

By: Cook

H.B. No. 3871

A BILL TO BE ENTITLED

AN ACT

relating to the procedures for an application for a writ of habeas corpus and the issuance of the writ.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 11.05, Code of Criminal Procedure, is amended to read as follows:

Art. 11.05. BY WHOM WRIT MAY BE ISSUED ~~[GRANTED]~~. The court ~~[Court]~~ of criminal appeals ~~[Criminal Appeals]~~, the district courts ~~[District Courts]~~, the county courts ~~[County Courts]~~, or any judge ~~[Judge]~~ of those courts may ~~[said Courts, have power to]~~ issue the writ of habeas corpus, ~~[+]~~ and it is their duty, on ~~[upon]~~ proper application ~~[motion]~~, to issue ~~[grant]~~ the writ under the rules prescribed by law.

SECTION 2. Article 11.051, Code of Criminal Procedure, is amended to read as follows:

Art. 11.051. FILING FEE PROHIBITED. Notwithstanding any other law, a clerk of a court may not require a filing fee from an individual who files an application ~~[or petition]~~ for a writ of habeas corpus.

SECTION 3. Article 11.06, Code of Criminal Procedure, is amended to read as follows:

Art. 11.06. WHERE WRIT IS RETURNABLE IN CASES NOT INVOLVING FELONY CONVICTION ~~[TO ANY COUNTY]~~. (a) If the applicant has not been formally charged by ~~[Before]~~ indictment or information

1 ~~[found]~~, the writ must ~~[may]~~ be made returnable to the ~~[any]~~ county
2 in which:

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

5 (2) the applicant is alleged, by any means including
6 the issuance of a warrant for the applicant's arrest or the
7 applicant's arrest pursuant to Chapter 14, to have committed a
8 criminal offense that provides the basis for the restraint from
9 which the application seeks relief; or

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

12 (b) After the applicant has been charged by indictment or
13 information, and before any conviction of the applicant, the writ
14 must be made returnable to the county in which the indictment or
15 information is pending.

16 (c) After final conviction in any misdemeanor case, the writ
17 must be made returnable to the county in which the applicant was
18 convicted ~~[State]~~.

19 SECTION 4. Article 11.08, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 11.08. APPLICANT ACCUSED OF ~~[CHARGED WITH]~~ FELONY. If
22 the applicant is accused of committing a ~~[person is confined after~~
23 ~~indictment on a charge of]~~ felony offense, whether by indictment,
24 information, warrant, arrest, or other means, and has not been
25 convicted of the offense, the applicant or petitioner ~~[, he]~~ may
26 apply:

27 (1) to the judge of the court in which the indictment

1 or information charging the applicant ~~[he]~~ is pending ~~[indicted]~~;
2 or

3 (2) if an indictment or information charging the
4 applicant has not been filed or the ~~[if there be no]~~ judge of the
5 court in which the indictment or information is pending is not
6 available:

7 (A) ~~[within the district, then]~~ to any ~~[the]~~
8 judge with felony jurisdiction in a ~~[of any district whose~~
9 ~~residence is nearest to the court house of the]~~ county to ~~[in]~~ which
10 the writ is returnable; or

11 (B) if there is no judge with felony jurisdiction
12 available in a county described by Paragraph (A), to any judge with
13 felony jurisdiction who presides over a court in any county that
14 adjoins a county described by Paragraph (A) ~~[applicant is held in~~
15 ~~custody]~~.

16 SECTION 5. Article 11.09, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 11.09. APPLICANT ACCUSED OR CONVICTED OF ~~[CHARGED~~
19 ~~WITH]~~ MISDEMEANOR. (a) If the applicant is accused of committing a
20 [person is confined on a charge of] misdemeanor offense, whether by
21 information, warrant, complaint, arrest, or other means, and has
22 not been convicted of the offense, the applicant or petitioner ~~[~~
23 ~~he]~~ may apply:

24 (1) to the ~~[county]~~ judge of the court ~~[county]~~ in
25 which the information charging the applicant ~~[misdemeanor]~~ is
26 pending; or

27 (2) if an information charging the applicant has not

1 been filed [~~charged to have been committed,~~] or the [~~if there be no~~
2 ~~county~~] judge of the court in which the information is pending is
3 not available:

4 (A) [~~in said county, then~~] to any [~~the county~~]
5 judge of a county court with criminal jurisdiction in a [~~whose~~
6 ~~residence is nearest to the courthouse of the~~] county to [~~in~~] which
7 the writ is returnable; or

8 (B) if there is no judge of a county court with
9 criminal jurisdiction available in a county described by Paragraph
10 (A), to any judge of a county court with criminal jurisdiction who
11 presides over a court in any county that adjoins a county described
12 by Paragraph (A) [applicant is held in custody].

13 (b) After final conviction in any misdemeanor case, the
14 applicant or petitioner may apply to the judge of the court in which
15 the applicant was convicted.

