

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1233  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, only a peace officer may execute a subpoena, warrant, or capias on an inmate of the county jail. S.B. 1233 allows a jailer or detention officer to perform this function, which would allow either a jailer or detention officer to perform the ministerial duty of serving or delivering the warrant on the inmate. The bill also permits a person operating a video teleconferencing system to facilitate testimony to be present in a grand jury room during testimony, and includes such a person in penalty provisions if they disclose any grand jury testimony. Additionally, it allows a peace officer summoned by a grand jury to testify through the use of video teleconferencing instead of having to attend the hearing in person.

S.B. 1233 allows a person incarcerated by the Texas Department of Criminal Justice (TDCJ) to submit a guilty plea or nolo contendere for a misdemeanor charge in writing, by mail, fax, or other means, and requires the court to make the required admonitions to the defendant in writing. The bill clarifies that when a person arrested by one county appears in court in another county by video teleconference, a court reporter is not required to transcribe or make a separate recording of a plea or waiver made by video teleconference, and stipulates that the destruction or loss of a video recording is not alone sufficient grounds to set aside the plea. The bill also allows a TDCJ inmate to testify as a witness by means of a video teleconferencing system. S.B. 1233 gives a medical examiner the authority to charge a reasonable fee for providing a crematory with a certificate showing either an autopsy has been completed or determined not to be necessary before the body can be cremated. The bill allows an elections administrator to be suspended with or without pay, therefore providing an alternative to current law, which only allows termination of an elections administrator who is accused of impropriety. Currently, all certified copies are subject to a one dollar fee. S.B. 1233 allows a district clerk to require a fee of less than one dollar for a certified copy of a record if it is provided electronically.

As proposed, S.B. 1233 amends current law relating to the promotion of efficiencies in and the administration of certain county services and functions.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.31, as follows:

Art. 2.31. COUNTY JAILERS. Authorizes a jailer licensed under Chapter 1701 (Law Enforcement Officers), Occupations Code, to execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail at which the jailer is employed to the same extent that a peace officer is authorized to execute process under Article 2.13(b)(2) (relating to executing all lawful process), including:

- (1) a warrant under Chapter 15 (Arrest Under Warrant), 17 (Bail), or 18 (Search Warrants);

- (2) a *capias* under Chapter 17 or 23 (The *Capias*);
- (3) a subpoena under Chapter 20 (Duties and Powers of the Grand Jury) or 24 (Subpoena and Attachment); or
- (4) an attachment under Chapter 20 or 24.

SECTION 2. Amends Article 20.011(a), Code of Criminal Procedure, as follows:

- (a) Authorizes only the following persons to be present in a grand jury room while the grand jury is conducting proceedings:
  - (1) grand jurors;
  - (2) bailiffs;
  - (3) the attorney representing the state;
  - (4) witnesses while being examined or when necessary to assist the attorney representing the state in examining other witnesses or presenting evidence to the grand jury;
  - (5) interpreters, if necessary;
  - (6) a stenographer or person operating an electronic recording device, as provided by Article 20.012 (Recording of Certain Testimony); and
  - (7) a person operating a video teleconferencing system for use under Article 20.151.

Makes a nonsubstantive change.

SECTION 3. Amends Article 20.02(b), Code of Criminal Procedure, as follows:

- (b) Provides that a grand juror, bailiff, interpreter, stenographer or person operating an electronic recording device, person preparing a typewritten transcription of a stenographic or electronic recording, or person operating a video teleconferencing system for use under Article 20.151 who discloses anything transpiring before the grand jury, regardless of whether the thing transpiring is recorded, in the course of the official duties of the grand jury, is liable to a fine as for contempt of the court, not exceeding \$500, imprisonment not exceeding 30 days, or both the fine and imprisonment. Makes nonsubstantive changes.

SECTION 4. Amends Chapter 20, Code of Criminal Procedure, by adding Article 20.151, as follows:

Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING. (a) Authorizes a peace officer summoned to testify before the grand jury, with the consent of the foreman of the grand jury and the attorney representing the state, to testify through the use of a closed circuit video teleconferencing system that provides an encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the peace officer, the attorney representing the state, and the grand jury.

- (b) Requires a peace officer testifying through the use of a closed circuit video teleconferencing system under this article, in addition to being administered the oath described by Article 20.16(a) (relating to the oath administered by the foreman), before being interrogated, to affirm that:

- (1) no person other than a person in the grand jury room is capable of hearing the peace officer's testimony; and

(2) the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the peace officer is testifying.

