

**PROCEDURAL
LAW UPDATE**

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**NO ONE'S LIFE, LIBERTY OR
PROPERTY ARE SAFE WHILE THE
LEGISLATURE
IS IN SESSION.**

— Benjamin Franklin

Legislative Process

- ⦿ Texas Legislature meets every two years
- ⦿ Session lasts 140 days
- ⦿ All bills must pass both chambers
 - House of Representatives
 - Senate
- ⦿ Must be approved by the Governor

81st Texas Legislature: By the Numbers

Lawmakers filed 7,609 bills and proposed Constitutional amendments.

- 19 Percent Increase from the 80th Legislature in 2007
- 29 Percent Increase from the 76th Legislature in 1999

According to the Texas Municipal League^{TML}
Legislative Update (June 11, 2009 No. 21)

"It's likely that no other American legislative body has ever filed that many bills in a biennium."

"The volume of bills was made even harder to handle by a five-day, late-session talk-a-thon in the House that prevented a voter identification bill from being considered for passage but held up dozens of other measures, as well."

The Number of Bills Passed Declined

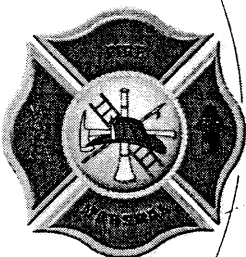
- In 2007, 23.5 Percent of Bills filed became Law
- In 2009, only 19.3 Percent became Law

Code of Criminal Procedure

- ⦿ Intended to embrace rules applicable to the prevention and prosecution of offenses
- ⦿ To make the rules intelligible to the officers who are to act under them
- ⦿ Laid out in sequence
 - Follows the timeline of a criminal action

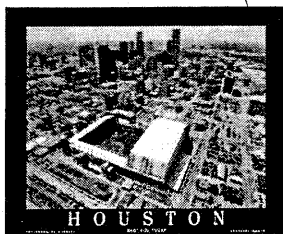
Art. 2.12 Who are Peace Officers

- ⦿ **HB 3201: County Fire Marshals designated as Peace Officers**
- ⦿ **Art. 2.12 of the CCP Continues to Grow**
- ⦿ **Adds one more Person who Can Write Citations under State Law**



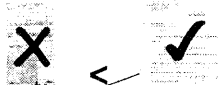
Art. 4.14 Jurisdiction of Municipal Courts

- ⦿ SB 1504
- ⦿ Concurrent Jurisdiction in Municipal Courts Contiguous to Houston
- ⦿ Also amends Art. 13.045 Boundaries of Certain Municipalities



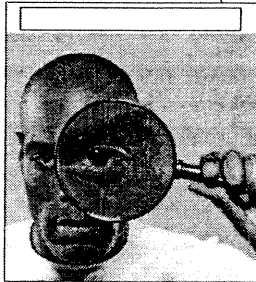
Art. 12.02 Misdemeanors

- S.B. 410: Statute of Limitations in Class C Misdemeanors
- Effective Date: September 1, 2009
- A complaint for any Class C misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward.



Citation vs. Complaint

What Are These Three Trying to Do?





They are all trying to read the fine print on your new citations.

Art. 14.06 Must Take Offender Before Magistrate

- S.B. 1236: Domestic Violence Admonishment on Citations for Class C Assault
- Amends Arts. 14.06 and 27.14 CCP 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.



Arts. 15.08, 15.09 Transmittal of Complaints and Warrants

- **H.B. 1060**
 - Effective Date: September 1, 2009
 - Amends Article 15.08 and 15.09, CCP
 - No Longer have to use Telegraph
 - "Complaint" is P.C. Affidavit, Not Charging Instrument in Ch. 45



Art. 15.17 Duties of Magistrate

- **S.B. 415: Magistrate Release Without Bail for Class C Misdemeanors and Order to Appear in Municipal or Justice Court.**
- **New Law: "Applicable Justice or Municipal Court"**
- **Old Law: Magistrate Could Release Person Arrested for Class C WITHOUT Bond and Order Appearance in "COUNTY COURT" for Arraignment.**



Art. 19.16 Absent Juror Fined

- ⦿ **H.B. 1665: Contempt for Jurors**
 - Effective Date: September 1, 2009
 - Old Range: \$10-\$100
 - New Range: \$100-\$500
 - ATTENTION - Did NOT Amend Art. 45.027, CCP (Still Capped at \$100).
 - But DID Amend Sec. 62.111, GC (Filing False Juror Exemption Claim)
 - Also affects Art. 38.02

Art. 26.13 Plea of Guilty

- ⦿ S.B. 1236
- ⦿ Domestic Violence Admonishment on Citations for Class C Assault
- ⦿ Admonishment used to have to be given by the court before accepting the plea of guilty or no contest
- ⦿ Moved to 14.06

Art. 27.14 Plea of Guilty or Nolo Contendere in Misdemeanor

- ⦿ **H.B. 1544: Guilty Pleas by Mail**
- ⦿ **Effective Date: September 1, 2009**
- ⦿ **Origin: Class C Defendant Wanting to "Plea Out" Forced to Appear after Not Mailing Plea in a Timely Manner**
- ⦿ **Defendant May Plea Out by Mail Without Appearance as long as not within 5 Days of Trial**
- ⦿ **No Effect on Prosecution of FTA or VPTA**



Art. 27.14 Also amended by...

- ⦿ S.B. 413: Mandatory Filing of Complaints upon Non Appearance
- ⦿ Effective Date: September 1, 2009
 - What Triggers Mandatory Filing of a Complaint?
 1. A Plea of Not Guilty (Already Law) OR
 2. Failure to Appear on the "Written Notice" (i.e. Citation) (New Law)
- ⦿ How many of you already do this?

