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Report on the Texas Legislature, 87th Session: An Urban Perspective-Executive Summary

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Cover Page Footnote

The Earl Carl Institute for Legal & Social Policy, Inc. would like to give special recognition to Prairie View A&M University and the Texas Juvenile Crime Prevention Center for their partnership on this report, with a special thank you to Associate Director Grady Paris for partnering with us on the legislative updates over the years. Ms. Paris is a Texas Southern University Alumnus who earned her undergraduate degree in Government and her Juris Doctorate from the University of Houston; she is licensed to practice law in the state of Texas. Grady Paris has been with Prairie View A&M University's Juvenile Crime Prevention Center since 2005.

OVERVIEW

In Texas, the legislature meets every two years. At the end of a regular legislative session, hundreds of passed bills will have been sent to the governor for approval. The large number of bills and the wide range of topics they cover can always make it difficult to gain an understanding of all the new laws that were passed, and in the 87th Session there were three special sessions as well.

At the close of each legislative session, the Earl Carl Institute for Legal and Social Policy, Inc. publishes highlights from the session in a bi-annual legislative report for the benefit of its constituents. In this year's publication entitled Report on the Texas Legislature, 87th Session: An Urban Perspective, the Institute attempted to cover matters that it believes to be of concern to the urban community. However, many of the highlights cover issues of particular concern to other traditionally disenfranchised communities as well. The legislation covered in these reports generally falls under such issues as Criminal Justice (Human Trafficking, Criminal Procedure, Wrongful Convictions, Domestic Violence), Elections, Juvenile Justice, Family Law, Property, Education, Healthcare, Wills, Estate and Probate, Wealth and Litigation, and more. We are pleased to present, via *The Bridge: Interdisciplinary Perspectives on Legal & Social Policy*, the executive summary of this year's legislative report, as well as some excerpts we found particularly relevant. The full report, published in September 2022, can be accessed via the Institute's website www.tsulaw.edu/centers/ECI/publications.html.

EXECUTIVE SUMMARY

Welcome to the Earl Carl Institute's Report on the Texas Legislature, 87th Session: An Urban Perspective. The Institute is pleased to again provide our supporters with an analysis of certain bills passed in the 87th Legislative Regular and Special Sessions. We appreciate the assistance and support of our partner in this endeavor, Prairie View A&M Texas Juvenile Crime Prevention Center.

To say that the 87th Legislative Session was unusual is a gross understatement. Given the official start date of January 12, 2021, the session began at the height of the COVID-19 pandemic. As the legislature convened, first virtually then in person, there were tensions in play across the state and the world. In fact, even as we grappled with the "new normal" conditions that COVID created, we were faced with an even graver crisis. Not only did COVID rob many of their health, livelihoods, and even their lives, but we had to simultaneously grapple with police brutality and the shootings of unarmed Black and Brown people. Here in Texas—as in many parts of the world—in the aftermath of the deaths of Sandra Bland, Botham Jean, George Floyd, Pamela Turner, and Attatiana Jefferson at the hands of police, there was another outbreak taking root. It was one of racial and social unrest, featuring the re-emergence of a new wave of activist movements like Black Lives Matter and others. Even as this movement gained momentum, we

saw attempts to restrict black students and their choice of hairstyles. Limits were placed on articulating the factual history of this country by silencing primary and secondary curricula on race and racial constructs in the classroom. Challenged by potential or real loss of work, increased childcare and schooling responsibilities, and overall economic instability, lower- and middle-income wage earners also faced threats related to housing instability.

During the regular legislative session, there were several bills filed that were of significance to the communities that we serve at the Institute. Some of the bills either failed to pass both chambers, or were ultimately vetoed by the Governor. These remain relevant, however, as they inform us about political agendas moving forward. We share comments on some of those bills below. As for new laws, we have attempted to cover issues of particular concern to the urban community; however, many of the issues covered impact other traditionally disenfranchised communities as well. We hope you enjoy this publication as much as we have enjoyed its compilation.

