

## BILL ANALYSIS

Senate Research Center

S.B. 1516  
By: King  
Criminal Justice  
6/27/2023  
Enrolled

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

#### Problem:

- Several articles of Chapter 11 contain outdated and inconsistent language and are out of touch with case law and current practice.
- One such inconsistency leaves open the possibility that an application for a writ of habeas corpus can be filed in any county in Texas, regardless of where the applicant is in custody, though current practice is to file such applications in the county where the person has been charged or is being held.
- In 2022, 430 people arrested and being held in Kinney County filed habeas applications in Travis County, attempting to take advantage of this inconsistency.
- When the first of these habeas applications came to be heard, the Travis County district court refused to transfer the applications to a court in Kinney County or allow the Kinney County Attorney to represent the interests of the State, giving that responsibility to the Travis County District Attorney.
- But the Travis County District Attorney did not represent the interests of the State; instead it agreed with the applicant, taking the position that his arrest was unconstitutional and he was being unlawfully restrained.
- Fortunately, the Court of Criminal Appeals disagreed with the Travis County district court and prohibited it from exercising its jurisdiction in cases outside of Travis County because "'one of the cardinal principles of our system of government' [is] 'to localize the administration of the law,—to try causes in the county, and before the court, having the primary jurisdiction thereof.'"

#### Solution:

- We must amend current habeas corpus procedure to clarify where a habeas application may properly be filed.
- We must update language throughout Chapter 11 to create consistency and meet with current case law and practice.

#### Benefits:

- Removes inconsistencies and closes gaps in the language which may lead to confusion.
- Allows the prosecutor with an interest in the outcome of the case to represent the State in habeas proceedings.
- Saves local taxpayer dollars from being wasted on transporting habeas applicants across the state.

#### How the Bill Works:

- Requires a habeas application to be filed, heard, and ruled on in a court for the county in which the felony or misdemeanor case is pending, if the application is filed after an applicant has been accused of or charged with committing an offense.
- Requires a writ application to be filed in either the county in which the person is in custody or in the county where the offense is alleged to have occurred, if the application is filed before an applicant has been accused of or charged with committing an offense.
- Clarifies the status and requirements for a person to file a habeas application on behalf of another.

S.B. 1516 amends current law relating to the procedures for an application for a writ of habeas corpus and the issuance of the writ.

## **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 11.05, Code of Criminal Procedure, as follows:

Art. 11.05. New heading: BY WHOM WRIT MAY BE ISSUED. Authorizes the Texas Court of Criminal Appeals (court of criminal appeals), the district courts, the county courts, or any judge of those courts to issue the writ of habeas corpus, and provides that it is their duty, on proper application, rather than on proper motion, to issue, rather than grant, the writ under the rules prescribed by law. Makes nonsubstantive changes.

SECTION 2. Amends Article 11.051, Code of Criminal Procedure, as follows:

Art. 11.051. FILING FEE PROHIBITED. Prohibits a clerk of the court, notwithstanding any other law, from requiring a filing fee from an individual who files an application, rather than application or petition, for a writ of habeas corpus.

SECTION 3. Amends Article 11.06, Code of Criminal Procedure, as follows:

Art. 11.06. New heading: WHERE WRIT IS RETURNABLE IN CASES NOT INVOLVING FELONY CONVICTION. (a) Requires that, rather than authorizes, the writ, if the applicant has not been formally charged by indictment or information, rather than before indictment found, be made returnable to the county, rather than any county in the state, in which:

(1) the applicant is confined to the custody of the sheriff or other authority;

(2) the applicant is alleged, by any means including the issuance of a warrant for the applicant's arrest or the applicant's arrest pursuant to Chapter 14 (Arrest Without Warrant), to have committed a criminal offense that provides the basis for the restraint from which the application seeks relief; or

(3) if neither Subdivision (1) nor (2) applies, the action imposing a restraint on the applicant's liberty occurred.

(b) Requires that the writ be made returnable to the county in which the indictment or information is pending after the applicant has been charged by indictment or information.

(c) Requires that the writ, after final conviction in any misdemeanor case, be made returnable to the county in which the applicant was convicted.

