



2017 Special Legislative Issue

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LEGISLATIVE FOREWORD
by Nydia D. Thomas
Special Counsel
Texas Juvenile Justice Department

The 85th Texas Legislature 2017
Texas Juvenile Justice: The Work That Remains

Some have suggested that the juvenile justice agenda was eclipsed in a significant way by high profile legislation and the unpredictable political dynamics that were characteristic of the tumultuous 85th Legislative Session. We can choose, therefore, to dwell on the events that have transpired or roll up our sleeves to accomplish the work that remains. Famed physicist and chemist Marie Curie said, “One never notices what has been done; there are times when one can only see what remains to be done.” For practitioners in the field of juvenile justice, this axiom holds true.

As we assess the merits and complexities of this session, perhaps the real story can be fashioned by reflecting on the ground game of the 2015 session and interim work that served as the prologue in advance of the 85th Texas Legislature. Two years ago, practitioners, advocates, and policymakers engaged in a healthy debate that challenged many of the longstanding attributes of the juvenile justice system in Texas. Legislative proposals reflected an effort to align our state’s laws on age jurisdiction, information-sharing, regionalization, and mental health with the multi-faceted reform measures that have emerged around the country in the last several years. Some of these concepts were offered for consideration by lawmakers in 2015. Proposals, such as *Raise the Age*, were not enacted into law but were resurrected and presented for a second round in 2017.

Many of the major bills filed this session were conceptualized from interim charges, advocacy initiatives, and practitioner workgroups. Most notably, an amazing group of juvenile justice practitioners dedicated their knowledge, diverse experience, and time to a year-long commitment as members of the Juvenile Records Advisory Committee (JRAC) and the Task Force on Improving the Outcomes of Juveniles Adjudicated of Sexual Offenses (IJSXO). These efforts resulted in extensive reports that laid the foundation for important statutory revisions to Chapter 58 of the Family Code on juvenile records and, in some respects, served as a gauge of the state’s inclination to consider break-away reform of the laws on juvenile sex offender registration.

Ironically, bills that appeared to have early momentum -- **HB 122**, revisiting the concept of raising the age of criminal responsibility; **HB 2441**, contemplating procedural changes to allow public access to confidential juvenile hearings; **HB 679**, proposing changes regarding mechanical and physical restraint of a child during court proceedings; **HB 72**, allowing for the establishment of victim-offender mediation programs; **SB 1350**, removing the expiration date of a local post-adjudication commitment program in a certain county; **HB 2879**, the work product of the IJSXO Task Force, which would have made significant procedural reforms to juvenile sex offender registration; and **HB 3594**, which revisited needed cleanup legislation proposed during the 84th Session by a juvenile justice workgroup -- did not make it through the precarious committee referral process or advance through a second chamber.

In sessions past, juvenile justice legislation was consolidated into one or two “omnibus” bills drafted under the watchful scrutiny of the late University of Texas Law Professor Robert Dawson along with others, known collectively as “Gang of Four.” Proposals were vetted in advance by a cross-section of juvenile justice professionals and agency stakeholders in order to build consensus and carefully consider the impact of transformative law changes on the capacity of the system. In recent years, this unified vision has been encumbered by competing interests, limited budgets, and well-meaning initiatives that have resulted in statutory instability and the need each subsequent legislative cycle to revisit and offer corrective measures once the unintended practical consequences of a law have been discovered. The present reality has posed a significant challenge to the day-to-day work of juvenile probation departments, courts and other system practitioners charged with the task of implementing new legislation and related policies. To that end, important lessons can be learned from the bills that did not pass as well as bills that underscore the continued need for system-wide coordination and innovation in the policymaking and legislative process.

