

BILL ANALYSIS

Senate Research Center
76R10579 JMC-F

C.S.S.B. 1230
By: Ellis
Jurisprudence
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Committee Report (Substituted)

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. C.S.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, C.S.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 Article 2.07, Code of Criminal Procedure, by adding Subsection (g), to authorize certain attorneys performing the duties of an attorney for the state to be paid a reasonable fee for performing those duties.

SECTION 2. Amends Article 4.12, Code of Criminal Procedure, to require certain misdemeanor cases tried in a justice court to be in the precinct of the defendant, except as otherwise provided by this article. Authorizes the cases to be tried in certain other precincts, if each justice of the peace was disqualified for any reason, rather if upon disqualification for any reasons of all justices. Makes conforming and nonsubstantive changes.

SECTION 3. Amends the heading to Chapter 45, Code of Criminal Procedure, as follows:

CHAPTER 45. New heading: JUSTICE AND MUNICIPAL COURTS

SECTION 4. 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 5. 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 6. 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 7. 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 court to use electronic means to maintain a docket. Provides that an electronically recorded judgment has the same force and effect as a written signed judgment. 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 8. 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 or affidavit 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 9. Amends Article 45.43, Code of Criminal Procedure, to redesignate Article 45.43 as 45.015. Authorizes a peace officer to apply this code or other law to a defendant. Deletes a condition of arrest as a place where the defendant can safely be kept. Makes nonsubstantive changes.

SECTION 10. 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 require the defendant to give bail to secure appearance of the defendant. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Article 45.13, Code of Criminal Procedure, to redesignate Article 45.13 as 45.017, and require the justice, judge, or clerk, if directed by the justice or judge, 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 12. 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 13. 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 14. 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 15. 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 16. Amends Article 45.331, Code of Criminal Procedure, to redesignate Article 45.331 as Article 45.0215, and to authorize certain pleas with the leave of the judge of the court of original jurisdiction. Makes conforming changes.

SECTION 17. 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 18. Amends Article 45.31, Code of Criminal Procedure, to redesignate Article 45.31 as Article 45.023, as follows:

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

SECTION 19. 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 20. Amends Article 45.24, Code of Criminal Procedure, to redesignate Article 45.24 as Article 45.025, and to make conforming changes.

SECTION 21. Amends Article 45.251, Code of Criminal Procedure, to redesignate Article 45.251 as Article 45.026, as follows:

Art. 45.026. New heading: JURY TRIAL; FAILURE TO APPEAR. Authorizes a justice or a municipal court to order a party who does not waive, rather than a party who demands, a jury trial to pay the costs incurred for impaneling the jury if the party fails to appear.

SECTION 22. Amends Article 45.25, Code of Criminal Procedure, to redesignate Article 45.25 as Article 45.027, and to make nonsubstantive changes.

SECTION 23. Amends Article 45.29, Code of Criminal Procedure, to redesignate Article 45.29 as Article 45.028, and to make a conforming change.

SECTION 24. 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 25. 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 26. 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 27. 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 28. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.033, as follows:

Art. 45.033. JURY CHARGE. Requires the judge to charge the jury orally, in writing, or as otherwise required by law.

SECTION 29. Amends Article 45.39, Code of Criminal Procedure, to redesignate Article 45.39 as Article 45.034, and to require a jury to retire until they agree to a verdict, are discharged, or the court recesses.

SECTION 30. 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 31. 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 32. Amends Article 45.45, Code of Criminal Procedure, to redesignate Article 45.45 as Article 45.037, to delete text regarding the execution of a judgment from being stayed until a new trial has been granted. Make conforming and nonsubstantive changes.

SECTION 33. Amends Article 45.44, Code of Criminal Procedure, to redesignate Article 45.44 as Article 45.038, to authorize a judge to grant a new trial, not later than the 10th day after the date that the judgment is entered, and to make any later motions denied. Makes nonsubstantive and conforming changes.

SECTION 34. Amends Article 45.46, Code of Criminal Procedure, to redesignate Article 45.46 as Article 45.039, and to make a conforming change.

SECTION 35. Amends Article 45.47, Code of Criminal Procedure, to redesignate Article 45.47 as Article 45.040, and to make a nonsubstantive change.

SECTION 36. 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 in an amount not to exceed \$500 and to satisfy any other sanction. Requires 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 37. 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 38. 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 39. Amends Article 44.14, Code of Criminal Procedure, to redesignate Article 44.14 as Article 45.0426, and to require an appeal to be perfected when the appeal bond has been filed. Makes conforming and nonsubstantive changes.

SECTION 40. 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 41. Amends Article 45.231, Code of Criminal Procedure, to redesignate Article 45.231 as Article 45.044, as follows:

Art. 45.044. New heading: FORFEITURE OF CASH BOND IN SATISFACTION OF FINE. Makes conforming and nonsubstantive changes.

