CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 11. HABEAS CORPUS

Art. 11.01. WHAT WRIT IS. The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.02. TO WHOM DIRECTED. The writ runs in the name of "The State of Texas". It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.03. WANT OF FORM. The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object of its issuance.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.04. CONSTRUCTION. Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.05. BY WHOM WRIT MAY BE GRANTED. The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus;

and it is their duty, upon proper motion, to grant the writ under the rules prescribed by law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

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.

Added by Acts 1999, 76th Leg., ch. 392, Sec. 1, eff. Aug. 30, 1999.

Art. 11.06. RETURNABLE TO ANY COUNTY. Before indictment found, the writ may be made returnable to any county in the State.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.07. PROCEDURE AFTER CONVICTION WITHOUT DEATH PENALTY

Sec. 1. This article establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a felony judgment imposing a penalty other than death.

Sec. 2. After indictment found in any felony case, other than a case in which the death penalty is imposed, and before conviction, the writ must be made returnable in the county where the offense has been committed.

Sec. 3. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and forward a copy of the application by certified mail, return receipt requested, by secure electronic mail, or by personal service to the attorney

representing the state in that court, who shall answer the application not later than the 30th day after the date the copy of the application is received. Matters alleged in the application not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. Confinement means confinement for any offense or any collateral consequence resulting from the conviction that is the basis of the instant habeas corpus. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the application , any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, additional forensic testing, and hearings, as well as using personal recollection. The state shall pay the cost of additional forensic testing ordered under this subsection, except that the applicant shall pay the cost of the testing if the applicant retains counsel for purposes of filing an application under this article. The convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. On completion of the transcript, the reporter shall immediately transmit the transcript to the clerk of the convicting court. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the

clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the application, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

(e) For the purposes of Subsection (d), "additional forensic testing" does not include forensic DNA testing as provided for in Chapter 64.

Sec. 4. (a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, 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:

(1) 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; or

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

(b) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) 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) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Sec. 5. The Court of Criminal Appeals may deny relief upon the findings and conclusions of the hearing judge without docketing the cause, or may direct that the cause be docketed and heard as though originally presented to said court or as an appeal. Upon reviewing

the record the court shall enter its judgment remanding the applicant to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Sec. 6. Upon any hearing by a district judge by virtue of this Act, the attorney for applicant, and the state, shall be given at least seven full days' notice before such hearing is held.

Sec. 7. When the attorney for the state files an answer, motion, or other pleading relating to an application for a writ of habeas corpus or the court issues an order relating to an application for a writ of habeas corpus, the clerk of the court shall mail or deliver to the applicant a copy of the answer, motion, pleading, or order.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1734, ch. 659, Sec. 7, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1271, ch. 465, Sec. 2, eff. June 14, 1973.

Sec. 2 amended by Acts 1977, 65th Leg., p. 1974, ch. 789, Sec. 1, eff. Aug. 29, 1977; Sec. 5 added by Acts 1979, 66th Leg., p. 1017, ch. 451, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 319, Sec. 5, eff. Sept. 1, 1995; Sec. 3(b) amended by Acts 1999, 76th Leg., ch. 580, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1006 (H.B. 681), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 78 (S.B. 354), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 648 (H.B. 833), Sec. 1, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 8.01, eff. September 1, 2021.

Art. 11.071. PROCEDURE IN DEATH PENALTY CASE

Sec. 1. APPLICATION TO DEATH PENALTY CASE. Notwithstanding any other provision of this chapter, this article establishes the

procedures for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death.

Sec. 2. REPRESENTATION BY COUNSEL. (a) An applicant shall be represented by competent counsel unless the applicant has elected to proceed pro se and the convicting trial court finds, after a hearing on the record, that the applicant's election is intelligent and voluntary.

(b) If a defendant is sentenced to death the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus. If the defendant desires appointment of counsel for the purpose of a writ of habeas corpus, the court shall appoint the office of capital and forensic writs to represent the defendant as provided by Subsection (c).

(c) At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint the office of capital and forensic writs or, if the office of capital and forensic writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, other competent counsel under Subsection (f), unless the applicant elects to proceed pro se or is represented by retained counsel. On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 781, Sec. 11, eff. January 1, 2010.