The most transformative bills on our roster this session help to ensure that the laws relating to juvenile records keep pace with technological advances. **SB 1304** is comprehensive in scope and contains revisions proposed by the Juvenile Records Advisory Committee. Practitioners are invited to read the *H.B. 431: Ch. 58, Family Code Report & Reorganization Plan* to gain perspective on the advisory committee's original findings and recommendations. Similarly, **HB 3705** expands the information maintained in local or regional juvenile justice information systems (e.g., JCMS), authorizes the inclusion of treatment and diagnosis information, and gives prosecutors, courts, and court clerks broader access to the system as well as modifies functionality for juvenile facilities. **HB 7** requires juvenile service providers to disclose personal health information and coordinate government services under information-sharing protocols set by DFPS and TJJD. **HB 932** is an effort to collect and track data on the number of foster care youth committed to TJJD and requires DFPS to share data with juvenile probation departments. In addition, **HB 2904** modifies the currently required MOU on interagency staffing groups to promote multi-agency coordination of social, corrections, and educational services. **HB 1521** requires DFPS and its foster care contractors to share with state and local juvenile justice agencies information necessary to improve and maintain community safety. **HB 1569** requires a residential facility (other than a juvenile pre-adjudication or post-adjudication secure correctional facility) to disclose to a school district or open-enrollment charter school records relating to the student's educational services, needs and behavioral history. These changes reflect the emphasis on information-sharing protocols and the importance of data collection to provide greater insight into the rehabilitative needs of the juvenile population.

The Legislature also made procedural changes to the powers of certain presiding judges and expanded the dispositional and program options available to juvenile courts. **HB 678** authorizes an associate judge to take determinate sentence pleas and transfer findings to the juvenile court judge. **SB 1548** authorizes probation departments to offer a range of aftercare services for up to six months regardless of a youth's age at the time of discharge. **HB 1204** diverts children under the age of 12 to a CRCG or interagency staffing group as an adjudication alternative and commissions the Office of Court Administration to study the statutory use of the terms child, juvenile, and minor and whether processes used in criminal court or in juvenile court are best for children charged with Class C misdemeanor. **SB 1314** requires TJJD, rather than the Department of State Health Services (DSHS), to adopt minimum standards for the operation of substance abuse facilities or programs operated by juvenile probation departments. **HB 156** establishes a pilot Junior Reserve Officer Training Corp (JROTC) program as an alternative to DAEP/JJAEP placement. In addition, **SB 1177** allows eligible entities contracting with deten-

tion, correctional, or residential facilities to apply for a charter and receive open-enrollment charter school funding.

Finally, lawmakers affirmed the commitment to a juvenile justice culture that protects youth with the enactment of **SB 343**, which adds volunteer and contract employees of juvenile facilities and juvenile probation departments to the list of persons who may be prosecuted for the offense of improper sexual activity with a child under supervision but not in custody.

Background and commentary on these and many other important bills affecting the juvenile justice system are featured in this issue. Readers who browse through this issue should also take note of the excerpt of **HB 1** featuring the Appropriations Riders for the Texas Juvenile Justice Department and introductory overview by TJJD Executive Director **David Reilly** on the implications of budgetary constraints on system capacity.

Interestingly, in early June, Governor Greg Abbott convened state lawmakers for a special session which will have adjourned as of the date of this publication. To that end, this issue provides timely coverage of the highlights of the 85th session since juvenile justice issues are outside the scope of the Governor's call. Overall, the 2017 Special Legislative Issue is a snapshot of the forward movement of the juvenile justice system and encapsulates the emergence of trends and legislative history needed by practitioners to quickly implement statutory changes.

We are most encouraged by the continued support for the TJJD Biennial Post-Legislative Conference and the publication of the Special Legislative Issue as an essential service to practitioners in Texas. We commend our outstanding team of contributing editors who, despite busy schedules, kept their commitment to this project by submitting quality analyses and information. Office of the General Counsel (OGC) Attorney **Kaci Singer** was a vital contributor in this year's issue, including the commentary write-up on SB 1304, Legislation Affecting Juvenile Records. In light of our staffing shortage in OGC/LETA, Kaci assisted with additional aspects of this labor-intensive project. We also appreciate the commitment of our extended team of agency contributors. TJJD General Counsel **Jill Mata** and Staff Attorneys **Karol Davidson, Jenna Reblin, and Kathryn Gray** did an amazing job preparing commentary on a variety of topics. The work of other OGC attorneys, including Deputy General Counsel **Karen Kennedy**, as legislative analysts was important to our efforts. We would also like to extend a special thank you to **Carolyn Beck**, Director of External Relations, who served as a contributor and provided invaluable legislative expertise throughout the session. In addition, we would also like to acknowledge TJJD Chief Financial Officer **Mike Meyer** for his assistance on the Appropriations segment. We absolutely

could not have completed this project without the publications assistance of **Maria Tissing** and **Sunni Zuniga**.

