

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1230  
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### **DIGEST**

In the fall of 1995, Governor George W. Bush appointed an ad hoc committee to revise the Code of Criminal Procedure. The committee attempted to streamline and modernize the code in a cooperative effort with the Texas Municipal Courts Education Center and the Texas Justice Court Training Center.

The committee succeeded in streamlining Chapter 45, Code of Criminal Procedure. Currently, Chapter 45 consists of 60 sections, notwithstanding the general provisions found elsewhere in the code which by definition, have specific applicability to justice and municipal court proceedings. Of the 60 sections, 12 sections make specific reference to municipal court proceedings and 10 sections make references to justice court proceedings. The remaining 38 sections are general with shared applicability to both courts. Presently, Chapter 45 does not group similar sections; instead, the sections are scattered. Grouping similar sections together would make referencing the chapter much easier for a person who must implement the chapter's provisions.

Those implementing the provisions include approximately 1,200 municipal judges and 1,000 justices of the peace. One-third of the judges and 90 percent of the justices are non-law trained. Adding order and grouping of topics in Chapter 45 for these judicial officers would make their respective duties and responsibilities more clear.

In streamlining Chapter 45, the committee removed archaic provisions, arranged the remaining provisions in a more logical order, and made amendments and technical corrections to conform Chapter 45 to certain judicial decisions. S.B. 1230 would clarify and arrange the existing provisions in Chapter 45, Code of Criminal Procedure, regarding procedures governing the prosecution and administration of misdemeanor offenses in the jurisdiction of the justice and municipal courts, in a more logical nature and conform Chapter 45 to certain judicial decisions.

### **PURPOSE**

As proposed, S.B. 1230 streamlines Chapter 45, Code of Criminal Procedure.

### **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 the heading to Chapter 45, Code of Criminal Procedure, as follows:

CHAPTER 45. New heading: JUSTICE AND MUNICIPAL COURTS

SECTION 2. Amends Chapter 45, Code of Criminal Procedure, by adding a new Subchapter A, as follows:

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Art. 45.001. OBJECTIVES OF CHAPTER. Establishes the purpose of this chapter. Sets forth the objectives of this chapter.

Art. 45.002. APPLICATION OF CHAPTER. Requires criminal proceedings in the justice and

municipal courts to be conducted in accordance with this chapter. Requires a judge to apply this code to achieve the objectives of this chapter when this chapter does not provide a rule of procedure governing an aspect of a case.

SECTION 3. Amends Chapter 45, Code of Criminal Procedure, to redesignate Articles 45.011-45.043, Code of Criminal Procedure, under the following heading:

**SUBCHAPTER B. PROCEDURES FOR JUSTICE AND MUNICIPAL COURTS**

SECTION 4. Amends Article 45.38, Code of Criminal Procedure, to redesignate Article 45.38 as Article 45.011, and to make conforming and nonsubstantive changes.

SECTION 5. Amends Article 45.021, Code of Criminal Procedure, to redesignate Article 45.021 as Article 45.012. Authorizes a document maintained by a justice or municipal court to be created by electronic means. Authorizes a justice or municipal court to create a court seal by electronic means that does not permit a change to an original document, if required by law.

SECTION 6. Amends Article 45.18, Code of Criminal Procedure, to redesignate Article 45.18 as Article 45.014, as follows:

Art 45.014. New heading: **WARRANT OF ARREST**. Authorizes a justice or judge to issue a warrant for an arrest, when a sworn complaint based on probate cause has been filed before the justice of municipal court. Sets forth conditions under which a warrant is sufficient. Deletes a requirement that the proceeding article must be complied with to issue a warrant.

SECTION 7. Amends Article 45.43, Code of Criminal Procedure, to redesignate Article 45.43 as 45.015. Authorizes a peace officer to apply this code to a defendant. Deletes a condition of arrest as a place where the defendant can safely be kept. Makes nonsubstantive changes.

SECTION 8. Amends Article 45.41, Code of Criminal Procedure, to redesignate Article 45.41 as Article 45.016, as follows:

Art. 45.016. New heading: **BAIL**. Authorizes a justice or judge, rather than only a justice, to apply this section to the defendant. Makes nonsubstantive changes.