SESSION HIGHLIGHTS

The regular session, the 87th Legislature filed 9,999 bills, sent 1,073 bills to the Governor of which 20 were vetoed, there was one line-item veto, and 105 bills became law without the Governor's signature.

The legislation covered in this report includes the following subject matters:

Criminal Justice and Procedure	Elections
Juvenile Justice	Property
Family Law	Human Trafficking
Guardianship & Disabilities	Child Protective Services
Wills Estate & Probate	Wealth
Secondary & Higher Education	Domestic Violence
Litigation	Healthcare
Mental Health	COVID-19

We begin by considering a few key bills that did not move forward, recognizing that only about 10 percent of the number of originally filed bills became law in the regular session.

Failed to Pass the House and/or Senate

The CROWN Act (HB 392): H.B. 392, also known as “The CROWN Act,” sought to ban educational, employment, and housing discrimination based on hair texture or styles including braids, locks, and twists. CROWN is an acronym which stands for “Creating a Respectful and Open World for Natural Hair” which was a national movement created in 2019 by Dove and the CROWN Coalition, in partnership with then State Senator Holly J. Mitchell of California, to ensure protection against discrimination based on race-based hairstyles by extending statutory protection to hair texture and protective styles such as braids, locks, twists, and knots in the workplace and public schools. Similar statutes have already been passed by 13 states and 30 cities as of March 2022. A Houston area student, De’Andre Arnold, was the inspiration behind the Texas bill. He was suspended from school and told that he could not walk at his high school graduation unless he cut off his dreadlocks. H.B. 392 had bipartisan support but the session ended before it could get passed through both chambers.

George Floyd Act (HB 88): The legislature had been considering the George Floyd Act Omnibus bill in the aftermath of the brutal murder of Houston native, George Floyd, at the hands of Derek Chauvin and other former Minneapolis police officers. Chauvin was videotaped kneeling on the neck of George Floyd for 9 minutes and 29 seconds despite Floyd’s agonizing verbal pleas for help and relief. Chauvin was ultimately found guilty of second-degree unintentional murder, third-degree murder and second-degree manslaughter. The George Floyd Act for police reform was introduced in both the Texas House and the Senate but the bill was later broken into smaller bills. Unfortunately, many of these did not progress. Police unions were vehemently opposed to the bills because they wanted to preserve qualified immunity protections that have protected officers from state civil rights lawsuits since the U.S. Supreme Court decision in *Harlow vs. Fitzgerald*, 457 U.S. 800 (1982). Despite law enforcement push back, the George Floyd Act had public support, and pieces of the original bill did advance to become law. For instance, officers must intervene and report when they see another officer using excessive force (S.B. 68), and chokeholds are now banned in Texas (S.B. 69).

Governor’s Vetoes:

Parole Eligibility for Juvenile Offenders (HB 686): H.B. 686 would have allowed for earlier parole for juveniles who committed crimes under the age of 18. Under this bill, rather than serve a minimum of 30 or 45 years, these inmates would be eligible for parole when their time served, without considering good conduct time, equaled 20 years or one-half of their term, whichever was less, with a minimum of four years. This law would have allowed parole panels to take into consideration the juvenile’s mental health and growth and maturity among other factors towards eligibility for parole. Citing language that conflicts with jury instructions as required by the Texas Code of Criminal Procedure, Governor Abbot vetoed H.B. 686 stating it would result in confusion and needless, disruptive litigation.

Hypnosis Testimony Use in Criminal Trials (SB 281): This bill would have made all statements obtained by hypnosis for the purpose of enhancing a person's recollection of an event at issue in a criminal investigation or case inadmissible against a defendant in a criminal trial. The bill's provisions would not affect the admissibility of any physical evidence, or the testimony of any witness identified that independently corroborates a crime. This bill was prompted by the case of Charles Flores, who is on Texas' death row for murder. Through his veto message, Governor Abbott stated that this "expands the scope in an unacceptable way" as it pertains to the use of investigative hypnosis. He added that the sponsor's amendment would grant "lifetime immunity, for everyone who undergoes this type of hypnosis, from having any subsequent statements used in a criminal trial."

