

2021 Legislative Updates – Civil Process

Texas Justice Court Training Center

1

Funded by a Grant from the Texas Court of Criminal Appeals

© Copyright 2021. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd; Suite 530, Austin, TX, 78744.

2

TJCTC
Constable
Resources
Available
to You!

Practical Guide to
Writs of Execution

Civil Process Field
Guide

Legal Calls

Legal Question
board

Updated Forms

Self-Paced Courses
– New to the
Constables Office
(more coming soon)

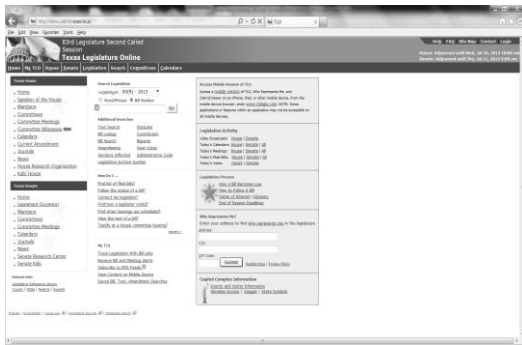
3

Texas Legislature Online

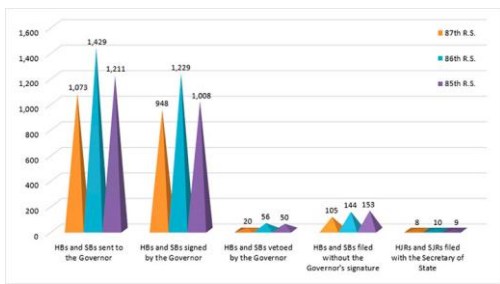
- www.capitol.state.tx.us
- Look up Bills and Bill Analysis
- Track Bills
- Search by Subject
- Search by Author
- Search Texas Statutes & Constitution
- See "How to Use Texas Legislature Online" handout if you need a reminder later

4

Legislative Research



5



6

Bill Effective Dates

All bills, unless otherwise noted, take effect on September 1, 2021.

7

Civil Process & Civil Courts

8

HB1012 Property Retrieval

- A person applying for a writ to enter a residence or former residence to retrieve personal property must apply in the court where the parties have a pending suit, or in the court where a separation or divorce decree was adjudicated, or if neither of those apply, a justice court.
- Items the person can apply for a writ to recover has been expanded to now include service animals, wireless communication devices, and tools, equipment, or books used by the person's trade or profession.

9

HB3165

Juveniles

- Amends the Family Code to establish an affirmative defense to an allegation of truant conduct in cases where one or more of the absences is due to the child's voluntary absence from the child's home because of abuse, as shown by a preponderance of the evidence.
- This applies beginning immediately with the 2021-2022 school year.

10

10

Constables

11

HB1049

Oath of Office

- Relates to the requirement for a deputy sheriff or constable and taking an official oath of office that expires on December 31st at midnight.
- It clarifies law enforcements authority for Constables in the gap until they can reasonably be sworn in for a new term.

12

12

Protective Orders

13

HB39 Protective Orders

- With respect to protective orders (PO) in the Code of Criminal Procedure (CCP), victims of PC 20A.02, 20A.03, 43.05 are now included in the list of victims eligible to file for a PO.
- Additionally, an adult acting on behalf of a person younger than 18 years of age, or an adult ward may file for a PO for any of the offenses listed in CCP 7B.001(a)(1).
- If a PO has not been filed in any of the offenses listed in CCP 7B.001(a)(1), the ADA shall file for a PO on behalf of the victim, unless the victim, who is 18 years of age or older and not an adult ward, requests that the ADA not file for the PO.

14

14

HB39 Protective Orders

- New **conspicuous language** is added to the existing language that informs the subject of the PO that if the subject is released from jail after the PO has expired then the PO is automatically extended. Additionally, an agreed upon PO is enforceable both criminally and civilly regardless if the court finds that a PO is needed.
- Among other things, HB 39 also requires that on receipt of information pertaining to the date of confinement or imprisonment or date of release of a person subject to the protective order, a **law enforcement agency enter the information along the same timelines as protective orders**

15

15

HB1372 Courts and Protective Orders

- A person who is a primary user of a wireless phone number may request that a court include in a protective order (PO) for that person, an order to separate the person's wireless number and, if applicable, children's wireless numbers from the wireless service under the name of the subject of the PO.
- If approved, the court shall issue an order to a wireless company to separate all listed phone numbers in the order to an account under the person's name.

16

16

HB3607 Crime Victims/PO

- Makes several conforming and non-substantive additions to, revisions of, and corrections in enacted codes. **This bill is essentially a 160 page clean up document to ensure that changes are codified correctly in the various statutes.**
- The areas pertaining to the Code of Criminal Procedure are most relevant for law enforcement and contained in the following bill sections:

17

17

HB3607 Crime Victims/PO

- Section 4.002 et seq of the bill addresses protective orders.
- This includes addition of **indecent assault victims** as eligible for a protective order under CCP art. 7B.001 and 7B.002.
- The bill also amends the law to allow a prosecutor to file an application for a protective order on behalf of a victim of any applicable crime following the offender's conviction or placement on deferred adjudication community supervision.
- Furthermore, an offender's conviction or placement on deferred adjudication will now constitute reasonable grounds for a court to believe the applicant for a protective order is a victim.

18

18

HB3607

Crime Victims/PO

- Section 4.008 of the bill adds **indecent assault** to the crimes for which rights are provided to victims, along with sexual assault, stalking, and trafficking.
- In addition, this section changes the time in which a forensic medical exam may be requested from 96 hours to **120 hours**.

