

# SHERIFFS' ASSOCIATION OF TEXAS

## NEW SHERIFFS LEADERSHIP INSTITUTE

December 7-11, 2020



Since 1874

## New Sheriffs Handbook

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**Legal Advisor**

## **LAW FINDER**

**Texas Statutes**     [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)

**Google Scholar**     [www.scholar.com](http://www.scholar.com)

**Office of Court Administration**     [www.tx.courts.gov](http://www.tx.courts.gov)

**Texas Attorney General**     [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)

**A G Opinions**

**Open Government     Public Information Act**

**Open Meetings Act**

**Open Reports & Publications**

**Open Records Letter Rulings**

**30.06 Rulings**

**PRESENTED AT**  
**NEW SHERIFFS LEADERSHIP INSTITUTE**

**December 2020**  
**by**  
**Judge Dan Mills**  
Legal/Technical Advisor

**I. Remarks**

Bits of wisdom from someone who has been there and done that; having dealt with county commissioners for almost 10 years in obtaining budget approval for the District Court.

**II. Local Government Code**

Having been elected to the office of sheriff, now what must you do?

**III. General information**

Some of the nuts and bolts that sheriffs should know in dealing with the office of sheriff.

**IV. Attorney General Opinions affecting the office of sheriff.**

Why should you be interested in what an Attorney General opinion has to say about the office of sheriff?

# I. Remarks

Congratulations on your election to the office of sheriff.

You now belong to an exclusive club of 254. Out of 26 million or more people who live in the state of Texas, you are 1 of 254 people who have dedicated themselves to provide fair, honest and commonsense law enforcement protection to all the people in your county. You have the responsibility of seeing you and your staff set a high moral and ethical standard for those that come in contact with you.

As you take over the office of sheriff, the score is no hits, no runs, no errors. We all make honest errors but we should learn from them. You begin squeaky clean and you should keep it that way. Whatever happens during your term of office be truthful when talking to everyone including the press. If it is something you don't want to discuss then say, "I have no comment at this time". When you go home at night you can go with a clean conscious and never have to worry about having to deal with an untruth later on. I can assure you that it will come back to bite you if you do.

It is important that you establish good relations with your County Judge and the Commissioners Court. Remember they set your budget. You may win a battle with them but you will lose the war. This doesn't mean that you should let them tell you how to run your office. **Also, your Auditor can be a friend or an adversary.**

Don't forget that you need a good working relationship with your County/District Attorney. They are there to help you. In fact, this also applies to all of the county officials in your county.

If for some reason you cannot get answers from your County/District Attorney you should feel free to call me at the Sheriffs' Association Office at 512-445-5888. This is a service provided to you for free. If you receive advice from me, I would urge you to check with your County/District Attorney, when he/she is available, to verify the advice I have given you is correct. **Remember they are the only ones who have the legal responsibility to advise you and represent you in a lawsuit.**

There will be questions that arise that you will not have an answer, so don't hesitate to get advice. You have the option of taking the advice or not, but don't guess. You can study the advice given you and then decide what are the right ways to handle the situation. Usually commonsense will help you make a proper decision.

## II. Local Government Code (LGC)

To access the full text of the Texas Constitution, Texas Statutes, as well as the Local Government Code, go to the following website: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us). Under "Quick Search" select the "Code", then the "Chapter" and Article" you want to read.

Example: If you wanted to read Sec. 85.001 of the Local Government Code you would click on the above website and then click on Local Government Code. Then go to Chapter 85. Click on Sec. 85.001, hit "GO" and it will appear on your screen ready to read.

The Local Government Code (LGC) provides information for the sheriff to use in the operations of his office. In many instances, I will paraphrase the information I want you to have. Never take anything for granted. When you have a question about something in the LGC, go to the actual section and read it completely.

### Sheriff and Sheriff's Personnel Chapter 85 (LGC)

*Section 85.001 (LGC) sets out what the new sheriff **must do before taking office**. This Section provides the following:*

#### Sheriff

a. A person elected as sheriff, before beginning to perform the duties of office, must **execute a bond with 2 or more** good and sufficient sureties or a solvent surety company authorized to do business in Texas.

b. The bond must be approved by the commissioners court of the county and made payable to the governor. The bond shall be for **not less than \$5000 nor**

**more than \$30,000.** The conditions of the bond will provide for the sheriff to faithfully perform the duties of office established by law, and shall account for and pay to the person authorized by law to receive them the fines, forfeiture, and penalties the sheriff collects for the use of the state or county.

**Bond should be mailed to Texas Comptroller of Public Accounts,** Fiscal Services Division, P O Box 13528, Austin, TX 78711-3528

Attn: Dolores Fostasek (512) 463 4416

c. Execute and return when due the process and precepts lawfully -3316 to the sheriff, and pay to the person to whom they are due or to the attorney the funds collected by virtue of the process or precept.

d. Pay to the county any funds illegally paid, voluntarily or otherwise to the sheriff from county funds. The sheriff must take and subscribe the official oath, which, together with the certificate of the officer administering the oath, must be endorsed on the bond.

e. A person elected or appointed as sheriff who has executed the bond and takes the official oath may enter at once on the duties of office - - -

f. A sheriff or deputy is not liable on an official bond, and is not personally liable on an official bond, and is not personally liable, for having received or confined a prisoner delivered or surrendered to the sheriff or deputy by a state ranger.

Section 85.0011 requires that a person is not eligible to serve as sheriff unless the person has (1) a high school diploma or a high school equivalency certificate and (2) is eligible to be licensed under **Section 1701.301 thru 1701.317 Occupation Code.**

Section 85.002 discusses “New Bond Requirements and Removal”

### Deputies

Section 85.003 sets out that the appointment of a deputy sheriff must be in writing. Before beginning to perform the duties of office, must **take and subscribe the official oath**, which, together with the certificate of the officer administering the oath, **must be endorsed** on the appointment. The appointment and oath shall be deposited and recorded in the county clerk’s office. (*Must be*

certified as a peace officer by TCOLE before performing the duties as deputy sheriff).

**A deputy serves at the pleasure of the sheriff.** The sheriff may revoke the appointment for a deputy on the indictment of the deputy for a felony.

A sheriff is responsible for the official acts of a deputy and may require that deputy execute a bond or other security. A sheriff has the same remedies against a deputy and the deputy's sureties as any other person has against the sheriff and the sheriff's securities.

### Reserve Deputies

**Section 85.004 (LGC)** provides that the **commissioners** court of a county **may authorize** the sheriff to appoint reserve deputy sheriffs and may **limit their number**.

A reserve deputy serves at the discretion of the sheriff and may be called into service if the sheriff considers it necessary to have additional officers to preserve the peace and enforce the law. 85.004(b)

A sheriff may authorize a reserve deputy, who is a peace officer under 2.12 of the Code of Criminal Procedure, to carry a weapon while engaged in the actual discharge of official duties or the sheriff may limit their authority. 85.004(b)

A reserve deputy, who is not a peace officer, may act as a peace officer only during the actual discharge of official duties. 85.004(b)

A reserve deputy, before beginning to perform the duties of office and at the time of appointment, must file an oath and execute and file a bond in the amount of **\$2,000 payable to the sheriff**. The oath and bond shall be filed with the county clerk. (***Must meet TCOLE certification requirements as to training before performing the duties of office.***)

The county or sheriff is not liable if the reserve deputy incurs personal injury while serving in an official capacity. 85.004(g)

### Guards

Section 85.005 LGC states that a sheriff may, with the approval of the commissioners court or, in the case of emergency, with the approval of the county judge, employ a sufficient number of guards to ensure the safekeeping of prisoners and the security of the jail. (*Be sure and check with State Jail Standards as to their rules and regulations concerning jails.*)

### County Police Force in Counties of 210,000 or More

Section 85.006(a) gives the opportunity to appoint a county police force. The commissioners court shall determine the number which must be at least 6. The appointments are subject to approval by the commissioners court. The sheriff shall appoint one of the officers as chief. The sheriff shall deputize each police officer under this section ----- (*Not generally used by a county.*)

### Miscellaneous Powers and Duties Process or Precepts

Section 85.021 provides that the sheriff shall execute all process and precepts directed to the sheriff by legal authority and shall return the process or precept to the proper court on or before the date the process or precept is returnable.

The sheriff **commits an offense** if the sheriff **fails to return a process** or precept as required or the sheriff makes a false return.

An offense under this section is punishable by the court which the process is returnable, as for contempt, by a fine of not more than \$100. The fine shall be deposited in the county treasury. (*Probably goes to the general fund.*)

The **sheriff is liable for all damages sustained** by a person by reason of an offense committed by the sheriff under this section.

Section 85.022 states that a sheriff shall execute subpoenas and other process directed to the sheriff that are **issued by the speaker of the house** of representatives, the president of the senate, or the chairman of a committee of either house of the legislature. Failure to execute carries a fine of not more than \$100. The sheriff shall receive fees prescribed by law for similar service rendered in the courts - - - - .

### Unfinished Business

Section 85.023 requires that a sheriff who vacates the office for any reason, all unfinished business shall be transferred to the succeeding sheriff and completed in the same manner as if the successor had begun the business.



Constable and Constable Personnel (LGC)

**Section 86.001 - Section 86.025** provide for duties of constables.

Removal of County Officers From Office; filling of Vacancies (Chap. 87 LGC)

**Section 87.001 - Section 87.019**

County Finances

County Budget

*It is important to understand the budget process and how it affects the office of sheriff. Sometimes the full Section is not set out but provides the tenor of that section. It is suggested that if you want a fuller understanding of the “budget process” you read the complete “County Finances” section.*

Budget Preparation In Counties (A)  
Population **225,000** or Less

Section 111.001 (LGC) This subchapter applies only to counties that have a population of 225,000 or less and that does not operate under Subchapter C.

Section 111.002 (LGC) The county judge serves as the budget officer for the commissioners court of the county.

Section 111.005 (LGC) The county judge may require any county officer to furnish existing information necessary for the judge to properly prepare the budget. *(Whether the county judge asks for you to prepare a budget or not, I would recommend that you provide one.)*

Section 111.011 (LGC) This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

Section 111.012 (LGC) A person who refuses to comply with this subchapter commits an offense. A fine of \$100 or more than \$1,000, confinement in the county jail for not less than one month or more than one year, or both fine and confinement.

Budget Preparation in Counties (B)  
Population more than 225,000

Section 111.031 (LGC) This subchapter applies only to a county that has a population of more than 225,000 and that does not operate under Subchapter C.

Section 111.032 (LGC) **the county auditor serves** as budget officer for the commissioners court of the county. (Section 112.001 - 112.054)

Section 111.041 (LGC)

a. - - -

b. - - -

c. The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.

Section 111.0415 (LGC) This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

Alternate Method of Budget In Counties (C)  
With Population **More Than 125,000**

**Section 111.061** (LGC) This subchapter applies only to a county that has a population of more than 125,000 and that chooses to operate under this Subchapter **instead of under Subsection A or B.**

Section 111.062 (LGC) The commissioners court of the county may appoint a county budget officer to prepare a county budget.

Section 111.065 (LGC) In preparing or monitoring the budget, the budget officer may require the **county auditor** or any other **district, county**, or precinct officer to **provide any information necessary for the budget officer** to properly prepare or monitor the budget.

Section 111.070 (LGC)

a. - - -

b. - - -

c. The commissioners court, by order, may (1) amend the budget to

transfer amount budgeted for one item to another budgeted item **without authorizing an emergency expenditure; or - - - -**

### County Financial Accounting

#### County With Population Less Than 190,000 With County Auditor

Section 112.001 (LGC) In a county with a population of less than 190,000, the **county auditor may adopt** and enforce regulations, not inconsistent with law or with a rule adopted under Section 112.003, that the auditor considers necessary for the **speedy and proper collecting, checking**, and accounting of the revenues and other funds and fees that belong to the county.

