

Legislative Update – 84th R.S.

By David Slayton

Administrative Director, Texas Office of Court Administration

Executive Director, Texas Judicial Council

OFFICE *of* COURT ADMINISTRATION



New Courts

- Every session, analysis of need for new courts
- Uses 2007 weighted caseload study - <http://www.txcourts.gov/media/868706/Weighted-Caseload-StudyFinal-Report-July-7-08.pdf>
- Currently updating CPS caseload weight
- SB 1139 – 7 new district courts, 5 new CCAL
 - DC - Collin (2), Coryell, Ector, Kendall, Ft Bend, Harris
 - CCAL – Cameron (2), Collin, Ft Bend, Harris



Criminal Procedure

- HB 326 – sworn statement for search warrant can be accepted by phone or other reliable electronic means
- HB 518 – incarcerated defendant can waive hearing on motion to revoke probation in writing before notary public; no need to go before judge anymore
- HB 643 – surety can file motion to discharge bail when case isn't filed within 180 days
- HB 904 – defendants sentenced to <10 years can be transferred to TDC immediately
- HB 1396 – trial priority to criminal trials with victims under 14 over other civil and criminal trials



Criminal Procedure (cont)

- HB 1546 – requires judge to determine, at sentencing, whether felony defendant is presumptively eligible for diligent participation credit (on judgment)
- HB 1930 – community justice councils no longer required (allowed), strategic plans now required for probation
- HB 2159 - restitution required for FV cases when committed in presence of child under 15
- HB 2286 – human trafficking victims eligible for nondisclosure
- HB 2499 – bail bonds can be eFiled
- HB 3633 – orders for repayment of attorney fees on probation must be subject to ability to pay at time of order; actual costs only



Criminal Procedure (cont)

- SB 316 – priority to appoint public defender
- SB 737 – emergency protection orders and family protective orders must be sent to law enforcement not later than next business day; clerk to send to victim not later than next business day (electronic allowed)
- SB 1071 – clerk required to provide copy of order setting execution date to defense attorney and office of capital writs within 2 days or execution date could be reset
- SB 1139 – telephonic interpreters allowed in any criminal law proceeding
 - <http://www.txcourts.gov/tcris.aspx>
- SB 1326 – judge must credit defendant with time in jail when considering time in competency restoration
- SB 1474 – vet court eligibility expanded



Out of County Arrests – Appointing Attorney – SB 1517

- Magistrate must transfer request for counsel to other county within 24 hours of request
- Appointing authority must appoint counsel timely from request
- If defendant not transferred and no appointment made within 11 days, arresting county must appoint
- County that issued warrant must reimburse arresting county



Court Costs, Fines, Fees and Collections

- HB 121 allows immediate payment by credit/debit card on past due amounts when capias pro fine is served
- SB 287 – defendant must be provided with written and signed bill of cost before costs are payable
- SB 740 – courts costs paid once per case, not once per count
- Several changes in court costs effective 1/1.



Nondisclosure – SB 1902

- Expands eligibility for nondisclosure
 - Including those **convicted** of certain misdemeanors
- Allows order without filing of petition in dismissed cases or discharged from deferred for certain misdemeanors
 - Does not apply to certain offenses, those with previous convictions or deferred (except traffic), or if not in best interest of justice
 - Defendant must pay \$28



Competency Restoration Procedures

- HB 211 – Resuming case after competency
 - After defendant returns to court, court must notify prosecutor and defense attorney
 - Within three days of notice, defense attorney must meet with defendant to see if restored competency
 - In counties with less than 1 million or more than 4 million, - timeframe is as soon as practicable.
 - Judge has to make determination of competency within 5 days of defendant's return (or within 20 days of notice of regained competency)
 - <1 mill or >4 mill just 20 days
 - Case to resume within 14 days of finding of restoration (or as soon as practicable - <1 mill or >4 mill)



Civil Commitment of Violent Sex Offenders – SB 746

- Previously, all cases heard in one court in Montgomery County
- Petition to commit now to be filed in convicting court
- Court has 270 days to hear it, but must be before sentence discharge date
- Attorneys appointed locally and paid locally