Texas Middle and High Schoolers Lessons on Forms of Abuse (SB 1109): S.B. 1109 would have required that every school district provide instruction to middle school and high school students regarding the prevention of child abuse, family violence, and dating violence. In the Governor's veto message, he opposed the bill because "it failed to recognize the right of parents to opt their children out of this type of instruction."

Removal of Judicial Discretion to Set Conditions of Probation (HB 787): This bill would have ensured that judges did not issue overly broad prohibitions on the activities of probationers that could prevent probationers from meaningful, rehabilitative interactions with others who were or are involved with the criminal justice system and have had similar experiences. In Governor Abbot's veto statement, Abbot stated, "H.B.787 seeks to encourage rehabilitation of criminal defendants, but in doing so would remove judicial discretion to set certain necessary conditions on a case-by-case basis.... I cannot support legislation that eliminates judicial discretion...."

Jurisdiction of Juvenile Courts as it Relates to the Sealing of Records (HB 1193): H.B. 1193 would have established that a juvenile court retained jurisdiction over a person, without regard to the age of the person, if the proceeding had been delayed through no fault of the state. Proponents raised concerns that under current law, any juvenile who has been placed on a determinate sentence is ineligible to have his or her juvenile record sealed and that as a result, juveniles who made one mistake at a young age but successfully turned their lives around are subject to being stigmatized and burdened by a criminal record as adults. This bill would have clarified that such youth would be entitled to have their records cleared. In the Governor's veto statement he asserted, "Texas already allows juveniles to clear their records in appropriate circumstances, however, House Bill 1193 would allow juveniles who were sentenced for serious violent crimes to hide their acts from society and future employers. I have vetoed similar bills in the past... and I must do so again here."

Allowing Police Officers to Issue a Citation for the Misdemeanor of Criminal Trespass Instead of Taking the Suspect Before a Judge (SB 237): Currently, Code of Criminal Procedure art. 14.06(c) allows a peace officer, under certain circumstances, to issue a citation to someone being charged with committing certain Class A or Class B misdemeanor offenses, rather than arresting

the individual. This bill would have amended the law to allow person(s) charged with a Class B misdemeanor trespass to receive a citation from a peace officer with a Notice to Appear instead of taking the person before a magistrate. Governor Abbott in his Veto Proclamation stated that "Senate Bill 237 would add criminal trespass to the list of offenses for which law enforcement can "cite and release" instead of arresting an intruder.... it would allow (and tempt) agencies to categorically mandate cite and release for this crime, taking away an important tool for officers...."

There is so much information to share that we obviously could not include everything in one report. Please excuse us if you come across a new law you believe should have been included in our report. In such a case, please feel free to contact us for the analysis of that law. We put a great deal of effort and time into this compilation and truly hope that you enjoy it. If we can be of service to other organizations and elected officials in policy changes, research or educational contributions, please do not hesitate to email us at earlcarlinstitute@tmslaw.tsu.edu or call the Institute at 713-313-1139. It is always our pleasure to be of service to the community.

Excerpts from the Complete Report

Criminal Justice

Criminal Procedure

HB 929 (Sherman, Sr. | Krause | Jetton | Rodriguez | Reynolds) *Relating to law enforcement policies and procedures regarding body worn cameras.*

Summary: H.B. 929, known as the “*The Botham Jean Act*,” requires that law enforcement agencies adopt policies that require a peace officer who is equipped with a body worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer’s active participation in the investigation unless the camera has been deactivated in compliance with that policy. It also contains provisions relating to the collection of a body worn camera, including the applicable video and audio recorded by the camera, as evidence. It is so named to recognize the shooting of Botham Jean, an unarmed Black man who was shot and killed while sitting in his residence by off-duty police officer, Amber Guyger.

