

Substantive/Procedural
Law Changes
from the
80th Regular Legislature

Meichihko Proctor

Program Attorney & Deputy Counsel

Texas Municipal Courts Education Center

Procedural Law Changes

HB 485 - Restitution

- Amends Article 45.041 CCP (Judgments)
 - Deletes Cap of \$500 on Restitution
 - Allows for Restitution in Hot Check Cases
 - Not to Exceed \$5,000
 - All Other Cases - No Maximum Dollar Amount
 - Was this a Problem?
 - Will this now be a Problem?
 - Must there be a “Victim?”
 - What’s the Difference between “Damages” and “Restitution?”

HB 2267 - Deferred Disposition

■ Indigent Issues

- Old Law- Made it a Condition Precedent that All Court Costs be Paid before Deferred Disposition Could be Granted:

- Legal? – Probably not (*Tate v. Short* – Equal Protection)
- Strictly Followed? – Not by Judges who Know Case Law

- New Law (Art. 45.051 (a-1) CCP)

“Notwithstanding any other provision of law...”

- Installments
- Community Service
- Combination

HB 2267 - Deferred Disposition (Continued)

- Show Cause Hearing Now Required
 - Art. 45.051(c-1) – No Different than Existing DSC Requirement
 - Notice in Writing
 - Mailed to Address on File or on Citation
 - Stating Time and Date of Show Cause
 - Show What? Show why Order should not be Revoked!
- “Additional Period” (Article 45.051(c-2))
 - Unclear
 - Presumably no longer than another 180 Days

HB 1470 – Notification for Family Violence Offenders

- Amends Art. 26.13 CCP - Requires Admonishment PRIOR to Plea of Guilty or No-Contest
- Amends Art. 42.0131 - Persons Convicted of Misdemeanors involving “Family Violence” that it is Unlawful to Possess or Transfer a Firearm or Ammunition

HB 3060 – “The *Capias* Clean Up Bill”

Secs. 2, 3, 6, 7, 10, 13

- ALL RESULT IN SEIZURE; BUT ARE NOT THE SAME:
 - Capias – Issued by JUDGES (not Magistrates)
 - Chapter 23 – Bond Forfeiture (Pre-Judgment)
 - Chapter 43 – Procuring Custody of Defendant (Post-Judgment)
 - Arrest Warrant – Issued by Magistrate (not Judge)
 - Chapter 17 – Surety Surrenders Principal
 - Capias Pro Fine – Issued by Judges (not Magistrates)
 - Chapter 43 and 45 – Post Judgment Enforcement for Fines and/or Court Costs ONLY
 - 1st Time Ever there are Definitions for Each Writ in their Respective Chapters

HB 3060

Stay Tuned...

Ryan Turner will cover this extensively during the final session of the seminar.

Substantive Law

Changes

New Class C Misdemeanors

- HB 1411 – Restraint of Dogs
- HB 1586 Laser Light Aimed at Planes
- HB 402 *Ex Parte* Contact with Appraiser
- HB 416 Access to Restrooms
- HB 539 Age for Fireworks
- SB 91 Tobacco Health Warnings

HB 1411

Unlawful Restraint of Dogs

- Amends Chapter 821, Health and Safety Code
- Dog may not be left outdoors unattended between 10 pm and 6 am (w/in 500 feet of school and in inclement weather) with:
 - Pinch or choke collar;
 - Lead less than 10 feet (or 5x length of dog);
 - Any restraint which is unsafe or causes injury to the dog.

HB 1586

Illumination of Aircraft by Intense Light

- New Class C misdemeanor for a person to intentionally shine a light at an aircraft from a laser pointer or other light source when the light has “sufficient intensity to impair the pilot’s ability to control the aircraft”.
- If the pilot’s ability to control aircraft is actually impaired, Class A misdemeanor.

HB 402

Ex Parte Contact Between Appraisal Board Member and Chief Appraiser

- New Class C (Section 6.15, Tax Code).
- A member of the board of an appraisal district cannot communicate with the chief appraiser of that district on any matter related to the appraisal of property unless the communication takes place during an open meeting or an approved closed meeting.

