

1-1 By: King S.B. No. 1516  
1-2 (In the Senate - Filed March 3, 2023; March 16, 2023, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 19, 2023, reported favorably by the following vote: Yeas 7,  
1-5 Nays 0; April 19, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Whitmire</u>	X		
1-9	<u>Flores</u>	X		
1-10	<u>Bettencourt</u>	X		
1-11	<u>Hinojosa</u>	X		
1-12	<u>Huffman</u>	X		
1-13	<u>King</u>	X		
1-14	<u>Miles</u>	X		

1-15 A BILL TO BE ENTITLED  
1-16 AN ACT

1-17 relating to the procedures for an application for a writ of habeas  
1-18 corpus and the issuance of the writ.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Article 11.05, Code of Criminal Procedure, is  
1-21 amended to read as follows:

1-22 Art. 11.05. BY WHOM WRIT MAY BE ISSUED ~~[GRANTED]~~. The court  
1-23 ~~[Court]~~ of criminal appeals ~~[Criminal Appeals]~~, the district courts  
1-24 ~~[District Courts]~~, the county courts ~~[County Courts]~~, or any judge  
1-25 ~~[Judge]~~ of those courts may ~~[said Courts, have power to]~~ issue the  
1-26 writ of habeas corpus, ~~[+]~~ and it is their duty, on ~~[upon]~~ proper  
1-27 application ~~[motion]~~, to issue ~~[grant]~~ the writ under the rules  
1-28 prescribed by law.

1-29 SECTION 2. Article 11.051, Code of Criminal Procedure, is  
1-30 amended to read as follows:

1-31 Art. 11.051. FILING FEE PROHIBITED. Notwithstanding any  
1-32 other law, a clerk of a court may not require a filing fee from an  
1-33 individual who files an application ~~[or petition]~~ for a writ of  
1-34 habeas corpus.

1-35 SECTION 3. Article 11.06, Code of Criminal Procedure, is  
1-36 amended to read as follows:

1-37 Art. 11.06. WHERE WRIT IS RETURNABLE IN CASES NOT INVOLVING  
1-38 FELONY CONVICTION ~~[TO ANY COUNTY]~~. (a) If the applicant has not  
1-39 been formally charged by ~~[Before]~~ indictment or information  
1-40 [found], the writ must ~~[may]~~ be made returnable to the ~~[any]~~ county  
1-41 in which:

1-42 (1) the applicant is confined to the custody of the  
1-43 sheriff or other authority;

1-44 (2) the applicant is alleged, by any means including  
1-45 the issuance of a warrant for the applicant's arrest or the  
1-46 applicant's arrest pursuant to Chapter 14, to have committed a  
1-47 criminal offense that provides the basis for the restraint from  
1-48 which the application seeks relief; or

1-49 (3) if neither Subdivision (1) nor (2) applies, the  
1-50 action imposing a restraint on the applicant's liberty occurred.

1-51 (b) After the applicant has been charged by indictment or  
1-52 information, and before any conviction of the applicant, the writ  
1-53 must be made returnable to the county in which the indictment or  
1-54 information is pending.

1-55 (c) After final conviction in any misdemeanor case, the writ  
1-56 must be made returnable to the county in which the applicant was  
1-57 convicted ~~[State]~~.

1-58 SECTION 4. Article 11.08, Code of Criminal Procedure, is  
1-59 amended to read as follows:

1-60 Art. 11.08. APPLICANT ACCUSED OF ~~[CHARGED WITH]~~ FELONY. If  
1-61 the applicant is accused of committing a ~~[person is confined after~~

2-1 ~~indictment on a charge of]~~ felony offense, whether by indictment,  
2-2 information, warrant, arrest, or other means, and has not been  
2-3 convicted of the offense, the applicant or petitioner~~[, he]~~ may  
2-4 apply:

2-5 (1) to the judge of the court in which the indictment  
2-6 or information charging the applicant ~~[he]~~ is pending ~~[indicted];~~  
2-7 or

2-8 (2) if an indictment or information charging the  
2-9 applicant has not been filed or the ~~[if there be no]~~ judge of the  
2-10 court in which the indictment or information is pending is not  
2-11 available:

2-12 (A) ~~[within the district, then]~~ to any ~~[the]~~  
2-13 judge with felony jurisdiction in a ~~[of any district whose~~  
2-14 ~~residence is nearest to the court house of the]~~ county to ~~[in]~~ which  
2-15 the writ is returnable; or

2-16 (B) if there is no judge with felony jurisdiction  
2-17 available in a county described by Paragraph (A), to any judge with  
2-18 felony jurisdiction who presides over a court in any county that  
2-19 adjoins a county described by Paragraph (A) ~~[applicant is held in~~  
2-20 ~~custody]~~.