Codification: §§1701.655 & 1701.657, Occupations Code

Effective Date: September 1, 2021

HB 3712 (Thompson, Ed | White | Schaefer | Cyrier | Moody) *Relating to the training of and policies for peace officers.*

Summary: H.B. 3712 amends current law relating to the hiring and training of and policies for peace officers. H.B. 3712 seeks to strengthen and create greater consistency in the training received by peace officers. The bill adds to the basic peace officer training course to require training on the prohibition and use of chokeholds, carotid artery holds, and neck restraints during

certain encounters with members of the public. H.B. 3712 contains language requiring training on the duty of an officer to intervene if an officer observes another officer using force that he or she believes to be more than is required under the circumstances. The bill also requires training on an officer's duty to render aid to a person who the officer observes to have sustained serious injury during a use of force and addresses the conditions under which aid should be rendered. H.B. 3712 requires the Texas Commission on Law Enforcement (TCOLE) and the Bill Blackwood Law Enforcement Management Institute to work with other interested parties in the development of certain model training and curriculum policies for law enforcement agencies and peace officers. H.B. 3712 also requires TCOLE and the Bill Blackwood Law Enforcement Management Institute to work with other interested parties to develop and make available to Texas law enforcement agencies model policies regarding pre-employment investigations of a licensed peace officer that include the topics of criminal background checks and the employment termination report.

Codification: Subchapter F, Chapters 1701, Occupations Code

Effective Date: September 1, 2021

HB 4293 (Hinojosa | Krause | Moody | Leach | González, Jessica) *Relating to the creation of a court reminder program for criminal defendants.*

Summary: H.B. 4293 amends current law relating to the creation of a court reminder program for criminal defendants. Arrests for failure to appear typically happen when persons simply forget about scheduled court dates, not because they intentionally skip them. Court reminder programs are a cost-effective solution that would improve the overall efficiency of Texas courts, as well as keep persons from being arrested for failing to appear. H.B. 4293 requires the Office of Court Administration of the Texas Judicial System to develop and make available to each county a court reminder program that allows the county to send a text message to notify criminal defendants of scheduled court appearances. The program will document each occurrence of a criminal defendant receiving a text message reminder, identify criminal defendants with scheduled court appearances who lack access to devices with the technological capability of receiving text messages, and document the number of criminal defendants who fail to appear at scheduled court appearances after being sent one or more text messages.

Codification: Chapter 75, Government Code

Effective Date: September 1, 2021

SB 69 (Miles) *Relating to the use of force by peace officers.*

Summary: S.B. 69 prohibits officers from applying deadly pressure to a person's throat, neck, or torso, blocking a person's nose or mouth, or impeding a person's circulation unless the officer is protecting themselves or another person from serious bodily injury or death. Chokeholds and neck restraints have unique potential for harm to individuals and police community relations. They should be banned and excluded from training. At least 134 people nationwide have died in police custody from "asphyxia/restraint" in the past decade alone, and these are only the deaths

reported. Wrongful death claims against law enforcement agencies collectively cost taxpayers millions of dollars to defend and, in many cases settle. S.B. 69 protects citizens from being choked to death by police and protects taxpayers from paying for wrongful death suits due to police chokeholds.

Codification: Chapter 2, Code of Criminal Procedure

Effective Date: September 1, 2021

Juvenile Justice

HB 454 (Metcalf) *Relating to the creation of a specialty treatment court for certain individuals residing with a child who is the subject of a juvenile court case.*

Summary: H.B. 454 amends current law relating to the creation of a specialty treatment court for certain individuals residing with a child who is the subject of a juvenile court case. Concerns have been raised about how the odds of a successful outcome for a child with a pending juvenile court case may be negatively impacted by the child residing with a family member experiencing substance abuse issues. H.B. 454 authorizes a county to establish a juvenile family drug court program designed to connect individuals residing in the home of a child who is the subject of a juvenile court case with substance abuse treatment options if applicable.