SECTION 42. Amends Article 45.51, Code of Criminal Procedure, to redesignate Article 45.51 as Article 45.045, to add a new heading, as follows:

Art. 45.045. New heading: CAPIAS PRO FINE. Authorize a court to order a capias pro fine if the defendant fails to satisfy the judgment according to its terms. Deletes text requiring a capias for an escaped defendant. Makes conforming and nonsubstantive changes.

SECTION 43. Amends Article 45.52, Code of Criminal Procedure, to redesignate Article 45.52 as Article 45.046, as follows:

Art. 45.046. New heading: COMMITMENT. Authorizes a judge to confine a defendant who defaults in the discharge of a judgment, rather than defaults in payment for a fine and costs. Deletes a provision that the justice may order fines and costs to be collected in a certain manner.

SECTION 44. Amends Chapter 45B, Code of Criminal Procedure, by adding Article 45.047, as follows:

Art. 45.047. CIVIL 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 45. Amends Article 45.53, Code of Criminal Procedure, to redesignate Article 45.53 as Article 45.048, and to increase the rate of confinement to pay a fine to \$100, rather than \$15, per day. Makes nonsubstantive and conforming changes.

SECTION 46. 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. Deletes criteria required in a judge's order to require a person to participate in community service. Sets forth jurisdiction for a justice or a municipal court regarding a child under Section 51.02, Family Code, who fails to obey an order. Makes conforming and nonsubstantive changes.

SECTION 47. Amends Article 45.54, Code of Criminal Procedure, to redesignate Article 45.54 as Article 45.051, and to make standard recodification changes. Deletes text regarding a misdemeanor case punishable by fine. Makes conforming and nonsubstantive changes.

SECTION 48. Amends Article 45.55, Code of Criminal Procedure, to redesignate Article 45.55 as Article 45.052.

SECTION 49. Amends Article 45.56, Code of Criminal Procedure, to redesignate Article 45.56 as Article 45.053.

SECTION 50. 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 51. Amends Chapter 45C, Code of Criminal Procedure, by adding Article 45.101, as follows:

Art. 45.101. JUSTICE COURT PROSECUTIONS. Requires all prosecutions in a justice court

to be conducted by the county or district attorney or a deputy county or district attorney. Authorizes appeals from the justice court to be prosecuted by the attorneys, except as provided by law.

SECTION 52. Amends Article 45.21, Code of Criminal Procedure, to redesignate Articles 45.21 as Article 45.101, as follows:

Article 45.102. New heading: OFFENSES COMMITTED IN ANOTHER COUNTY.

SECTION 53. 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 54. 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 55. 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. Provides that in certain cases, the county attorney is not entitled to receive any fees or other compensation for certain services. Makes conforming and nonsubstantive changes.

SECTION 56. 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 57. Amends Article 45.06, Code of Criminal Procedure, to redesignate Article 45.06 as Article 45.203, as follows:

Art. 45.203. New heading: COLLECTION OF FINES, COSTS, AND SPECIAL EXPENSES. Prohibits costs from being imposed or collected in criminal cases in municipal court by municipal ordinance. Deletes text regarding the citation to certain acts. Makes conforming and nonsubstantive changes.

SECTION 58. Amends Article 42.111, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 59. Amends Articles 102.002(b) and (c), Code of Criminal Procedure, to require municipal courts to maintain a certain records.

SECTION 60. Amends Article 102.004, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 61. 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 62. Amends Section 52.027, Family Code, by adding Subsection (h) and adding Subsection (j), to make conforming and nonsubstantive changes.

SECTION 63. Amends Section 30.00430(b), Code of Criminal Procedure, to make a conforming change.

SECTION 64. Amends Section 30.00940(b), Code of Criminal Procedure, to make a conforming change.

SECTION 65. Amends Section 30.01101(b), Code of Criminal Procedure, to make a conforming change.

SECTION 66. Amends Section 30.01221(b), Code of Criminal Procedure, to make a conforming change.

SECTION 67. Amends Section 406.014(d), Code of Criminal Procedure, to make a conforming change.

SECTION 68. Amends Section 542.402(b), Transportation Code, to make a conforming change.

SECTION 69. Amends Section 543.204(a), Transportation Code, to make a conforming change.

SECTION 70. Amends Section 706.001(1), Transportation Code, to redefine “complaint.”

SECTION 71. 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 45.22 (Offenses in counties of less than 2,000,000 and over 225,000; venue; fee of constable; penalties)

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 72. Effective date: September 1, 1999.

SECTION 73. Makes application of this Act prospective.

SECTION 74. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Adds Article 2.07(g), Code of Criminal Procedure, regarding an authorization for an attorney to be paid a reasonable fee for performing certain duties.