16 SECTION 6. Article [11.10](#), Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 11.10. PROCEEDINGS UNDER THE WRIT. If an application
19 is [~~When motion has been~~] made to a judge under Article [11.08](#) or
20 [11.09](#) [~~the circumstances set forth in the two preceding Articles~~],
21 the judge [~~he~~] shall appoint a time when the judge [~~he~~] will examine
22 the cause of the applicant, and issue the writ returnable at that
23 time, in a specified place in a [~~the~~] county to which the writ is
24 returnable [~~where the offense is charged in the indictment or~~
25 ~~information to have been committed. He shall also specify some~~
26 ~~place in the county where he will hear the motion~~].

27 SECTION 7. Article [11.12](#), Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 11.12. WHO MAY PRESENT APPLICATION [~~PETITION~~]. The
3 [~~Either the~~] party for whose relief the writ of habeas corpus is
4 intended, or any person on behalf of that party [~~for him~~], may
5 present an application for a writ of habeas corpus [~~a petition~~] to
6 the proper authority for the purpose of obtaining relief.

7 SECTION 8. Article 11.13, Code of Criminal Procedure, is
8 amended to read as follows:

9 Art. 11.13. APPLICANT AND PETITIONER. (a) The word
10 applicant, as used in this chapter [~~Chapter~~], refers to the person
11 for whose relief the application for a writ of habeas corpus is
12 presented.

13 (b) An application for a writ of habeas corpus [~~asked,~~
14 ~~though the petition~~] may be signed and presented on behalf of an
15 applicant by any [~~other~~] person, who shall be referred to as the
16 petitioner.

17 (c) A petitioner is not a party to a proceeding under this
18 chapter.

19 (d) A petitioner who is not the applicant's attorney may not
20 take any additional actions on behalf of the applicant that would
21 constitute the practice of law.

22 SECTION 9. Article 11.14, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 11.14. APPLICATION REQUIREMENTS [~~REQUISITES OF~~
25 ~~PETITION~~]. (a) An application for a writ of habeas corpus [~~The~~
26 ~~petition~~] must state substantially:

27 1. That the applicant [~~person for whose benefit the~~

1 ~~application is made~~] is illegally restrained in the applicant's
2 ~~[his]~~ liberty, and by whom, naming both parties, if their names are
3 known, or if unknown, designating and describing them;

4 2. When the applicant ~~[party]~~ is confined or restrained
5 by virtue of any writ, order or process, or under color of either, a
6 copy shall be annexed to the application ~~[petition]~~, or it shall be
7 stated that a copy cannot be obtained;

8 3. When the confinement or restraint is not by virtue
9 of any writ, order or process, the application ~~[petition]~~ may state
10 only that the applicant ~~[party]~~ is illegally confined or restrained
11 in the applicant's ~~[his]~~ liberty;

12 4. There must be a prayer in the application ~~[petition]~~
13 for the writ of habeas corpus; and

14 5. Oath must be made that the allegations of the
15 application ~~[petition]~~ are true, according to the belief of the
16 applicant or petitioner.

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

21 SECTION 10. Article 11.15, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 11.15. WRIT ISSUED ~~[GRANTED]~~ WITHOUT DELAY. The writ
24 of habeas corpus shall be issued ~~[granted]~~ without delay by the
25 judge or court receiving the application ~~[petition]~~, unless it be
26 manifest from the application ~~[petition]~~ itself, or some documents
27 annexed to it, that the applicant ~~[party]~~ is not entitled to any

1 ~~[no]~~ relief ~~[whatever]~~.

2 SECTION 11. Article 11.16, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 11.16. WRIT MAY ISSUE WITHOUT APPLICATION ~~[MOTION]~~. A
5 judge of the district or county court who has knowledge that any
6 person is illegally confined or restrained in the person's ~~[his]~~
7 liberty within the judge's ~~[his]~~ district or county may, if the case
8 is ~~[be one]~~ within the judge's ~~[his]~~ jurisdiction, issue the writ of
9 habeas corpus, without any application ~~[motion]~~ being made for the
10 writ ~~[same]~~.

11 SECTION 12. Article 11.24, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 11.24. ONE COMMITTED IN DEFAULT OF BAIL. Where a
14 person has been committed to custody for failing to enter into bond,
15 the person ~~[he]~~ is entitled to the writ of habeas corpus, if it be
16 stated in the application ~~[petition]~~ that there was no sufficient
17 cause for requiring bail~~[7]~~ or that the bail required is excessive.
18 If the proof sustains the application ~~[petition]~~, it will entitle
19 the person ~~[party]~~ to be discharged~~[7]~~ or have the bail reduced.