SECTION 4. Amends Article 11.08, Code of Criminal Procedure, as follows:

Art. 11.08. New heading: APPLICANT ACCUSED OF FELONY. Authorizes an applicant or petitioner, if the applicant is accused of committing a felony offense, whether by indictment, information, warrant, arrest, or other means, and has not been convicted of the offense, to apply:

(1) to the judge of the court in which the indictment or information charging the applicant is pending; or

(2) 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:

(A) to any judge with felony jurisdiction in a county to which the writ is returnable; or

(B) if there is no judge with felony jurisdiction available in a county described by Paragraph (A), to any judge with felony jurisdiction who presides over a court in any county that adjoins a county described by Paragraph (A).

Deletes existing text authorizing a person, if he is confined after indictment on a charge of felony, to apply to the judge of the court in which he is indicted, or if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

SECTION 5. Amends Article 11.09, Code of Criminal Procedure, as follows:

Art. 11.09. New heading: **APPLICANT ACCUSED OR CONVICTED OF MISDEMEANOR.** (a) Creates this subsection from existing text. Authorizes an applicant or petitioner, if the applicant is accused of committing a misdemeanor offense, whether by information, warrant, complaint, arrest, or other means, and has not been convicted of the offense, to apply:

(1) to the judge of the court in which the information charging the applicant is pending; or

(2) if an information charging the applicant has not been filed or the judge of the court in which the information is pending is not available:

(A) to any judge of a county court with criminal jurisdiction in county to which the writ is returnable; or

(B) if there is no judge of a county court with criminal jurisdiction available in a county described by Paragraph (A), to any judge of a county court with criminal jurisdiction who presides over a court in any county that adjoins a county described by Paragraph (A).

Deletes existing text authorizing a person, if he is confined on a charge of misdemeanor, to apply to the county judge of the county in which the misdemeanor is charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is nearest to the courthouse of the county in which the applicant is held in custody.

(b) Authorizes the applicant or petitioner to apply to the judge of the court in which the applicant was convicted after final conviction in any misdemeanor case.

SECTION 6. Amends Article 11.10, Code of Criminal Procedure, as follows:

Art. 11.10. **PROCEEDINGS UNDER THE WRIT.** Requires the judge, if an application is made to a judge under Article 11.08 or 11.09, to appoint a time when the judge will examine the cause of the applicant, and issue the writ returnable at that time, in a specified place in a county to which the writ is returnable. Deletes existing text requiring the judge, when motion has been made to a judge under the circumstances set forth in the two preceding Articles, to appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. Deletes existing text requiring the judge to also specify some place in the county where he will hear the motion.

SECTION 7. Amends Article 11.12, Code of Criminal Procedure, as follows:

Art. 11.12. New heading: WHO MAY PRESENT APPLICATION. Authorizes the party for whose relief the writ of habeas corpus is intended, or any person on behalf of that party, rather than for him, to present an application for a writ of habeas corpus, rather than a petition, to the proper authority for the purpose of obtaining relief. Makes a nonsubstantive change.

SECTION 8. Amends Article 11.13, Code of Criminal Procedure, as follows:

Art. 11.13. New heading: APPLICANT AND PETITIONER. (a) Provides that the word applicant, as used in Chapter 11 (Habeas Corpus), refers to the person for whose relief the application for a writ of habeas corpus is presented.

(b) Authorizes an application for a writ of habeas corpus to be signed and presented on behalf of an applicant by any person, who is required to be referred to as the petitioner.

Deletes existing text providing that the word applicant, as used in this chapter, refers to the person for whose relief the writ is asked, though the petition is authorized to be signed and presented by any other person.

(c) Provides that a petitioner is not a party to a proceeding under this chapter.

(d) Prohibits a petitioner who is not the applicant's attorney from taking any additional actions on behalf of the applicant that would constitute the practice of law.

SECTION 9. Amends Article 11.14, Code of Criminal Procedure, as follows:

Art. 11.14. New heading: APPLICATION REQUIREMENTS. (a) Sets forth the language that an application for a writ of habeas corpus, rather than the petition, is required to include.

(b) Requires a petitioner, in addition to the requirements under Subsection (a), to state in the application and under oath that the petitioner is presenting the application with the applicant's knowing and voluntary consent.

SECTION 10. Amends Article 11.15, Code of Criminal Procedure, as follows:

Art. 11.15. New heading: WRIT ISSUED WITHOUT DELAY. Requires the writ of habeas corpus to be issued, rather than granted, without delay by the judge or court receiving the application, rather than petition, unless it be manifest from the application itself, or some documents annexed to it, that the applicant is not entitled to any relief, rather than the party is entitled to no relief whatsoever. Makes a conforming change.