19

19

HB3607

Crime Victims/PO

- Section 4.010 amends Art. 56A.251 regarding required documentation by law enforcement regarding requests for forensic medical exams.
- The bill also amends Art. 56A.252 regarding payment of cost of the exam and moves the burden from law enforcement.

20

20

HB3607

Crime Victims/PO

- Sec. 4.013 of the bill amends Art. 56A.306 regarding the procedures for transfer and preservation of evidence from a forensic medical exam and changes the retention to five years rather than two (or the date provided in written consent) and provides guidelines for handling and destruction of the evidence.
- Sec 4.014 includes **online promotion of prostitution** offenses in the definition of trafficking for the purposes of crime victims' compensation.

21

21

Offenses & Criminal Courts

22

HB9 Obstructing Highway

- Enhances the punishment for PC 42.03 Obstructing Highway or Other Passageway to a State Jail Felony (from a Class B) if the actor knowingly prevents the passage of an emergency vehicle with its lights or sirens on or obstructs access to a hospital or health care facility that provides emergency care.
- Additionally, a court that grants community supervision to an actor convicted with a SJF under PC 42.03 **must require the actor spend 10 days or more in county jail** as part of the community supervision. While originally intended to address riots, this new law may also be applicable for other law enforcement operations, such as street takeovers and street racing.

23

23

HB624 Police Officer Provisions

- HB 624 increases the punishment for certain criminal offenses if the offense was committed against someone the defendant knew was a public servant or a member of a public servant's family or household or if the offense involved property that the defendant knew belonged to a public servant, and the offense was committed in retaliation for the service or status of the person as a public servant.

24

24

HB624 Police Officer Provisions

- The increased punishments apply to Penal Code sections:
 - 21.16 (Revenge Porn),
 - 21.18 (Sexual Coercion),
 - 21.19 (Unlawful Transmission),
 - 22.011 (Sexual Assault),
 - 28.02 (Arson),
 - 28.03 (Criminal Mischief),
 - 30.05 (Criminal Trespass),
 - 33.02 (Breach of Computer Safety),
 - 42.07 (Harassment), or
 - 42.072 (Stalking); or
 - an offense under Section 32.51 (Fraudulent Use/Possession ID).

25

25

SB530 Harassment

- Attempts to **update the offense of harassment** by including indirect communication posted openly on social media platforms.
- The bill amends Penal Code 42.07 to include repeated electronic communications published on an internet website (including social media platform) in a manner reasonably likely to cause emotional distress, abuse, or torment to another person as harassment, unless made in connection with a matter of public concern.

26

26

SB530 Penal Code

- The offense is a Class B misdemeanor but is enhanced to a Class A if committed against a child with intent that the child commit suicide or engage in conduct causing serious bodily injury or if the actor has previously violated a temporary restraining order or injunction related to cyberbullying.

27

27

HB558

Blood Speciman

- If a defendant **refuses to consent** to provide a specimen related to a motor vehicle or watercraft DWI arrest involving the defendant, a peace officer may not require the taking of a specimen without a search warrant or probable cause to believe exigent circumstances exist.
- If an **accident occurred** at the time the defendant is suspected of the DWI and a person died, will die, or suffered SBI, and the defendant has refused to provide a specimen, then the peace officer shall take a specimen of the defendant's blood. Aside from the instance referenced above regarding an accident resulting in death or SBI, a peace officer shall designate the type of specimen to be taken.

28

28

HB1694

Narcotics

- HB 1694 creates a defense to prosecution for certain drug offenses for individuals seeking medical assistance for another person who may be experiencing a drug overdose and for the victim of the possible overdose.
- The defense applies to multiple Health and Safety Code drug offenses relating to possession of up to four ounces of marijuana and small amounts of drugs in Penalty Groups 1, 1-A, 2, 2-A, 3, and 4.

29

29

HB1694

Narcotics

- It also applies to controlled substances listed in a schedule but not in a penalty group, drug paraphernalia, a dangerous drug without a prescription, and certain actions relating to abusable volatile chemicals.

30

30

HB1694

Narcotics

- The defense is available to an individual who:
 - was the victim of a possible overdose and the request was made by the victim or another person during an ongoing medical emergency; or
 - was the first person to request emergency medical assistance in response to the possible overdose of another and made the request during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel

31

31

HB1925

Camping Ban

- Creates a new criminal offense for a person to **intentionally or knowingly camp in a public place**: Penal Code sec. 48.05, Prohibited Camping.
- A person commits an offense of prohibited camping if the actor intentionally or knowingly camps in a public place without the effective consent of the owner or agency that controls the public space.

32

32

HB1925

Camping Ban

- This is a Class C offense.
- If there is not an imminent threat to the health and safety of the actor or another, a peace officer must make a reasonable effort to advise the actor of a lawful camping location and contact the political subdivision where the camping is taking place to request materials to give to actor about human trafficking and other services that may help reduce the reoccurrence of this offense.

33

33

HB1925

Camping Ban

- If a peace officer arrests an actor for public camping, the officer must allow for the actor to remove the actor's personal property or must take control of the personal property until the actor is released from jail.
- A local entity is prohibited from prohibiting or discouraging the enforcement of any public camping ban.

34

34

HB1925

Camping Ban

- A political subdivision must create a plan and have it approved to designate public areas as public camping areas.
- A political subdivision may not make a rule, law, ordinance, etc., that prohibits a public camping ban.
- This law does not affect recreational camping.