Section 112.002 (LGC) In a county with a population of 190,000 or more, the **county auditor shall prescribe** the system of accounting for the county.

b. - - -

c - - -

#### Other Specific Accounts

*You need to check and see if the section set out below is being implemented by the county clerk. If this section is not being implemented, then I would check with the county auditor and the county attorney for directions on how to comply with this section.*

Section 112.051(a) (LGC) except as provided by Subsection (c), the county clerk **shall keep an account for the county sheriff that charges the sheriff** with each judgment, fine, forfeiture, or penalty that is payable to and rendered in any court of the county and that the sheriff charged by law to collect. The sheriff may discharge the liability by producing the county treasurer's receipt that shows payment of the judgment, fine, forfeiture or penalty.

(b) The sheriff may also discharge the liability by showing to the satisfaction of the commissioners court that the judgment, fine, forfeiture, or penalty cannot be collected or that it has been discharged through imprisonment or labor or by escape occurring without the sheriff's fault or neglect. The sheriff must obtain an order of the commissioners court that allows the discharge.

(c) The sheriff is not liable for a judgment, fine, forfeiture, or penalty if the judgment, fine, forfeiture or penalty is collected by: - - - a public or private vendor or the county treasurer or county auditor.

### **Estray Account**

Section 112.053 (a) (LGC) If a notice of an estray is filed with the county clerk, the clerk shall keep an estray account on the debit side of the county finance ledger. The estray account must show the date of the notice, the name of the person who reported the estray, and a brief description of the animal. The clerk shall leave the amount of the charge blank until the sheriff files an account of the sale of the estray.

(b) When the account of the sale is filed, the county clerk shall enter the net amount due to the county from the sale in the blank in the estray account. When the county treasurer's receipt is presented to the clerk, indicating the amount paid into the county treasury because of the sale, the clerk shall enter that amount on the credit side of the estray account, showing the date, the name of the person paying, the amount paid, and a brief description of the animal. The clerk shall then charge that amount on the debit side of the county treasurer's account.

### **Management of County Money**

Section 113.001 (LGC) The county treasurer, as chief custodian of county funds, shall keep in a designated depository and shall account for all money belonging to the county.

Section 113.002 (LGC) Provides that the county treasurer shall keep an account of the receipts and expenditures of all money that the treasurer receives by virtue of this the office and all debts due to and owed by the county. - - -

Section 113.003(LGC) requires the county treasurer shall receive all money belonging to the county from **whatever source it may be derived. (GA 636)**

### **Deposit of Money**

Section 113.021 (a) (LGC) The fees, commissions, funds, and other money belonging to a county shall be deposited with the county treasurer by the officer who collects the money. The officer must deposit the money in accordance with any applicable procedures prescribed by or under Section 112.001 or 112.002. - - -

### **Time for Making Deposits**

Section 113.022 (LGC) A county officer or **other person who receives money shall** deposit the money with the county treasurer on **or before the next regular business day after the date on which the money** is received. If the deadline cannot be met, the officer or person must deposit the money, without exception, on or before the **fifth business day** after the day on which the money is received. However, in a county with fewer than 50,000 inhabitants, the **commissioners court** may extend the period during which funds must be deposited with the county treasurer, **but not to exceed 15 days after the date the funds are received.**

### **Deposit Warrants**

Section 113.023 (a) (LGC) provides each deposit made in the county treasury must be made on a deposit warrant. The deposit warrant authorizes the county treasurer to receive the amount stated in the warrant. The warrant must state the purpose in which the amount is received and the fund to which it is to be applied.

(b) The county treasurer shall keep the original deposit warrant. The county treasurer shall provide the county clerk or the county auditor with duplicate deposit warrants or a written report of all deposit warrants received that contains detailed information about each warrant. On the request of a person making a deposit, the county treasurer may provide a duplicate deposit warrant to the person. If the county has an auditor, the auditor shall enter the amount in the auditor's books, charging the amount to the county treasurer and crediting the person who deposited the amount. The treasurer may receive money only through the procedure except as provided by Subsection (c).

*(I would check with the county treasurer or county auditor and see how they implement this section.)*

(c) In a county with more than 2.2 million inhabitants, - - -

Deposit of Money Does Not  
Affect Ownership

Section 113.024 (LGC) The deposit of money in a county treasury does not change the ownership of the money, except to indemnify the officer and the officer's surety, or any other owner of the money, during the period of deposits with the county.

Disbursement of Money By County Treasurer:  
Payment By Check or Warrant

Section 113.041 (a) (LGC) provides that the county treasurer shall disburse the money belonging to the county and shall pay and apply the money as required by law and as the commissioners court may require or direct, not inconsistent with law.

(b) Except as provided by Chapter 156, a person may not spend or withdraw money from the county treasury except by a check or warrant drawn on the county treasury, whether or not the money is in a county depository as required by law.

(c) The county treasurer may not disburse money out of the county treasurer without an order for payment from officer who is authorized by law to issue the order.

(d) If the county treasurer doubts the legality or propriety of an order, presented to the treasurer for payment, the treasurer may not make the payment. The treasurer shall report the matter to the commissioner's court for the court's consideration and direction. The treasurer may require that the claim supporting the order be made available and verified by an affidavit after the claim is approved for payment by the commissioner's court. - - - - -

County Financial Report

Section 114.001 (a) (LGC) each **report** under this subtitle must be **made in writing** and must be **sworn to** before an the officer authorized to administer oaths by the officer making the report or by a person designated by he officer to receive fees, commissions, or costs under Section 114.041(b).

(b) a **monthly report** must be filed within five days after the last day of each month.

Section **114.002 (LGC)** The **county auditor shall determine:**

- (1) the time and manner for making reports to the auditor; and
- (2) the manner for making an annual report of:
  - (A) office fees collected and disbursed, and
  - (B) the amount of office fees refunded to the county in excess of those that the officer is permitted by law to keep.

Section 114.003 (a) (LGC) provides a county official or other person who is required under this subtitle to provide a report, statement, or other information to the county auditor and who intentionally refuses to comply with a reasonable request of the county auditor relating to the report, statement, or information, commits an offense.

Section 114.003 (b) (LGC) Misdemeanor \$25 to \$200, **removal from office** or both fine and **removal from office**.

Reports About Money Collected or Received  
County With Population of 190,000 or Less

Section 114.041(a) (LGC) provides in a county with a population of **190,000 or less**, a district, county, or precinct officer shall keep, as part of a record provided for the purpose, a **statement of the fees earned by the officer and of the money** received by the officer as deposits for costs, trust fund deposits in the registry of a court, fees of office, and commissions. The officer must make an entry in the record when the fees or commissions are earned or the deposits are made and when the money is received. The county auditor or, if the county does not have a county auditor, the commissioners court, shall **annually examine the records** and accounts of each officer and report the findings of the examination to the **next grand jury** or district court.

County With Population of **More than 190,000**

Section 114.041(b) (LGC) In a county with a population of more than

190,000, a district, county, or precinct officer shall keep, as part of a record provided for the purpose by the proper county authorities, a statement of the amounts earned by the officer and of the money received by the officer as fees, commissions, or costs. The officer must make an entry in the record when the fees, commissions, or costs are earned and when they are received.

Section 114.043 (LGC) in a county with a population of 190,000 or more, the **county auditor may require** a district clerk, district attorney, **county officer**, or precinct officer to **furnish monthly reports**, annual reports, or other reports regarding any money, tax, or fee received, disbursed, or remaining on hand. In connection with those reports, the auditor may count the cash in the custody of the officer or verify the amount on deposit in the bank in which the officer has deposited the cash for safe keeping.

**Section 114.044 (a)** (LGC) requires each district clerk, county clerk, county judge, county treasurer, **sheriff**, district attorney, county attorney, constable, or justice of the peace who collects or handles any money for the use of the county shall make a full report at least once a month at a regular term to the commissioners court on all fines imposed and collected, all judgments rendered and collected for the use of the county, and all jury fees collected by the respective courts in favor of or for the use of the county and, at the time of the report, shall present the receipts and vouchers that show the disposition of the money, fines, or judgments.

(b) Each report must fully state:

(1) the name of the person fined and the amount of the fine or the name of the person against whom judgment was rendered and the amount of judgment.

(2) the style, number, and date of each case in which a fine was imposed or a judgment rendered: or

(3) the amount of jury fees collected - - -

(c) The court shall carefully examine the reports, receipts, and vouchers. If the court finds them to be correct, the court shall direct the county clerk to enter the information in the county finance records. If they are found to be incorrect, the court shall summon before the court the officer making the report and shall have corrections made. The reports, receipts, and vouchers shall be filed in the county clerk's office.



Audit of County Finances  
Examination of Records

Section 115.001 (LGC) The **county auditor shall have continual access** to and shall

examine and investigate the correctness of:

- (1) the books, accounts, reports, vouchers, and other records of any officer;
- (2) the orders of the commissioners court relating to county finances, and
- (3) - - -

Section 115.002 (a) (LGC) The county auditor **shall carefully** examine and report on all reports that are about the collection of money for the county and that are required to be made to the commissioners court.

(b) **At least once** each quarter, the **county auditor shall check the books** and shall examine in detail the reports of the county tax assessor-collector, the county treasurer, **and all other officers**. The auditor shall verify the footings and the correctness of those books and reports. The auditor shall either stamp the book and reports approved or shall note any differences, errors, or discrepancies.

(c) - - -

Section 115.0035 (a) (LGC) Accounts means all public funds that are subject to the control of any precinct, county or district official and the attorney for the state composed of money and proceeds of property seized and forfeited to those officials.

(b) At least once each fiscal year, or more often if the county auditor desires, the auditor shall, without any notice, fully examine the accounts of all precinct, county and district officials.

(c) - - -

(d) - - -

Audit in County With Population of **190,000 or More**

Section 115.004 (a) (LGC) This section applies only in a county with a population of 190,000 or more.

(b) At the end of the fiscal year or the accounting period fixed by law, the county auditor **shall audit, adjust, and settle the accounts of the district attorney, the district clerk, and each county or precinct officer.**

(c) - - -

#### Audit in County With Population **Less Than 25,000**

Section 115.042 (a) (LGC) The commissioners court of a county with a population of less than 25,000 may arrange with one or more other counties to jointly employ and compensate one or more special auditors for the purposes set forth in Section 115.031 (Independent audit if considered commissioners court as an imperative public necessity).

(b) - - -

#### **Examination of Certain Records by County Treasurer**

Section 115.901 (a) (LGC) The **county auditor or, in a county that does not have the office of county auditor, the county treasurer shall examine the accounts, dockets, and records of each clerk, justice of the peace, and constable and of the sheriff and county tax assessor-collector to determine if any money belonging to the county and in the possession of the officer has not been accounted for and paid over according to law.**

(b) If the auditor or treasurer finds that such money exist, the auditor or treasurer shall report the findings of the examination to the commissioners court of the county at its next term for the purpose of instituting a suit for the recovery of the money.

#### Fees of Sheriff and Constable

*To search a list of fees set by other counties, go to <https://mycpa.cpa.state.tx.us/sacf>*

Section 118.131 (a) (LGC) the commissioners court of a county may set reasonable fees to be charged for services by the offices of the sheriff and constables.