SECTION 11. Amends Article 11.16, Code of Criminal Procedure, as follows:

Art. 11.16. New heading: WRIT MAY ISSUE WITHOUT APPLICATION. Authorizes a judge of the district or county court who has knowledge that any person is illegally confined or restrained in the person's liberty within the judge's district or county, if the case is within the judge's jurisdiction, to issue the writ of habeas corpus, without any application, rather than motion, being made for the writ. Makes conforming and nonsubstantive changes.

SECTION 12. Amends Article 11.24, Code of Criminal Procedure, as follows:

Art. 11.24. ONE COMMITTED IN DEFAULT OF BAIL. Provides that a person, where the person has been committed to custody for failing to enter into bond, is entitled to the

writ of habeas corpus, if it be stated in the application, rather than petition, that there was no sufficient cause for requiring bail or that the bail required is excessive. Provides that if the proof sustains the application, rather than the petition, it will entitle the person, rather than the party, to be discharged or have the bail reduced. Makes nonsubstantive changes.

SECTION 13. Amends Article 11.25, Code of Criminal Procedure, as follows:

Art. 11.25. PERSON AFFLICTED WITH DISEASE. Authorizes an order, when a judge or court authorized to issue, rather than grant, writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, to be made for the removal of the person, rather than prisoner, to some other place where the person's health will not be likely to suffer, or the person is authorized to be admitted to bail when it appears that any manner, rather than species, of confinement will endanger the person's life. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Article 11.30, Code of Criminal Procedure, as follows:

Art. 11.30. HOW RETURN IS MADE. Provides that the return is made by making certain statements in plain language on the copy of the writ or some paper connected with it. Sets forth the language to be included in the statements. Makes conforming changes.

SECTION 15. Amends Article 11.33, Code of Criminal Procedure, as follows:

Art. 11.33. COURT SHALL ALLOW TIME. Requires the court or judge issuing, rather than granting, the writ of habeas corpus to allow reasonable time for the production of the person detained in custody.

SECTION 16. Amends Article 11.38, Code of Criminal Procedure, as follows:

Art. 11.38. WHEN A PRISONER DIES. Requires that all the proceedings had in such cases be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which is required to be sufficient proof of the death of the prisoner at the hearing of an application for a writ of habeas corpus, rather than a motion under habeas corpus. Makes nonsubstantive changes.

SECTION 17. Amends Article 11.51, Code of Criminal Procedure, as follows:

Art. 11.51. RECORD OF PROCEEDINGS. Requires that all the proceedings had, if a writ of habeas corpus be made returnable before a court in session, be entered of record by the clerk of the court, as in any other case in the court. Requires the clerk, when the application, rather than motion, is heard out of the county where the offense was committed or in the court of criminal appeals, to transmit a certified copy of all the proceedings on the application, rather than motion, to the clerk of the court which has jurisdiction of the offense. Makes nonsubstantive changes.

SECTION 18. Amends Article 11.54, Code of Criminal Procedure, as follows:

Art. 11.54. COURT MAY GRANT NECESSARY ORDERS. Authorizes the court or judge issuing, rather than granting, a writ of habeas corpus to:

(1)-(2) makes nonsubstantive changes to these subdivisions.

SECTION 19. Amends Article 11.59, Code of Criminal Procedure, as follows:

Art. 11.59. OBTAINING WRIT A SECOND TIME. Authorizes an applicant, rather than a party, to obtain the writ of habeas corpus a second time by stating in an application, rather than a motion, therefor that since the hearing of the applicant's first application important testimony has been obtained which it was not in the applicant's power to produce at the former hearing. Requires the applicant to also set forth the newly

discovered testimony, rather than testimony so newly discovered; and requires that, if it be that of a witness, the affidavit of the witness also accompany the application, rather than such motion. Makes conforming and nonsubstantive changes.

SECTION 20. Repealer: Section 2 (relating to requiring the writ to be made returnable in the county where the offense has been committed after indictment found in any felony case, other than a case in which the death penalty is imposed, and before conviction), Article 11.07, Code of Criminal Procedure.

SECTION 21. Makes application of this Act prospective.

SECTION 22. Effective date: September 1, 2023.