35

35

HB2366

Laser Pointers

- Amends Penal Code 42.13, **Use of Laser Pointers**, to increase penalty to a third-degree felony if it causes bodily injury to the officer and to a first-degree felony if it causes serious bodily injury to the officer.
- Also creates a new chapter in the Penal Code regarding **"unlawful use of fireworks."** The bill establishes that a person commits a criminal offense if the person explodes or ignites fireworks with the intent to interfere with the lawful performance of an official duty by a law enforcement officer or to flee from a person the actor knows is a law enforcement officer attempting to lawfully arrest or detain the actor.

36

36

HB2669 Child Criminal Records

- Amends Code of Criminal Procedure Arts. 44.2811 and 45.0217, both of which relate to the confidentiality of a child's criminal records, by removing repeated language and clarifying that a child's criminal records related to fine-only misdemeanor offenses, other than a traffic offense, are confidential.

37

37

SB1056 Swatting

- Creates a criminal penalty for "**swatting**." Swatting is the **act of falsely reporting an emergency or crime to law enforcement or emergency service** with the intent of having an emergency response deployed to a specific location.
- Creates Penal Code sec. 42.0601, "False Report to Induce Emergency Response," such that is a Class A misdemeanor if a person knowingly makes a false report that causes an emergency response from a law enforcement agency or other emergency responder and in making the report the person is reckless with regard to whether the emergency response may directly result in bodily harm to another person.

38

38

SB1056 Swatting

- It is a third-degree felony if the false report was of a criminal offense and a person suffered serious bodily injury or death.
- A case may be prosecuted in any county where defendant lives, the false report was made, or the law enforcement agency responded.
- Additionally, a court may order a person convicted of this offense to make restitution to an entity for the reasonable costs of the emergency response.

39

39

HB4293 Court Reminder Program

- Requires the Office of Court Administration (OCA) to develop and make available to each county a “**court reminder program**” allowing the county to send a text message notifying criminal defendants of scheduled court appearances.
- It also authorizes the judges of the county courts and district courts to send text message reminders.

40

40

HB4293 Court Reminder Program

- Further, it allows these courts to partner with cities and local law enforcement agencies to allow: 1) individuals to whom a peace officer issues a citation and releases to receive text message reminders of scheduled court appearances; and 2) criminal defendants in municipal court to receive text message reminders of scheduled court appearances.
- Any city that partners with the OCA must pay all costs of sending reminders to municipal criminal defendants, including the costs of linking the municipal court database with the state court administrator database.

41

41

SB1923 Court Costs

- Amends current law relating to certain criminal court costs, fines, and fees. In addition, the bill establishes that the definition of “**conviction**” for the purposes of criminal court costs includes:
 - 1) a judgment, a sentence, or both a judgment and a sentence imposed on a person;
 - 2) community supervision, deferred adjudication, or deferred disposition; or
 - 3) when the court defers final disposition of the case or imposition of the judgment and sentence.

42

42

Traffic & Transportation Code

43

HB1281

Golf Carts

- A person may operate a golf cart:
 - 1) in a master plan community that is defined by Sec. 209.002 Property Code and has one or more plats approved;
 - 2) on a public or private beach open to vehicular traffic; and
 - 3) on a highway where the posted speed limit is 35 mph or less and is not more than 5 miles from where the golf cart is usually parked. A golf cart driven on a highway where the posted speed limit is 35 mph or less within a master plan community may be operated without a golf cart license plate.
- Effective Immediately

44

44

SB1055

Crosswalks

- Attempts to clarify law regarding pedestrian use of crosswalks.
- The bill amends the Transportation Code to create a Class A misdemeanor offense for a person who, with criminal negligence, operates a motor vehicle within the area of a crosswalk and causes bodily injury to a pedestrian or a person operating a bicycle, motor-assisted scooter, electronic personal assistive mobility device, neighborhood electric vehicle, or golf cart.

45

45

SB1055

Crosswalks

- The bill enhances the penalty for the offense to a state jail felony if the victim suffered serious bodily injury.
- The bill establishes as an affirmative defense to prosecution for the offense that the person suffering bodily injury was violating rules of the road relating to walking, movement, or operation in a crosswalk or on a roadway.
- In addition, the bill amends other sections of the Transportation Code to require that a vehicle stop, in addition to yielding, for a pedestrian in a crosswalk.

46

46

SB1495

Street Racing

- Addresses street racing and street takeovers by changing laws related to obstructing a highway or passageway and by creating a new traffic offense intended to address spectators at these events.
- Section 1 of the bill creates a Class A penalty for **obstructing a highway or passageway when engaged in "reckless driving exhibition."**
- A **"reckless driving exhibition"** is defined to address "donuts" (intentionally breaking traction with rear wheels, spinning tires, and steering in a manner to rotate the vehicle) when done in front of two or more people assembled to watch.

47

47

SB1495

Street Racing

- It is a State Jail Felony for a second conviction, or the driver was intoxicated at the time or causes bodily injury.
- Section 2 of the bill creates a new criminal offense in the Transportation Code titled **"Interference with Peace Officer Investigation of Highway Racing or Reckless Driving Exhibition."**
- It is a Class B misdemeanor if a person knowingly impedes an officer's investigation of a reckless driving exhibition or street racing by using the person's body, car, or a barricade.

48

48

HB1693 Financial Responsibility Verification

- Relates to access to the financial responsibility verification program (TexasSure database) for verification only, by justice and municipal courts to verify financial responsibility.
- Effective immediately.
- Judges and court staff can access this information through TLETS. Please share the handouts explaining how to access the TexasSure information through TLETS with your court if they need assistance.