(c) Requires that testimony received from a peace officer under this article be recorded and preserved.

SECTION 5. Amends Article 26.13, Code of Criminal Procedure, by adding Subsection (j), as follows:

(j) Authorizes a person who is incarcerated in a facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ), notwithstanding any provision of this code, to submit in writing a plea of guilty or plea of nolo contendere regarding any misdemeanor charge. Authorizes the plea to be transmitted to the court by mail, facsimile, or other means. Requires the court, on receipt of a plea under this subsection, to make the admonitions required by this article to the defendant in writing as provided by Subsection (d) (relating to admonitions required of the court).

SECTION 6. Amends Article 27.18, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Provides that a court reporter or court recorder is not required to transcribe or make a separate recording of a plea taken under this article.

(c-1) Creates this subsection from existing text. Authorizes the defendant to obtain a copy of a recording made under Subsection (c), rather than the recording, on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(c-2) Provides that the loss or destruction of or failure to make a video recording of a plea entered under this article is not alone sufficient grounds for a defendant to withdraw the defendant's plea or to request the court to set aside a conviction or sentence based on the plea.

SECTION 7. Amends Article 38.073, Code of Criminal Procedure, as follows:

Art. 38.073. TESTIMONY OF INMATE WITNESSES. Authorizes any deposition or testimony of the inmate witness, in a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the TDCJ is required to testify as a witness, to be conducted by a video teleconferencing system in the manner described by Article 27.18 (Plea or Waiver of Rights by Closed Circuit Video Teleconferencing), rather than by electronic means, in the same manner as permitted in civil cases under Section 30.012 (Use of Communication Equipment in Certain Proceedings), Civil Practice and Remedies Code.

SECTION 8. Amends Article 49.25, Code of Criminal Procedure, by adding Section 13A, as follows:

Sec. 13A. FEES. Authorizes a medical examiner to charge reasonable fees for services provided by the office of medical examiner under this article, including cremation approvals, court testimonies, consultations, and depositions.

SECTION 9. Amends Section 31.037, Election Code, as follows:

Sec. 31.037. New heading: SUSPENSION OR TERMINATION OF EMPLOYMENT. Authorizes the employment of the county elections administrator to be suspended, with or without pay, or terminated at any time for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority vote of the commissioners court.

SECTION 10. Amends Sections 51.318(b) and (e), Government Code, as follows:

(b) Sets forth certain fees, including that, the fee, notwithstanding Section 51.3195 (Copies of Court Records Preserved Only on Microfilm or by Electronic Method), for an electronic certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page is not to exceed \$1.

(e) Prohibits the district clerk from charging the United States Immigration and Customs Enforcement or the United States Citizenship and Immigration Services, rather than the United States Immigration and Naturalization Service, a fee for a copy of any document on file or of record in the clerk's office relating to an individual's criminal history, regardless of whether the document is certified.

SECTION 11. Amends Subchapter D, Chapter 101, Government Code, by adding Section 101.06118, as follows:

Sec. 101.06118. ADDITIONAL DISTRICT COURT FEES: GOVERNMENT CODE. Requires the clerk of a district court to collect for an electronic certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, a fee not to exceed \$1 for each page or part of a page under Section 51.318 (Fees Due When Service Performed or Requested), Government Code.

SECTION 12. (a) Provides that Articles 20.011(a) and 20.02(b), Code of Criminal Procedure, as amended by this Act, and Article 20.151, Code of Criminal Procedure, as added by this Act, apply only to testimony before a grand jury that is impaneled on or after the effective date of this Act.

(b) Provides that Article 27.18, Code of Criminal Procedure, as amended by this Act, and Article 26.13(j), Code of Criminal Procedure, as added by this Act, apply to a plea of guilty or nolo contendere entered on or after the effective date of this Act, regardless of whether the offense with reference to which the plea is entered is committed before, on, or after that date.

(c) Provides that Article 38.073, Code of Criminal Procedure, as amended by this Act, applies only to the testimony of an inmate witness that is taken on or after the effective date of this Act.

(d) Makes application of Section 13A, Article 49.25, Code of Criminal Procedure, as added by this Act, only to a service provided by a medical examiner's office on or after the effective date of this Act, prospective.

(e) Makes application of Section 51.318(b), Government Code, as amended by this Act, only to a request for an electronic certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, made on or after the effective date of this Act, prospective.

SECTION 13. Effective date: upon passage or September 1, 2011.