2-21 SECTION 5. Article 11.09, Code of Criminal Procedure, is  
2-22 amended to read as follows:

2-23 Art. 11.09. APPLICANT ACCUSED OR CONVICTED OF ~~[CHARGED~~  
2-24 ~~WITH]~~ MISDEMEANOR. (a) If the applicant is accused of committing a  
2-25 ~~[person is confined on a charge of]~~ misdemeanor offense, whether by  
2-26 information, warrant, complaint, arrest, or other means, and has  
2-27 not been convicted of the offense, the applicant or petitioner~~[, he]~~  
2-28 ~~he]~~ may apply:

2-29 (1) to the ~~[county]~~ judge of the court ~~[county]~~ in  
2-30 which the information charging the applicant ~~[misdemeanor]~~ is  
2-31 pending; or

2-32 (2) if an information charging the applicant has not  
2-33 been filed ~~[charged to have been committed,]~~ or the ~~[if there be no~~  
2-34 ~~county]~~ judge of the court in which the information is pending is  
2-35 not available:

2-36 (A) ~~[in said county, then]~~ to any ~~[the county]~~  
2-37 judge of a county court with criminal jurisdiction in a ~~[whose~~  
2-38 ~~residence is nearest to the courthouse of the]~~ county to ~~[in]~~ which  
2-39 the writ is returnable; or

2-40 (B) if there is no judge of a county court with  
2-41 criminal jurisdiction available in a county described by Paragraph  
2-42 (A), to any judge of a county court with criminal jurisdiction who  
2-43 presides over a court in any county that adjoins a county described  
2-44 by Paragraph (A) ~~[applicant is held in custody]~~.

2-45 (b) After final conviction in any misdemeanor case, the  
2-46 applicant or petitioner may apply to the judge of the court in which  
2-47 the applicant was convicted.

2-48 SECTION 6. Article 11.10, Code of Criminal Procedure, is  
2-49 amended to read as follows:

2-50 Art. 11.10. PROCEEDINGS UNDER THE WRIT. If an application  
2-51 is ~~[When motion has been]~~ made to a judge under Article 11.08 or  
2-52 11.09 ~~[the circumstances set forth in the two preceding Articles]~~,  
2-53 the judge ~~[he]~~ shall appoint a time when the judge ~~[he]~~ will examine  
2-54 the cause of the applicant, and issue the writ returnable at that  
2-55 time, in a specified place in a ~~[the]~~ county to which the writ is  
2-56 returnable ~~[where the offense is charged in the indictment or~~  
2-57 ~~information to have been committed. He shall also specify some~~  
2-58 ~~place in the county where he will hear the motion]~~.

2-59 SECTION 7. Article 11.12, Code of Criminal Procedure, is  
2-60 amended to read as follows:

2-61 Art. 11.12. WHO MAY PRESENT APPLICATION ~~[PETITION]~~. The  
2-62 ~~[Either the]~~ party for whose relief the writ of habeas corpus is  
2-63 intended, or any person on behalf of that party ~~[for him]~~, may  
2-64 present an application for a writ of habeas corpus ~~[a petition]~~ to  
2-65 the proper authority for the purpose of obtaining relief.

2-66 SECTION 8. Article 11.13, Code of Criminal Procedure, is  
2-67 amended to read as follows:

2-68 Art. 11.13. APPLICANT AND PETITIONER. (a) The word  
2-69 applicant, as used in this chapter ~~[Chapter]~~, refers to the person

3-1 for whose relief the application for a writ of habeas corpus is  
 3-2 presented.

3-3 (b) An application for a writ of habeas corpus [asked,  
 3-4 though the petition] may be signed and presented on behalf of an  
 3-5 applicant by any [other] person, who shall be referred to as the  
 3-6 petitioner.

3-7 (c) A petitioner is not a party to a proceeding under this  
 3-8 chapter.

3-9 (d) A petitioner who is not the applicant's attorney may not  
 3-10 take any additional actions on behalf of the applicant that would  
 3-11 constitute the practice of law.

