

## **BILL ANALYSIS**

Senate Research Center

S.B. 1728  
By: West  
Criminal Justice  
4-22-97  
Committee Report (Amended)

### **DIGEST**

During the 74th Legislature, a bill passed creating a new procedure for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death. S.B. 1728 would clarify a filing deadline for those seeking habeas corpus review and provide prosecutors and trial courts an opportunity to have full input before the application is ultimately disposed of by the Court of Criminal Appeals, in an effort both to clarify the statute and make the procedure more efficient.

### **PURPOSE**

As proposed, S.B. 1728 establishes procedures in death penalty cases.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 4(a) and (h), Article 11.071, Code of Criminal Procedure, to require an application for a writ of habeas corpus to be filed in the convicting court not later than the 180th day after the date the court of criminal appeals appoints counsel under Section 2 or not later than the 45th day after the date the appellee's original brief is filed on direct appeal. Requires the applicant's initial, rather than original application, if an applicant who was convicted before September 1, 1995, does not have an initial, rather than an original application for a writ of habeas corpus pending on September 1, 1995, and has not previously filed an application, to be filed not later than the 180th day after the date the court of criminal appeals appoints counsel under Section 2 or not later than the 45th day after the date the appellee's brief is filed, rather than due, on direct appeal, whichever is later. Makes a conforming change.

SECTION 2. Amends Sections 5(a) and (b), Article 11.071, Code of Criminal Procedure, to make conforming changes.

SECTION 3. Amends Section 7(a), Article 11.071, Code of Criminal Procedure, to require, rather than authorize, the state to file an answer to the application for a writ of habeas corpus not later than a certain date. Makes a conforming change.

SECTION 4. Amends Section 8, Article 11.071, Code of Criminal Procedure, to require, rather than authorize, the parties, if the convicting court determines the issues do not exist, to file proposed findings of fact and conclusions of law on or before a certain date. Deletes existing text regarding failure of the court to issue findings within the time provided. Makes a conforming change.

SECTION 5. Amends Sections 9(a) and (e), Article 11.071, Code of Criminal Procedure, to require, rather than authorize, the parties to file proposed findings of fact and conclusions of law for the convicting court to consider on or before a certain date. Makes a conforming change.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

### Amendment 1.

Page 1, line 7, inserts "180th day after the date the court of criminal appeals appoints counsel under Section 2 or not later than the" between "than the" and "45th day," to amend the time by which an application for a writ of habeas corpus must be filed.