- (b) The commissioner's court may not set fees higher than is necessary to pay the expenses of providing the services.
- (c) The commissioner's court may not set fees under this section more than once during any one-year period.
- (d) The commissioner's court must set the fees before October 1 of each year to be effective January 1 of the following year.
- (e) A notice setting out the fees shall be posted in the same manner in which notices are posted under Section 81.007 (LGC) and shall be posted in the offices of the county officials who are authorized to charge the fees.
- (f) On or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the comptroller - - who each year before December 15 compile the fee information provided by the counties and send the compilation to:
  - (1) the commissioners court of each county in this state;
  - (2) any statewide associations of counties or of officers of counties that requests in writing before December 15 to be informed: and
  - (3) The State Bar of Texas
- (g) A commissioners court that receives a notice under Subsection (f)(1) shall furnish the notice to its district clerk, county clerk, justices of the peace, sheriff, and constables.
- (h) If the commissioner's court does not set fees under this section, the fees for services by the office of the sheriff and constables are those fees provided by law in effect on August 31, 1981.
- (i) The commissioner's court may not assess an applicant a fee in connection with the filing, serving, or entering of a protective order. A fee may not be charged to an applicant to dismiss, or modify, or withdraw a protective order.

Section 118.132 (LGC) provides a sheriff shall collect the same fee for service of process issued by the Supreme Court or a Court of Appeals as the fee provided for service of process issued by a district court.

Section 118.133 (LGC) Sheriff's and Constable's response to **false alarm in a county** with a population of more than 3.3 million - - -

### Penalties

Section 118.801 (a) (LGC) An officer named in this chapter who, in bad faith, demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for **four times** the amount unlawfully demanded and received.

(b) An officer who, in good faith, demands and receives a higher fee than authorized or a fee not authorized under this chapter is liable to the aggrieved person for the difference between the amount demanded and received and the amount of the fee authorized under this chapter.

(c) The demand for and receipt of a fee authorized by the legislature that is later determined by a court of competent jurisdiction to be unlawful is considered to be a good faith action by the officer.

(d) In this section, "bad faith" includes a demand that an officer makes with the knowledge that a fee is not authorized by law.

### General Employment Authority

#### Officer Applies to Commissioners Court for Authority to Appoint Employees

Section 151.001 (a) (LGC) **requires sheriff to request the services of deputies**, assistants, or clerks in the performance of the officer's duties.

If the population of more than 190,000, the officer shall apply for authority to appoint any other kind of employees.

(b) The application must state:

1. the number of employees required;
2. the title of the positions to be filled; and
3. the amounts to be paid the employees.

(c) If the application is made in a county with a population of more than 190,000, it must also describe the duties to be performed by the employees.

(d) The application must be accompanied by a statement of the probable receipts from fees, commissions, and compensation to be collected by the office during the fiscal year and the probable disbursements, including salaries and expenses, of the office. *(You should check with your county judge as what procedure your county follows. This application is a request by you and is not binding on the commissioner's court. As you know the commissioners court set the salaries as well as the number of the personnel for your office in their budget.*

Section 151.002 (LGC) Commissioners court order authorizing appointment of employees. **(Commissioners court shall determine number to be appointed)**

Section 151.003 (LGC) after the entry of the commissioners court's order, the officer applying for the employees may appoint them.

#### Commissioners Court May Not Influence Appointments

Section 151.004 (LGC) provides the **commissioners court or a member of the court may not attempt to influence the appointment of any person to an employee position authorized by the court under this subchapter.**

Section 151.901 (LGC) The commissioners court of a county may enter an order to employ and provide for compensation for secretarial personnel for a district, county, or precinct officer if the court determines that the financial condition of the county and the staff needs of the officer justify doing so.

### **Salaries**

#### Compensation, Expenses and Allowances

Section 152.001 (LGC) Amount to be set by the commissioner's court.

Section 152.002 (LGC) Salary Donation to County

The county may accept from an elected county or precinct officer a gift or donation of all or part of the salary paid by the county to the officer. The county treasurer shall deposit a gift or donation accepted under this section in the general fund of the county.

Section 152.012 (LGC) The commissioners court may not set the salary of an officer or employee at an amount less than the amount of the salary in effect on

January 1, 1972. Justice of the peace - May 25, 1973.

Section 152.013 (LGC) Procedure for setting amounts for elected officers.

### Salary Grievance Committee

Section 152.014 (a) (LGC) in each county there is a salary grievance committee composed of the county judge and:

(1) the sheriff, county tax assessor-collector, county treasurer, county clerk, district clerk, county attorney or criminal district attorney, and the number of public members to provide nine voting members; or

(2) nine public members, if the commissioners votes to have nine public members.

(b) The county judge is chairman of the committee, but is not entitled to vote,

(c) Public members must be residents of the county.

Section 152.015 (LGC) addresses the selection and term of public members on grievance committee. *(To read how this selection is made, go to Section 152.015 of the Local Government Code.)*

Section 152.016 (LGC) tells you the function of the grievance committee, and what you must set out in writing, and what must be presented to the committee. *(To see what you must include, and time limits set, go to Section 152.016 of the Local Government Code.)*

Section 152.0165 (a) (LGC) An elected county or precinct official may not file suit regarding the officer's salary or personal expense unless a hearing has been requested and held under Section 152.016.

(b) - - -

### Special Provisions Applying to Sheriff's Department

#### Classifications of Positions, Salary Schedule

Section 152.071 (a) (LGC) in a county with a population of more than 75,000 the county government shall classify all positions in its sheriff's department and

shall specify the duties and prescribe the salary of each classification.

(a-1) A county government in a county that has a population of more than 7,500 and is located on an international boundary, and contains no incorporated territory of a municipality may classify all positions in the sheriff's department and may specify the duties and prescribe the salary for each classification.

(b) A member of the sheriff's department who is required to perform the duties of a particular classification is entitled to be paid the salary prescribed for that position during the time the member performs those duties.

### Petition To Increase Salaries

Section 152.072 (a) (LGC) The qualified voters of a county with a population of more than 25,000 may petition the commissioner court of the county to increase the minimum salary of each member of the sheriff's department. *(To see what is needed in the petition, you should go to Section 152.072 of the Local Government Code.)*

### Penalty

Section 152.073 (a) (LGC) A person who is a county official and who is in charge of the sheriff's department or is responsible for setting the compensation provided by Sections 152.071 and Section 152.072 **commits an offense if the person violates these sections.** (\$10.00 to \$100.00 per day fine)

### Longevity Pay for Commissioned Deputies and Jailers

Section 152.074 (a) (LGC) In a county with a population of 150,000 or more, the commissioners court of a county shall provide to each commissioned deputy and *jailer* of the sheriff's department longevity pay in an amount not less than \$5.00 a month for each year of service in the department up to and including 25 years. Each commissioned deputy is entitled to the longevity pay in addition to the deputy's regular compensation.

(a-2) *(Under very special conditions, longevity pay applies to a county with more than 7,500 people. To see details, go to Section 152.074 (a-2) of the Local Government Code.)*

### Compensation for Reserve Deputy Sheriffs

Section 152.075 (a) (LGC) The commissioners court of a county may compensate a reserve deputy sheriff as provided by law for the compensation of a deputy sheriff.

(b) The commissioner's court may reimburse a reserve deputy for reasonable and necessary expenses incurred in the performance of official duty.

### Continuing Education Expenses

Section 152.907 (LGC) The commissioners court of a county may authorize payment of reasonable continuing education expenses incurred by a county or precinct officer if the expenses are related to the officer's official duties, including expenses incurred by the officer between general election at which the officer is elected and the beginning of the officer's term of office.

### Salary Paid in Lieu of Fees and Commissions

Section 154.002 (LGC) Provides that a district, county or precinct officer who is paid on a salary basis receives the salary instead of all fees, commissions, and other compensation the officer would otherwise be authorized to keep, except as otherwise provided by this subchapter.

Section 154.003 (LGC) a district, county or precinct official who is paid an annual salary shall charge and collect in the manner authorized by law all fees, commissions, and other compensation permitted for official services performed by the officer. The officer shall dispose of the collection money as provided by Subchapter B, Chapter 113.

Section 154.004 (LGC) Prohibits State and County from paying Fees or Commissions to Salaried Officer. (*Go to Section 154.004 of the Local Government Code for complete statement.*)



## Fees and Commissions Certain Salaried Officers May Receive in Addition to Salary

Section 154.005 provides in section (c) the following:

(c) A sheriff or constable may receive, in addition to a salary, any reward for the apprehension of a criminal fugitive from justice or for the recovery of stolen property.

### Effect of Failure to Collect Fee or Commission

Section 154.009 (a) (LGC) If, following a hearing, the commissioners court finds that a district, county, or precinct officer has, through neglect, failed to collect a fee or commission that the officer is required by law to collect, the commissioners court **shall deduct the amount of the fee or commission from the officer's salary**. Before the 10<sup>th</sup> day before the date of the hearing, the commissioners court shall provide the officer with notice of the time and place of the hearing and an itemized statement of the uncollected fees to be charged against the officer's salary.

(b) This section does not apply to a district, county or precinct officer if the county treasurer or county auditor is required to collect the fee or commission under Section 154.011.

### Authority to Purchase Liability Insurance for County Officers and Employees

Section 154.010 (LGC) (*For complete information, check this section out in the Local Government Code.*)

### Counties with a Population of 190,000 or less

Section 154.021 (LGC) applies to a county with a population of 190,000 or less, except as otherwise provided.

### Option to Pay Compensation on Fee Basis of Salary Basis

Section 154.022(a) (LGC) In a county with a **population of less than 20,000**, the commissioners court shall determine, by order entered in the record at its first regular meeting in the first month of each fiscal year, whether county officers are to

be compensated for the fiscal year by an annual salary or by fees earned from the performance of official duties. This subsection does not apply to a county surveyor, registrar of vital statistics, or notary public or to a county officer required to be compensated on a salary basis.

(b) Before the expiration of the first month of the fiscal year, the county clerk shall deliver to the comptroller of public accounts a certified copy of the commissioners court's order.

### Monthly Report of Expenses of Officers

Section.154.024 (LGC) provides that at the end of each month, an officer who is compensated on a salary basis shall prepare a report of the officer's expenses. The report must:

(1) contain an itemized and sworn statement of all approved expenses incurred by the officer and charged to the officer's county.

(2) contain the name of the case, if any, in connection with which an expense is incurred: and

(3) be accompanied by invoices covering any purchases and requisitions issued by the officer and included in the report. *(It is suggested that you check with your county treasurer or auditor as to how the county commissioners handles this section.)*

### Counties with Population of More Than 190,000

Section 154.041 (LGC) This subchapter applies to a county with more than 190,000.

### Monthly Report of Fees, Commissions, and Expenses of Officers

Section 154.044 (a) (LGC) Provides that on or before the fifth day of each month, a district, county, or precinct officer shall file with the county auditor a report, on a form prescribed by the county auditor, that contains:

(1) a detailed and itemized statement of all fees, commissions, and other compensation that the officer collected during the preceding month;

(2) An itemized and sworn statement of all expense claims paid during the

preceding month to each employee of the officer and the name and position of the employee. *(It is suggested that you check with your county auditor as to how he wants this report prepared)*

(b) - - -

### Assistance, Benefits, and Working Conditions of County Officers and Employees

*This chapter discusses the assistance, benefits, and working conditions of county officers and employees. It covers topics that include the following:*

*Section 157.001 (LGC) Hospitalization Insurance, etc*

*Section 157.021 (LGC) Hours of work, etc*

*Section 157.041 (LGC) Liability Insurance, etc*

*Section 157.062 (LGC) Child Care Services, etc*

*Section 157.072 (LGC) Pooling of sick leave pool, etc*

*Section 157.101 (LGC) Group Health and related benefits, etc*

### Legal Representation of County Officials and Employees

Section 157.901(a) (LGC) A county official or employee sued by any entity, other than the county with which the official or employee serves, for an action arising from the performance of public duty is entitled to be represented by the district attorney of the district in which the county is located, the county attorney, or both.

