

## **BILL ANALYSIS**

H.B. 3871  
By: Cook  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Current practice for filing habeas corpus applications is to file in the county where the person has been charged or is being held. In 2022, 430 people arrested and being held in Kinney County Court filed habeas corpus applications in Travis County. Upon the hearing of the first of the habeas corpus applications, the Travis County District Court did not transfer the habeas corpus application to a Kinney County Court nor allow the Kinney County Attorney to represent the state's interests. Ultimately, the Court of Criminal Appeals issued an opinion that the Travis County District Court could not exercise its jurisdiction outside of Travis County. H.B. 3871 seeks to clarify aspects of the habeas corpus process, to include clarifying that a court located in the county in which a felony or misdemeanor case occurred or where the defendant is in custody should generally be the court that hears and rules upon a habeas corpus application.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3871 amends the Code of Criminal Procedure to revise provisions relating to the procedures for an application for a writ of habeas corpus and the issuance of the writ.

H.B. 3871 requires a writ of habeas corpus, if the applicant for the writ has not been formally charged by indictment or information, to be made returnable to one of the following applicable counties:

- the county in which the applicant is confined to the custody of the sheriff or other authority;
- the county in which the applicant is alleged, by any means including the issuance of a warrant for the applicant's arrest or the applicant's arrest, to have committed a criminal offense that provides the basis for the restraint from which the application seeks relief; or
- if neither are applicable, the county in which the action imposing a restraint on the applicant's liberty occurred.

The bill requires such a writ, after the applicant has been charged by indictment or information, and before any conviction of the applicant, to be made returnable to the county in which the indictment or information is pending. The bill requires such a writ, after final conviction in any misdemeanor case, to be made returnable to the county in which the applicant was convicted.

H.B. 3871 revises procedures for an application for the writ to authorize an applicant or petitioner, if accused of committing a felony or misdemeanor offense who has not been convicted of the offense, to apply to the judge of the court in which the indictment or information charging the applicant is pending or, if an indictment or information charging the applicant has not been filed or the judge of the court in which the indictment or information is pending is not available, to the following applicable judges:

- for a felony, any judge with felony jurisdiction in a county to which the writ is returnable; if there is no judge with felony jurisdiction available, any judge with felony jurisdiction who presides over a court in any county that adjoins the county; and
- for a misdemeanor, any judge of a county court with criminal jurisdiction in a county to which the writ is returnable; if there is no judge of a county court with criminal jurisdiction available, any judge of a county court with criminal jurisdiction who presides over a court in any county that adjoins the county.

H.B. 3871 establishes the following for the application for the writ:

- a petitioner is not a party to a related court proceeding; and
- a petitioner who is not the applicant's attorney may not take any additional actions on behalf of the applicant that would constitute the practice of law.

H.B. 3871 requires a petitioner to state in the application for the writ and under oath that the petitioner is presenting the application with the applicant's knowing and voluntary consent.

H.B. 3871 applies only to an application for a writ of habeas corpus filed on or after the bill's effective date.

H.B. 3871 repeals Section 2, Article 11.07, Code of Criminal Procedure.

**EFFECTIVE DATE**

September 1, 2023.