(e) If the court of criminal appeals denies an applicant relief under this article, an attorney appointed under this section to represent the applicant shall, not later than the 15th day after the date the court of criminal appeals denies relief or, if the case is filed and set for submission, the 15th day after the date the court of criminal appeals issues a mandate on the initial application for a writ of habeas corpus under this article, move for

the appointment of counsel in federal habeas review under 18 U.S.C. Section 3599. The attorney shall immediately file a copy of the motion with the court of criminal appeals, and if the attorney fails to do so, the court may take any action to ensure that the applicant's right to federal habeas review is protected, including initiating contempt proceedings against the attorney.

(f) If the office of capital and forensic writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, the convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code. The convicting court shall reasonably compensate as provided by Section 2A an attorney appointed under this section, other than an attorney employed by the office of capital and forensic writs, regardless of whether the attorney is appointed by the convicting court or was appointed by the court of criminal appeals under prior law. An attorney appointed under this section who is employed by the office of capital and forensic writs shall be compensated in accordance with Subchapter B, Chapter 78, Government Code.

Sec. 2A. STATE REIMBURSEMENT; COUNTY OBLIGATION. (a) The state shall reimburse a county for compensation of counsel under Section 2, other than for compensation of counsel employed by the office of capital and forensic writs, and for payment of expenses under Section 3, regardless of whether counsel is employed by the office of capital and forensic writs. The total amount of reimbursement to which a county is entitled under this section for an application under this article may not exceed $25,000. Compensation and expenses in excess of the $25,000 reimbursement provided by the state are the obligation of the county.

(b) A convicting court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation that the county is entitled to receive under this section. The comptroller of public accounts shall issue a warrant to the county in the amount certified by the convicting court, not to exceed $25,000.

(c) The limitation imposed by this section on the reimbursement by the state to a county for compensation of counsel and payment of reasonable expenses does not prohibit a county from compensating counsel and reimbursing expenses in an amount that is in excess of the amount the county receives from the state as reimbursement, and a county is specifically granted discretion by this subsection to make payments in excess of the state reimbursement.

(d) The comptroller shall reimburse a county for the compensation and payment of expenses of an attorney appointed by the court of criminal appeals under prior law. A convicting court seeking reimbursement for a county as permitted by this subsection shall certify the amount the county is entitled to receive under this subsection for an application filed under this article, not to exceed a total amount of $25,000.

Sec. 3. INVESTIGATION OF GROUNDS FOR APPLICATION. (a) On appointment, counsel shall investigate expeditiously, before and after the appellate record is filed in the court of criminal appeals, the factual and legal grounds for the filing of an application for a writ of habeas corpus.

(b) Not later than the 30th day before the date the application for a writ of habeas corpus is filed with the convicting court, counsel may file with the convicting court an ex parte, verified, and confidential request for prepayment of expenses, including expert fees, to investigate and present potential habeas corpus claims. The request for expenses must state:

(1) the claims of the application to be investigated;

(2) specific facts that suggest that a claim of possible merit may exist; and

(3) an itemized list of anticipated expenses for each claim.

(c) The court shall grant a request for expenses in whole or in part if the request for expenses is timely and reasonable. If the court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant.

(d) Counsel may incur expenses for habeas corpus investigation, including expenses for experts, without prior

approval by the convicting court or the court of criminal appeals. On presentation of a claim for reimbursement, which may be presented ex parte, the convicting court shall order reimbursement of counsel for expenses, if the expenses are reasonably necessary and reasonably incurred. If the convicting court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant. The applicant may request reconsideration of the denial for reimbursement by the convicting court.

(e) Materials submitted to the court under this section are a part of the court's record.

(f) This section applies to counsel's investigation of the factual and legal grounds for the filing of an application for a writ of habeas corpus, regardless of whether counsel is employed by the office of capital and forensic writs.

Sec. 4. FILING OF APPLICATION. (a) An application for a writ of habeas corpus, returnable to the court of criminal appeals, must be filed in the convicting court not later than the 180th day after the date the convicting court appoints counsel under Section 2 or not later than the 45th day after the date the state's original brief is filed on direct appeal with the court of criminal appeals, whichever date is later.

(b) The convicting court, before the filing date that is applicable to the applicant under Subsection (a), may for good cause shown and after notice and an opportunity to be heard by the attorney representing the state grant one 90-day extension that begins on the filing date applicable to the defendant under Subsection (a). Either party may request that the court hold a hearing on the request. If the convicting court finds that the applicant cannot establish good cause justifying the requested extension, the court shall make a finding stating that fact and deny the request for the extension.