20 SECTION 13. Article 11.25, Code of Criminal Procedure, is
21 amended to read as follows:

22 Art. 11.25. PERSON AFFLICTED WITH DISEASE. When a judge or
23 court authorized to issue ~~[grant]~~ writs of habeas corpus shall be
24 satisfied, upon investigation, that a person in legal custody is
25 afflicted with a disease which will render a removal necessary for
26 the preservation of life, an order may be made for the removal of
27 the person ~~[prisoner]~~ to some other place where the person's ~~[his]~~

1 health will not be likely to suffer, ~~[+]~~ or the person ~~[he]~~ may be
2 admitted to bail when it appears that any manner ~~[species]~~ of
3 confinement will endanger the person's ~~[his]~~ life.

4 SECTION 14. Article 11.30, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 11.30. HOW RETURN IS MADE. The return is made by
7 stating in plain language on ~~[upon]~~ the copy of the writ or some
8 paper connected with it:

9 1. Whether it is true or not, according to the
10 statement of the application ~~[petition]~~, that the person ~~[he]~~ has
11 in the person's ~~[his]~~ custody, or under the person's ~~[his]~~
12 restraint, the applicant ~~[person]~~ named or described in the
13 application ~~[such petition]~~;

14 2. By virtue of what authority, or for what cause, the
15 person ~~[he]~~ took and detains the applicant ~~[such person]~~;

16 3. If the person ~~[he]~~ had the applicant ~~[such person]~~
17 in the person's ~~[his]~~ custody or under restraint at any time before
18 the service of the writ, and has transferred the applicant ~~[him]~~ to
19 the custody of another, the person ~~[he]~~ shall state particularly to
20 whom, at what time, for what reason or by what authority the person
21 ~~[he]~~ made the ~~[such]~~ transfer;

22 4. The person ~~[He]~~ shall annex to the person's ~~[his]~~
23 return the writ or warrant, if any, by virtue of which the person
24 ~~[he]~~ holds the applicant ~~[person]~~ in custody; and

25 5. The return must be signed and sworn to by the person
26 making it.

27 SECTION 15. Article 11.33, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 11.33. COURT SHALL ALLOW TIME. The court or judge
3 issuing [~~granting~~] the writ of habeas corpus shall allow reasonable
4 time for the production of the person detained in custody.

5 SECTION 16. Article [11.38](#), Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 11.38. WHEN A PRISONER DIES. When a prisoner confined
8 in jail, or who is in legal custody, shall die, the officer having
9 charge of the prisoner [~~him~~] shall forthwith report the same to a
10 justice of the peace of the county, who shall hold an inquest to
11 ascertain the cause of the prisoner's [~~his~~] death. All the
12 proceedings had in such cases shall be reduced to writing,
13 certified and returned as in other cases of inquest; a certified
14 copy of which shall be sufficient proof of the death of the prisoner
15 at the hearing of an application for a writ of [~~a motion under~~]
16 habeas corpus.

17 SECTION 17. Article [11.51](#), Code of Criminal Procedure, is
18 amended to read as follows:

19 Art. 11.51. RECORD OF PROCEEDINGS. If a writ of habeas
20 corpus be made returnable before a court in session, all the
21 proceedings had shall be entered of record by the clerk of the court
22 [~~thereof~~], as in any other case in the [~~such~~] court. When the
23 application [~~motion~~] is heard out of the county where the offense
24 was committed, or in the court of criminal appeals [~~Court of~~
25 ~~Criminal Appeals~~], the clerk shall transmit a certified copy of all
26 the proceedings on [~~upon~~] the application [~~motion~~] to the clerk of
27 the court which has jurisdiction of the offense.

1 SECTION 18. Article 11.54, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 11.54. COURT MAY GRANT NECESSARY ORDERS. The court or
4 judge issuing [~~granting~~] a writ of habeas corpus may:

5 (1) grant all necessary orders to bring before the
6 court or judge [~~him~~] the testimony taken before the examining
7 court; ~~;~~ ~~[~~ and

8 (2) [~~may~~] issue process to enforce the attendance of
9 witnesses.

10 SECTION 19. Article 11.59, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 11.59. OBTAINING WRIT A SECOND TIME. An applicant [~~A~~
13 ~~party~~] may obtain the writ of habeas corpus a second time by stating
14 in an application [~~a motion~~] therefor that since the hearing of the
15 applicant's [~~his~~] first application [~~motion~~] important testimony
16 has been obtained which it was not in the applicant's [~~his~~] power to
17 produce at the former hearing. The applicant [~~He~~] shall also set
18 forth the newly discovered testimony [~~so newly discovered~~]; and if
19 it be that of a witness, the affidavit of the witness shall also
20 accompany the application [~~such motion~~].

21 SECTION 20. Section 2, Article 11.07, Code of Criminal
22 Procedure, is repealed.

23 SECTION 21. The changes in law made by this Act apply only
24 to an application for a writ of habeas corpus filed on or after the
25 effective date of this Act. An application filed before the
26 effective date of this Act is governed by the law in effect when the
27 application was filed, and the former law is continued in effect for

1 that purpose.

2 SECTION 22. This Act takes effect September 1, 2023.