(b) If additional counsel is necessary or proper in the case of an official or employee provided legal counsel under Subsection (a) or if it reasonably appears that the act complained of may form the basis for the filing of a criminal charge against the official or employee, the official or employee is entitled to have the commissioners court of the county employ and pay private counsel.

(c) A county official or employee is not required to accept the legal counsel provided in this section.

Section 157.9015 (a) (LGC) It is not a conflict of interest for a district attorney or county attorney under Section 157.901 to defend a county or a county official or employee sued by another county official - - -

## Authority to Indemnify Elected and Appointed County Officers

Section 157.903 (LGC) The commissioners court of a county by order may provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties if the loss was not the result of the officer's negligence or criminal action.

## County Civil Service

*Section 158.001 to Section 158.015 (LGC) explains how a county may set up a County Civil Service System.*

## Temporary Salary Payments for Municipal and County Employees Called to Active Duty

*Section 173.001 to 173.006 deals with temporary salary for municipal and county employees called to active duty.*

## County Records

*Section 191.001 to Section 205.009 deals with county records. This is a section that should be read by all sheriffs in how to handle county records. It is suggested that you check with the county clerk and see how they handle their county records in accordance with these sections.*

*See Section 191.001 in the Local Government Code.*

## Purchasing and Contracting Authority of Counties

### **Competitive Bidding in General**

Section 262.023(a) (LGC) before a county may purchase one or more items under a contract that will require an expenditure exceeding **\$50,000**, the commissioners court of the county must:

- (1) comply with the competitive bidding or competitive proposal procedure prescribed by this subchapter,
- (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
- (3) comply with a method described by Section 2155.062(d) Government Code.

### Discretionary Exemptions

Section 262.024 (a) (LGC) Provides a contract for the purchase of any of the following items is **exempt from the requirement** established by Section 262.023 **if the commissioners court by order grants the exemption:**

- (1) an item that must be purchased in a case of **public calamity** if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;
- (2) an item necessary **to preserve or protect the public** health or safety of the residents of the county;
- (3) - - -
- (4) a personal or professional service;
- (5) - - -
- (6) - - -
- (7) an item that can be obtained from **only one source**, including:
  - (A) - - -
  - (B) - - -
  - (C) - - -
  - (D) captive replacement parts or components for equipment;
- (8) an item of food;
- (9) personal property sold;
  - (A) at an auction by a state licensed auctioneer;

(B) - - -

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government:

(10) - - -

(11) vehicle and equipment repairs.

*(There are several other items listed but probably would not effect the office of sheriff. It is suggested that you see those items by which the commissioners court by order may grant the exemption and go to Section 262.024 of the Local Government Code.*

### **Control of the County Court House**

**Section 291.003** The county sheriff shall have charge and control of the county courthouse, **subject to the regulations of the commissioners court.**

#### **Court Security - Recent Major Incidents**

- October 28, 2014: Nashville, NC - Two men shot as they stood on the steps of the Nash County Courthouse. Both victims had lengthy criminal histories and had been involved in an ongoing dispute with the two shooters.
- August 3, 2015: Canton, MS - Former firefighter shoots and kills a man outside the courthouse. The victim was trial and had threatened the mother of the suspect who was a scheduled witness for the trial.
- August 9, 2015: Providence, RI - Man shot and wounded in the courthouse parking lot at 2:30am as bars in the area were closing.
- November 6, 2015 Austin, TX - Judge Julie Kocurek is shot and critically injured in the driveway of her home as she returned from a football game.
- June 8, 2016 Sanford, NC - Man shoots estranged wife in parking lot of Lee County Courthouse.
- June 10, 2016 Springfield, MA - Shots fired outside district court during disturbance. Two suspects in custody, one suspect reportedly hit a victim on the head with a bottle while second suspect fires gun in the air.
- June 7, 2016 Bridgeport, CT - People clash outside Fairfield County Courthouse fighting with baseball bats and wrenches. This happened just days after law enforcement thwarted a "gang hit" outside the same courthouse.
- June 29, 2016 Holbrook, AZ - Two women dead and one injured after being shot outside the Navajo County Courthouse. The suspect ran out to his vehicle and grabbed a gun after a custody hearing did not go in his favor. The suspect opened fire as the women left the court building.

### Court Security News in the Past Several Weeks

- 6/3/16 Woman drops folding knife on floor of D.C. Superior court prior to a hearing. The knife made it through security screening and authorities are investigating.
- 6/6/16 Man who opened fire outside of the Nash County, NC courthouse sentenced to 15-19 years.
- 6/7/16 Man sues after hand wand disrupts his pacemaker at the Pittsburg, PA municipal court.
- 6/7/16 Danville, VA courthouse gets security upgrades including security screening. Visitors question the necessity for security but Sheriff explains that it is good to be proactive.
- 6/9/16 Man sentenced to 6 years for assaulting Deputy U.S. Marshal in East St. Louis courtroom in March 2015.
- 6/13/16 Sussex County Delaware prosecutor suspended after convincing the chief bailiff to point his handgun at another prosecutor in a prank. A Dover police department detective was in an adjacent room was unaware that a prank was being played and started to react to a hostile incident before laughter broke out in the room.
- 6/14/16 Watertown, NY approves 2 million dollar city court expansion program to approve court security for all of city hall.
- 6/14/16 Montreal courts to begin stricter court security to include x-rayscreening of handbags.

### Incidents in the Past Several Weeks

- 6/19/16 Providence, RI - Shortage of deputies forces courts to limit the number of trials due to security issues.
- 6/21/16 Mobile, AL - Mobile City Council moves to add council meetings to court security screening in light of violent incidents across the country.
- 6/22/16 San Antonio, TX - Bexar County DA to purchase patrol rifles for investigators in the courthouse.
- 6/22/16 Oshkosh, WI - Winnebago County approves court security upgrade.
- 6/28/16 Elliot Lake, Ont - Woman assaults ex-husbands girlfriend in hallway of courthouse.
- 6/28/16 Hamburg, NY - Hamburg Town Court is having trouble finding court security officers due to low pay. The \$15.29 per hour starting salary has not changed in years.
- 6/28/16 Corpus Christi, TX - Woman arrested at Nueces County courthouse for making threats. She told personnel that she had a gun and planned to kill people. The

woman had been stalking a Justice at the court for months and had brought what appeared to be a partial Bundt cake with dead flowers on it to the courthouse.

- 6/29/16 Holbrook, AZ - Two women dead and one injured after being shot outside the Navajo County Courthouse. The suspect ran out to his vehicle and grabbed a gun after a custody hearing did not go in his favor. The suspect opened fire as the women left the court building.

#### Liability

Fulton County, GA 3/11/2015

### ***Fulton County will pay judge's widow \$5 million***

*Associated Press*

*ATLANTA --- The wife of a judge killed during a 2005 shooting spree that started at the Fulton County Courthouse has agreed to a settlement of more than \$5.2 million in a case that could clear the way for settling other lawsuits filed over the rampage.*

*Claudia Barnes said Thursday she had settled the lawsuit against Fulton County authorities in the fatal shooting of her husband, Fulton County Superior Court Judge Rowland Barnes. "We're happy about it," she said.*

*Brian Nichols faces the death penalty on charges that he escaped custody while on trial for rape and shot Judge Barnes, a court reporter, a deputy and a federal agent March 11, 2005. He has pleaded not guilty by reason of insanity.*

*Mrs. Barnes' lawsuit claimed that Fulton County Sheriff Myron Freeman and several other current and former deputies had shirked their duties. Seven separate lawsuits filed by relatives of the other victims are also pending, and attorneys say this agreement could lead to their settlement also.*

*"They could use any of the arguments that we used," said Tommy Malone, Mrs. Barnes' attorney.*

*The settlement calls for a \$5 million payout from Clarendon America, Fulton County's insurer, according to documents obtained by The Associated Press. The county will pay Mrs. Barnes another \$250,000 in pension benefits she accrued while working as a judicial assistant to another judge, the records say.*

#### **"Georgia Law"**

**O.C.G.A. 15-16-10**

**Requires the sheriff or his or her designee to attend sessions of court.**

#### Selection of Personnel

Selection of the correct person as a court security officer or bailiff is very important.



These officers have to be ready for anything to happen and be able to handle it. Not everyone is cut out to be a court security officer or bailiff because they either do not have the temperament or physical ability.

It is also not a job for someone right out of an academy that has no knowledge or experience dealing with tense law enforcement situations.

- Avoid hiring sweet ol' Bob.
- Should meet minimum physical requirements to handle the job.
- Avoid political appointments or hiring cronies.
- Look for officers with prior court experience.

The U.S. Marshal service requires that their contractors hire former law enforcement officers with a minimum 3 years front line experience within the past 7 years.

They must meet physical standards and testing every two years to retain their jobs.

Many are retired officers that have years of experience that is valuable to the job of court security officer.

### Training - TCOLE Court Security Specialist

#### About the Program

- Developed based on comments and requests from law enforcement agencies
- 40 hour comprehensive court security training program
- TCOLE credit
- Curriculum developed after researching other states that have programs

#### 7 Units of Training

- Introduction to Court Security (4 hours)
- Bailiff Functions (4 hours)
- Court Security Screening Basics (8 hours)
- Explosives Recognition and Awareness (4 hours)
- Introduction to Court Security Technology (4 hours)
- Court Security Practical Exercise(8 hours)
- Court Security Practical Firearms (8 Hours)

#### Court Security Policy

- Don't reinvent the wheel; there are many sources for good court security policy.
  - Other agencies.
  - The internet.
  - Persons in this room.
- Once you have gathered examples, review them and see how they will fit your agency/facility.

- After you have done this, design the policy that works for your situation.
- Once it is written, have it legally reviewed prior to implementation.

### Bailiff Duties

- Pre and Post session search of the courtroom and jury room.
- Security before, during, and after court sessions.
  - Tactical placement in the courtroom
  - Security seating strategies.
  - Prisoner transport and security.
  - Knowledge of emergency plans:
    - Active shooter inside/outside of courtroom.
    - Disturbance inside/outside of courtroom.
    - Weather, medical, fire, etc.
- Jury handling.
  - Security
  - Sequestration
  - Behavior to prevent mistrial
- Valet to the court
  - Errands
  - Service in the courtroom related to the trial
- Judicial Protection
  - Escort
  - Evacuation
  - Service
  - Other duties as assigned

### Court Security Fund

Art. 102.017. COURT COSTS; COURTHOUSE SECURITY FUND; MUNICIPAL COURT BUILDING SECURITY FUND; JUSTICE COURT BUILDING SECURITY FUND.

- (a) A defendant convicted of a felony offense in a district court shall pay a \$5 security fee as a cost of court.
- (b) A defendant convicted of a misdemeanor offense in a county court, county court at law, or district court shall pay a \$3 security fee as a cost of court. A defendant convicted of a misdemeanor offense in a justice court shall pay a \$4 security fee as a cost of court. The governing body of a municipality by ordinance may create a municipal court building security fund and may require a defendant convicted of a misdemeanor offense in a municipal court to pay a \$3 security fee as a cost of court.
- The fund can be used for:
- (1) the purchase or repair of X-ray machines and conveying systems;

- (2) handheld metal detectors;
- (3) walkthrough metal detectors;
- (4) identification cards and systems;
- (5) electronic locking and surveillance equipment;
- (6) video teleconferencing systems;
- (7) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (8) signage;
- (9) confiscated weapon inventory and tracking systems;
- (10) locks, chains, alarms, or similar security devices;
- (11) the purchase or repair of bullet-proof glass;
- (12) continuing education on security issues for court personnel and security personnel; and
- (13) warrant officers and related equipment.