3-12 SECTION 9. Article 11.14, Code of Criminal Procedure, is  
 3-13 amended to read as follows:

3-14 Art. 11.14. APPLICATION REQUIREMENTS [REQUISITES OF  
 3-15 PETITION]. (a) An application for a writ of habeas corpus [The  
 3-16 petition] must state substantially:

3-17 1. That the applicant [person for whose benefit the  
 3-18 application is made] is illegally restrained in the applicant's  
 3-19 [his] liberty, and by whom, naming both parties, if their names are  
 3-20 known, or if unknown, designating and describing them;

3-21 2. When the applicant [party] is confined or restrained  
 3-22 by virtue of any writ, order or process, or under color of either, a  
 3-23 copy shall be annexed to the application [petition], or it shall be  
 3-24 stated that a copy cannot be obtained;

3-25 3. When the confinement or restraint is not by virtue  
 3-26 of any writ, order or process, the application [petition] may state  
 3-27 only that the applicant [party] is illegally confined or restrained  
 3-28 in the applicant's [his] liberty;

3-29 4. There must be a prayer in the application [petition]  
 3-30 for the writ of habeas corpus; and

3-31 5. Oath must be made that the allegations of the  
 3-32 application [petition] are true, according to the belief of the  
 3-33 applicant or petitioner.

3-34 (b) In addition to the requirements under Subsection (a), a  
 3-35 petitioner must state in the application and under oath that the  
 3-36 petitioner is presenting the application with the applicant's  
 3-37 knowing and voluntary consent.

3-38 SECTION 10. Article 11.15, Code of Criminal Procedure, is  
 3-39 amended to read as follows:

3-40 Art. 11.15. WRIT ISSUED [GRANTED] WITHOUT DELAY. The writ  
 3-41 of habeas corpus shall be issued [granted] without delay by the  
 3-42 judge or court receiving the application [petition], unless it be  
 3-43 manifest from the application [petition] itself, or some documents  
 3-44 annexed to it, that the applicant [party] is not entitled to any  
 3-45 [no] relief [whatever].

3-46 SECTION 11. Article 11.16, Code of Criminal Procedure, is  
 3-47 amended to read as follows:

3-48 Art. 11.16. WRIT MAY ISSUE WITHOUT APPLICATION [MOTION]. A  
 3-49 judge of the district or county court who has knowledge that any  
 3-50 person is illegally confined or restrained in the person's [his]  
 3-51 liberty within the judge's [his] district or county may, if the case  
 3-52 is [be one] within the judge's [his] jurisdiction, issue the writ of  
 3-53 habeas corpus, without any application [motion] being made for the  
 3-54 writ [same].

3-55 SECTION 12. Article 11.24, Code of Criminal Procedure, is  
 3-56 amended to read as follows:

3-57 Art. 11.24. ONE COMMITTED IN DEFAULT OF BAIL. Where a  
 3-58 person has been committed to custody for failing to enter into bond,  
 3-59 the person [he] is entitled to the writ of habeas corpus, if it be  
 3-60 stated in the application [petition] that there was no sufficient  
 3-61 cause for requiring bail[7] or that the bail required is excessive.  
 3-62 If the proof sustains the application [petition], it will entitle  
 3-63 the person [party] to be discharged[7] or have the bail reduced.

3-64 SECTION 13. Article 11.25, Code of Criminal Procedure, is  
 3-65 amended to read as follows:

3-66 Art. 11.25. PERSON AFFLICTED WITH DISEASE. When a judge or  
 3-67 court authorized to issue [grant] writs of habeas corpus shall be  
 3-68 satisfied, upon investigation, that a person in legal custody is  
 3-69 afflicted with a disease which will render a removal necessary for

4-1 the preservation of life, an order may be made for the removal of  
4-2 the person [prisoner] to some other place where the person's [his]  
4-3 health will not be likely to suffer, [7] or the person [he] may be  
4-4 admitted to bail when it appears that any manner [species] of  
4-5 confinement will endanger the person's [his] life.