49

49

HB3927 Temporary Tags

- An attempt to address the fraudulent use of temporary tags, used on vehicles to mask certain criminal activity, including stolen vehicles, kidnappings, and other crimes.
- Allows TxDMV with the ability to manage the temp tag database and the authority to deny access to the database by dealers who may appear suspicious by printing large numbers of tags.

50

50

HB3927 Temporary Tags

- Also amends Transportation Code 503.067 to specify that a person may not operate a vehicle that displays a temporary tag in violation of laws governing vehicle registration or dealers' and manufacturers' vehicle license plates and removes the ability of a printer or distributor to engage in the business of selling temporary tags.

51

51

Alcohol & Narcotics

52

HB1518 Retail Alcohol Sales

- Changes the time to begin the retail sale of beer and wine on Sundays from **noon to 10:00am**.
- Also authorizes hotel bars to sell alcoholic beverages at any time to a registered guest of the hotel and authorizes individuals who are registered guests of a hotel to consume or possess alcoholic beverages at any time in the hotel bar.

53

53

HB1535 THC

- Among other things related to the program, HB 1535 expands patient eligibility for low-THC cannabis prescriptions under the Texas Compassionate Use Act.
- In addition to previously authorized patients, certified, licensed physicians may now prescribe low-THC cannabis to patients diagnosed with cancer, PTSD, and a medical condition approved for certain authorized research programs.

54

54

SB1125

Narcotics

- Makes it easier for law enforcement agencies, crime labs and justice agencies to dispose of drug evidence without a court order.
- It specifies how to preserve samples for future needs and testing and documentation necessary for disposal and/or destruction to occur without a court order.

55

55

SB1125

Narcotics

- This is crucial because one of the biggest bottlenecks in the destruction pipeline is that court order.
- This would allow for agencies to do their research, preserve small samples along with documentation of the original and more efficiently dispose of the bulk evidence.

56

56

Warrants & Bonds

57

HB766

Conditions of Bond

- Requires that "conditions of bond" for defendants released on bond for violent crimes defined by Art. 17.50 of the CCP be entered into TCIC by the Sheriff's office.
- This must be done by the next business day the sheriff's office receives bond information by the magistrate.

58

58

HB766

Conditions of Bond

- The sheriff's office must make a good faith effort to contact any named person the bond intends to protect.
- The sheriff's office is also responsible for entering into TCIC any bond changes as well as removing conditions of bond within one business day of receipt of the information from a magistrate.

59

59

SB1047

Blood Specimen

- This bill is intended to address concerns regarding the validity of collecting a blood specimen in alcohol-related driving offenses in which a warrant is issued in one county, while the blood draw is taken in a separate, neighboring county (such as in municipalities located in more than one county.)

60

60

SB1047

Blood Specimen

• Allows a warrant for a blood specimen in intoxication offenses to be executed in any county adjacent to the county in which the warrant was issued and by any law enforcement officer authorized to make an arrest in the county of execution.

• The property (blood) may be removed from the county in which was seized and returned to the county in which the warrant was issued without a court order.

61

61

Firearms

62

SB20

Hotel Gun Policy

• Prohibits a hotel from adopting a policy that prohibits a hotel guest from:

- 1) carrying or storing a handgun or ammunition in the guest's room or in the guest's vehicle on hotel property or
- 2) carrying a handgun or ammunition directly en route to or from the hotel or the guest's room or to or from the guest's vehicle located on the hotel property.

63

63

HB29 Secure Weapon Storage

- Allows a political subdivision to provide a person temporary secure weapon storage when entering a building or portion of a building used by the political subdivision that is generally open to the public and in which carrying a firearm, knife, club or other weapon is prohibited by state law or the political subdivision.

64

64

HB29 Secure Weapon Storage

- The bill allows weapon storage to be provided via self-service weapon lockers or other temporary secure weapon storage operated at all times by a designated employee of the political subdivision.
- The bill further allows a political subdivision to collect a fee of not more than \$5 for the use of the temporary secure weapon storage and addresses how a political subdivision must handle an unclaimed weapon.

65

65

HB957 Firearm Silencer

- Removes "firearm silencer" from the list of prohibited weapons in Penal Code sec. 46.05 so that it is no longer an offense to possess a silencer.
- Additionally, a firearm suppressor that was manufactured and remained in Texas is not subject to federal law or federal regulation.

66

66

HB957

Firearm Silencer

• A “firearm suppressor” is defined as any device designed, made, or adapted to muffle the sound of a firearm and is “manufactured in this state” if it was made in Texas with basic materials and does not include materials from another state other than a generic and insignificant part.

• A firearm suppressor manufactured in this state for sale must have the words “Made in Texas” stamped onto it.

67

67

HB957

Firearm Silencer

• A firearm suppressor manufactured in this state is not subject to federal law.

• No state or local entity may adopt a law, rule, ordinance etc., or, by consistent action, allow the enforcement of a federal rule, law, statute etc., that purports to regulate a firearm suppressor if it does not also exist under Texas law.

68

68

HB957

Firearm Silencer

• An entity found in violation of this section shall be denied state grant funds for the next fiscal year.

69

69

HB1069

First Responders

- This bill pertains to actions made by first responders and volunteer emergency services personnel and refers to Penal Code 46.01 for the definitions.
- For the purpose of the affected sections by this bill, a first responder is not a peace officer or reserve law enforcement officer.

70

70

HB1069

First Responders

- A first responder or volunteer emergency services personnel who discharges a handgun is outside the scope or the duties of that profession and the employing agency is not liable for the actions.
- DPS shall develop a training program for first responders that or employed by a municipality under Chap. 179, Local Government Code. A certificate may be issued when training is complete to allow the first responder to carry a handgun while employed.