SECTION 9. Amends Article 45.13, Code of Criminal Procedure, to redesignate Article 45.13 as 45.017, and require the justice, judge, or clerk, to keep a docket containing certain information, rather than require each justice of the peace and each municipal court judge to keep the court docket. Makes nonsubstantive changes.

SECTION 10. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.018, as follows:

Art. 45.018. **COMPLAINT**. Provides that a complaint is a sworn allegation. Provides that a defendant is entitled to be notified of a complaint, but may waive that right.

SECTION 11. Amends Article 45.17, Code of Criminal Procedure, to redesignate Article 45.17 as Article 45.019, as follows:

Art. 45.019. New heading: **REQUISITES OF COMPLAINT**. Sets forth requirements for a complaint and conditions that make a complaint sufficient. Makes conforming changes.

SECTION 12. Amends Article 45.37, Code of Criminal Procedure, to redesignate Article 45.37 as Article 45.020, as follows:

Art. 45.020. New heading: **APPEARANCE BY COUNSEL**. Makes conforming changes.

SECTION 13. Amends Article 45.33, Code of Criminal Procedure, redesignated as Article 45.021, as follows:

Art. 45.021. New heading: **PLEADINGS**. Adds a municipal court to courts where a defendant may make a pleading. Deletes the requirement that the justice note the plea on the docket.

SECTION 14. Amends Article 45.331, Code of Criminal Procedure, to redesignate Article 45.331 as Article 45.0215, and to make conforming and nonsubstantive changes.

SECTION 15. Amends Article 45.34, Code of Criminal Procedure, to redesignate Article 45.34 as Article 45.022, as follows:

Art. 45.022. New heading: PLEA OF GUILTY OR NOLO CONTENDERE. Authorizes proof of a plea to be heard upon a plea of guilty or, rather than and, a plea of nolo contendere.

SECTION 16. Amends Article 45.31, Code of Criminal Procedure, to redesignate Article 45.31 as 45.023, as follows:

Art. 45.023. New heading: DEFENDANT'S PLEA. Makes conforming and nonsubstantive changes.

SECTION 17. Amends Article 45.35, Code of Criminal Procedure, to redesignate Article 45.35 as Article 45.024, as follows:

Art. 45.024. New heading: DEFENDANT'S REFUSAL TO PLEAD. Makes conforming changes.

SECTION 18. Amends Article 45.24, Code of Criminal Procedure, to redesignate Article 45.24 as Article 45.025, and to make conforming changes.

SECTION 19. Amends Article 45.251, Code of Criminal Procedure, to redesignate Article 45.251 as Article 45.026, as follows:

Art. 45.026. New heading: DEMAND FOR JURY TRIAL; FAILURE TO APPEAR.

SECTION 20. Amends Article 45.25, Code of Criminal Procedure, to redesignate Article 45.25 as Article 45.027, and to make nonsubstantive changes.

SECTION 21. Amends Article 45.29, Code of Criminal Procedure, to redesignate Article 45.29 as Article 45.028, and to make a conforming change.

SECTION 22. Amends Article 45.28, Code of Criminal Procedure, to redesignate Article 45.28 as Article 45.029, as follows:

Art. 45.029. New heading: PEREMPTORY CHALLENGES. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Article 45.30, Code of Criminal Procedure, to redesignate Article 45.30 as Article 45.030, as follows:

Art. 45.030. New heading: FORMATION OF JURY. Requires the justice or judge to administer to the jury the appropriate oath in accordance with Chapter 35, rather than a certain oath.

SECTION 24. Amends Article 45.36, Code of Criminal Procedure, to redesignate Article 45.36 as Article 45.031, as follows:

Art. 45.031. New heading: COUNSEL FOR STATE NOT PRESENT. Sets forth actions the justice or judge may take if the state is not represented by counsel.

SECTION 25. Amends Article 45.031, Code of Criminal Procedure, to redesignate Article 45.031 as Article 45.032, and to make a nonsubstantive and conforming change.

SECTION 26. Amends Article 45.39, Code of Criminal Procedure, to redesignate Article 45.39 as Article 45.034.

SECTION 27. Amends Article 45.40, Code of Criminal Procedure, to redesignate Article 45.40 as Article

45.035, and to make conforming and nonsubstantive changes.