4-6 SECTION 14. Article 11.30, Code of Criminal Procedure, is  
4-7 amended to read as follows:

4-8 Art. 11.30. HOW RETURN IS MADE. The return is made by  
4-9 stating in plain language on [upon] the copy of the writ or some  
4-10 paper connected with it:

4-11 1. Whether it is true or not, according to the  
4-12 statement of the application [petition], that the person [he] has  
4-13 in the person's [his] custody, or under the person's [his]  
4-14 restraint, the applicant [person] named or described in the  
4-15 application [such petition];

4-16 2. By virtue of what authority, or for what cause, the  
4-17 person [he] took and detains the applicant [such person];

4-18 3. If the person [he] had the applicant [such person]  
4-19 in the person's [his] custody or under restraint at any time before  
4-20 the service of the writ, and has transferred the applicant [him] to  
4-21 the custody of another, the person [he] shall state particularly to  
4-22 whom, at what time, for what reason or by what authority the person  
4-23 [he] made the [such] transfer;

4-24 4. The person [He] shall annex to the person's [his]  
4-25 return the writ or warrant, if any, by virtue of which the person  
4-26 [he] holds the applicant [person] in custody; and

4-27 5. The return must be signed and sworn to by the person  
4-28 making it.

4-29 SECTION 15. Article 11.33, Code of Criminal Procedure, is  
4-30 amended to read as follows:

4-31 Art. 11.33. COURT SHALL ALLOW TIME. The court or judge  
4-32 issuing [granting] the writ of habeas corpus shall allow reasonable  
4-33 time for the production of the person detained in custody.

4-34 SECTION 16. Article 11.38, Code of Criminal Procedure, is  
4-35 amended to read as follows:

4-36 Art. 11.38. WHEN A PRISONER DIES. When a prisoner confined  
4-37 in jail, or who is in legal custody, shall die, the officer having  
4-38 charge of the prisoner [him] shall forthwith report the same to a  
4-39 justice of the peace of the county, who shall hold an inquest to  
4-40 ascertain the cause of the prisoner's [his] death. All the  
4-41 proceedings had in such cases shall be reduced to writing,  
4-42 certified and returned as in other cases of inquest; a certified  
4-43 copy of which shall be sufficient proof of the death of the prisoner  
4-44 at the hearing of an application for a writ of [a motion under]  
4-45 habeas corpus.

4-46 SECTION 17. Article 11.51, Code of Criminal Procedure, is  
4-47 amended to read as follows:

4-48 Art. 11.51. RECORD OF PROCEEDINGS. If a writ of habeas  
4-49 corpus be made returnable before a court in session, all the  
4-50 proceedings had shall be entered of record by the clerk of the court  
4-51 [thereof], as in any other case in the [such] court. When the  
4-52 application [motion] is heard out of the county where the offense  
4-53 was committed, or in the court of criminal appeals [Court of  
4-54 Criminal Appeals], the clerk shall transmit a certified copy of all  
4-55 the proceedings on [upon] the application [motion] to the clerk of  
4-56 the court which has jurisdiction of the offense.

4-57 SECTION 18. Article 11.54, Code of Criminal Procedure, is  
4-58 amended to read as follows:

4-59 Art. 11.54. COURT MAY GRANT NECESSARY ORDERS. The court or  
4-60 judge issuing [granting] a writ of habeas corpus may:

4-61 (1) grant all necessary orders to bring before the  
4-62 court or judge [him] the testimony taken before the examining  
4-63 court; [7] and

4-64 (2) [may] issue process to enforce the attendance of  
4-65 witnesses.

4-66 SECTION 19. Article 11.59, Code of Criminal Procedure, is  
4-67 amended to read as follows:

4-68 Art. 11.59. OBTAINING WRIT A SECOND TIME. An applicant [A  
4-69 party] may obtain the writ of habeas corpus a second time by stating

5-1 in an application [~~a motion~~] therefor that since the hearing of the  
5-2 applicant's [~~his~~] first application [~~motion~~] important testimony  
5-3 has been obtained which it was not in the applicant's [~~his~~] power to  
5-4 produce at the former hearing. The applicant [~~He~~] shall also set  
5-5 forth the newly discovered testimony [~~so newly discovered~~]; and if  
5-6 it be that of a witness, the affidavit of the witness shall also  
5-7 accompany the application [~~such motion~~].

5-8 SECTION 20. Section 2, Article 11.07, Code of Criminal  
5-9 Procedure, is repealed.

5-10 SECTION 21. The changes in law made by this Act apply only  
5-11 to an application for a writ of habeas corpus filed on or after the  
5-12 effective date of this Act. An application filed before the  
5-13 effective date of this Act is governed by the law in effect when the  
5-14 application was filed, and the former law is continued in effect for  
5-15 that purpose.

5-16 SECTION 22. This Act takes effect September 1, 2023.

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