For More information on court security or training, please contact:

Richard Carter

817 343-5496

[lawmagnet@aol.com](mailto:lawmagnet@aol.com)

Randy Harris

325 315-4209

[Jrandy.harris1@yahoo.com](mailto:Jrandy.harris1@yahoo.com)

### Municipal Public Safety

*This chapter provides for a regular police force, other police force, and marshals. It also deals with municipal Juvenile curfew. It is suggested that an understanding of the authority of the municipal police officers and their duties would help a sheriff in dealing with them. Please read Section 341.001 to 341.905 in the Local Government Code.*

### County Public Safety

#### County Jails and Law Enforcement

#### County Jail Facilities

Section 351.001 Duty to provide jails; Location

Section 351.002 Jail Standards

Section 351.0035 Temporary Housing  
Section 351.0036 Housing of Correctional Program Participants  
Section 351.004 Structural and maintenance requirements  
Section 351.007 Space requirements  
Section 351.008 Access to dayroom  
Section 351.009 Safety vestibule  
Section 351.010 Sanitation and health requirements  
Section 351.011 Furnishing of cells, compartments, and dormitories  
Section 351.012 Furnishing of a day room  
Section 351.013 Bunks  
Section 351.014 Holding insane persons  
Section 351.015 Enforcement

#### Intercounty Cooperation For Jail Facilities

Section 351.031 Contract  
Section 351.032 Location of facility  
Section 351.033 Financing  
Section 351.034 Administrator  
Section 351.035 Duties

#### Operation of County Jails

Section 351.041 (a) (LGC) The sheriff of each county is the keeper of the county jail. The sheriff shall safely keep all prisoners committed to the jail by a lawful authority, **subject to an order of the proper court.**

(b) The sheriff may appoint a jailer to operate the jail and meet the needs of the prisoners, but the sheriff shall continue to exercise supervision and control over the jail.

#### Commissary Operations by Sheriff or Private Vendor

Section 351.0415 (a) (LGC) The sheriff of a county or the sheriff's designee, including a private vendor operating a detention facility under contract with the county, may operate, or contract with another person to operate a commissary for the use of the inmates committed to the county jail or to a detention facility operated by the private vendor, as appropriate. The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards.

(b) The sheriff or the sheriff's designee:

- (1) has exclusive control of the commissary funds;
  - (2) shall maintain commissary accounts showing the amount of proceeds from the commissary operation and the amount and purpose for disbursements made from the proceeds; and
  - (3) shall accept new bids to renew contracts of commissary suppliers every five years.
- (c) The sheriff or the sheriff's **designee may use commissary proceeds** only to:

*(1) It is suggested that you read the rest of this section as to what commissary proceeds can be used for. If you have any doubts as to what you can purchase with commissary proceeds contact your county or criminal district attorney for advise. (See Section 41.007 of the Government Code)*

Section 351.04155 applies only to commissary operation by the sheriff in Tarrant County, Texas.

Federal Prisoners

Section 351.043 (a) The sheriff or jailer may receive into the county jail a federal prisoner delivered by a federal law enforcement officer unless the sheriff or jailer determines that receipt of the prisoner may violate a state or federal court order, statute, or a rule of the Commission on Jail Standards or the Texas Board of Criminal Justice.

(b) The sheriff or jailer shall safely keep the prisoner until the prisoner is transferred or discharged by due course of law.

(c) The federal law enforcement officer on whose authority the prisoner is received and kept is directly and personally liable to the sheriff or jailer for the jail fees and other cost incurred in keeping the prisoner. The fees and costs shall be estimated according to laws regulating similar fees and costs in other cases.

(d) In this section, "federal law enforcement officer" has the meaning assigned by 5 U.S.C. Section 8331(20).

Prisoner in Another County's Jail

Section 351.044 (LGC) A county to which a prisoner is sent, due to the lack of a safe jail in the sending county as determined by the Commission on Jail

Standards, may recover by suit from the sending county the reasonable cost of keeping the prisoner.

### Contracts For Law Enforcement Services On Fee Basis

*It is recommended that as sheriff you should be aware of Sections 351.061 through Section 351.066 dealing with commissioner's court **contracting with a non-governmental association for the provision of law enforcement services.***

### County Contract With Private Entity For Jail Facilities

Section 351.101 (LGC) The commissioners court of a county, with the approval of the sheriff of the county, may contract with a private organization to place inmates in a detention facility operated by the organization. The commissioner court may not contract with a private organization in which a member of the court or an elected or appointed peace officer who serves in the county has a financial interest or in which an employee or commissioner of the Commission on Jail Standards has a financial interest. A contact made in violation of this section is void.

Section 351.102 (LGC) The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility. ----- The commissioners court of the county must receive the written approval of the sheriff of the county, **which approval shall not be unreasonably withheld by the sheriff.** - - - - -

*It is suggested that a sheriff dealing with this type of situation should go to the Local Government Code and read Sections 351.001 through Section 351.104.*

### Jail District (Multiple Counties)

*It is recommended that if the commissioners court of your county is considering participating in a jail district that you read Sections 351.121 through Sections 351.186.*

## County Jail Industries Program

Section 351.201 (a) (LGC) A commissioners court by order **may** establish a county jail industries program. The sheriff may allow inmate participation in the county jail industries program in carrying out his constitutional and statutory duties.

(b) The purposes for which a county jail industries program may be established are to:

(1) provide adequate, regular, and suitable employment for the vocational training of inmates.

(2) - - -

(3) - - -

(4) - - -

(c) A commissioners court, in an order establishing a county jail industrial program, shall, with the approval of the sheriff: - - -

(d) - - -

(e) - - -

(f) - - -

*If a sheriff has a desire to create a county jail industries program he/she should contact the commissioner's court and discuss this program with them. Read the complete text of Section 351.201 in the Local Government Code.*

*For further information on "Public Safety" go to Sections 351.901 through Section 370.004, Local Government Code and read text.*

## III. General Information

### 1. Sheriffs

*There shall be, elected by the qualified voters of each county, a Sheriff, who shall hold his office for the term of four years, whose duties, qualifications, prerequisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners Court until the next general election. Article 5, Section 23, Texas Constitution.*

2. Sheriff's Resident

***A sheriff must reside in his county. Failure to do so could result in declaring the office vacant. See Article 16, Section 14, Texas Constitution. There are no resident requirements for deputies, reserve deputies, jailers or office employees. See AG Opinion JC 29.***

3. Officers To Serve Until Successors Qualified

***Officers within this State shall continue to perform their duties of their offices until their successors shall be duly qualified.***

4. Persons Holding Certain Public Offices:  
Candidacy for election to constitute resignation of office

***This section applies to sheriffs and many other county and district officials.***

***(b) If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of the State or the United States other than the office then held, at any announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled. (Texas Constitution Article 16, Section 65)***

5. Statement of Elected/Appointed Officer  
and Oath of office

***Before taking office, the sheriff and his or her deputies and the reserve deputies must sign a Statement of Elected/Appointed Officer as well as the Oath of the Office. These papers should be retained with the official records of office. (Article 16, Section 1, Texas Constitution)***

***You will find at the end of this section on pages 46-49 the following instructions and forms.***

- (1) Filing Instructions (Exhibit A)***
- (2) Statement of Elected or Appointed Officer (Exhibit B)***
- (3) Oath of Office (Exhibit C)***



6. *Request for an Opinion or Advice*  
*from*  
*The County or District Attorney*

**Section 41.007 of the Government Code provides the following:**

*“A district attorney or county attorney, on request, shall give to a county or precinct official of his district or county a **written opinion** or **written advice** relating to the official duties of that official”.*

*Sample Letter On Your Stationary*

*December 8, 2012*

*Mr. John Jones  
County Attorney  
PO Box 2232  
Crazy Horse, Texas 71111*

*Dear Mr. Jones,*

*I am requesting your written opinion or written advice as set out in Section 41.007 of the Government Code.*

*I had a call this morning asking if a person who had been convicted of a felony 3, and had served his time, could he be a jailer. His conviction was 15 years ago and he has become an outstanding citizen of the county. I would like to hire this man if at all possible. It is my understanding that he has been pardoned by the Governor. I am enclosing a certified copy of the pardon.*

*Your early reply in this matter will be most appreciated.*

*Sincerely yours,*

*Sheriff Bill Fishbin*

*There are many duties set out for the sheriff in the Texas Codes and Statutes. It is suggested that the sheriff be familiar with those duties required of his office. During this lecture you were shown how to find the "Texas Statutes". Proceed to the internet, go to Google.com and insert the words "Texas Statutes", then click on "Texas Statutes". There will be displayed on your screen all of the Texas Codes and Statutes. Click on the one that you are interested in. There have been selected bits and pieces of important information taken from the Texas Codes and Statutes that could be helpful to you.*

7. *Sheriff or Deputy Disabled In Line of Duty*  
*Article 3, Section 52e*  
*Texas Constitution*

*This article provides for payment of medical expenses for law enforcement officials.*

*All doctor bills and all hospital bills for Sheriffs, Deputy Sheriffs, Constables, Deputy constables and other county and precinct law enforcement officials who are injured in the course of their official duties; providing that while said Sheriff, Deputy Sheriff, Constable, Deputy Constable or other county or precinct law enforcement official is hospitalized or incapacitated that the county shall continue to pay his maximum salary; providing however, that such payment of salary shall cease on the expiration of the terms of office to which such official was elected or appointed. (See Attorney General's Letter Opinion 93-62 and JC 0040)*

8. *Working Private Security*  
*Private Security Act*  
*Sec. 1702.322 Occupations Code*

Texas Department of Public Safety has the duty to administer this Act.

*The Private Security Act does not apply to:*

*(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator or watchman if the officer:*

(A) is employed in an employee-employer relationship or employed on an individual contractual basis;  
 (i) directly by the recipient of the service; or  
 (ii) by a company licensed under this chapter;  
 (B) is not in the employ of another peace officer;  
 (C) is not a reserve peace officer; and  
 (D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision by the state at least at the minimum wage, and is entitled to all employees benefits offered to a peace officer by the state or political subdivision;  
 (2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;  
 (3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or  
 (4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter. (See Attorney General's Opinion GA 465 as it applies to jailer-deputy sheriff.)

9. County Bail Bond Board

1704.001 to 1704.306 Occupations Code

*Section 1704.051 Mandatory Creation of Board*

A board is created in each county with a population of 110,000 or more.

*Section 1704.052 Discretionary Creation of Board*

A board may be created in a county with a population of less than 110,000 if a majority of the persons who would serve as members of the board under Section 1704.053, or who would designate the persons who would serve as members of the board, determine to create a board. (For particulars, read all of the sections on County Bail Bond Boards.)

10. Commission on Law Enforcement

1701.001 to 1701.603 Occupations Code

Excerpts

*Section 1701.357 Retired Peace Officers*

*(a) This section applies only to:*

*(1) a peace officer designated as a peace officer under Article 2.12 (1), (2), (3), or (10), Code of Criminal Procedure.*

*(2) - - -*

*(b) The head of a state or local law enforcement agency may allow an honorably retired peace officer of the agency to whom this section applies an opportunity to demonstrate weapons proficiency if the retired officer provides to the agency a sworn affidavit stating that:*

*(1) the officer **honorably retired** after **15 years of service** as a commissioned officer;*

*(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and*

*(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.*

*(c) The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this section. The agency shall issue the certificate to a retired officer who satisfactorily demonstrates weapons proficiency under Subsection (b) and satisfies the written procedures established by the agency. The agency shall maintain records of any retired officer who holds a certificate issued under this section.*

*(d) A certificate issued under this section expires on the second anniversary of the date the certificate was issued.*

*(e) - - -*

*(f) - - -*

*(g) A county law enforcement agency must obtain approval of the program authorized by this section from the commissioners court of the county before issuing a certificate of proficiency under this section.*

*(h) - - -*

*11. Honorably Retired Peace Officer*

***License To Carry A Concealed Handgun***

*Section 411.199 Government Code*

*Section 411.199 of the Government Code sets out how an Honorably Retired Peace Officer may obtain a license to carry a concealed handgun. It sets out the*

procedure and information that must be furnished to the Texas Department of Public Safety. This section dovetails with Section 1701.357 of the Occupations Code set out in paragraph 10. It is suggested that you read all of Section 411.199 of the Government Code.

