

- SUBJECT:** Allowing subsequent writ of habeas corpus if prosecutor agrees
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut
- 0 nays
- WITNESSES:** For — Mike Ware, Innocence Project of Texas; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Rachana Chhin, Texas Catholic Conference of Bishops; Shea Place, Texas Criminal Defense Lawyers Association; Alycia Castillo, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Rebecca Bernhardt, The Innocence Project)
- Against — None
- On — (*Registered, but did not testify*: Edward Marshall, Office of the Attorney General)
- BACKGROUND:** Code of Criminal Procedure, ch. 11 outlines procedures for filing applications for writs of habeas corpus, which is a way to challenge the constitutionality of a criminal conviction or the process that resulted in a conviction or sentence. Art. 11.07 governs procedures for applying for a writ in a felony conviction where the death penalty was not imposed. Art. 11.07(4) governs procedures when a subsequent application for a writ is filed after an initial one. In this situation, courts may consider the subsequent writ only if certain conditions are met, including sufficient specific facts establishing that:
- the current claims have not been and could not have been presented previously because the factual or legal basis for the claim was unavailable when the writ was filed; or

- by a preponderance of the evidence, but for a violation of the U.S. Constitution no rational juror could have found the individual guilty beyond a reasonable doubt.

DIGEST: HB 187 would allow subsequent applications for writs of habeas corpus to be filed after an initial writ if the attorney representing the state and having primary responsibility for similar cases in that jurisdiction consented in writing to the court's consideration of and ruling on the merits of the application for a writ. The attorney representing the state would be defined as a district attorney, criminal district attorney, or county attorney with criminal jurisdiction but would not include an assistant prosecuting attorney.

The bill would take effect September 1, 2021, and would apply only to a writ filed on or after that date.

SUPPORTERS SAY: HB 187 would help address situations in which there could have been a wrongful criminal conviction by allowing criminal defendants to bring an additional application for a writ of habeas corpus before the court with the approval of the prosecutor.

Many times a defendant's first writ is filed without the assistance of a lawyer, and it might fail to raise or develop all the important issues in a case. If that writ is denied, additional ones may be filed only under the limited circumstances. These circumstances are so limited that in some cases, a writ cannot be filed even if it appears that there may have been a wrongful conviction and the prosecutor wants to have a court examine a writ. HB 187 would address this by establishing a condition under which a subsequent writ could be filed, giving the justice system another tool to address potential wrongful convictions.

The courts would not be flooded with writs, and the ability to file them would not be abused because they would require the written consent of the prosecutor. Filing a subsequent writ would not mean that anyone was released from their conviction or from prison as the writ would be subject to all the procedures currently required and the courts would make

decisions about its merits.

CRITICS
SAY:

No concerns identified.