71

71

HB1069

First Responders

- An employing agency may not prevent a first responder from carrying a handgun but may limit based on certain factors.
- A first responder may only discharge a handgun while on duty if in self-defense.
- Additionally, it is a defense to prosecution to PC Trespass by License Holder that the first responder had an unexpired certificate from DPS, was engaged in first responder duties, and employed by the agency.

72

72

HB1407

Handgun Visibility

• Creates a new exception to Sec 46.035 Penal Code, offense of **allowing a handgun to be in plain view of another in a public place**.

• The new exception is if the LTC holder, while in a vehicle, allows the handgun to wholly or partially visible while the handgun was in a holster.

73

73

HB1500

State of Emergency

• Specifies that a declared state of emergency does not authorize any person from prohibiting or restricting businesses related to firearms.

• This includes restrictions or prohibitions on the sale, dispensing, or transportation of firearms and explosives or combustibles that are components of firearm ammunition.

74

74

HB1500

State of Emergency

• Local municipalities are also prohibited from regulating firearms and other arms during a riot, insurrection, or natural disaster for public health & safety.

75

75

HB1927

Permitless Carry

- Authorizes most Texans over 21 years of age to carry a handgun in a concealed manner or openly in a holster, without the requirement to first obtain a handgun license.

76

76

HB1927

Permitless Carry

- It does so by modifying language in the Texas Penal Code to make it a crime to carry "on or about his or her person a handgun" only if he or she
 - "is younger than 21 years of age" or
 - "has been convicted of, in the five-year period preceding the date the instant offense was committed:" (*offenses on the next slide*)

77

77

HB1927

Permitless Carry

1. **Assault causing bodily injury**, including to their spouse;
2. **Deadly conduct**, including discharging a firearm at persons, a habitation, a vehicle or a building;
3. Making a **terroristic threat**; or
4. **Disorderly conduct** by: (a) discharging a firearm in a public place other than a public road or a sport shooting range; or (b) displaying a firearm or other deadly weapon in a public place in a manner calculated to alarm.

78

78

HB1927

Permitless Carry

- A peace officer may disarm an individual at any time the officer reasonably believes it is necessary for safety. The officer must return the handgun when discharging the individual.
- Additionally, the charge regarding being a member of a street gang and unlawfully carrying a weapon has been removed (placed into a different section of the PC).
- **Unlawful Possession of a Firearm** has been amended to add that a member of a criminal street gang commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft.

79

79

HB1927

Permitless Carry

- A peace officer may disarm an individual entering a secure, nonpublic portion of a law enforcement facility if the agency provides a secure location for the handgun.
- The officer must return the handgun as soon as the person leaves the secure, nonpublic portion of the facility.

80

80

HB1927

Permitless Carry

- A person is entitled to have their **Unlawful Carry of a Weapon** conviction and all records and files expunged if the conviction was before 09/01/2021.
- DPS must develop and post to their website a firearms safety course that is free of charge to any person who would like to view it.
- DPS can no longer revoke a LTC permit for being convicted of unlawful carrying of a handgun by an LTC holder.

81

81

HB1927

Permitless Carry

- Foster parents may now carry a handgun, in a holster, in their motor vehicles without an LTC if they are not prohibited from possessing a handgun by any other law.
- A municipality may not regulate a handgun carried by a person, who is not prohibited by law to carry a handgun, at a public park, a public meeting, a political rally, a parade, a school, college, or professional athletic event.

82

82

HB1927

Permitless Carry

- Businesses may post signs that state firearms are prohibited on the premises.
- A violation by an actor who goes onto the premises with a posted sign is a Class C offense.
- If shown at trial that notice was personally given to the actor that the firearm is prohibited and the actor does not depart the premises, then it is a Class A offense.

83

83

HB1927

Permitless Carry

- Added to Unlawful Carry of a Weapon are the offenses of
 - 1) intentionally displaying a handgun in plain view of another, except if secured in a holster,
 - 2) carrying a handgun while intoxicated and is not on the actor's property or en route to a motor vehicle or boat or coming from a motor vehicle or boat, and
 - 3) carries a handgun other than en route to or from a motor vehicle or boat and the actor was prohibited from possessing a firearm under Sec. 46.04 (a), (b), or (c).

84

84

HB1927

Permitless Carry

- It is a 2nd degree felony if the person commits UCW while prohibited from possessing a firearm by 46.04(a).
- It is a 3rd degree felony if the person commits UCW while prohibited from possessing a firearm by 46.04(b) or (c).

85

85

HB1927

Permitless Carry

- A person may not possess a firearm on the premise of a business that has more than 51% of sales from alcohol, on a premise where a high school, college or professional sporting event is taking place, on the premise of a correctional or civil commitment facility, of the premises of a hospital, a nursing facility, a mental hospital, on the premises of an amusement park, in the rooms of an open governmental meeting (if notice is provided).

86

86

HB2112

Sholder/Belt Holster

- HB 2112 revises offenses in the Penal Code relating to an openly carried handgun by a licensed handgun owner by removing the specification that the holster is shoulder or belt holster.
- This bill strikes "shoulder or belt" from the statutes that describe a holster, allowing a person to use any type of holster for openly carrying a gun in Texas.

87

87

SB550

Sholder/Belt Holster

- Strikes "shoulder or belt" from existing statutes describing a holster, allowing a person to use any type of holster for properly carrying a gun in Texas.

88

88

HB2622

Sanctuary State Act

- Creates the Second Amendment Sanctuary State Act, which prohibits a state agency, political subdivision or law enforcement agency from assisting in the enforcement of certain new federal firearms laws or regulations.