HB 416

Providing Restroom Access to Persons with Certain Medical Conditions

- Restrooms no longer “for employees only.”
- New Class C misdemeanor (Section 341.069, Health and Safety Code) for retail establishment with employee restrooms but no public restrooms to refuse to provide restroom access to customers with “incontinence” diseases.

- Customer must provide evidence of the medical condition.
- Customer must leave restroom in the same condition as it was before the customer's use.
- Retail establishment does not have to provide access if restroom is located where there is a health or safety risk or security risk to establishment.
- Punishable by fine not to exceed \$100.

HB 539

Age Requirements for Selling or Buying Fireworks

- New Class C misdemeanor to sell fireworks to children under 16 (Section 2154.252(c), Occupations Code) (used to be 12 years old), or to allow someone under 16 to sell fireworks (Section 2154.254, Occupations Code) ...



SB 91

Health Warning for Tobacco

- Requires warning signs wherever tobacco products are sold which state the risks to pregnant women and unborn children (Section 161.084(b), Health and Safety Code).
- Violation is Class C misdemeanor.

Other New Laws of Interest

- HB 916 – Punishment for Dog Fighting
- HB 1889 – Attorneys/Bailiffs with Guns
- HB 2300 – Judges with Guns
- HB 2703 – Public Health Professionals
- HB 3584 – Organized Retail Theft
- HB 1093 – Funeral Service Disruption
- HB 1168 – State Licenses and Permits

HB 916

Prosecution and Punishment of Dog Fighting

- Removes “knowingly or intentionally and for a pecuniary benefit” from offense of causing a dog to fight another dog.
- Now, just causing a dog to fight another dog is a state jail felony.

HB 1889

Allowing Active Judicial Officers and Bailiffs to Carry Weapons

- Amends Section 46.15(a), Penal Code, to provide as follows:

Municipal attorneys (and Bailiffs) licensed to carry concealed handguns are exempt from prohibition against carrying weapon in Courthouse.

HB 2300

Carrying of Weapons by Judge

- Amends Chapter 411 of Government Code and creates 411.1882.
- Person sitting as a judge need not submit to the DPS a handgun proficiency certificate in order to obtain or renew a concealed handgun license.

HB 2703

Interfering With A Public Health Professional

- New Class B Misdemeanor (new Section 38.15(a)(7), Texas Penal Code), to disrupt, impede or interfere with the duty of a public health professional on official duty.
- Not within the jurisdiction of Municipal Courts, but does apply to Code Compliance Officers.

HB 3584

Organized Retail Theft

- Creates new Section 31.16 of the Penal Code.
- Person commits a felony if s/he intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, sells, or barter stolen retail merchandise or merchandise represented to be stolen retail merchandise valued at \$1,500 or more.

HB 1093

Funeral Service Disruption

- Class B misdemeanor to picket within 1,000 feet of a facility or cemetery being used for a funeral service, from 1 hour before to 1 hour after the service.
- No Municipal Court jurisdiction, but good to know about.

HB 1168

State Licenses and Permits

- Amends Government Code (Chapter 2005), including creating several new subchapters.
- A licensing authority may (civilly) deny a person's application for a license or suspend or revoke a license issued by that licensing authority if the person:

More New Laws Of Interest...

- HB 1815 – Guns in Cars/Trucks
- HB 184 – Consent as Defense for Assault
- HB 1887 – Vehicle Burglary
- HB 2112 – Guns at School or on Bus
- HB 401 – Sex Offense Against Minor/Student
- SB 103 – Sexual Activity at TYC
- SB 904 – Public Intox. and ABC Offenses

HB 1815

Handguns in Motor Vehicles

- Amends Section 46.02(a), Penal Code, to create subsections (a-1) and (a-2) allowing for a person to carry a handgun on the person's own property or directly en route to the person's vehicle.