(c) An application filed after the filing date that is applicable to the applicant under Subsection (a) or (b) is untimely.

(d) If the convicting court receives an untimely application or determines that after the filing date that is applicable to the

applicant under Subsection (a) or (b) no application has been filed, the convicting court immediately, but in any event within 10 days, shall send to the court of criminal appeals and to the attorney representing the state:

(1) a copy of the untimely application, with a statement of the convicting court that the application is untimely, or a statement of the convicting court that no application has been filed within the time periods required by Subsections (a) and (b); and

(2) any order the judge of the convicting court determines should be attached to an untimely application or statement under Subdivision (1).

(e) A failure to file an application before the filing date applicable to the applicant under Subsection (a) or (b) constitutes a waiver of all grounds for relief that were available to the applicant before the last date on which an application could be timely filed, except as provided by Section 4A.

Sec. 4A. UNTIMELY APPLICATION; APPLICATION NOT FILED. (a) On command of the court of criminal appeals, a counsel who files an untimely application or fails to file an application before the filing date applicable under Section 4(a) or (b) shall show cause as to why the application was untimely filed or not filed before the filing date.

(b) At the conclusion of the counsel's presentation to the court of criminal appeals, the court may:

(1) find that good cause has not been shown and dismiss the application;

(2) permit the counsel to continue representation of the applicant and establish a new filing date for the application, which may be not more than 180 days from the date the court permits the counsel to continue representation; or

(3) appoint new counsel to represent the applicant and establish a new filing date for the application, which may be not more than 270 days after the date the court appoints new counsel.

(c) The court of criminal appeals may hold in contempt counsel who files an untimely application or fails to file an application before the date required by Section 4(a) or (b). The

court of criminal appeals may punish as a separate instance of contempt each day after the first day on which the counsel fails to timely file the application. In addition to or in lieu of holding counsel in contempt, the court of criminal appeals may enter an order denying counsel compensation under Section 2A.

(d) If the court of criminal appeals establishes a new filing date for the application, the court of criminal appeals shall notify the convicting court of that fact and the convicting court shall proceed under this article.

(e) Sections 2A and 3 apply to compensation and reimbursement of counsel appointed under Subsection (b)(3) in the same manner as if counsel had been appointed by the convicting court, unless the attorney is employed by the office of capital and forensic writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

(f) Notwithstanding any other provision of this article, the court of criminal appeals shall appoint counsel and establish a new filing date for application, which may be no later than the 270th day after the date on which counsel is appointed, for each applicant who before September 1, 1999, filed an untimely application or failed to file an application before the date required by Section 4(a) or (b). Section 2A applies to the compensation and payment of expenses of counsel appointed by the court of criminal appeals under this subsection, unless the attorney is employed by the office of capital and forensic writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

Sec. 5. SUBSEQUENT APPLICATION. (a) If a subsequent application for a writ of habeas corpus is filed after filing an initial application, 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:

(1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the

previous application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt; or

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071, 37.0711, or 37.072.

(b) If the convicting court receives a subsequent application, the clerk of the court shall:

(1) attach a notation that the application is a subsequent application;

(2) assign to the case a file number that is ancillary to that of the conviction being challenged; and

(3) immediately send to the court of criminal appeals a copy of:

(A) the application;

(B) the notation;

(C) the order scheduling the applicant's execution, if scheduled; and

(D) any order the judge of the convicting court directs to be attached to the application.

(c) On receipt of the copies of the documents from the clerk, the court of criminal appeals shall determine whether the requirements of Subsection (a) have been satisfied. The convicting court may not take further action on the application before the court of criminal appeals issues an order finding that the requirements have been satisfied. If the court of criminal appeals determines that the requirements have not been satisfied, the court shall issue an order dismissing the application as an abuse of the writ under this section.

(d) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by or 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.

(e) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

(f) If an amended or supplemental application is not filed within the time specified under Section 4(a) or (b), the court shall treat the application as a subsequent application under this section.

Sec. 6. ISSUANCE OF WRIT. (a) If a timely application for a writ of habeas corpus is filed in the convicting court, a writ of habeas corpus, returnable to the court of criminal appeals, shall issue by operation of law.

(b) If the convicting court receives notice that the requirements of Section 5 for consideration of a subsequent application have been met, a writ of habeas corpus, returnable to the court of criminal appeals, shall issue by operation of law.