89

89

HB2622

Sanctuary State Act

- The prohibition does not apply to a contract or agreement to provide assistance in the enforcement of a federal statute, order, rule, or regulation in effect on January 19, 2021.
- A violation of the prohibition may be enforced by denying certain state grant funds to the political subdivision and through certain court action by the attorney general that is initiated by citizen complaint.

90

90

HB2675 At-Risk Designation

- Requires DPS to develop a procedure for persons who are at increased risk of becoming a victim of violence to obtain a handgun license on an expedited basis and qualify for an "at-risk designation" on the LTC.

91

91

Reform & Policy

92

HB54 Reality TV

- State & local law enforcement agencies may not authorize a person to accompany and film a peace officer acting in the line of duty for the purpose of producing a "reality television program." (State game wardens are exempted.)
- A reality television program is basically defined in the bill as a program that follows live subjects for more than one episode primarily for entertainment but does not include a journalist reporting on a matter of public concern.
- Effective Immediately

93

93

HB929

Body Worn Camera

- Amends the body worn camera statute to require that an agency's BWC policy must include provisions related to the collection of a BWC, including the applicable video and audio recorded by the camera, as evidence.
- Known as the "Botham Jean Act."

94

94

HB929

Body Worn Camera

- The policy must also require a peace officer who is equipped with a BWC and actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with the policy.

95

95

HB929

Body Worn Camera

- Additionally, a peace officer may choose not to activate a camera or may choose to discontinue a recording currently in progress for any encounter with a person that is not related to an investigation.

96

96

HB1938

BW Camera Grant

- Allows a law enforcement agency in Texas that provides body worn cameras to its peace officers to apply to the office of the governor for a grant to defray the cost of data storage for recordings created with the body worn cameras.

97

97

SB22

COVID Presumption

- Creates a presumption that a peace officer or other first responder who dies or suffers disability as a result of SARS-CoV-2 or COVID 19 contracted the virus during the course and scope of employment.
- Among other limitations, the presumption applies only to a person who was employed on a full-time basis and was last on duty no more than 14 days before testing positive.

98

98

SB22

COVID Presumption

- Also includes provisions related to workers compensation and filing claim under this presumption.
- Applies to a claim pending on or filed after the effective date and a claim may not be filed later than 6 months after 6/14/21. Other dates vary.
- *This law expires on September 1, 2023.*
- Effective Immediately

99

99

SB23

Anti-Defund Police

- Effective 1/1/22
- Amends the Local Government Code to require a county with a population of more than one million to hold an election to obtain voter approval before implementing an applicable reduction or reallocation of funding to or resources for a primary law enforcement agency, excluding a 9-1-1 call center.

100

100

SB23

Anti-Defund Police

- Among other provisions, the bill authorizes a person who believes that the county in which they reside has implemented a proposed reduction or reallocation without the required voter approval to file a complaint with the criminal justice division of the governor's office and requires the division to provide written notice of a potentially valid complaint to the county that is the subject of the complaint in order to provide the county the opportunity to correct the action that is the subject of the complaint before referring the complaint to the comptroller of public accounts.

101

101

SB23

Anti-Defund Police

- The bill requires the comptroller, on request by the division, to determine whether a county has implemented the proposed reduction or reallocation without the required voter approval.

102

102

SB23

Anti-Defund Police

- If the comptroller makes an affirmative determination, the county may not adopt a property tax rate that exceeds the county's no-new-revenue tax rate until the earlier of the date on which each reduction and reallocation that was a subject of the determination has been approved in an election or the date the comptroller issues a written determination that the county has reversed each funding reduction, adjusted for inflation, and personnel reduction or has restored all reallocated funding and resources.

103

103

SB24

LE Pre-Employment

- Establishes a new pre-employment procedure for law enforcement agencies hiring a person licensed by TCOLE.
- Before a law enforcement agency can hire a licensed person (i.e., a lateral), the agency must, on a form and in the manner prescribed by TCOLE 1) obtain the person's written consent for the agency to review specific information listed in the bill and 2) request such information from TCOLE and any other applicable entity/person.

104

104

SB24

LE Pre-Employment

- The law enforcement agency must submit to TCOLE confirmation that the agency not only contacted each entity/individual to obtain the required information but also obtained and reviewed it.
- Notably, the head of a law enforcement agency or designee shall review and sign each required confirmation form before submission to TCOLE, and the failure to review and sign shall be grounds for suspension of the agency head's TCOLE license.

105

105

SB24 LE Pre-Employment

- SB24 is effective 9/1/21, but changes apply to the hiring of a person after 1/1/22.
- TCOLE has until 1/1/22 to adopt the rules

106

106

SB69 Duty to Intervene

- Establishes that a peace officer has a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense.

107

107

SB69 Duty to Intervene

- An officer has a duty to intervene if the amount of force exceeded that which was reasonable under the circumstances and the officer knew or should know that the other officer's use of force:
 - 1) violated state or federal law;
 - 2) put a person at risk of bodily injury and was not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and
 - 3) was not required to apprehend the person suspected of committing the offense.

108

108

SB69

Duty to Intervene

- A peace officer who witnessed the use of excessive force by another peace officer shall promptly make a detailed report of the incident and deliver the report to that officer's supervisor.
- Also prohibits the use of neck restraints during search or arrest, unless the choke hold, carotid artery hold, or similar neck restraint is necessary to prevent serious bodily injury to or death of the officer or another person.

109

109

SB2212

Duty of Officer

- Imposes a duty on an officer, who encounters an injured person while discharging the officer's official duties, to immediately:
 - 1) request emergency medical services (if necessary) and
 - 2) while waiting for emergency medical services personnel to arrive, provide first aid to the person to the extent of the officer's skill and training.
- The bill provides exceptions if the officer is injured and unable to request or provide aid or if doing either would expose the officer or others to risk of injury.

