

BILL ANALYSIS

Senate Research Center
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H.B. 1713
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Criminal Justice
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Engrossed

DIGEST AND PURPOSE

Under current law, applications for writs of habeas corpus by persons placed on community supervision can only be processed if the applicant is confined.

H.B. 1713 establishes procedures for an application for a writ of habeas corpus in a felony or misdemeanor case if the applicant is not currently confined but was given conditions of community supervision.

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 Chapter 11, Code of Criminal Procedure, by adding Article 11.072, as follows:

Art. 11.072. PROCEDURE IN COMMUNITY SUPERVISION CASE

Sec. 1. Provides that this article establishes the procedures for an application for a writ of habeas corpus in a felony or misdemeanor case in which the applicant seeks relief from an order or a judgment of conviction ordering community supervision.

Sec. 2. (a) Requires an application for a writ of habeas corpus under this article to be filed with the clerk of the court in which community supervision was imposed.

(b) Requires the applicant, at the time the application is filed, to be, or have been, on community supervision, and requires the application to challenge the legal validity of the conviction for which or order in which community supervision was imposed or the conditions of community supervision.

Sec. 3. (a) Prohibits an application from being filed under this article if the applicant could obtain the requested relief by means of an appeal under Article 44.02 and Rule 25.2, Texas Rules of Appellate Procedure.

(b) Requires an applicant seeking to challenge a particular condition of community supervision but not the legality of the conviction for which or the order in which community supervision was imposed to first attempt to gain relief by filing a motion to amend the conditions of community supervision.

(c) Authorizes an applicant to challenge a condition of community supervision under this article only on constitutional grounds.

Sec. 4. (a) Provides that when an application is filed under this article, a writ of habeas corpus issues by operation of law.

(b) Provides that at the time the application is filed, the clerk of the court must

assign the case a file number ancillary to that of the judgment of conviction or order being challenged.

Sec. 5. (a) Requires the applicant, immediately on filing an application, to serve a copy of the application on the attorney representing the state, by either certified mail, return receipt requested, or personal service.

(b) Authorizes the state to file an answer within the period established by Subsection (c), but provides that it is not required to file an answer.

(c) Prohibits the state from filing an answer after the 30th day after the date of service, except that for good cause the convicting court may grant the state one 30-day extension.

(d) Requires any answer, motion, or other document filed by the state to be served on the applicant by certified mail, return receipt requested, or by personal service.

(e) Provides that matters alleged in the application not admitted by the state are considered to have been denied.

Sec. 6. (a) Requires the trial court, not later than the 60th day after the day on which the state's answer is filed, to enter a written order granting or denying the relief sought in the application.

(b) Authorizes the court, in making its determination, to order affidavits, depositions, interrogatories, or a hearing, and to rely on the court's personal recollection.

(c) Provides that if a hearing is ordered, the hearing may not be held before the eighth day after the day on which the applicant and the state are provided notice of the hearing.

(d) Authorizes the court to appoint an attorney or magistrate to hold a hearing ordered under this section and make findings of fact. Provides that an attorney appointed under this subsection is entitled to compensation as provided by Article 26.05.

Sec. 7. (a) Provides that if the court determines from the face of an application or documents attached to the application that the applicant is manifestly entitled to no relief, the court must enter a written order denying the application as frivolous. Requires the court, in any other case, to enter a written order including findings of fact and conclusions of law. Authorizes the court to require the prevailing party to submit a proposed order.

(b) Provides that at the time an order is entered under this section, the clerk of the court must immediately, by certified mail, return receipt requested, send a copy of the order to the applicant and to the state.

Sec. 8. Authorizes the applicant, if the application is denied in whole or part, to appeal under Article 44.02 and Rule 31, Texas Rules of Appellate Procedure. Authorizes the state, if the application is granted in whole or part, to appeal under Article 44.01 and Rule 31, Texas Rules of Appellate Procedure.

Sec. 9. (a) Provides that if a subsequent application for a writ of habeas corpus is filed after final disposition of an initial application under this article, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis

for the claim was unavailable on the date the applicant filed the previous application.

(b) Provides that for purposes of Subsection (a), a legal basis of a claim is unavailable on or before a date described by that subsection if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(c) Provides that for purposes of Subsection (a), a factual basis of a claim is unavailable on or before a date described by that subsection if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

SECTION 2. Amends Article 44.01, Code of Criminal Procedure, by adding Subsection (k), to provide that the state is entitled to appeal an order granting relief to an applicant for a writ of habeas corpus under Article 11.072.

SECTION 3. Effective date: upon passage or September 1, 2003.