(b-1) If the convicting court receives notice that the requirements of Section 5(a) for consideration of a subsequent application have been met and if the applicant has not elected to proceed pro se and is not represented by retained counsel, the convicting court shall appoint, in order of priority:

(1) the attorney who represented the applicant in the proceedings under Section 5, if the attorney seeks the appointment;

(2) the office of capital and forensic writs, if the office represented the applicant in the proceedings under Section 5 or otherwise accepts the appointment; or

(3) counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code, if the office of capital and forensic writs:

(A) did not represent the applicant as described by Subdivision (2); or

(B) does not accept or is prohibited from accepting the appointment under Section 78.054, Government Code.

(b-2) Regardless of whether the subsequent application is

ultimately dismissed, compensation and reimbursement of expenses for counsel appointed under Subsection (b-1) shall be provided as described by Section 2, 2A, or 3, including compensation for time previously spent and reimbursement of expenses previously incurred with respect to the subsequent application.

(c) The clerk of the convicting court shall:

(1) make an appropriate notation that a writ of habeas corpus was issued;

(2) assign to the case a file number that is ancillary to that of the conviction being challenged; and

(3) send a copy of the application by certified mail, return receipt requested, or by secure electronic mail to the attorney representing the state in that court.

(d) The clerk of the convicting court shall promptly deliver copies of documents submitted to the clerk under this article to the applicant and the attorney representing the state.

Sec. 7. ANSWER TO APPLICATION. (a) The state shall file an answer to the application for a writ of habeas corpus not later than the 120th day after the date the state receives notice of issuance of the writ. The state shall serve the answer on counsel for the applicant or, if the applicant is proceeding pro se, on the applicant. The state may request from the convicting court an extension of time in which to answer the application by showing particularized justifying circumstances for the extension, but in no event may the court permit the state to file an answer later than the 180th day after the date the state receives notice of issuance of the writ.

(b) Matters alleged in the application not admitted by the state are deemed denied.

Sec. 8. FINDINGS OF FACT WITHOUT EVIDENTIARY HEARING. (a) Not later than the 20th day after the last date the state answers the application, the convicting court shall determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist and shall issue a written order of the determination.

(b) If the convicting court determines the issues do not exist, the parties shall file proposed findings of fact and

conclusions of law for the court to consider on or before a date set by the court that is not later than the 30th day after the date the order is issued.

(c) After argument of counsel, if requested by the court, the convicting court shall make appropriate written findings of fact and conclusions of law not later than the 15th day after the date the parties filed proposed findings or not later than the 45th day after the date the court's determination is made under Subsection (a), whichever occurs first.

(d) The clerk of the court shall immediately send to:

(1) the court of criminal appeals a copy of the:

(A) application;

(B) answer;

(C) orders entered by the convicting court;

(D) proposed findings of fact and conclusions of law; and

(E) findings of fact and conclusions of law entered by the court; and

(2) counsel for the applicant or, if the applicant is proceeding pro se, to the applicant, a copy of:

(A) orders entered by the convicting court;

(B) proposed findings of fact and conclusions of law; and

(C) findings of fact and conclusions of law entered by the court.

Sec. 9. HEARING. (a) If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, the court shall enter an order, not later than the 20th day after the last date the state answers the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved. To resolve the issues, the court may require affidavits, depositions, interrogatories, and evidentiary hearings and may use personal recollection.

(b) The convicting court shall hold the evidentiary hearing not later than the 30th day after the date on which the court enters the order designating issues under Subsection (a). The convicting court may grant a motion to postpone the hearing, but not for more than 30 days, and only if the court states, on the record, good

cause for delay.

(c) The presiding judge of the convicting court shall conduct a hearing held under this section unless another judge presided over the original capital felony trial, in which event that judge, if qualified for assignment under Section 74.054 or 74.055, Government Code, may preside over the hearing.

(d) The court reporter shall prepare a transcript of the hearing not later than the 30th day after the date the hearing ends and file the transcript with the clerk of the convicting court.

(e) The parties shall file proposed findings of fact and conclusions of law for the convicting court to consider on or before a date set by the court that is not later than the 30th day after the date the transcript is filed. If the court requests argument of counsel, after argument the court shall make written findings of fact that are necessary to resolve the previously unresolved facts and make conclusions of law not later than the 15th day after the date the parties file proposed findings or not later than the 45th day after the date the court reporter files the transcript, whichever occurs first.

