

**Selected Criminal Procedure Law Affected by the 81<sup>st</sup> Legislature**

❖ **Chapter 2 General Duties of Officers**

• **Art. 2.12 Who are Peace Officers**

- HB 3201: County Fire Marshals designated as Peace Officers
- This bill adds the fire marshal and any related officers, inspectors, or investigators commissioned by a county for purposes of county fire protection to the list of persons who are designated as peace officers under state law.

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❖ **Chapter 4 Courts and Criminal Jurisdiction**

• **Art. 4.14 Jurisdiction of Municipal Court**

- SB 1504: Concurrent Jurisdiction in Municipal Courts Contiguous to Houston
- authorizes a municipality with a population of 1.9 million or more and a contiguous municipality to enter into agreements for concurrent municipal court jurisdiction. This act applies only to offenses punishable by a fine and committed on the boundary of those municipalities or within 200 yards of that boundary, thus eliminating the uncertainty in determining appropriate jurisdiction.

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❖ **Chapter 12 Limitation**

• **Art. 12.02 Misdemeanors**

- Only Texas statute that addresses the statute of limitations in misdemeanor cases.
- The statute states that an indictment or information for any misdemeanor must be presented within two years from the date of the commission of the offense. Indictments and information serve as charging instruments in Class A and Class B misdemeanor cases. The charging instrument in Class C misdemeanor cases, however, is the complaint.
- Prevailing view has been that despite the statute's failure to include complaints, Class C misdemeanor cases are subject to a two-year statute of limitations.
- **SB 410: Statute of Limitations in Class C Misdemeanors**
  - Amends current law relating to the statute of limitations for a misdemeanor.

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❖ **Chapter 13 Venue**

• **Art. 13.045 On the Boundaries of Certain Municipalities**

- SB 1504: Concurrent Jurisdiction in Municipal Courts Contiguous to Houston

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❖ **Chapter 14 Arrest Without Warrant**

• **Art. 14.06 Arrest by Peace Officer from Other Jurisdiction**

- Section 42.0131 of the Code of Criminal Procedure requires the court to notify a person convicted of a misdemeanor involving family violence that it is unlawful for the person to possess or transfer a firearm or ammunition.
- **S.B. 1236: Domestic Violence Admonishment on Citations for Class C Assault**
  - This bill amends Article 14.06 and Article 27.14 of the Code of Criminal Procedure to authorize federally mandated language on a citation to be issued to persons charged with committing a Class C misdemeanor assault (domestic violence) regarding the possible loss of their right to possess or purchase a firearm if they are convicted of certain offenses.

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#### ❖ Chapter 15 Arrest Under Warrant

- **Art. 15.08 Warrant May Be Forwarded**
  - **Art. 15.09 Complaint May Be Forwarded**
    - The means of transferring warrants for this purpose are provided for in Articles 15.08 and 15.09 of the Code of Criminal Procedure. Articles 15.08 and 15.09 of the Code of Criminal Procedure require that an arrest warrant be forwarded by telegraph. While this was the most modern and efficient technology when the statute was originally drafted, there are now more efficient methods for forwarding these documents.
  - **H.B. 1060: Transmittal of Complaints and Warrants**
    - Amends C.C.P. to expand the methods by which complaints or warrants may be transferred to include secure facsimile transmission or other secure electronic means.
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- **Art. 15.17 Duties of Arresting Officer and Magistrate**
    - Article 15.17 sets forth the duties that a magistrate is to perform when an individual is arrested.
    - Article 15.17(b) specifically instructs the magistrate to release an accused person without bond and then order him or her to appear at a later date for arraignment "in the county court or statutory county court." This language was problematic because Subsection (b) applies only to persons charged with misdemeanors punishable by fine only, which are heard in justice and municipal courts as opposed to county-level courts.
    - **S.B. 415: Magistrate Release Without Bail for Class C Misdemeanors and Order to Appear in Municipal or Justice Court.**
    - Authorizes a magistrate to release the accused person without bond and order the accused to appear at a later date for arraignment in the applicable justice court or municipal court, rather than in the county court or statutory county court.
    - This amendment will without doubt be put to good use by magistrates who do not want to set bail in Class C misdemeanor arrests and will be appreciated by municipal and justice

courts throughout the state. Ideally, it will help reduce the number of bail bonds seen in municipal and justice courts.

