proceedings, including assessment of punishment,  
1-45 pronouncement of sentence, granting of community supervision, and  
1-46 defendant's appeal continue as if the adjudication of guilt had not  
1-47 been deferred. A court assessing punishment after an adjudication  
1-48 of guilt of a defendant charged with a state jail felony may suspend  
1-49 the imposition of the sentence and place the defendant on community  
1-50 supervision or may order the sentence to be executed, regardless of  
1-51 whether the defendant has previously been convicted of a felony.

1-52 SECTION 3. (a) Article 11.07, Code of Criminal Procedure,  
1-53 as amended by this Act, applies only to an application for a writ of  
1-54 habeas corpus that is filed on or after the effective date of this  
1-55 Act. An application for a writ of habeas corpus that is filed  
1-56 before the effective date of this Act is governed by the law in  
1-57 effect at the time the application was filed, and the former law is  
1-58 continued in effect for that purpose.

1-59 (b) Subsection (b), Section 5, Article 42.12, Code of  
1-60 Criminal Procedure, as amended by this Act, applies to a hearing  
1-61 conducted under that section on or after the effective date of this  
1-62 Act, regardless of when the adjudication of guilt was originally  
1-63 deferred or when the offense giving rise to the grant of deferred  
1-64 adjudication community supervision was committed.

2-1 SECTION 4. This Act takes effect September 1, 2007.

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