12. **Death Benefits For Survivor Of Sheriffs, Deputies,  
Jailers, Certain Chaplains And Others Killed In The Line Of Duty**  
**Section 615.001 to 615.123**  
**Government Code**

Section 615.001 to 615.123 of the Government Code includes the following:

**Subchapter A**      **General Provisions**  
Section 615.001 to Section 615.008

**Subchapter B**      **Payment To Eligible Survivors**  
Section 615.021      Eligible Survivors  
Section 615.022      Payment to Survivors  
Section 615.023      Payment to Surviving Minor Child

Education Benefits for Certain Survivors  
Education Code 54.354

**Subchapter C**      **Administration And Procedure**  
Section 615.041      Proof of Claim  
Section 615.042      Award and Payment of Assistance  
Section 615.043      Denial of Claim  
Section 615.044      Appeals  
Section 615.045      Records

**Subchapter D**      **Health Insurance Coverage**  
Section 615.071      Applicability  
Section 615.072      Eligible Survivors  
Section 615.073      Benefit to Surviving Spouse  
Section 615.074      Benefit to Dependent  
Section 615.075      Notice  
Section 615.076      Level of Coverage  
Section 615.077      Payments: Rates  
Section 615.078      Certain Practices Not Prohibited or Affected

*Section 615.079      Benefits Additional*  
*Section 615.080      Grace Period*

*Subchapter E      Additional Benefits For Eligible Survivors*

*Section 615.101      Definition*  
*Section 615.102      Duty Weapon and Badge*  
*Section 615.103      Burial with Uniform*  
*Section 615.104      Benefits Additional*  
*Section 615.105      Provision of State Flag*

*Subchapter F      Additional Benefits For Surviving of Peace Officer*

*Section 615.121      Payment to Surviving Spouse*  
*Section 615.122      Payment to Surviving Minor Children*  
*Section 615.123      Benefits Additional*

*All of the above Sections should be read by the Sheriff, Deputies, Reserve Deputies and Jailers in order to be more fully informed as to the benefits your families would be entitled to in the event you were killed in the line of duty. In some instances there are also federal benefits available. There is no guarantee that the Codes and Statutes set out below are complete effecting sheriffs. Just about the time you think you have listed all of the codes and statutes effecting sheriffs someone will be sure and come up with something that has been missed. If you run across other codes or statutes that are important to you as sheriff, add it to this list.*

- 1. The Constitution of the State of Texas*  
***Duel Office Holding (Article 16, Section 40)***  
*Read*
- 2. Texas **Penal Code***  
*Read*
- 3. Texas **Code of Criminal Procedure***  
*Read*  
*also see Section 59.06 forfeiture*
- 4. Texas **Civil Practice and Remedies Code***  
***Civil Process***  
*Read those sections applicable to the sheriff's duties.*
- 5. Texas **Property Code***  
***Civil Process***  
*Read those sections applicable to the sheriff's duties.*

6. *Texas Rules of the Court*  
*Civil Process*  
*Read those sections applicable to the sheriff's duties.*
7. *Texas **Transportation Code***  
*Read those sections applicable to the sheriff's duties.*
8. *Texas **Occupation Code***  
*Commission on Law Enforcement Officers Standards and Education*  
*Sections 1701.151 - 1701.603*  
*Private Security - DPS*  
*Sections 1702.061 - 1702.413*
9. *Texas **Health and Safety Code***
10. *Texas **Family Code***
11. *Texas **Agriculture Code***  
*Estrays*  
*Sections 142.001 - 142.014*
12. *Texas **Parks and Wildlife Code***

**Oath Administered By A Peace Officer**  
**Section 602.001 and Section 602.002**  
**Government Code**

Section 602.002 provides that "Oath Made In Texas" may be administered and a certificate of the fact given by:

- (16) a peace officer described by Article 2.12, Code of Criminal Procedure, if:
- (A) the oath is administered when the officer is engaged in the performance of the officer's duties; and
  - (B) the administration of the oath relates to the officer's duties

In this section it lists 16 different classes of people authorized to administer oath in Texas including a notary public. To get a full reading of this section it is suggested that you read the entire Section 602.002, Government Code.

## Form 2201 - Statement of Officer (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

### **Execution and Delivery Instructions**

The Statement is considered filed once it has been received by this office.

**Mail:** P.O. Box 12887, Austin, Texas 78711-2887.

**Overnight mail or hand deliveries:** James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

**Fax:** (512) 463-5569.

**Email:** Scanned copies of the executed Statement may be sent to *register@sos.state.tx.us*.

***NOTE: The Statement of Officer form, commonly referred to as the “Anti-Bribery Statement,” must be executed and filed with the Office of the Secretary of State **before taking the Oath of Office (Form 2204).*****

### **Commentary**

Article XVI, section 1 of the Texas Constitution requires all elected or appointed state and local officers to take the official oath of office found in section 1(a) and to subscribe to the anti-bribery statement found in section 1(b) before entering upon the duties of their offices. Local officers must retain the signed anti-bribery statement with the official records of the office. This form is designed for filing the anti-bribery statement by elected and appointed state-level officers.

Elected and appointed state-level officers required to file the anti-bribery statement with the Office of the Secretary of State include members of the Legislature, the Secretary of State, and all other officers whose jurisdiction is coextensive with the boundaries of the state or who immediately belong to one of the three branches of state government. Op. Tex. Att’y Gen. No. JC-0575(2002).

Questions about whether a particular officer is a state-level officer may be resolved by consulting relevant statutes, constitutional provisions, judicial decisions, and attorney general opinions.

*Questions about this form should be directed to the **Government Filings Section at (512) 463-6334 or register@sos.state.tx.us.***

Revised 10/2011



**Submit to:**  
**SECRETARY OF STATE**  
**Government Filings Section**  
**P O Box 12887**  
**Austin, TX 78711-2887**  
**512-463-6334**  
**512-463-5569 - Fax**  
**Filing Fee: None**



**STATEMENT OF OFFICER**

**Statement**

I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Position to Which Elected/Appointed: \_\_\_\_\_

City and/or County: \_\_\_\_\_

**Execution**

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer

**Form 2204 - Oath of Office  
(General Information)**

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

**Execution and Delivery Instructions**

The Oath is considered filed once it has been received by this office.

**Mail:** P.O. Box 12887, Austin, Texas 78711-2887.

**Overnight mail or hand deliveries:** James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

**Fax:** (512) 463-5569. If faxed, the original Oath should also be mailed to the appropriate address above.

**Email:** Scanned copies of the executed Oath may be sent to [register@sos.state.tx.us](mailto:register@sos.state.tx.us). If emailed, the original Oath should also be mailed to the appropriate address above.

*NOTE: Do not have the Oath of Office administered to you before executing and filing the Statement of Officer (Form 2201 – commonly referred to as the “Anti-Bribery Statement”) with the Office of the Secretary of State.*

***Commentary***

All state or county officers, other than the governor, lieutenant governor, and members of the legislature, who qualify for office, are commissioned by the governor. Tex. Gov’t Code, Section 601.005. The Secretary of State performs ministerial duties to administer the commissions issued by the governor, including confirming that officers are qualified prior to being commissioned. Submission of this oath of office to the Office of the Secretary of State confirms an officer’s qualification so that the commission may be issued.

Pursuant to art. XVI, Section 1 of the Texas Constitution, the Oath of Office *may not* be taken until a Statement of Officer (see Form 2201) has been subscribed to and, as required, filed with the Office of the Secretary of State. Additionally, gubernatorial appointees who are appointed during a legislative session *may not* execute their Oath until after confirmation by the Senate. Tex. Const. art. IV, Section 12. A Statement of Officer form required to be filed with the Office of the Secretary of State is filed upon receipt by the Secretary of State. The Oath of Office may be administered by anyone authorized under the provisions of Chapter 602 of the Texas Government Code. Commonly used officials include notaries public and judges.

***Officers Required to File Oath of Office with the Secretary of State:***

- Gubernatorial appointees, appellate and district court judges, and district attorneys
- Directors of districts operating pursuant to chapter 36 or 49 of the Texas Water Code file a duplicate original of their Oath of Office within 10 days of its execution. Tex. Water Code Ann. Sections 36.055(d); 49.055(d)

***Officers Not Required to File Oath of Office with the Secretary of State:***

- Members of the Legislature elected to a *regular* term of office will have their Oath of Office administered in chambers on the opening day of the session and recorded in the appropriate Journal. Members elected to an *unexpired* term of office should file their Oath of Office with either the Chief Clerk of the House or the Secretary of the Senate, as appropriate.
- All other persons should file their Oaths locally. Please check with the county clerk, city secretary or board/commission secretary for the proper filing location.

*Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or [register@sos.state.tx.us](mailto:register@sos.state.tx.us).*

*Revised 10/2011*

**Submit to:**  
**SECRETARY OF STATE**  
**Government Filings Section**  
**P O Box 12887**  
**Austin, TX 78711-2887**  
**512-463-6334**



**OATH OF OFFICE**

**Filing Fee: None**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,  
I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully  
execute the duties of the office of \_\_\_\_\_ of  
the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws  
of the United States and of this State, so help me God.

\_\_\_\_\_  
Signature of Officer

.....  
State of \_\_\_\_\_)  
County of \_\_\_\_\_)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(seal)

\_\_\_\_\_  
Signature of Notary Public or Other Officer  
Administering Oath

\_\_\_\_\_  
Printed or Typed Name

## V. Attorney General Opinions affecting the office of sheriff.

*The opinions set out below were selected for the reason that in the past they have been of interest to the sheriffs throughout the state. There are many opinions not listed that you might have an interest in and it is suggested that you go to the Texas Attorney General's website to read other opinions effecting sheriffs. If you find other opinions that you think would be of help to you then I would suggest that you add them to this list.*

### Arrest and Commitment

DM 313      City prisoner's - Violating a state statute

If a city police officer arrests a person for violating a **state statute** and a city magistrate issues a commitment order for the prisoner, the county is required to incarcerate the prisoner. Should the sheriff refuse to take custody of the prisoner, the county is responsible for the prisoner's maintenance.

Article 2.18 CCP provides that when a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. To permit such a prisoner to remain out of jail is a violation of duty on the part of the sheriff.

AG Opinion JM 1009 and JM 151 in answer to the question of whether a city or a county was responsible for the maintenance of prisoners who had violated city traffic laws that implemented the Uniform Traffic Code, the city is relieved of its obligation to provide for the maintenance of such prisoners once they are accepted for incarceration by the sheriff of the county.

### Bail Bonds

H 856      Peace officer that has defendant in custody is authorized to set and take bail in a misdemeanor case.

JM 760      Peace officer may not release a defendant on personal bond charged with a misdemeanor.

DM 483      In a non-bail bond county sheriff may not require an attorney or bondsman to post collateral.

GA 515 Texas sheriff has no authority to accept bail for an offense committed in the sheriff's county if the accused is jailed in another state.