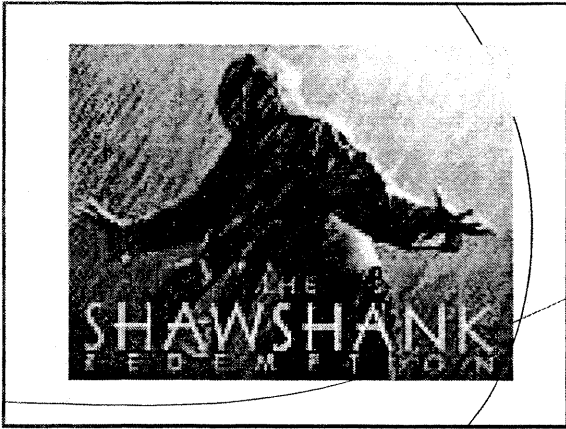
Art. 35.01 Jurors Called

- ⦿ H.B. 1665: Contempt for Jurors
- ⦿ Jurors not present when called for trial may be fined not less than \$100 nor more than \$500
- ⦿ Old law: may be fined not exceeding \$50



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

- ⦿ H.B. 1360: Application of PIA
- ⦿ Release of info by state attorney to defense counsel for prosecution purpose is not considered a voluntary release of info to the public
- ⦿ Eliminates potential conflicts between the release of files and PIA



Art. 38.075 Corroboration of Certain Testimony Required

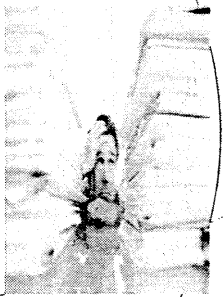
- ⦿ S.B. 1681
- ⦿ Prohibits conviction of a defendant based solely on the testimony of a fellow inmate
 - When defendant makes statement against interest while imprisoned or confined in the same correctional facility
- ⦿ Applies to any case without judgment entered on 9/1/09

Journalist Privilege in Criminal Proceedings

- ⦿ H.B. 670
- ⦿ Adds Arts. 38.11 and 38.111
- ⦿ Cannot compel a journalist to testify about, produce, or disclose:
 - ANY unpublished info, document, or item obtained while acting as journalist
 - The source
- ⦿ Cannot compel communication service provider

Art. 42.01 Judgment/Art.42.037 Restitution

- ⦿ **H.B. 4464: Confidential Victim Information in Restitution Provision of a Judgment**
- ⦿ **Provides an Alternative to Redaction before Public Inspection**
- ⦿ **Intended to Reduce Workload of the Clerks**



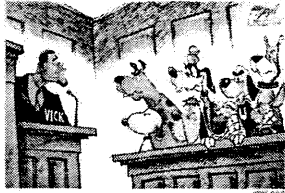
Art. 43.03 Payment of Fine
Art. 45.046 Commitment

- ⦿ **S.B. 414: Commitment Hearings for Capias Pro Fine by Electronic Means**
Effective Date: September 1, 2009
- ⦿ **For purposes of a hearing described by Subsection (a), a defendant may be brought before the court in person or by means of an electronic broadcast system through which an image of the defendant is presented to the court.**
- ⦿ **"Electronic Broadcast System" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.**

Art. 55.011 Right of Close Relative to Seek Expunction on Behalf of Deceased Person

- ⦿ **Tim Cole, wrongly convicted and imprisoned. Died in prison.**
- ⦿ **DNA evidence proved his innocence in 2008.**
- ⦿ **If entitled to expunction under Chapter 55, relative may file ex parte petition**

Appeal of Animal Cruelty Determinations
Sec. 821.05, H.S.C.



S.B. 408: Effective September 1,
2009

Section 11:

1. Allows a Determination of Animal Cruelty and Divestment of Ownership by a Municipal or Justice Court to be Appealed to a County Court;
2. Requires that the Municipal or Justice Court Provide a Transcript of the Court's Proceeding regarding the Divestment of Ownership to the County Court within 5 Days of Notice of an Appeal; and
3. Requires the County Court to Dispose of the Appeal within 10 Days of Receiving the Transcript

Public Intoxication of Children

- ⊙ HB 558 changes the game
- ⊙ Currently, Municipal and Justice Courts have jurisdiction over quite a few alcohol-related offenses involving minors
 - Purchasing, possessing, or consuming
 - DUI
- ⊙ But, no jurisdiction over the Public Intoxication of Children!
- ⊙ Starting September 1, 2009, it all changes...

Public Intoxication of Children

- ⦿ HB 558, continued
- ⦿ Public Intoxication currently has to be referred to the juvenile court system
 - Due to heavy juvenile dockets in many counties, juveniles are sometimes never charged with a crime and suffer no consequences
- ⦿ Upon passage, municipal courts will have jurisdiction over PI
- ⦿ §8.07, Penal Code is changed allowing a child under 15 to be prosecuted and

Public Intoxication of Children

Adults Charged with PI	Children Charged with PI
<ul style="list-style-type: none"> ⦿ May be released under Art. 14.031, CCP <ul style="list-style-type: none"> • Detention is unnecessary and individual is released to an adult who assumes responsibility (OR admission into dependency program) ⦿ May NOT be issued a citation under Art. 14.06, CCP 	<ul style="list-style-type: none"> • May NOT be released under Art. 14.031, CCP • May be released to child's parent, guardian, custodian, or other responsible adult under Art. 45.058, CCP • May be issued a citation upon release to parent, guardian, custodian, or other responsible adult under Art. 45.058

Thank You for Your Attention
