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Criminal Law

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DURING THE 83RD TEXAS LEGISLATURE, CRIMINAL JUSTICE ISSUES WERE DOMINATED BY MICHAEL MORTON, a man who was wrongfully convicted of killing his wife and who spent 25 years in prison before being officially exonerated. In his biennial address to the Legislature, Texas Supreme Court Chief Jus-

tice Wallace B. Jefferson called on lawmakers to establish a special commission to investigate wrongful convictions, suggesting that public faith in the legal system is undermined when “wrongful convictions leave our citizens vulnerable, as actual perpetrators remain free.” While the bill to establish an innocence commission ultimately failed to

pass, the Morton case generated momentum on all sides to legislatively address systemic issues that led to Morton's wrongful conviction and incarceration. In response to the Morton case, which resulted in part from the withholding of favorable evidence by the prosecution, the "Michael Morton Act" (Senate Bill 1611) was signed into law and reforms the discovery process for criminal cases in Texas. Other criminal justice reform bills designed to prevent and remedy wrongful convictions also passed, along with numerous penalty enhancement and new crime bills, a bill that significantly alters the rules of evidence in certain criminal cases, and a bill in response to the U.S. Supreme Court's recent decision in *Miller v. Alabama*.

CRIMINAL JUSTICE REFORM LEGISLATION

S.B. 1611, the "Michael Morton Act," requires prosecutors to open their files to defendants and keep records of the evidence they disclosed in an attempt to reduce wrongful convictions in Texas. While the U.S. Supreme Court's decision in *Brady v. Maryland* (1963) has long required prosecutors to disclose evidence that is "material either to guilt or punishment," this new law requires disclosure of all police reports and witness statements, regardless of whether the evidence is material to guilt or punishment, and requires that any other evidence that is material to any matter be disclosed.

S.B. 344 addresses the appeals process for those who were convicted based on "junk science" by expressly allowing courts to overturn convictions in cases where the forensic science that originally led to the verdict has changed. The bill authorizes courts to grant relief on applications for writs of habeas corpus if the relevant scientific evidence is currently available but was not available at the time of the conviction because the evidence was not ascertainable through reasonable diligence at the time of trial as long as the scientific evidence would be admissible.

S.B. 1238 specifically authorizes the Texas Forensic Science Commission to investigate forensic disciplines that are unaccredited such as arson, fingerprinting, breath-alcohol testing, ballistic examinations, and unaccredited entities.

H.B. 1847 requires that prosecutors complete at least one hour of ethics training relating to the duty to disclose exculpatory and mitigating evidence.

S.B. 825 allows for the filing of a grievance by an exoneree up to four years following release from prison against a prosecutor alleged to have violated the ethics rule regarding the duty to disclose and prohibits a private reprimand for such a violation.

H.B. 2090 requires a written statement signed by an accused to be in the language that he or she can read and understand before it can be admitted as evidence in a criminal proceeding. The legislation aims to reduce the

possibility of false confessions being admitted at trial by a person who does not speak or understand English.

PENALTY ENHANCEMENT AND NEW CRIME LEGISLATION

H.B. 1302 requires an automatic sentence of life in prison without parole upon a second conviction for a "sexually violent offense" against a child under the age of 14. This legislation also specifically prohibits registered sex offenders from working at amusement parks or seeking employment as a cab, bus, or limousine driver.

S.B. 124 provides that the offense of tampering with a governmental record is enhanced from a Class A misdemeanor to a third-degree felony if the governmental record was a public school record, report, or state-mandated assessment instrument (or a second-degree felony if the actor's intent was to defraud or harm another).

H.B. 8 was the major bill that addressed human trafficking and provides for many enhancements, including a change on all prostitution offenses from a Class B misdemeanor to a second-degree felony if the person solicited is younger than 18, regardless of whether the actor knows the age of the person solicited at the time of the offense. This legislation also significantly alters the definition of the crime of possession of child pornography by providing that a person commits an offense if they knowingly or intentionally "access with the intent to view" child pornography.

S.B. 1360 enhances the penalty to the greater of a third-degree felony or the most serious offense charged in the criminal case if the underlying official proceeding involves family violence. This legislation also provides a statutory forfeiture-by-wrongdoing provision, which provides that a party to any criminal case who wrongfully procures the unavailability of a witness forfeits the right to object to the admissibility of evidence or statements based on the unavailability of the witness.

S.B. 275 enhances the penalty from a third-degree felony to a second-degree felony for the offense of leaving the scene of an accident resulting in the death of a person.

S.B. 549 enhances the minimum penalty from five to 15 years in prison upon a conviction for a first-degree felony engaging-in-organized-crime offense. In addition, this legislation requires an automatic sentence of life without parole upon conviction of engaging in organized crime if the underlying offense is an aggravated sexual assault and the defendant is 18 or older and the victim was either younger than six; or if the victim was younger than 14 and the person caused serious bodily injury or placed the victim in fear of death, serious bodily injury, or kidnapping; or if the victim is younger than 17 and suffered serious bodily injury.

H.B. 2539 places an affirmative duty on computer technicians to immediately report the discovery of an image

on a computer that is or appears to be child pornography and provides a new Class B misdemeanor offense if the computer technician fails to make such report.

EVIDENTIARY CHANGE LEGISLATION

S.B. 12 suspends evidentiary Rules 404 and 405 in trials for certain sex offenses by allowing the admission of evidence during the guilt-innocence phase of the trial that the defendant has committed a separate enumerated sex offense for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant. This legislation requires the trial judge to make a determination outside the presence of the jury and prior to the introduction of this evidence that the defendant committed the separate offense beyond a reasonable doubt.

LEGISLATION IN RESPONSE TO *MILLER V. ALABAMA*

S.B. 2 (second called special session) is an attempt by the Legislature to address the U.S. Supreme Court's decision in *Miller v. Alabama*, which held that mandatory sentences of life in prison without the possibility of parole are unconstitutional for juvenile offenders (those under the age of 18). Prior to the passage of S.B. 2, the only punishment available for an individual convicted of capital murder was either automatic life in prison without the possibility of parole or the death penalty. This posed a unique issue for 17 year olds, who under Texas law are treated as adults and not juveniles, who were convicted of capital murder since both of its mandatory punishments (life in prison without parole and the death penalty) had been declared unconstitutional. As a result, S.B. 2 requires that an individual younger than 18 who is convicted of capital murder be punished with an automatic sentence of life in prison with the possibility of parole.

OTHER HIGHLIGHTS

H.B. 434 expands the list of those authorized to draw blood from a person during a driving-while-intoxicated investigation to include emergency medical technicians and paramedics. Under previous law, only a physician, qualified technician, chemist, registered nurse, or licensed vocational nurse was authorized to take a blood specimen at the request or order of a peace officer for purposes of intoxication-related offenses. This new legislation will allow for a person's blood to be drawn without having to transport the individual to a separate facility such as a hospital during an intoxication-related investigation.

H.B. 1862 amends the prohibited-weapons statute by removing the switchblade knife from the prohibited-weapons list so that there are no longer criminal consequences to possessing, manufacturing, transporting, repairing, or selling a switchblade knife.

S.B. 821 brings Texas law up to date by adding "hot drafts" to "hot checks" statutes to allow prosecution of those who pay with hot drafts by adding "sight order," along with checks, for purposes of theft by check to allow prosecution for insufficiently funded electronic transfers, or "hot drafts."

CONCLUSION

Overall, the 83rd Texas Legislature made significant improvements in the criminal justice system, decreasing the likelihood of wrongful convictions by increasing transparency and accountability.



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