Redesignates SECTIONS 1-25 as SECTIONS 3-27.

SECTION 2.

Adds changes to Article 4.12(a), Code of Criminal Procedure, regarding misdemeanor cases.

SECTION 7.

Amends Article 45.012, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (d), to authorize a court to maintain a docket by electronic means, and to provide that an electronically recorded judgment has the same force and effect as a written signed judgment.

SECTION 8.

Amends Article 45.013, Code of Criminal Procedure, to authorize a judge or justice to issue an arrest warrant based on a sworn affidavit. Adds conditions under which the warrant is sufficient.

SECTION 9.

Amends Article 45.014, Code of Criminal Procedure, to authorize certain arrests in accordance with this code or other law.

SECTION 10.

Amends Article 45.015, Code of Criminal Procedure, to make a nonsubstantive change.

SECTION 11.

Amends Article 45.016, Code of Criminal Procedure, to condition the clerk's requirement to keep a docket based on the direction of a justice of judge.

SECTION 13.

Amends Article 45.018, Code of Criminal Procedure, to delete text regarding whether a complaint is sufficient.

SECTION 16.

Amends Article 45.021(c), Code of Criminal Procedure, to authorize certain pleas with the leave of the judge of the court of original jurisdiction.

SECTION 21.

Amends Article 45.026, Code of Criminal Procedure, to add a new heading, and to authorize certain judges to charge a party the cost of impaneling a jury that the party did not waive a right to.

SECTION 26.

Redesignates SECTIONS 26-47 as SECTIONS 29-50.

SECTION 28.

Adds Article 45.033, Chapter 45B, Code of Criminal Procedure, regarding jury charge.

SECTION 29.

Amends Article 45.034, Code of Criminal Procedure, to require the jury to remain in the charge of an officer until the court recesses.

SECTION 32.

Amends Article 45.037, Code of Criminal Procedure, to delete text regarding the prohibition of a motion from being stayed.

SECTION 33.

Amends Article 45.038(a), Code of Criminal Procedure, to authorize a judge to grant a new trial, but not later than the 10th day after the date that the judgment is entered, and to make any later motions denied.

SECTION 36.

Amends Article 45.041(b), Code of Criminal Procedure, to add text to make certain restitution not to exceed \$500.

SECTION 39.

Amends Article 44.045(a), Code of Criminal Procedure, to require an appeal to be perfected when the appeal bond has been filed.

SECTION 41.

Amends Article 45.044, Code of Criminal Procedure, to add a new heading.

SECTION 42.

Amends Article 45.045, Code of Criminal Procedure, to add a new heading and to amend Subsection (a), to authorize a court to order a *capias pro fine* if the defendant fails to satisfy the judgment according to its terms. Deletes text requiring a *capias* for an escaped defendant.

SECTION 43.

Amends Article 45.046(a), Code of Criminal Procedure, to add a new heading, and to authorize a judge to confine a defendant who defaults in the discharge of a judgment.

SECTION 44.

Amends Article 45.047, Code of Criminal Procedure, to add a new heading.

SECTION 45.

Amends Article 45.048, Code of Criminal Procedure, to increase the rate of confinement to pay a fine to \$100, rather than \$15, per day.

SECTION 46.

Amends Article 45.049, Code of Criminal Procedure, to delete criteria a judge or justice must include in an order requiring someone to participate in community service. Sets forth jurisdiction for a justice or a municipal court regarding a child under Section 51.02, Family Code, who fails to obey an order.

SECTION 47.

Amends Article 45.54, Code of Criminal Procedure, to delete text regarding a misdemeanor case punishable by fine.

SECTION 48.

Redesignates SECTIONS 48-58 as SECTIONS 52-61.

SECTION 51.

Adds Article 45.101, Chapter 45C, Code of Criminal Procedure, regarding justice court prosecutions.

SECTION 52.

Amends Article 45.102, Code of Criminal Procedure, to add a new heading.

Deletes redesignated Article 45.22, Code of Criminal Procedure.

SECTION 53.

Deletes proposed Article 45.203, Code of Criminal Procedure, regarding jury charge.

SECTION 55.

Amends Article 45.201, Code of Criminal Procedure, to make certain county attorneys not eligible to receive any fees or other compensation for certain services.

SECTION 59.

Amends Article 102.002(c), Code of Criminal Procedure, to make additional nonsubstantive changes.

Redesignates SECTIONS 59-70 as SECTIONS 63-74.

SECTION 62.

Amends Section 52.027, Code of Criminal Procedure, to make conforming and nonsubstantive changes.

SECTION 71.

Adds a repealer, Article 45.22, Code of Criminal Procedure, regarding offenses in counties of less than 2,000,000 and over 225,000; venue; fee of constable; and penalties.

SECTION 73.

Adds additional provisions regarding the prospective clause.