

BILL ANALYSIS

Senate Research Center
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S.B. 577
By: Armbrister
Criminal Justice
4/6/1999
Committee Report (Amended)

DIGEST

In the course of their duties regarding criminal proceedings, clerks currently maintain several duties and practices impractical or improper. Many practices result from confusion or misinterpretation of current statutes. S.B. 577 amends those duties and procedures affecting a court clerk in certain criminal matters, including a problematic statute that provides direction to a clerk on specific matters; guidelines for handling contraband items and an application for writ of habeas corpus; guidelines on when and what information may be released in an indictment or deferred adjudication case; granting authority to computerize a request and service of a subpoena; creating a prohibition to prepare judgments without a supervising attorney; and assigning the clerk a requirement to notify the Department of Public Safety of a completed community supervision program.

PURPOSE

As proposed, S.B. 577 amends certain duties of a court clerk in certain criminal matters.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 2.21(a) and (b), Code of Criminal Procedure, to require a district or county clerk in a criminal proceeding to receive all exhibits at the conclusion of the proceeding and perform all duties imposed on the clerk by law. Requires the court reporter to release to the sheriff for safekeeping any firearm or contraband received by the court as an exhibit in that proceeding, rather than require the reporter place the firearm or contraband in the hands of the sheriff for safekeeping at any time during the pendency of such proceeding or thereafter. Makes conforming changes.

SECTION 2. Amends Section 3(b), Article 11.07, Code of Criminal Procedure, to require an application of habeas corpus to be filed with the clerk of the court in which the conviction being challenged was obtained, and to require the clerk to assign the application to that court. Requires the clerk to forward a copy of the application by certain means, including personal service, to the attorney representing the state in that court. Requires the attorney to answer the application within a certain date of receiving the application. Makes conforming changes.

SECTION 3. Amends Article 20.22, Code of Criminal Procedure, to require a grand jury indictment to be entered into the minutes of the court if the defendant is in custody or under bond, noting briefly the style of the criminal action and the file number of the indictment and the defendant's name. Requires the entry into the minutes to be made if the defendant is not in custody or under bond at the time of the indictment, until the capias is served and the defendant is placed in custody or under bond. Deletes the requirement that a grand jury indictment omit the name of the defendant unless he is in custody or under bond.

SECTION 4. Amends Article 24.03(a), Code of Criminal Procedure, to require the application filed with the clerk to be placed with any other electronic information linked to the number of the cause, when an application is filed electronically. Requires the application to also be available to the state and the defendant. Requires the defendant or his attorney or the state's attorney to make an application to the clerk for each witness desired, and deletes the requirement for the application to be written and sworn. Makes conforming changes.

SECTION 5. Amends Article 24.04, Code of Criminal Procedure, to authorize a subpoena to be served

via an electronically transmitted copy to a witness with acknowledgment of receipt requested to the last known electronic address of the witness. Requires an officer serving a subpoena to acknowledge the receipt of the subpoena, if served under Subsection (a)(3) of this article. Requires the officer to use due diligence to locate and serve the witness if receipt of an electronically transmitted subpoena is not acknowledged within a reasonable time. Requires a subpoena served under Subsection (a)(3) to be accompanied by a notice advising the recipient that acknowledgment of receipt of the subpoena must be made in a manner enabling verification of the person acknowledging receipt. Makes conforming changes.

SECTION 6. Amends Section 2, Article 42.01, Code of Criminal Procedure, to provide that, at the judge's order, certain attorneys or a clerk under the supervision of an attorney may prepare the judgment.

SECTION 7. Amends Section 5, Article 42.12, Code of Criminal Procedure, by adding Subsection (e), to establish that a deferred adjudication record held by a court clerk is not confidential.

SECTION 8. Amends Sections 13 (h) and (j), Article 42.12, Code of Criminal Procedure, to authorize a judge to waive a person's educational program requirement or to extend the program completion date for one year from when the person began the community supervision, rather than probation, if the defendant by a motion in writing shows good cause. Requires a defendant's instructor, upon successful completion of the defendant's education program or educational program for repeat offenders, to give notice to the Department of Public Safety (DPS) for inclusion in the defendant's driving record and to give notice to the community supervision and corrections department (community department). Requires the community department to then forward the notice to the court clerk for filing. Requires DPS to revoke the driving privileges of a defendant who did not complete within the specified time period the education program or the educational program for repeat offenders, as provided by Sections 521.344(e) and (f), Transportation Code, rather than Article 6687b, V.T.C.S. Deletes the requirement that the court clerk report the date of successful completion of the education program to DPS. Makes conforming changes.

SECTION 9. Amends Section 521.342(b), Transportation Code, to make conforming changes.

SECTION 10. Amends Section 521.344(i), Transportation Code, to make conforming changes.

SECTION 11. Repealer: Articles 102.002 (a)-(c), Code of Criminal Procedure (Witness Fees).
Repealer: Article 102.005 (e), Code of Criminal Procedure (Fees to Clerks).

SECTION 12. (a) Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 1999.

SECTION 14. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 3.

Amends Article 2.21, Code of Criminal Procedure, to establish when an indictment should be entered into the minutes of the court.

SECTION 6.

Amends Article 42.01, Code of Criminal Procedure, to authorize a clerk under the supervision of an attorney to prepare a judgment.

SECTION 7.

Amends Article 42.12, Code of Criminal Procedure, to make a deferred adjudicate record not confidential. Deletes text regarding when a deferred adjudication record may be made confidential.