

- SUBJECT:** Changing requirements for petitions seeking a writ of habeas corpus.
- COMMITTEE:** Criminal Jurisprudence-favorable, without amendment
- VOTE:** 6 ayes — Place, Talton, Farrar, Nixon, Pitts, Solis
0 nays
3 absent — Greenberg, Hudson, Pickett
- WITNESSES:** None
- BACKGROUND:** Writs of habeas corpus are constitutionally guaranteed writs sought by prisoners as a remedy for possible violations of their constitutional rights. Habeas corpus appeals do not deal with guilt or innocence and are independent of other proceedings. The release of a person as a result of a habeas corpus proceeding is not an annulment or reversal of a judicial decision and is not an act of clemency. Habeas corpus appeals can be based on such state or federal claims as a defective indictment, incompetent or inadequate counsel or similar charges of procedural abuses.
- Petitions to a court for a writ of habeas corpus must meet certain requisites, including attachment to the petition of a copy of the writ, order or process rendering the prisoner's confinement or a statement that no such copy can be obtained. Code of Criminal Procedure art. 11.62 makes it an offense for a jailer, sheriff other officer who has a prisoner in custody to fail to furnish a copy of the order by which the prisoner is held.
- DIGEST:** HB 525 would make optional attachment of a copy of the writ, order or process that holds a prisoner in confinement to petitions requesting writs of habeas corpus. HB 525 would also strike language that requires petitioners to state when a copy cannot be obtained. The bill would take effect immediately if approved by two-thirds of the membership of each house.
- SUPPORTERS SAY:** Delays often occur in obtaining copies of confinement orders. These delays prevent some prisoners from properly completing their petitions requesting habeas corpus relief. Delays by sheriffs and other officers to get this paperwork together are often unintentional and result from backlogs in administrative paperwork. These delays can result in prisoners not being able to file their petitions, law enforcement officials being subject to

penalties for not providing copies of the orders promptly and petitions being denied by the court.

HB 525 would streamline the current procedure for those seeking to file habeas corpus petitions and relieve sheriffs and other law enforcement agencies from paperwork. The bill would save prisoners and their attorneys time in trying to gather the necessary documents. In addition, HB 525 would increase judicial efficiency. Petitions denied at the hearing stage because they lack the required documents evidencing confinement waste the court's time and cause unnecessary expense to the state when bringing the prisoner to court for the hearing.

Since petitioners must state under oath that they are being illegally restrained when they execute the petition request, the attachment of the order is superfluous, since it is clear the petitioner is confined.

**OPPONENTS
SAY:**

The law already allows for alternate procedures when copies of confinement orders cannot be obtained. Furthermore, the current requirement for attachment of confinement orders when they are available is helpful for judges when determining prisoners' petitions seeking habeas corpus relief. Including a copy of the order, writ or process that confines the individual allows the judge to examine firsthand this important document.

When such documents cannot be found, prisoners must simply state that a copy cannot be obtained when filing their petitions.