110

110

SB198

Weapons Proficiency

- Amends current law relating to the demonstration of weapons proficiency by qualified retired law enforcement officers by allowing a more convenient method.
- The bill will allow an honorably retired officer to complete their yearly weapons qualification with any state permitted license to carry instructor, rather than at the agency from which they retired or by another active-duty law enforcement firearms instructor.

111

111

SB198 Weapons Proficiency

- In addition to demonstrating weapons proficiency, the retired officer must provide a sworn affidavit to TCOLE stating that the officer's TCOLE license was not revoked or suspended during the officer's term of service and that the officer has no disabilities that would interfere with proper handling of a handgun.

112

112

HB2073 Paid Quarantine Leave

- Effective Immediately
- Requires the governing body of a political subdivision to develop and implement a "paid quarantine leave policy" for fire fighters, peace officers, detention officers, and emergency medical technicians who are employed by, appointed by, or elected for the political subdivision and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

113

113

HB2073 Paid Quarantine Leave

- The policy must require that the leave be ordered by the person's supervisor.
- Additionally, the policy must provide that the first responder on paid quarantine leave receive all employment benefits and compensation as well as reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation.
- Furthermore, a political subdivision may not reduce the first responder's leave balances in connection with paid quarantine leave.

114

114

SB1359 Mental Health Leave

- Requires each law enforcement agency to develop and adopt a mental health leave policy for its peace officers who experience a traumatic event in the scope of their employment.

115

115

SB1359 Mental Health Leave

- The policy must be adopted as soon as practicable after September 1st, 2021, and must do the following:

- 1) provide **clear and objective guidelines** establishing the circumstances under which a peace officer is granted mental health leave and may use mental health leave;
- 2) entitle a peace officer to mental health leave **without a deduction in salary** or other compensation;
- 3) enumerate the **number of mental health leave days** available to a peace officer; and
- 4) detail the **level of anonymity** for a peace officer who takes mental health leave.

116

116

SB1359 Mental Health Leave

- The mental health leave policy may provide a list of mental health services available to peace officers in the area of the law enforcement agency.
- Effective 9/1/21 but develop policy *as soon as practicable* after 9/1/21.

117

117

HB3712 Basic Peace Officer Course

- Increases the basic peace officer course (BPOC) to 720 hours and establishes that it must include training on the prohibition on:
 - chokeholds,
 - the duty to intervene, and
 - the duty to request and render aid.

118

118

HB3712 Basic Peace Officer Course

- In addition, TCOLE is required to develop a model training curriculum and model policies on each of those three topics.
- Following release of TCOLE's model policies, law enforcement agencies must adopt either TCOLE's policy or their own policy on each of the three topics.

119

119

HB3712 Basic Peace Officer Course

- TCOLE will also specify the mandated topics for up to 16 of the 40 hours of mandatory in-service training in each 24-month training unit.
- No later than 1/1/22 TCOLE shall develop and make available model curriculum and model policies.
- Law enforcement agencies must adopt a policy not later than 180 days after TCOLE provides their model policies.

120

120

HB315 Peace Officer Uniforms

- Relates to the purchase of uniforms by family members of certain honorable retired peace officers for burial privileges.

121

121

HB1677 Service Pets

- Requires the State Preservation Board to establish a Texas Police Service Animals Memorial Monument on the grounds of the Capitol Complex adjacent to the Texas Peace Officers' Memorial Monument.
- The monument will recognize, and honor police service animals killed in the line of duty.

122

122

HB368 Peace Officer Address

- This bill allows for the alternative address for a peace officer to be any address in the county or municipality where the peace officer resides or any address in the county the peace officer is employed.
- The ability to put an alternative address on a driver's license has been expanded to include prosecutors.

123

123

HB368 Peace Officer Address

- The alternate address for a prosecutor may be an office of the prosecutor.
- This change also states for purposes of elections, the driver's license with the alternative address may only be used to verify identity, not residence.

124

124

HB1082 Elected Public Officer

- Relates to the availability of personal information of elected officials and public officers.
- Currently only statewide elected officers and members of the legislature can withhold certain personal information from public disclosure, now local officials are able to as well.
- Effective Immediately

125

125

SB841 Public Disclosure

- While law protects active peace officers and commissioned security officers from the public disclosure of certain personal information (such as home address and phone number), these protections did not continue after retirement.
- Extends the applicable privacy protections in the Government Code and Tax Code to honorably retired law enforcement.
- Effective Immediately

126

126

HB1419 John & Joseph's Law

- Requires a law enforcement agency, on receiving a report of a missing child or missing person, to enter
 - 1) the name of the missing child or person,
 - 2) all available identifying features, and
 - 3) all available information describing any person believed to have taken or retained the missing child or person into the National Missing and Unidentified Persons System (NamUs) within 60 days of receiving the report.

127

127

HB1419 John & Joseph's Law

- The officer shall inform the person making the report of the databases that the information is entered. The officer shall enter in new information as it comes available.
- If a missing person is found, the officer shall contact and clear any entry made into NCIC & NamUS.

128

128

HB1900 Anti-Defund Police

- To address concerns about "defunding," HB 1900 establishes restrictions for municipalities over 250,000 that adopt budgets that defund municipal police departments.
- A "defunding municipality" is a municipality that adopted a budget for a fiscal year that, in comparison to the preceding year, reduced the appropriation to the police department.