Codification: Subtitle K, Title 2, Government Code

Effective Date: September 1, 2021

HB 2669 (Guillen) *Relating to the confidentiality of a child's criminal records related to certain misdemeanor offenses.*

Summary: H.B. 2669 amends current law relating to the confidentiality of a child's criminal records related to certain misdemeanor offenses. In the Code of Criminal Procedure, there is repeated language relating to the confidentiality of a child's criminal records for some misdemeanor offenses. This language may result in confusion and misinterpretation of the law. By eliminating repetition in the code relating to juvenile criminal records, H.B. 2669 clarifies language to ensure the confidentiality of these records relating to a child who is charged with or convicted of a fine-only misdemeanor other than a traffic offense or whose conviction for such an offense is appealed.

Codification: Articles 44.2811, 45.0217, Code of Criminal Procedure.

Effective Date: September 1, 2021

Education

HB 572 (Dutton) *Relating to the inclusion of students enrolled in a dropout recovery school as students at risk of dropping out of school for purposes of compensatory, intensive, and accelerated instruction and to a study by the Texas Education Agency on competency-based educational programs.*

Summary: H.B. 572 amends current law relating to a study by the Texas Education Agency on competency-based educational programs. One in five Texas freshmen will not graduate high school, and this number is expected to grow after the 2020 school disruptions. Without a high school diploma, these students represent a loss of potential in their own lives and for the Texas economy at large. Current Texas education law, especially funding, does not allow for much flexibility in creating alternative programs for students who cannot conform to school schedules. Consequently, students with unique circumstances, such as needing to work to provide for their family, find themselves unable to complete high school or to return after failing to graduate. House Bill 572 amends the Education Code to classify a student who is under 26 years of age and is enrolled in a dropout recovery school as a "student at risk of dropping out of school" for purposes of a public school district's provision of compensatory, intensive, and accelerated instruction.

House Bill 572 also requires the Texas Education Agency (TEA) to conduct a study on the implementation of competency-based educational programs by public schools and to report the results to the legislature. Implementation by TEA of the bill's provisions relating to the study is mandatory only if a specific appropriation is made for that purpose.

Codification: §29.081(d), and Chapter 29, Education Code

Effective Date: Effective Immediately

HB 3979 (Toth | Leach | Metcalf | Bonnen | Parker) *Relating to the social studies curriculum in public schools.*

Summary: In a push back against Critical Race Theory, radical extremist passed House Bill 3979 which amends the Education Code to prohibit compelling a teacher for any social studies course, in the required curriculum. to discuss a particular current event or widely debated and currently controversial issue of public policy or social affairs but requires a teacher who chooses to do so to strive to explore the topic from diverse and contending perspectives without giving deference to any one perspective. The bill restricts how racism and the legacy of slavery can be addressed in class, and issues from LGBTQ perspectives.

Codification: §28.002, Education Code

Effective Date: 9/1/2021

Elections

HB 3107 (Clardy | Klick | Cain | Morales Shaw) *Relating to election practices and procedures.*

Summary: H.B. 3107 amends the Election Code to clarify and update certain election practices and procedures relating to voter registration, election officers and observers, election supplies, the conduct of elections, early voting, candidates, presidential elections, elections to fill a vacant office, and recounts.

Email submission of certain documents. H.B. 3107 adds email as an acceptable method of transmission for delivery, submission, or filing of a document or paper under the Election Code.

Voter registration applications. The bill specifies that for a voter registration application submitted by fax to be effective, a copy of the original application containing the voter's original signature should be submitted by personal delivery or mail and be received by the county voter registrar by the fourth business day after the fax was received.

Election judge and clerk training. H.B. 3107 specifies that the required training program for election judges and election clerks must include specific procedures related to the early voting ballot board and the central counting station, as applicable.

Written notice of ballot drawing. The bill requires an authority conducting a drawing for the order of candidate names on a ballot to provide notice of the date, hour, and place of the drawing to each candidate.