Juries

- HB 2159 – grand jury commissioner system abolished; 12 jurors with 4 alternates required using system similar to petit jurors



Family Law

- HB 825 – judges must ask about child's Native American heritage in CPS cases
- HB 3003 – authorizes public defense and managed assigned counsel offices for CPS cases
- SB 1929 – required clerk to transfer CPS cases to new court within 10 days of order; receiving court can keep same AAL and GAL or make new appointments
- SB 1931 – judge required to inform us represented parent in CPS case, at first hearing, of right to representation and appointed counsel; court can appoint temporary AAL until finding of indigency



Judicial Bypass – HB 3994

- Minor seeking abortion without parental consent required to obtain judicial authorization to do so
- Attorney ad litem and guardian ad litem must be different
- Venue is in county where minor lives, unless parent is judge or if population is less than 10k
 - Otherwise the case can be filed in contiguous county or where minor intends to obtain abortion
- Standard of proof changed from preponderance to clear & convincing and adds factors to consider
- Court must rule within 5 days (currently two) and automatic grant is removed
- Information on cases must be reported to OCA



Probate/Guardianship

- HB 39 – alternatives to guardianship; additional training for attorneys; physician's certificate with information on improvement; notice before moving ward; supported decision-making agreement
- HB 1438 – numerous changes to guardianship
 - Bond on transfer
 - Temporary guardianships expire after 180 days
- HB 2665 – relatives of ward can file application for access, visitation or communication
- SB 512 – simple probate forms coming
- SB 1139 – county clerk can serve as clerk in contested and uncontested probate and guardianship matters
- SB 1882 – ward's bill of rights



Ad Litem Appointments – SB 1876

- All courts with population over 25k required to establish lists of **qualified** and **registered** attorneys ad litem, guardians ad litem, mediators and guardians
 - Can be per court or per county (managed by LAJ)
- Judge has to appoint next person on list and then move that person to end of list
 - Exemptions for mediators in county-established ADR
 - Domestic Relations Office
 - GAL under Family Code 107.031
 - Family member or friend guardians
- If parties agree and approved by court, not required
- Good cause deviation allowed in certain instances
- Must post list at courthouse and website
- <https://www.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2015/pdf/RQ0060KP.pdf>



Ad litem Payment Reporting – SB 1369 (effective 9/1/16)

- Clerks required to report appointment and fee information on attorney ad litem, guardian ad litem, guardians, mediators and competency evaluators to OCA monthly
- Detailed information required:
 - Name
 - Name of judge and date of order approving compensation
 - Case number and style
 - Number of cases appointed
 - Total compensation paid and source of compensation
 - If over \$1,000, total number of hours billed (if available)
- Report must be posted at courthouse and on website
- Failure to report = no grants



Juvenile

- HB 263 and SB 1707 – judge required to seal juvenile records, even if no application
- HB 2398 – repeals criminal offense of failure to attend school and juvenile offense of truancy; replaces with civil offense of truant conduct
 - Cases may come to juvenile court if child fails to comply with JP/municipal court – contempt
- SB 888 – appeal of certification of juvenile as adult allowed; doesn't stay the case
 - <http://www.txcourts.gov/media/1055398/159156.pdf>



Judicial Administration

- HB 1306 – court reporters can claim mileage at county rate (not \$0.25 per mile)
- SB 1116 – all notices or documents may be sent by clerk or judge by eFiling system or email, even if statute says mail (except when proof of delivery required by statute like certified mail)
- SB 1913 – court administrator system authorized in all counties with more than one district court or CCAL



Miscellaneous

- SB 455 – three judge court allowed in redistricting or school finance cases
- HB 48 – Timothy Cole Exoneration Review Commission
 - <http://www.txcourts.gov/organizations/policy-funding/timothy-cole-exoneration-review-commission.aspx>
- HB 910 – open carry
 - <https://www.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2015/pdf/RQ0040KP.pdf>