129

129

HB1900 Anti-Defund Police

- In making this determination, the criminal justice division of the Governor's office may look at the 1st previous fiscal year or 2nd previous year, whichever is greater, to determine if the municipality took actions to defund a police department in the adopted fiscal year.

130

130

HB1900 Anti-Defund Police

- The exceptions to this are if the reduction to appropriations to the police department do not exceed the percentage of reductions for the total budget for the fiscal year or the municipality receives permission from the division to adopt a reduction in appropriations to the police department.

131

131

HB1900 Anti-Defund Police

- A municipality that has been determined to be a "defunding municipality" may not or may be limited in the municipality's ability to annex other areas, disannex certain areas, raise or collect certain taxes, and raise fees for certain utilities.

132

132

SB 713

TCOLE

- Effective Immediately
- Relating to the sunset review process of governmental entities, including TCOLE
- A stand-alone TCOLE Sunset Bill did not pass this session, so under this omnibus bill, TCOLE is able to continue operating as it has

133

133

Federal Case Law

134

Question:

Does the community caretaking doctrine authorize warrantless searches and seizures in a home?

Summary:

During an argument with his wife, Caniglia put a firearm on the table and told his wife to "shoot (him) and get it over with." His wife left the house and stayed overnight at a hotel, but the next day she couldn't reach him by phone. She called the police for a welfare check. The police went to the house with her and ultimately sent Caniglia to the hospital for a psychiatric evaluation with EMS. He asked that law enforcement not confiscate his firearms. Once he left, the officers went inside, located the weapons and seized him. Caniglia sued for 4th Amendment violations.

135

135

Decision/Holding:

No. The community caretaking exception to the warrants requirement is limited to vehicles and **does not** apply to warrantless entry into homes. *Cady v. Dombrowski*, 413 U.S. 433(1973).

The "recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere."

136

136

Commentary/Notes:

There were many concurring opinions, which might indicate that some justices are uncomfortable with some exceptions to the warrant requirement – more warrant case law could be coming as these issues are brought to a court with some newer justices.

137

137

Question:

Does the application of physical force to a person with the intent to restrain considered a seizure even if the person does not submit and is not subdued?

Summary:

Torres was standing next to her vehicle in an apartment complex. Two officers, at the complex to execute an arrest warrant, approached her to talk to her. Torres thought they were carjackers, got in her vehicle, and fled. The officers shot 13 times to stop Torres, striking her twice. Ultimately, she evaded the officers and went to a nearby hospital. She was arrested the next day. Torres sued the officers for excessive use of force and 4th Amendment violations.

138

138

Decision/Holding:

Yes. Force alone does not satisfy the definition of seizure but use of force with an intent to restrain can be considered a seizure.

The Court **rejected** the government's arguments:

1. All seizures should be evaluated under one test: intentional acquisition of control, and
2. Because the officers shot the defendant, rather than restrained her with more conventional means, no seizure had occurred.

139

139

Commentary/Notes:

This holding will have repercussions, because of evidence that is often dropped or ditched during a chase or when there is an "unsuccessful arrest."

Now, even if a suspect escapes, there could still be a seizure and evidence discovered at the scene might be suppressable.

140

140

Question:

Does a law enforcement officer violate the 4th Amendment by initiating an investigative traffic stop after running a vehicle's license plate and learning the registered owner has a revoked/suspended license?

Summary:

An officer ran Glover's license plate and found his DL was revoked. The officer pulled the truck over assuming Glover was the male driver. He was. The evidence was suppressed at the trial court, the court of appeals reversed, the Kansas Supreme Court then reversed, holding there was a 4th Amendment violation, because the officer had no reasonable suspicion to pull Glover over.

141

141

Decision/Holding:

No. When an officer doesn't have a reason to believe someone other than the registered owner is driving, a traffic stop made after running a license plate and learning that the registered owner's license has been revoked is reasonable under the 4th Amendment.

142

142

Question:

Does qualified immunity shield an officer from suit when they make a decision that, even if constitutionally deficient, reasonably misunderstands or misinterprets the law governing the circumstances?

Summary:

Taylor, a Texas prison inmate, alleged that officers knowingly confined him for 6 days in cells that were covered in human waste, that he was forced to sleep naked in raw sewage, and that he couldn't eat for 4 days due to the conditions. Taylor argues that the prison officials knowingly violated the 8th Amendment when they held him in such conditions and sued them in a 42 USC1983 Action.

143

143

Decision/Holding:

Yes, unless the circumstances so obviously violate the 8th Amendment that "any reasonable officer should have realized that...conditions of confinement offended the Constitution" even if there is no established court doctrine on the issue.

144

144

Discussion:

Important for 3 reasons.

1. Since 2004, the Court has not held that a plaintiff alleged a violation of a clearly established right (as related to qualified immunity).
2. This case revised the idea that a constitutional violation can be so obvious that an officer should know it violates the 8th Amendment even if there is no established court doctrine showing that it does, and qualified immunity may be inappropriate.
3. There has been a national push for reform of qualified immunity.

145

145

Get to Know Your Legislator

Do you know your State
Representative and Senator?

Can they describe what a
constable does?

The state representative who
knows and respects you is much
less likely to file legislation
against you!

146

146

Are you receiving JPCA Legislative Updates?

If not, please give us your email.

147

147

2020-2021 JPCA Constable
87th Legislative Session Team

Constable Carlos Lopez – Chair, Travis
Constable Sammy Knapp– Vice, Collin
Constable Dale Clark, Tarrant
Constable Chad Jordan, Hood
Constable Larry Gallardo, Hidalgo
Constable Michael Truitt, Denton
Chief Deputy Noel Johnson, Travis

148