HB 184

Consent as a Defense for Assault

- Amends Section 22.06, Penal Code, to create 22.06(b), eliminating the defense of consent to assault in gang activity.
- A victim's consent to the assault (or the actor's reasonable belief that the victim consented to the assault) is not a defense if the assault is committed due to the defendant or victim's membership in a street gang.

HB 1887

Punishment for Vehicle Burglary

- Amends Section 30.04(d), Penal Code.
- Burglary of a motor vehicle is a Class A misdemeanor, except:
 - Class A with a minimum term of 6 months if defendant has one previous conviction, and
 - State Jail felony if defendant has two or more previous convictions (or if burgled vehicle is railcar).

HB 2112

Firearms on School Property or School Bus

- Amends Section 37.125(a), Education Code – 3rd degree felony offense if, with intent to cause injury to another or damage school property, a person intentionally exhibits, uses, or threatens to exhibit or use a firearm on school property (including parking lots controlled by school) or on school bus.

HB 401

Sexual Offenses Against Minors and/or Students

- Amends Section 21.12(a), Penal Code, no employee of a public or private primary or secondary school can engage in sexual contact with a student who is not that person's spouse.
- Subsection (a-2) includes “conduct described by Section 33.021 ... regardless of the age of that person” – thus including online solicitation and text messaging.

SB 103

Improper Sexual Activity Pertaining to the Texas Youth Commission

- Amends Section 39.04, Penal Code, 2nd degree felony for person to have sexual contact with an individual in custody of the Texas Youth Commission through:
 - (1) employing the individual,
 - (2) authorizing the contact, or
 - (3) inducing the individual to engage in sexual conduct or performance.

SB 904

Public Intoxication and Other Alcoholic Beverage Code Offenses

- Amends Section 49.02 of the Penal Code and Section 105.06 of the Alcoholic Beverage Code so that any premises licensed or permitted under the Alcoholic Beverage Code is considered a “public place” for Public Intoxication purposes.

And Finally, Our Last Set...

- HB 460 – Fraud in Use of ID Information
- HB 649 – Fraud in Use of Child's ID
- HB 872 – Tampering with Evidence
- HB 946 – Controlled Substance w/ Child
- HB 959 – Stat. of Limit., Injury to Child
- SB 378 – Deadly Force to Defend Another

HB 460

Fraudulent Use or Possession of Identifying Information

- Amends Sections 32.51(b), (c) and (e), Penal Code – offense to obtain, possess, transfer or use an item of identifying information of a deceased person without legal authorization (or of another person without the person’s consent), if it is done “with the intent to harm or defraud another”.

HB 649

Fraudulent Use of Child's Identifying Information

- Amends Section 32.51(b), Penal Code – it is an offense for a person, “with intent to harm or defraud another”, to obtain, possess, transfer, or use identifying information of another person without that person’s consent, or if it is identifying information of a child younger than 18.

HB 872

Tampering with or Fabricating Physical Evidence

- Amends Section 37.09, Penal Code, and deals primarily with altering, destroying or concealing a human corpse.
- Violation is a 2nd degree felony.

HB 946

Controlled Substances that Endanger a Child

- Creates Section 481.1122, Health and Safety Code, to increase by one degree punishments for manufacture of a controlled substance under 481.112(b) and 481.112(c) if a child younger than 18 years of age was present at time of the offense.

HB 959

Statute of Limitations for Injury to Child

- Amends Article 12.01, Code of Criminal Procedure, - statute of limitations for offense of injury to a child under Section 22.04, Penal Code, will now be 10 years from the child's 18th birthday.

SB 378

Deadly Force to Defend a Person

- Amends Section 9.32, Penal Code – actor no longer has duty to retreat before using force or deadly force (authorized by 9.31 or 9.32) if:
 - Actor has the right to be present at location where the force takes place;
 - Actor has not provoked the person against whom the force is used;
 - Actor is not engaged in criminal activity at the time the force is used.

Have a Great Day!