#### Candidate for Another Office

DM 377 Sheriff with an unexpired term greater than one year, who declares to be a candidate for another office has **automatically resigned his office.**

#### Commissary

JC 122 Jail commissary purchases are not subject to competitive bid.  
LO 97-071 Only inmates may purchase items from a county jail commissary.

GA 814 Revenue from sale of prepaid phone cards from commissary Credit to sheriff or general fund

#### Commissioners Court - Appeal by Deputy Sheriff

LO 93-107 A county commissioners court is not authorized to hear an appeal of the sheriff's suspension of a deputy sheriff.

#### Constable's Authority in the County

GA 189 Constable may perform law enforcement services on property that extends into another precinct of the county.

GA 340 Constable has countywide jurisdiction to investigate criminal offenses not committed within the constable's view.

GA 402 An elected constable is not prohibited by article XVI, section 40 of Texas Constitution or the common-law doctrine of incompatibility from simultaneously serving as a deputy sheriff.

#### Contraband (Chapter 59, CCP)

DM 247 Forfeiture of property:

1. **Forfeiture monies must be deposited with the county treasurer and be placed in the county depository.**

2. A Sheriff who takes custody of seized property must move it to a safe place. Sheriff may pay for insurance, storage, locks and Do Not Enter signs on real property.

## Chapter 59 - Forfeiture of Contraband

### Category 1: Article 59.01(2)(A) Facilitating Property

- First or Second Degree Penal Code Felonies
- Any Felony under Penal Code Chapters 20A, 29, 30, 31, 32, 33, 33A, 35, or 43 and §§15.031(B), 20.05, 20.06, 21.11, 38.04
- Felony Securities Violations
- Repeat DWI Offenders

### Category 2: Article 59.01(2)(B) Facilitating Property

(Primarily property used or intended to be used in drug and money laundering offenses)

- Drug offenses
- Money laundering offenses
- Illegal dumping
- Medicaid offenses, identity theft, fraudulent procurement of telephone records
- Other Penal Code offenses

### Category 3: Article 59.01(2)(C) Proceeds

The definition of contraband includes any property that constitutes the proceeds gained from the commission of a felony listed in 59.01(2)(A) or (B), identity theft misdemeanors under the business & Commerce Code, or a crime of violence.

### Category 4: Article 59.01(2)(D) Proceeds Property

Includes items acquired with proceeds of the first two categories; for example, real estate purchased with proceeds of a drug sale.

### Category 5: Article 59.01(2)(E) & (F) Facilitating Property

(Primarily property used or intended to be used to facilitate sex crimes against minors)

- Add by legislature in 2005. Specific to felony-level solicitation of a minor (§15.031) and sexual performance by a child (§43.25).

- Almost all cases involve predator driving his vehicle to a predetermined meeting location. Because using the vehicle was a key part of the predator's plan, prosecutors wanted to make certain that vehicles used in this manner were subject to forfeiture.

| <b>ASSET FORFEITURE FUNDS</b>  |                |   |
|--|----------------|---|
| <b>Can I use asset forfeiture fund proceeds ...</b>                              | <b>Yes/ No</b> | <b>Authority</b>  |
| To maintain, repair, use, and operate the property for official purposes?        | Yes            | CCP 59.06(b)  |
| To pay for the prevention of drug abuse and persons with drug-related problems?  | Yes, but...    | See CCP 59.06(j) for a limitation of 10 percent for expenditures in a 59.06(c)(4) fund.   |
| To pay bonuses or increase salaries in the prosecutor's office?                  | Maybe...       | CCP 59.06(d-4) does not include a listing for salaries, but that list is inclusive rather than exclusive. Previously JM-1253 indicated this was allowed, but not that the payment is contingent upon commissioners court approval. Bonuses are prohibited unless approved as part of compensation before services are rendered. Tex. Constitution Art. III, §3. |
| To take title to a building to house the sheriff's anti-drug task force?         | Yes            | CCP 59.06(d-3); LO 96-012   |
| To purchase helicopters for counter-drug activities?                             | Yes            | LO 96-096   |
| To pay salaries and overtime pay for officers?                                   | Maybe...       | CCP 59.06(d-3) does not include a listing for salaries (this was previously included CCP 59.06(c)(2) before 2013), but the list in (d-3) is inclusive rather than exclusive.  |
| To pay for officer training?   | Yes            | CCP 59.06(d-3)(4)   |
| To pay for specialized investigative equipment and supplies?                     | Yes            | CCP 59.06(d-3)(1)   |
| To purchase items used by officers in direct law enforcement duties?             | Yes            | See CCP 59.06(d-3)  |
| To lease forfeited property itself?  | Yes            | CCP 59.06(d-3)(7) & (d-4)(7); GA-0122   |
| To help the commissioners court purchase or lease a juvenile detention facility? | Yes            | CCP 59.06(d-3)(7) & (d-4)(7) (apparently overruling GA-0613)  |
|  |                |   |

|   |    |  |
|---|----|--|
| From the sale of tangible property whose value is increased by the notoriety gained from the conviction of an offense?                              | No | CCP 59.06(k)(2). The increase in value from the notoriety must be sent to the AG, and the remainder of the proceeds that represent the item's fair market value should be transferred to the property owner. GA-0298 |
| From movies, books, magazine articles, tape recordings, radio or television presentations, Internet websites, etc., in which a crime is re-enacted? | No | CCP 59.06(k)(2). These proceeds must be sent to the AG.  |
| If forced by my city council to purchase vehicles?  | No | JC-0005; see also DM-72  |

DM 246 County Purchasing Act is binding on the sheriff under Chapter 59 C.C.P. and bids are required when purchase is in excess of \$50,000. See Section 262.023 Local Government Code.

The Attorney General in this opinion is paraphrasing and states the following:

We anticipate the argument that the Act and Chapter 59 could not operate together because the commissioner's court would interfere with the sheriff's spending authority. Although the Act applies to a sheriff's decision to make a purchase. The commissioner's court has a ministerial duty to initiate the competitive bidding process upon receipt of a purchase request from the sheriff. Although the commissioner's court has the right to reject all bids, it may not do so for the purpose of preventing or delaying a forfeiture-fund purchase. Proceeds awarded under 59.06 of the CCP to the sheriff may be spent by the sheriff after a budget for the expenditure of the proceeds has been submitted to the commissioners court. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to audit provision established under this article.



## Education & Training Fund - State

JC 190 Funds allocated by section 1701.157 of the Occupations Code to the sheriff for the continuing education may not be diverted to the general fund by the commissioner's court.

The sheriff shall maintain a complete and detailed written record of money received and spent by his office. Money spent under this section is subject to audit by the comptroller and the state auditor.

## Family Violence - Escort

JC 289 Neither the domestic violence protective order sections of the Family Code nor of the CCP explicitly permit, or specifically prohibit, a judge to include in such an order a provision requiring a police officer to escort a perpetrator of domestic violence to the family home to retrieve personal property. Article 5.045 of the CCP is not by its terms applicable in such a situation, and accordingly does not provide immunity from liability for a police officer providing such an escort.

Article 5.045 CCP provided the following:

- (a) **In the discretion of a peace officer**, the officer may stay with a victim of family violence to protect the victim and allow the victim to take the personal property of the victim or of a child in the care of the victim to a place of safety in an orderly manner.
- (b) A peace officer who provides assistance under Subsection (a) of this article is not:
  - (1) civil liable for an act or omission of the officer that arises in connection with providing the assistance or determining whether to provide the assistance ; or
  - (2) civil or criminally liable for the wrongful appropriation of any personal property by the victim.

## Fees

GA 636 Provides that a sheriff that collects fees for the county must deposit the funds with the county treasurer or in the county treasury as required by Local Government Code Chapter 113 or 133, absent a specific statute providing for a different disposition. A sheriff may not deposit the county funds the officer collects in an individual bank account in the county's depository that enables the officer to control and withdraw funds.

## Jail - County

DM 313 See heading "Arrest and Commitment"

GA 59 County jail inmate telephone contract - disposition of funds.

DM 183 Commissioners court is authorized to promulgate regulations creating a "smoke free" environment.

H 1190 Daily operation of the county jail is vested in the sheriff although the commissioner's court is limited to providing the jail, adequate funding, and broad operational guidelines.

GA 424 County jail inmate labor -----a sheriff may not "use jail inmate trustees on . . . projects.....for nonprofit organizations" except through a work program operated consistently with article 43.09 or 43.10 CCP or a county jail industries program operated consistently with an order entered under Section 351.201 of the Local Government Code. See article 43.10(4) CCP.

## Jail – Municipal

GA 166 A city council may prohibit the use of the municipal jail as a holding facility for persons arrested for state law violations while such persons wait to appear before a magistrate, to post bond, or to be transported to a county facility.

## Juvenile Transportation -Responsibility

LO 94-065 It shall be the duty of the law enforcement officer who has taken a child into custody to transport the child to the appropriate Juvenile detention facility if the child is not released to the parent, guardian, or custodian of the child.

If the juvenile detention facility is located outside the county in which the child is taken into custody, it shall be the duty of the sheriff of that county to transport the child to the appropriate juvenile detention facility if the child is not released to the parent, guardian, or custodian of the child.

On adoption of an order by the juvenile board and approval of the juvenile board's order by record vote of the commissioners court, it shall be the duty of the sheriff of the county in which the child is taken into custody to transport the child to and from all scheduled juvenile court proceedings and appearances and other activities ordered by the juvenile court. See Section 52.026(c) of the Family Code.

A sheriff may not be required to transport a child to juvenile court proceedings unless all of the procedural requirements have been satisfied. Absent the adoption of an order by the juvenile board and approval of the commissioners court by record vote requires a juvenile probation officer to transport a child to juvenile probation proceedings if so ordered by a juvenile court. See sections 142.001 and 142.002 Human Resource Code .Prisoners - Vote

H 267 Qualified prisoners who are entitled to vote may do so by voting absentee.

DM 225 Health care for indigent inmates  
Liability for all costs of health care provided to indigent inmates falls on the County Hospital District. Other hospital districts or public hospitals are responsible for such costs with respect to their indigent residents incarcerated in a county jail.

**The county of residence of an indigent inmate who does not reside in a hospital district or public hospital service area is responsible for the costs of his or her medical care.**

GA 753      An inpatient mental health facility or a mental health facility is not statutorily authorized to require a peace officer to transport a person in custody under chapter 573, Health and Safety Code, to a medical facility for a medical evaluation prior to taking that person to the mental facility.

GA 534      Medical expenses of Inmate paid out of inmates account fund.

A sheriff may deduct from a county-jail inmate's account funds necessary to recover the costs of medical expenses incurred during a previous term of incarceration in the county jail, for which the inmate is required to reimburse the county under Art. 104.002(d) CCP (Due process)

### Sheriff

JC 125      Jurisdiction of sheriff

The sheriff is conservator of the peace in the county and has authority to perform law enforcement services throughout the county, including the area within the boundaries of an incorporated city, absent an interlocal contract with the city. It is for the sheriff, in the exercise of reasonable discretion, to determine how the law enforcement efforts of his office should be allocated to different areas of the county. The fact that municipal residents pay county taxes does not require the county sheriff to provide equal level of law enforcement protection within municipal boundaries as he does in the unincorporated areas, as long as there is a rational basis for providing different levels of law enforcement services to different areas of the county.

JC 312      Person arrested by a law enforcement agency other than the sheriff's department hospitalized as a result of that arrest becomes the responsibility of the sheriff upon receiving a

magistrate commitment order directing the sheriff to "receive and place in jail the person so committed".