(f) The clerk of the convicting court shall immediately transmit to:

(1) the court of criminal appeals a copy of:

(A) the application;

(B) the answers and motions filed;

(C) the court reporter's transcript;

(D) the documentary exhibits introduced into evidence;

(E) the proposed findings of fact and conclusions of law;

(F) the findings of fact and conclusions of law entered by the court;

(G) the sealed materials such as a confidential request for investigative expenses; and

(H) any other matters used by the convicting court in resolving issues of fact; and

(2) counsel for the applicant or, if the applicant is proceeding pro se, to the applicant, a copy of:

(A) orders entered by the convicting court;

(B) proposed findings of fact and conclusions of law; and

(C) findings of fact and conclusions of law entered by the court.

(g) The clerk of the convicting court shall forward an exhibit that is not documentary to the court of criminal appeals on request of the court.

Sec. 10. RULES OF EVIDENCE. The Texas Rules of Criminal Evidence apply to a hearing held under this article.

Sec. 11. REVIEW BY COURT OF CRIMINAL APPEALS. The court of criminal appeals shall expeditiously review all applications for a writ of habeas corpus submitted under this article. The court may set the cause for oral argument and may request further briefing of the issues by the applicant or the state. After reviewing the record, the court shall enter its judgment remanding the applicant to custody or ordering the applicant's release, as the law and facts may justify.

Added by Acts 1995, 74th Leg., ch. 319, Sec. 1, eff. Sept. 1, 1995. Sec. 4(a), (h) amended by Acts 1997, 75th Leg., ch. 1336, Sec. 1, eff. Sept. 1, 1997; Sec. 5(a), (b) amended by Acts 1997, 75th Leg., ch. 1336, Sec. 2, eff. Sept. 1, 1997; Sec. 7(a) amended by Acts 1997, 75th Leg., ch. 1336, Sec. 3, eff. Sept. 1, 1997; Sec. 8 amended by Acts 1997, 75th Leg., ch. 1336, Sec. 4, eff. Sept. 1, 1997; Sec. 9(a), (e) amended by Acts 1997, 75th Leg., ch. 1336, Sec. 5, eff. Sept. 1, 1997; Sec. 2 amended by Acts 1999, 76th Leg., ch. 803, Sec. 1, eff. Sept. 1, 1999; Sec. 2A added by Acts 1999, 76th Leg., ch. 803, Sec. 2, eff. Sept. 1, 1999; Sec. 3(b), (d) amended by Acts 1999, 76th Leg., ch. 803, Sec. 3, eff. Sept. 1, 1999; Sec. 4 amended by Acts 1999, 76th Leg., ch. 803, Sec. 4, eff. Sept. 1, 1999; Sec. 4A added by Acts 1999, 76th Leg., ch. 803, Sec. 5, eff. Sept. 1, 1999; Sec. 5 heading amended by Acts 1999, 76th Leg., ch. 803, Sec. 7, eff. Sept. 1, 1999; Sec. 5(a), (b) amended by and Sec. 5(f) added by Acts 1999, 76th Leg., ch. 803, Sec. 6, eff. Sept. 1, 1999; Sec. 6(b) amended by Acts 1999, 76th Leg., ch. 803, Sec. 8, eff. Sept. 1, 1999; Sec. 7(a) amended by Acts 1999, 76th Leg., ch. 803, Sec. 9, eff. Sept. 1, 1999; Sec. 9(b) amended by Acts 1999, 76th Leg., ch. 803, Sec. 10, eff. Sept. 1, 1999; Sec. 2(f) amended by Acts 2003, 78th Leg., ch. 315, Sec. 1, eff. Sept. 1, 2003; Sec. 2A(d) added by Acts 2003, 78th Leg., ch. 315, Sec. 2,

eff. Sept. 1, 2003; Sec. 3(d) amended by Acts 2003, 78th Leg., ch. 315, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 965 (H.B. 1701), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 11, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 1139 (H.B. 1646), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 78 (S.B. 354), Sec. 2, eff. May 18, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 5, eff. September 1, 2015.

Art. 11.072. PROCEDURE IN COMMUNITY SUPERVISION CASE.

Sec. 1. 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) An application for a writ of habeas corpus under this article must be filed with the clerk of the court in which community supervision was imposed.

(b) At the time the application is filed, the applicant must be, or have been, on community supervision, and the application must challenge the legal validity of:

(1) the conviction for which or order in which community supervision was imposed; or

(2) the conditions of community supervision.