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❖ **Chapter 19 Organization of the Grand Jury**

• **Art. 19.16 Absent Juror Fined**

• **H.B. 1665: Contempt for Jurors**

- Amends Article 19.16 and Article 35.01 the Code of Criminal Procedure to increase from \$10 to \$100 the minimum fine, and from \$100 to \$500 the maximum fine, for a legally summoned juror who fails to attend without a reasonable excuse, or, as in the case of a petit juror, files a false claim of exemption from jury services. The bill increases the fine for a summoned juror who is not present when a criminal case is called for trial and the parties have announced ready for trial by removing the provision that sets the maximum fine amount at \$50, and replacing it with an amount that may range from not less than \$100 or more than \$500.

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❖ **Chapter 26 Arraignment**

• **Art. 26.13 Plea of Guilty**

- Section 42.0131 of the Code of Criminal Procedure requires the court to notify a person convicted of a misdemeanor involving family violence that it is unlawful for the person to possess or transfer a firearm or ammunition.

• **S.B. 1236: Domestic Violence Admonishment on Citations for Class C Assault**

- Removes a provision requiring the court to admonish a defendant that it is unlawful to possess or transfer a firearm or ammunition if convicted of a misdemeanor involving family violence before accepting a plea.

- The need to admonish has not disappeared, however. It has simply been moved to other parts of the code.

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❖ **Chapter 27 The Pleading in Criminal Actions**

• **Art. 27.14 Plea of Guilty or Nolo Contendere in Misdemeanor**

• **S.B. 1236: Domestic Violence Admonishment on Citations for Class C Assault**

- Amended 27.14 of the Code of Criminal Procedure providing a script for a court to use in order to admonish defendants before accepting the plea of guilty or nolo contendere for offenses involving family violence

• **H.B. 1544: Guilty Pleas by Mail**

- Defendants can dispose of cases without having to physically appear in court. Formerly, a defendant can change his or her original pleading to guilty or nolo

contendere and waive the right to a jury trial at any point until the trial on the merits of the case commenced. .

- Requires the court, if the court receives a plea and waiver after the time the defendant is scheduled to appear in court but at least **five** business days before a scheduled trial date, to dispose of the case without requiring a court appearance by the defendant.

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## ❖ Chapter 35 Formation of the Jury

### • Art. 35.01 Jurors Called

#### • H.B. 1665: Contempt for Jurors

- Amends Article 19.16 and Article 35.01 the Code of Criminal Procedure to increase from \$10 to \$100 the minimum fine, and from \$100 to \$500 the maximum fine, for a legally summoned juror who fails to attend without a reasonable excuse, or, as in the case of a petit juror, files a false claim of exemption from jury services. The bill increases the fine for a summoned juror who is not present when a criminal case is called for trial and the parties have announced ready for trial by removing the provision that sets the maximum fine amount at \$50, and replacing it with an amount that may range from not less than \$100 or more than \$500.
- H.B. 1665 does not, however, amend the specific provision in Article 45.027 of the Code of Criminal Procedure, which authorizes a fine not to exceed \$100 for juror contempt when a juror fails to appear for a municipal or justice court summons. Thus, there is a resulting disparity between the amount a juror can be fined for failure to appear in a county or district court and the amount a juror can be fined for failure to appear in a municipal or justice court. Nonetheless, Article 45.027 does not prescribe a penalty for filing a false exemption. The \$100 to \$500 fine in Section 62.111 of the Government Code, as amended by this bill, could arguably apply to a juror who files a false claim of exemption for municipal or justice court jury service.

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## ❖ Chapter 38 Evidence in Criminal Actions

### • Art. 38.02 Effect Under Public Information Law of Release of Certain Information

#### • H.B. 1360: Application of the PIA to Information Disclosed to Defense by Prosecution

- Allows information to be shared between prosecution and defense without the concern that the information may become public. The bill does not compel prosecutors to provide complete files to defense. It does, however, eliminate potential conflicts between the release of those files and the Public Information Act.