- DM 315      Fingerprinting service - Section 80.001 of the Human Resources Code obliges state and local law enforcement agencies to provide free fingerprinting services to the public upon request and without additional conditions.
- GA 542      The disposition of a motor vehicle that the sheriff seizes immediately after the occupants flee the vehicle when stopped by law enforcement and is neither held as evidence in pending case nor ordered to be destroyed or returned to the rightful owner, may be disposed of pursuant to CCP Article 18.17 if they are (1) seized in connection with the enforcement of the state's criminal laws and (2) not contraband subject to disposition under the CCP Chapter 59.
- JC 246      Amount of credit for time served in a county jail - Class C
- A defendant who is sentenced to county jail or failure to pay a fine assessed as a result of conviction for a Class C misdemeanor should be credited at a rate of not less than \$100 for each day or part of a day served in jail.
- JC 393      Misdemeanant convicted of multiple Class C offenses who fail to pay fine or court costs serves terms of confinement for default concurrently or consecutively.
- A misdemeanor who is confined when a court orders a term of confinement to enforce the discharge of a fine or costs on a second conviction serves the confinements concurrently unless the court orders the terms to be served consecutively.
- If the misdemeanor is ordered to be confined to enforce the discharge of multiple fines or costs when he or she is not confined the confinements are served consecutively. If fines or costs are discharged consecutively, the court's order must indicate that the confinements will run consecutively.

The Court's order also should contain five elements, which may be adapted to the circumstances of a confinement to enforce a default: (1) the prior conviction's trial court number; (2) the correct name of the court where the prior conviction was taken; (3) the prior conviction's date; (4) the prior conviction term; and (5) the prior conviction's nature.

A defendant convicted of multiple Class C misdemeanors receives credit for time spent in confinement prior to sentencing on each of the sentences as though the time ran concurrently.

### Sheriff's Vehicles

#### JC 214      Taking home of Assigned Sheriff's Vehicles

This opinion addresses, among other things, the applicability of a county vehicle policy of the sheriff's office.

The question raised is whether the commissioners court may substitute their judgment for that of another constitutional officer in determining how to deploy the resources placed at his disposal, such a substitution would amount to an invasion of that "sphere of authority, which is delegated to the sheriff by the Constitution and laws within which another officer may not interfere usurp." The Attorney General's office has previously opined that a commissioners court may not forbid the sheriff, as keeper of the jail, to serve Folger's coffee and Mrs. Baird's bread to the inmates. See Tex. Att'y Gen. LO-96-017. For the same reason the commissioners court may not micro-manage the deployment of the fleet of cars placed at his disposal.

Another question discussed in this opinion is when a commissioners court, having set the number of positions in the sheriff's office for a given budget year, is whether the sheriff is authorized to decide where to deploy such personnel. The sheriff has such discretion, and the commissioners court has no general power to countermand the sheriff's decision in this

regard . It is for the sheriff, in exercise of reasonable discretion, to determine how to allocate the law enforcement services of his office to different parts of the county. Tex. Att'y Op. No. JC-0125.

This opinion further states that the general power to make the budget, and contracts binding upon the county belongs to the commissioners court, and that the commissioners court has the sole responsibility to set minimum bid specifications for equipment or vehicles to be purchased by competitive bids.

GA 480      Off-duty deputy's use of county patrol vehicles

A sheriff may authorize the sheriff's deputies to use county patrol vehicles for off-duty employment without reimbursing the county only if the predominant purpose is to conserve the peace within the county. The sheriff retains control over the vehicles in a manner that ensures the peace will be conserved, and the county actually receives this public benefit.

The sheriff, and not the commissioner's court, is responsible for seeing that the sheriff's deputies use patrol vehicles only for lawful purposes.

GA 158      Identifying marks that must be printed on a nonexempt county-owned vehicle.

Section 721.004 of the Transportation Code requires a county to print the county's name on its motor vehicles:

- (a) The office having control of a motor vehicle or piece of heavy equipment owned by a county shall have printed on each side of the vehicle or equipment the name of the county, followed by the title of the department or office having custody of the vehicle or equipment.
- (b) The inscription must be in a color sufficiently different from the body of the vehicle or equipment so that the lettering is plainly legible.

(c) The title of the department or office must be in letters plainly legible at a distance of not less than 100 feet.

Section 721.005 Exemption from inscription requirements for certain county-owned motor vehicles.

(a) - - - -

(b) The commissioners court of a county may exempt from the requirements of Section 721.004 of the Transportation Code:

1. An automobile when used to perform an official duty by a:

- (A) police department;
- (B) sheriff's office;
- (C) constables office;
- (D) criminal district attorney's office;
- (E) district attorney's office;
- (F) county attorney's office
- (G) magistrate as defined by Article 2.09 CCP;
- (H) county fire marshal's office; or
- (I) medical examiner; or

2. a juvenile probation department vehicle used to transport children, when used to perform an official duty.

(c) An exemption provided under this section does not apply to a contract deputy. vehicle - Disabled - Tow

GA 215 Nonconsent tow

Section 545.305 and Section 545.3051 of the Transportation Code authorizes a peace officer to order a nonconsent tow of certain vehicles to a nearby place of safety.

*(The Texas Towing Act became effective September 1, 2008 by adding Section 2308 to the Occupation Code. **(A must read)**)*



*Applicable Sections of Occupation Code re Towing:*

*Section 251 Prohibition Against Unattended Vehicles in Certain*

*See 2308.209---**Tow Rotation List ( Comm. Ct Shall adopt)***

*Section 2308.252 Removal and Storage of Unauthorized Vehicle*

*Section 2308.253 Unattended Vehicles on Parking Facility of Apartment Complex; Removal and Storage of Vehicle*

*Section 2308.254 Limitation on Parking Facility Owner's Authority to Remove Unauthorized Vehicle*

*Section 2308.255 Towing Company's or Boot Operator's Authority to Remove and Store or Boot Unauthorized Vehicle*

*Section 2308.2555 Removal of Certain Unauthorized Vehicles in Rural Areas*

*Section 2308.2565 Vehicle Storage Facility Duty to Report After Accepting Unauthorized Vehicle*

*Section 2308.257 Booting of Unauthorized Vehicle*

*Authority is given to the Texas Department of Licensing on Registration (TDLR). Beginning September 1, 2008, tow truck companies will be licensed, and each tow truck operator must be licensed and subject to a criminal background check and drug testing. The Texas Towing Act creates 3 new classifications of tow truck operator's license. Each tow truck requires a separate permit. Each driver is required to have a license.*

*Types of Licenses:*

*1. Incident Management (IM) Towing Permit required for any nonconsent tow initiated by a peace officer. There are other requirements including liability insurance.*

*2. Private Property (PP) Towing Permit required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner. There are other requirements including liability insurance.*

*3. Consent Towing (CT) Permit required for a tow truck used for consent towing. A tow truck with a CT permit may not be used for nonconsent towing. Including management and private property*

*towing. Must also carry liability insurance.*

*IM and PP operators will need to be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or its equivalent.*

*All licenses and permits must renew annually.*

### **PRIVATE SECURITY**

*Section 1702.005 Occupation Code provides that the Texas Department of Safety shall administer this chapter through the board.*

*This chapter does not apply to:*

*(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:*

*(A) is employed in an employee-employer relationship or employed on an individual contractual basis:*

*(i) directly by the recipient of the services; or*

*(ii) by a company licensed under this chapter;*

*(B) is not in the employ of another peace officer;*

*(C) is not a reserve peace officer; and*

*(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision:*

*- - - - -*

*Please read entire section*

## **CODE OF CRIMINAL PROCEDURES**

### **Art. 38.20. Photograph and Live Lineup Identification Procedures**

*Sec. 1. In this article, "institute" means the Bill Blackwood Law Enforcement Management Institute of Texas located at Sam Houston State University.*

*Sec. 2. This article applies only to a law enforcement agency of this state or of a county, municipality, or other political subdivision of this state that employs peace officers who conduct photograph or live lineup identification procedures in the routine performance of the officers' official duties.*

*Sec.3. (a) Each law enforcement agency shall adopt, implement, and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures in accordance with this article. A law enforcement agency may adopt:*

- (1) the model policy adopted under Subsection (b); or*
- (2) the agency's own policy that, at a minimum, conforms to the*

*requirements of Subsection (c).*

*(b) The institute, in consultation with large, medium, and small law enforcement agencies and with law enforcement associations, scientific experts in eyewitness memory research, and appropriate organizations engaged in the development of law enforcement policy, shall develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. The institute shall provide for a period of public comment before adopting the policy and materials.*

*(c) The model policy or any other policy adopted by a law enforcement agency under Subsection (a) must:*

- (1) be based on:*

*(A) credible field, academic, or laboratory research on eyewitness memory;*

*(B) relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and*

- (C) other relevant information as appropriate; and*

*(2) address the following topics:*

*(A) the selection of photograph and live lineup filler photographs or participants;*

*(B) instructions given to a witness before conducting a photograph or live lineup identification procedure;*

*(C) the documentation and preservation of results of a photograph or live lineup identification procedure, including the documentation of witness statements, regardless of the outcome of the procedure;*

*(D) procedures for administering a photograph or live lineup identification procedure to an illiterate person or a person with limited English language proficiency;*

*(E) for a live lineup identification procedure, if practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case or alternative procedures designed to prevent opportunities to influence the witness;*

*(F) for a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness; and*

*(G) any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous eyewitness identifications and to enhance the objectivity and reliability of eyewitness identifications.*

*Sec. 4. (a) Not later than December 31 of each odd-numbered year, the institute shall review the model policy and training materials adopted under this article and shall modify the policy and materials as appropriate.*

*(b) Not later than September 1 of each even-numbered year, each law enforcement agency shall review its policy adopted under this article and shall modify that policy as appropriate.*

*Sec. 5. (a) Any evidence or expert testimony presented by the state or the defendant on the subject of eyewitness identification is admissible only subject to compliance with the Texas Rules of Evidence. Evidence of compliance with the model policy or any other policy adopted under this article or with the minimum requirements of this article is not a condition precedent to the admissibility of an out-of-court eyewitness identification.*

*(b) Notwithstanding Article 38.23 as that article relates to a violation of a state statute, a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this article or with the minimum requirements of this article does not bar the admission of eyewitness identification testimony in the courts of this state.*

*Added by Acts 2011, 82nd Leg., R.S., Ch. 219 (H.B. 215), Sec. 1, eff. September 1, 2011.*

*“(a) Not later than December 31, 2011, the Bill Blackwood Law Enforcement Management Institute of Texas shall develop, adopt, and disseminate the model policy and associated training materials required under Article 38.20, Code of Criminal Procedure, as added by this Act.*

*“(b) Not later than September 1, 2012, each law enforcement agency to which Article 38.20, Code of Criminal Procedure, as added by this Act, applies shall adopt a policy as required by the article.*

*“(c) The change in law made by Section 5, Article 38.20, Code of Criminal Procedure, as added by this Act, applies only to a photograph or live lineup identification procedure conducted on or after September 1, 2012, regardless of whether the offense to which the procedure is related occurred before, on, or after September 1, 2012.”*

# Subject Index

## Abbreviations

|        |                                    |
|--------|------------------------------------|
| AGO    | Attorney General's Opinions        |
| H      | John Hill                          |
| MW     | Mark White                         |
| JM     | Jim Mattox                         |
| DM     | Dan Morales                        |
| JC     | John Cornyn                        |
| GA     | Greg Abbott                        |
| KP     | Ken Paxton                         |
| AGO LO | Attorney General's Letter Opinions |
| CCP    | Code of Criminal Procedure         |
| GC     | Government Cod683.015              |
| LGC    | Local Government Code              |
| PC     | Penal Code                         |

Abandoned Vehicle---Code of Criminal Procedure 18.17  
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