Sec. 3. (a) An application may not be 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) 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 must first attempt to gain relief by filing a motion to amend the conditions of community supervision.

(c) An applicant may challenge a condition of community supervision under this article only on constitutional grounds.

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

(b) At the time the application is filed, the clerk of the court shall assign the case a file number ancillary to that of the judgment of conviction or order being challenged.

Sec. 5. (a) Immediately on filing an application, the applicant shall serve a copy of the application on the attorney representing the state by:

(1) certified mail, return receipt requested;

(2) personal service;

(3) electronic service through the electronic filing manager authorized by Rule 21, Texas Rules of Civil Procedure; or

(4) a secure electronic transmission to the attorney's e-mail address filed with the electronic filing system as required under Section 80.003, Government Code.

(b) The state may file an answer within the period established by Subsection (c), but is not required to file an answer.

(c) The state may not file 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) Any answer, motion, or other document filed by the state must be served on the applicant by certified mail, return receipt requested, or by personal service.

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

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

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

(c) 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) The court may appoint an attorney or magistrate to hold a hearing ordered under this section and make findings of fact. An attorney appointed under this subsection is entitled to compensation as provided by Article 26.05.

Sec. 7. (a) 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 shall enter a written order denying the application as frivolous. In any other case, the court shall enter a written order including findings of fact and conclusions of law. The court may require the prevailing party to submit a proposed order.

(b) At the time an order is entered under this section, the clerk of the court shall immediately, by certified mail, return receipt requested, or by secure electronic mail, send a copy of the order to the applicant and to the state.

Sec. 8. If the application is denied in whole or part, the

applicant may appeal under Article 44.02 and Rule 31, Texas Rules of Appellate Procedure. If the application is granted in whole or part, the state may appeal under Article 44.01 and Rule 31, Texas Rules of Appellate Procedure.

Sec. 9. (a) 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) 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) 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.

Added by Acts 2003, 78th Leg., ch. 587, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 78 (S.B. 354), Sec. 3, eff. May 18, 2013.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 8.02, eff. September 1, 2021.

Art. 11.073. PROCEDURE RELATED TO CERTAIN SCIENTIFIC EVIDENCE. (a) This article applies to relevant scientific evidence that:

(1) was not available to be offered by a convicted person at the convicted person's trial; or

(2) contradicts scientific evidence relied on by the

state at trial.

(b) A court may grant a convicted person relief on an application for a writ of habeas corpus if:

(1) the convicted person files an application, in the manner provided by Article 11.07, 11.071, or 11.072, containing specific facts indicating that:

(A) relevant scientific evidence is currently available and was not available at the time of the convicted person's trial because the evidence was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of or during the convicted person's trial; and

(B) the scientific evidence would be admissible under the Texas Rules of Evidence at a trial held on the date of the application; and

(2) the court makes the findings described by Subdivisions (1)(A) and (B) and also finds that, had the scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted.

(c) For purposes of Section 4(a)(1), Article 11.07, Section 5(a)(1), Article 11.071, and Section 9(a), Article 11.072, a claim or issue could not have been presented previously in an original application or in a previously considered application if the claim or issue is based on relevant scientific evidence that was not ascertainable through the exercise of reasonable diligence by the convicted person on or before the date on which the original application or a previously considered application, as applicable, was filed.

(d) In making a finding as to whether relevant scientific evidence was not ascertainable through the exercise of reasonable diligence on or before a specific date, the court shall consider whether the field of scientific knowledge, a testifying expert's scientific knowledge, or a scientific method on which the relevant scientific evidence is based has changed since:

(1) the applicable trial date or dates, for a determination made with respect to an original application; or

(2) the date on which the original application or a previously considered application, as applicable, was filed, for a

determination made with respect to a subsequent application.

Added by Acts 2013, 83rd Leg., R.S., Ch. 410 (S.B. 344), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1263 (H.B. 3724), Sec. 1, eff. September 1, 2015.

Art. 11.0731. PROCEDURES RELATED TO CERTAIN PREVIOUSLY TESTED EVIDENCE. (a) This article applies to relevant evidence consisting of biological material described by Article 64.01(a) that was:

(1) presented by the state at the convicted person's trial; and

(2) subjected to testing:

(A) at a laboratory that ceased conducting DNA testing after an audit by the Texas Forensic Science Commission revealed the laboratory engaged in faulty testing practices; and

(B) during the period identified in the audit as involving faulty testing practices.