SECTION 28. Amends Article 45.42, Code of Criminal Procedure, to redesignate Article 45.42 as Article 45.036, and to make conforming and nonsubstantive changes.

SECTION 29. Amends Article 45.45, Code of Criminal Procedure, to redesignate Article 45.45 as Article 45.037, and to make conforming and nonsubstantive changes.

SECTION 30. Amends Article 45.44, Code of Criminal Procedure, to redesignate Article 45.44 as Article 45.038, and to make nonsubstantive and conforming changes.

SECTION 31. Amends Article 45.46, Code of Criminal Procedure, to redesignate Article 45.46 as Article 45.039, and to make a conforming change.

SECTION 32. Amends Article 45.47, Code of Criminal Procedure, to redesignate Article 45.47 as Article 45.040, and to make a nonsubstantive change.

SECTION 33. Amends Article 45.50, Code of Criminal Procedure, to redesignate Article 45.50 as Article 45.041, as follows:

Art. 45.041. New heading: JUDGMENT. Authorizes the justice or judge to direct the defendant to make restitution and to satisfy any other sanction. Authorizes the justice or judge to credit the defendant for time in jail as provided by Article 42.03. Requires the credit to be applied at a certain rate. Requires all judgments, sentences, and final orders to be rendered in open court. Makes conforming and nonsubstantive changes.

SECTION 34. Amends Article 45.10, Code of Criminal Procedure, to redesignate Article 45.10 as Article 45.042. Requires the defendant in an appeal to be committed to jail unless the defendant gives bail. Deletes a requirement that the appeals be governed by the rules of practice and procedure for appeals. Makes conforming and nonsubstantive changes.

SECTION 35. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.0425, as follows:

Art. 45.0425. APPEAL BOND. Requires the court to approve bail in certain situations. Prohibits the amount of bail from being less than two times the amount of the fine and costs adjudged against the defendant, and not less than \$50. Requires the court to approve the appeal bond without requiring the presence of the defendant. Requires the appeal bond to make the defendant's personal appearance before the court in certain situations.

SECTION 36. Amends Article 44.14, Code of Criminal Procedure, to redesignate Article 44.14 as Article 45.0426, and to make nonsubstantive changes.

SECTION 37. Amends Article 45.48, Code of Criminal Procedure, to redesignate Article 45.48 as Article 45.043, and to make conforming and nonsubstantive changes.

SECTION 38. Amends Article 45.231, Code of Criminal Procedure, to redesignate Article 45.231 as Article 45.044, and to make conforming and nonsubstantive changes.

SECTION 39. Amends Article 45.51, Code of Criminal Procedure, to redesignate Article 45.51 as Article 45.045, and to make conforming and nonsubstantive changes.

SECTION 40. Amends Article 45.52, Code of Criminal Procedure, to redesignate Article 45.52 as Article 45.046, as follows:

Art. 45.046. New heading: CAPIAS PRO FINE. Deletes a provision that the justice may order fines and costs to be collected in a certain manner.

SECTION 41. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.047, as follows:

Art. 45.047. COLLECTION OF FINES AFTER JUDGMENT. Authorizes a justice or judge to order the fine and costs collected in a certain manner if a defendant defaults in payment of a fine.

SECTION 42. Amends Article 45.53, Code of Criminal Procedure, to redesignate Article 45.53 as Article 45.048, and to make nonsubstantive and conforming changes.

SECTION 43. Amends Articles 45.521 and 45.522, Code of Criminal Procedure, to redesignate Articles 45.521 and 45.522 as Articles 45.049 and 45.050, and to make conforming and nonsubstantive changes.

SECTION 44. Amends Article 45.54, Code of Criminal Procedure, to redesignate Article 45.54 as Article 45.051, and to make standard recodification changes, and conforming and nonsubstantive changes.

SECTION 45. Amends Article 45.55, Code of Criminal Procedure, to redesignate Article 45.55 as Article 45.052.

SECTION 46. Amends Article 45.46, Code of Criminal Procedure, to redesignate Article 45.46 as Article 45.053.

