

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1125
By: Lavender (Elife)
Criminal Justice
5/16/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas counties that border other states often have defendants in custody who require extradition. Currently defendants may go before magistrate judges for extradition; however in rural counties a magistrate is not always a court of record. Until a magistrate can hear the matter, which can be for weeks at a time, the county bears the cost of housing the defendant.

C.S.H.B. 1125 amends the Code of Criminal Procedure to allow a justice of the peace serving a precinct that is located in a county bordering another state to accept a voluntary waiver of extradition, which would allow the immediate transfer of the defendant. C.S.H.B. 1125 requires a justice of the peace, before the waiver is executed, to inform the prisoner of the prisoner's right to the issuance and service of an extradition warrant and right to obtain a writ of habeas corpus. All defendants would be allowed the opportunity to discuss this voluntary waiver with their attorney prior to signing. If the prisoner or the prisoner's counsel states the desire to test the legality of the arrest, the justice of the peace would direct the prisoner to a court of record for purposes of obtaining a writ of habeas corpus.

C.S.H.B. 1125 amends current law relating to the rights of an accused person in and the written waiver of extradition proceedings.

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 Section 10, Article 51.13, Code, of Criminal Procedure, as follows:

Sec. 10. RIGHTS OF ACCUSED PERSON; APPLICATION FOR WRIT OF HABEAS CORPUS. (a) Requires that no person arrested upon such warrant be delivered over to the agent whom the Executive Authority demanding him is required to have appointed to receive him unless he first be taken forthwith before a judge of a court of record in this State, or before a justice of the peace serving a precinct that is located in a county bordering another state, who is required to inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of the court of record is required to fix a reasonable time to be allowed the prisoner in which to apply for a writ of habeas corpus, or the justice of the peace shall direct the prisoner to a court of record for purposes of obtaining such a writ. Requires that notice thereof, when the writ is applied for, and of the time and place of hearing thereon, be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding State. Makes nonsubstantive changes.

(b) Requires a justice of the peace to take, through the Texas Justice Court Training Center (center), a training course that focuses on extradition law before a justice who is not an attorney is authorized to perform a duty or function

permitted by Subsection (a). Requires the center to develop a course to satisfy the requirements of this subsection.

(c) Requires each justice of the peace who performs a duty or function permitted by Subsection (a) to ensure that the applicable proceeding is transcribed or videotaped and that the record of the proceeding is retained in the records of the court for at least 270 days.

SECTION 2. Amends Section 25a, Article 51.13, Code of Criminal Procedure, as follows:

Sec. 25a. WRITTEN WAIVER OF EXTRADITION PROCEEDINGS. (a) Authorizes any person arrested in this State charged with having committed any crime in another State or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in Sections 7 (Issuance of Governor's Warrant of Arrest; Its Recitals) and 8 (Manner and Place of Execution) and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge or any court of record within this State, or in the presence of a justice of the peace serving a precinct that is located in a county bordering another state, a writing which states that the arrested person consents to return to the demanding State; provided, however, that before such waiver is required to be executed or subscribed by such person the judge or justice of the peace is required to inform such person of his:

(1) right to the issuance and service of a warrant of extradition; and

(2) right to obtain a writ of habeas corpus as provided for in Section 10.

Requires that such consent, if and when it has been duly executed to forthwith be forwarded to the Office of the Governor of this State and filed therein. Requires the judge or justice of the peace to direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding State, and to deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding State, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding State or of this State.

(b) Requires a justice of the peace to take, through the Texas Justice Court Training Center (center), a training course that focuses on extradition law before a justice who is not an attorney is authorized to perform a duty or function permitted by Subsection (a). Requires the center to develop a course to satisfy the requirements of this subsection.

(c) Requires each justice of the peace who performs a duty or function permitted by Subsection (a) to ensure that the applicable proceeding is transcribed or videotaped and that the record of the proceeding is retained in the records of the court for at least 270 days.

SECTION 3. Effective date: upon passage or September 1, 2013.