Early voting clerk contact information. H.B. 3107 specifies that an election order and election notice would have to state the early voting clerk's official mailing address or street address at which the clerk could receive delivery by common or contact carrier, if different, phone number, email address, and internet website, if applicable.

Bilingual election clerks. The bill specifies that in order to be eligible to serve as a bilingual election clerk, a person would have to be a qualified voter of the state and satisfy any additional requirements prescribed by written order of a commissioner's court or meet the eligibility requirements of a student election clerk.

Codification: Various Election Code Sections

Effective Date: September 1, 2021

SB 331 (Johnson) *Relating to eligibility to serve as an interpreter in an election.*

Summary: S.B. 331 amends the Election Code to make any person eligible to serve as a voter's interpreter in an election if the person is not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs. The bill restricts the appointment of an interpreter to a registered voter of the county in which the voter needing the interpreter resides or an adjacent county. Among other provisions, the bill removes the authorization for an interpreter to accompany a voter to the voting station for the purpose of translating the ballot and authorizes such a voter instead to receive certain voter assistance.

Codification: §§61.032, 61.033, 61.034, 61.035, Election Code

Effective Date: June 14, 2021

Family Law

HB 3009 (Ramos | Wu) *Relating to child custody evaluations.*

Summary: For many students enrolled in Texas public schools, members of their household do not speak English as their primary language, or at all. H.B. 3009 requires a court to ensure that a child custody evaluator appointed in a suit in which a party subject to the evaluation does not speak English as a primary language is able either to effectively communicate in the party's primary language or be assisted by a licensed or certified interpreter. The interpreter may accompany the evaluator in person or assist through use of audio or video conferencing technology.

Codification: §107.103, Family Code

Effective Date: September 1, 2021

HB 2924 (Dutton) *Relating to procedures in certain suits affecting the parent-child relationship.*

Summary: Under current law, a court may terminate a parent's parental rights solely because that parent's parental rights were previously terminated with respect to another child for certain conduct involving child endangerment. This penalizes parents who have turned their lives around. H.B. 2924 ensures that parents are not penalized for past mistakes by removing this as ground for involuntary termination of the parent-child relationship.

Codification: §161.001(b), Family Code

Effective Date: September 1, 2021

HB 3379 (Leman | Bell, Keith | Gates | Smith | Middleton) *Relating to the duty to report child abuse and neglect.*

Summary: H.B. 3379 amends current law changing the standard for reporting abuse and neglect from cause to believe to “reasonable” cause to believe. There are concerns that the current standard for reporting suspected child abuse or neglect, which is simply having any cause to believe reportable conduct has occurred, is overly broad and could lead to a person submitting a false report that would only distress the child in question and waste investigatory resources. Additionally, this overly broad reporting standard could also lead to a person who did not submit an initial report being charged for failing to do so even though they had no real information to indicate abuse or neglect had taken place.

Codification: §261.101, Family Code

Effective Date: September 1, 2021

Property

SB 30 (West | Alvarado | Bettencourt | Birdwell | Blanco | Buckingham | Campbell | Creighton | Eckhardt | Gutierrez | Hall | Hancock | Hinojosa | Huffman | Hughes | Johnson | Kolkhorst | Lucio | Menéndez | Miles | Nelson | Nichols | Paxton | Perry | Powell | Schwertner | Seliger | Springer | Taylor | Whitmire | Zaffirini) *Relating to the removal of certain discriminatory provisions from a recorded conveyance instrument.*

Summary: S.B. 30 amends current law relating to the removal of certain discriminatory provisions from a recorded conveyance instrument. In thousands of real property deeds across the state, there are racist restrictions barring families of color from moving into these homes. Although these racially restrictive provisions are no longer enforceable, they are still a reminder of the systemic and segregationist housing practices that limited the upward mobility of millions of people of color. Currently, there is no across-the-board mechanism for removing these types of racist restrictions from property records. S.B. 30 allows for these restrictions to be removed from real property records through the county clerk's office of the county in which the real property is located.

Codification: Chapter 5, Property Code

Effective Date: September 1, 2021