SECTION 47. Amends Articles 45.101, 45.102, and 45.103, Code of Criminal Procedure, to redesignate Articles 45.101, 45.102, and 45.103 as Chapter 45C, as follows:

#### SUBCHAPTER C. PROCEDURES IN JUSTICE COURT

SECTION 48. Amends Articles 45.21 and 45.22, Code of Criminal Procedure, to redesignate Articles 45.21 and 45.22 as Articles 45.101 and 45.102, and to delete the prohibition that a constable not allow misdemeanor fee from arising in other precincts, except through certain orders. Makes conforming and nonsubstantive changes.

SECTION 49. Amends Article 45.15, Code of Criminal Procedure, to redesignate Article 45.15 as Article 45.103, and to make conforming and nonsubstantive changes.

SECTION 50. Amends Articles 45.201 and 45.204, Code of Criminal Procedure, to redesignate Articles 45.201 and 45.204 as Chapter 45D, as follows:

#### SUBCHAPTER D. PROCEDURES IN MUNICIPAL COURT

SECTION 51. Amends Article 45.03, Code of Criminal Procedure, to redesignate Article 45.03 as Article 45.201, and provide that it is the primary duty of a municipal prosecutor not to convict, but to see that justice is done. Makes conforming and nonsubstantive changes.

SECTION 52. Amends Article 45.04, Code of Criminal Procedure, to redesignate Article 45.04 as Article 45.202, and to make nonsubstantive and conforming changes.

SECTION 53. Amends Chapter 45D, Code of Criminal Procedure, by adding Article 45.203, as follows:

Art. 45.203. **JURY CHARGE.** Requires the judge to charge the jury as required by law and on written request by the state's attorney and the defendant's attorney.

SECTION 54. Amends Article 45.06, Code of Criminal Procedure, to redesignate Article 45.06 as Article 45.204, as follows:

Art. 45.204. New heading: **COLLECTION OF FINES, COSTS, AND SPECIAL EXPENSES.** Deletes text regarding the citation to certain acts. Prohibits costs from being imposed or collected in criminal cases in municipal court by municipal ordinance. Makes conforming and nonsubstantive changes.

SECTION 55. Amends Article 42.111, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 56. Amends Articles 102.002(b) and (c), Code of Criminal Procedure, to require municipal courts to maintain a certain records.

SECTION 57. Amends Article 102.004, Code of Criminal Procedure, to make conforming and

nonsubstantive changes.

SECTION 58. Amends Article 45.11, Code of Criminal Procedure, to redesignate Article 45.11 as Article 45.281, as follows:

Art. 44.281. New heading: DISPOSITION OF FINES AND COSTS WHEN MISDEMEANOR AFFIRMED. Makes conforming and nonsubstantive changes.

SECTION 59. Amends Section 30.00430(b), Code of Criminal Procedure, to make a conforming change.

SECTION 60. Amends Section 30.00940(b), Code of Criminal Procedure, to make a conforming change.

SECTION 61. Amends Section 30.01101(b), Code of Criminal Procedure, to make a conforming change.

SECTION 62. Amends Section 30.01221(b), Code of Criminal Procedure, to make a conforming change.

SECTION 63. Amends Section 406.014(d), Code of Criminal Procedure, to make a conforming change.

SECTION 64. Amends Section 542.402(b), Transportation Code, to make a conforming change.

SECTION 65. Amends Section 543.204(a), Transportation Code, to make a conforming change.

SECTION 66. Amends Section 706.001(1), Transportation Code, to redefine “complaint.”

SECTION 67. Repealers:

Article 44.13 (Appeals from justice and municipal courts);

Article 45.01 (Complaint);

Article 45.02 (Seal);

Article 45.05 (Commitment);

Article 45.07 (Collection of costs);

Article 45.08 (Jury fees);

Article 45.09 (Officer’s fees);

Article 45.12 (Contempt and bail);

Article 45.16 (Complaint shall be written);

Article 45.19 (Requisites of warrant);

Article 45.23 (To try cause without delay);

Article 45.26 (Complaint read);

Article 45.27 (Not discharged for informality);

Article 45.32 (The only special plea); and

Article 45.49 (Judgments in open court).

SECTION 68. Effective date: September 1, 1999.

SECTION 69. Makes application of this Act prospective.

SECTION 70. Emergency clause.