(b) A court may grant a convicted person relief on an application for a writ of habeas corpus if the convicted person files an application, in the manner provided by Article 11.07, 11.071, or 11.072, containing specific facts indicating that:

(1) the person previously filed a motion under Chapter 64 for forensic DNA testing of evidence described by Subsection (a) that was denied because of a negative finding under Article 64.03(a)(1)(A) or (B); and

(2) had the evidence not been presented at the person's trial, on the preponderance of the evidence the person would not have been convicted.

(c) For purposes of Section 4(a)(1), Article 11.07, Section 5(a)(1), Article 11.071, and Section 9(a), Article 11.072, a claim or issue could not have been presented previously in an original application or in a previously considered application if the claim or issue is based on evidence that has been determined by the Texas Forensic Science Commission to have been subjected to faulty DNA testing practices.

Added by Acts 2017, 85th Leg., R.S., Ch. 903 (H.B. 3872), Sec. 1, eff. June 15, 2017.

Art. 11.074. COURT-APPOINTED REPRESENTATION REQUIRED IN CERTAIN CASES. (a) This article applies only to a felony or misdemeanor case in which the applicant seeks relief on a writ of habeas corpus from a judgment of conviction that:

(1) imposes a penalty other than death; or

(2) orders community supervision.

(b) If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, the court shall appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding based on the application for the writ.

(c) An attorney appointed under this article shall be compensated as provided by Article 26.05.

Added by Acts 2015, 84th Leg., R.S., Ch. 608 (S.B. 662), Sec. 1, eff. June 16, 2015.

Art. 11.08. APPLICANT CHARGED WITH FELONY. If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.09. APPLICANT CHARGED WITH MISDEMEANOR. If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is nearest to the courthouse of the

county in which the applicant is held in custody.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.10. PROCEEDINGS UNDER THE WRIT. When motion has been made to a judge under the circumstances set forth in the two preceding Articles, he shall appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the motion.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.11. EARLY HEARING. The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.12. WHO MAY PRESENT PETITION. Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.13. APPLICANT. The word applicant, as used in this Chapter, refers to the person for whose relief the writ is asked, though the petition may be signed and presented by any other person.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.14. REQUISITES OF PETITION. The petition must state substantially:

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom, naming both parties, if their names are known, or if unknown, designating and describing them;

2. When the party is confined or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy cannot be

obtained;

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained in his liberty;

4. There must be a prayer in the petition for the writ of habeas corpus; and

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.15. WRIT GRANTED WITHOUT DELAY. The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.16. WRIT MAY ISSUE WITHOUT MOTION. A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any motion being made for the same.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.17. JUDGE MAY ISSUE WARRANT OF ARREST. Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.18. MAY ARREST DETAINER. Where it appears by the

proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.
Acts 1965, 59th, Leg., vol. 2, p. 317, ch. 722.

Art. 11.19. PROCEEDINGS UNDER THE WARRANT. The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.20. OFFICER EXECUTING WARRANT. The same power may be exercised by the officer executing the warrant in cases arising under the foregoing Articles as is exercised in the execution of warrants of arrest.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.21. CONSTRUCTIVE CUSTODY. The words "confined", "imprisoned", "in custody", "confinement", "imprisonment", refer not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.22. RESTRAINT. By "restraint" is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.23. SCOPE OF WRIT. The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.24. ONE COMMITTED IN DEFAULT OF BAIL. Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive. If the proof sustains the petition, it will entitle the party to be discharged, or have the bail reduced.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.25. PERSON AFFLICTED WITH DISEASE. When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.26. WHO MAY SERVE WRIT. The service of the writ may be made by any person competent to testify.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.27. HOW WRIT MAY BE SERVED AND RETURNED. The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some

conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in his return, the manner and the time of the service of the writ.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.28. RETURN UNDER OATH. The return of a writ of habeas corpus, under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.29. MUST MAKE RETURN. The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

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

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition;

2. By virtue of what authority, or for what cause, he took and detains such person;

3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer;