### • Art. 38.075 Corroboration of Certain Testimony Required

#### • S.B. 1681: Corroboration of Testimony to Support a Criminal Conviction

- Prohibits the conviction of a defendant based solely on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when the person was imprisoned or confined in the same correctional facility as the defendant. .
  - Adds Article 38.075 to the Code of Criminal Procedure. It should be noted that this bill applies to any case in which a judgment has not been entered before September 1, 2009 (as opposed to an offense committed after the effective date).
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- **Art. 38.11 Journalist's Qualified Testimonial Privilege in Criminal Proceedings**
- **Art 38.111 News Media Recordings**

- **H.B. 670: Journalist Privilege to Not Testify in Criminal Proceedings**

- By adding Article 38.11 and Article 38.111, it substantially increases the provisions contained in Chapter 38 of the Code of Criminal Procedure (Evidence in Criminal Actions).
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#### ❖ Chapter 42 Judgment and Sentence

- **Art. 42.01 Judgment**

- **Art. 42.037 Restitution**

- **H.B. 4464: Confidential Victim Information in Restitution Provision of a Judgment**

- Amends current law relating to crime victim information in a criminal judgment.
  - This bill is intended to eliminate the situation in which court clerks are generally required to list the name and address of a crime victim who is to receive restitution in the criminal judgment only to then have to redact the victim's name and address from the judgment before allowing the public to see the judgment. By eliminating this situation, the workload of the clerks would be reduced and the clerk's court records would be more readily accessible by the public.
  - **TMCEC Commentary:** As judgments in municipal and justice courts are governed by both Article 45.041 and 42.01 of the Code of Criminal Procedure, this bill is pertinent to cases in which restitution is ordered.
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#### ❖ Chapter 43 Execution of Judgment

- **Art. 43.03 Payment of Fine**

- **S.B. 414: Commitment Hearings for Capias Pro Fine by Electronic Means**

- A defendant arrested pursuant to a capias pro fine must be brought for a hearing before the court that issued the capias pro fine. Ideally, the defendant is to be brought before the court immediately after the arrest. If this is not possible, the defendant is to be placed in jail until the next business day at which time he or she is to be brought before the court.
- S.B. 414 authorizes defendants to be brought before the court in person or by means of an electronic broadcast system.

- Please note, however, this bill does not authorize taking pleas from jail via electronic means. Nor should this law be confused with existing law authorizing similar technology to be used by magistrates pursuant to Article 15.17 of the Code of Criminal Procedure.

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❖ **Chapter 45 Justice and Municipal Courts**

- **Art. 45.046 Commitment**
  - **S.B. 414: Commitment Hearings for Capias Pro Fine by Electronic Means**
  - See above.

❖ **Chapter 55 Expunction of Criminal Records**

- **Art. 55.011 Right of Close Relative to Seek Expunction on Behalf of Deceased Person**
  - **H.B. 2002: Expunction for the Deceased**
  - The purpose of H.B. 2002 is to allow immediate family members or close relatives of the deceased person to reinstate that person's good name.
  - H.B. 2002 authorizes a close relative of deceased person who, if not deceased, would be entitled under Article 55 of the Code of Criminal Procedure to expunction of records and files relating to an arrest, through the filing of an *ex parte* petition for the expunction of the deceased person's records. The bill requires a court that finds that the deceased person would be entitled to expunction of any record that is the subject of the petition, to enter an order directing expunction.

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❖ **Chapter 56 Rights of Crime Victims**

- **Art. 56.01 Definitions**
  - **H.B. 1372: Definition of "Crime Victim" Expanded to Include Victims of Human Trafficking**
    - The purpose of this bill is to include human trafficking victims in the existing definition of "victim" under Article 56.01(3), Code of Criminal Procedure, which will allow victims of human trafficking to be eligible for benefits and protections under the Victims' Bill of Rights and the Crime Victims' Compensation Act.
    - H.B. 1372 amends current law relating to the definition of victim in relation to certain crime victims' rights.

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