4. He shall annex to his return the writ or warrant, if any, by virtue of which he holds the person in custody; and

5. The return must be signed and sworn to by the person making it.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.31. APPLICANT BROUGHT BEFORE JUDGE. The person on

whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.32. CUSTODY PENDING EXAMINATION. When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.33. COURT SHALL ALLOW TIME. The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.34. DISOBEYING WRIT. When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until

he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.35. FURTHER PENALTY FOR DISOBEYING WRIT. Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.36. APPLICANT MAY BE BROUGHT BEFORE COURT. In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.37. DEATH, ETC., SUFFICIENT RETURN OF WRIT. It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be assigned, the court or judge shall proceed to hear testimony; and the facts stated in the return shall be proved by satisfactory evidence.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.38. WHEN A PRISONER DIES. When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death. All the proceedings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which shall be sufficient proof of the

death of the prisoner at the hearing of a motion under habeas corpus.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.39. WHO SHALL REPRESENT THE STATE. If neither the county nor the district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be paid the same fee allowed district attorneys for like services.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.40. PRISONER DISCHARGED. The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.41. WHERE PARTY IS INDICTED FOR CAPITAL OFFENSE. If it appears by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part of the State and the applicant, and may either remand or admit him to bail, as the law and the facts may justify.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.42. IF COURT HAS NO JURISDICTION. If it appear by the return and papers attached that the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.43. PRESUMPTION OF INNOCENCE. No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.44. ACTION OF COURT UPON EXAMINATION. The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.45. VOID OR INFORMAL. If it appears that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.46. IF PROOF SHOWS OFFENSE. Where, upon an examination under habeas corpus, it appears to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.47. MAY SUMMON MAGISTRATE. To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.48. WRITTEN ISSUE NOT NECESSARY. It shall not be

necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.49. ORDER OF ARGUMENT. The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.50. COSTS. The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.51. RECORD OF PROCEEDINGS. If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as in any other case in such court. When the motion is heard out of the county where the offense was committed, or in the Court of Criminal Appeals, the clerk shall transmit a certified copy of all the proceedings upon the motion to the clerk of the court which has jurisdiction of the offense.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.52. PROCEEDINGS HAD IN VACATION. If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court

which has jurisdiction of the offense, who shall keep them safely.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.53. CONSTRUING THE TWO PRECEDING ARTICLES. The two preceding Articles refer only to cases where an applicant is held under accusation for some offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.54. COURT MAY GRANT NECESSARY ORDERS. The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue process to enforce the attendance of witnesses.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.55. MEANING OF "RETURN". The word "return", as used in this Chapter, means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.56. EFFECT OF DISCHARGE BEFORE INDICTMENT. Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless surrendered by his bail.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.57. WRIT AFTER INDICTMENT. Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause

of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in this Chapter.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.58. PERSON COMMITTED FOR A CAPITAL OFFENSE. If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in Articles 11.25 and 11.59.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.59. OBTAINING WRIT A SECOND TIME. A party may obtain the writ of habeas corpus a second time by stating in a motion therefor that since the hearing of his first motion important testimony has been obtained which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered; and if it be that of a witness, the affidavit of the witness shall also accompany such motion.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.60. REFUSING TO EXECUTE WRIT. Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this Chapter shall be directed, delivered or tendered, who refuses to execute the same according to his directions, or who wantonly delays the service or execution of the same, shall be liable to fine as for contempt of court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.61. REFUSAL TO OBEY WRIT. Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of

another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in Article 11.34 of this Code.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.62. REFUSAL TO GIVE COPY OF PROCESS. Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense, and shall be dealt with as provided in Article 11.34 of this Code for refusal to return the writ therein required.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.63. HELD UNDER FEDERAL AUTHORITY. No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.64. APPLICATION OF CHAPTER. This Chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody or in any manner restrained in their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment upon a hearing of the testimony. Instead of a writ of habeas corpus in other cases heretofore used, a simple order shall be substituted.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 11.65. BOND FOR CERTAIN APPLICANTS. (a) This article applies to an applicant for a writ of habeas corpus seeking relief from the judgment in a criminal case, other than an applicant

seeking relief from a judgment imposing a penalty of death.

(b) On making proposed findings of fact and conclusions of law jointly stipulated to by the applicant and the state, or on approving proposed findings of fact and conclusions of law made by an attorney or magistrate appointed by the court to perform that duty and jointly stipulated to by the applicant and the state, the convicting court may order the release of the applicant on bond, subject to conditions imposed by the convicting court, until the applicant is denied relief, remanded to custody, or ordered released.

(c) For the purposes of this chapter, an applicant released on bond under this article remains restrained in his liberty.

(d) Article 44.04(b) does not apply to the release of an applicant on bond under this article.

Added by Acts 2003, 78th Leg., ch. 197, Sec. 1, eff. June 2, 2003.