Our final acknowledgement goes out to the Juvenile Law Section of the State Bar of Texas and Section Chair, Kameron Johnson. We are especially proud to continue our partnership with newsletter editor Judge Pat Garza and this amazing group of professionals. We appreciate your continued involvement and support of the juvenile justice system. Thank you for your commitment to documenting the evolution of Texas juvenile law.

We also hope that you were able to attend the Post-Legislative Conference sponsored by the Texas Juvenile Justice Department in Austin, July 31 – August 1st for quality presentations and additional resource information on the highlights of the 85th Texas Legislative Session in order to strengthen the understanding and implementation of these important changes.

Post Stanza: Legislation referenced in this publication is categorized in its most relevant substantive category; however, legislation that is relevant to more than one substantive area will generally only be referenced in the primary area. In some instances, the bill applicability has been omitted by the contributor for certain non-substantive amendments or when unnecessary to explain the commentary.

The statutory excerpts provided in this issue are intended as a general reference and should be considered a secondary source. While every effort has been made to accurately include recent legislative changes and provide useful interpretative commentary, it is best to consult the original legislative enactments located on the Texas Legislature Online website homepage at:

www.legis.state.tx.us

Disclaimer

Every effort has been made to include the most significant pieces of legislation that impact juvenile justice practitioners. However, the Texas Juvenile Justice Department and the Juvenile Law Section make no express representations that the legislation excerpts contained herein comprise the entirety of legislation that was passed on any subject area or topic. The reader should consult the Texas Legislature's website for a complete presentation of all legislation enacted by the 85th Texas Legislature. Any views and opinions expressed in this issue are those of the contributing commentator and do not necessarily reflect those of the Texas Juvenile Justice Department or the Juvenile Law Section of the State Bar of Texas.

85th Session Legislative Appropriations to the Texas Juvenile Justice Department

David Reilly
Executive Director
Texas Juvenile Justice Department

The appropriations process of the 85th Regular Legislative Session was marked by a continuous search for budgetary efficiencies. The tone and expectation were set well before the commencement of the session by way of instructions from the Governor’s Office and Legislative Budget Board for state agencies to reduce baseline General Revenue. In January, the release of the Biennial Revenue Estimate from the Comptroller of Public Accounts and the Governor’s announcement of a statewide hiring freeze reinforced that state government would have to tighten its belt. Throughout the session, observers saw committee, subcommittee, and workgroup meetings regarding appropriations repeatedly come back to questions like, “Where can the State of Texas make do with fewer dollars without significantly impacting services?” and “What does the State do that is unnecessary or ineffective?” Within that context, the Texas Juvenile Justice Department (TJJD) presented significant financial needs across the entirety of the juvenile justice system, even as agency staff involved in the process knew most of those needs could not be met in this cycle. Despite the challenging budget session, TJJD enters into the coming biennium with certain long-term and urgent capital needs addressed, with adequate funding to maintain most core services, and with plans to respond to critical funding gaps.

TJJD’s baseline appropriations request of \$626.4 million included \$579.0 million in General Revenue, which integrated a required General Revenue reduction of \$16.8 million. The agency also presented a list of additional funding requests totaling \$168.8 million and 302 fulltime equivalent positions, including \$39.4 million to

maintain basic services for the projected probation and state residential populations. The initial versions of the House and Senate budgets were identical and added \$28.1 million to TJJD’s baseline request to partially address population-driven funding needs and to continue the fiscal year (FY) 2017 funding level of the probation regionalization initiative. After seeing these initial budgets, TJJD lowered its requests for additional funding to \$118.4 million.

Through the committee process, the House and Senate made similar decisions on TJJD’s budget, focused on lowering funding levels by \$12.1 million in response to updated population projections. These decisions mostly impacted probation funding under the State Aid Formula Funding program. Additional reductions were considered and adopted in administrative areas (Senate) and contracted services (House). Outside of funding reductions, both chambers considered how best to address capital funding needs in the areas of cybersecurity and deferred maintenance. These were both included in the House budget, along with additional funding to address the medical and psychiatric needs of the state residential population. Each chamber made its own decisions on the budget riders that guide how TJJD expends appropriated funds, but those decisions differed only in a few areas. During the final stages of the process, the House and Senate resolved their differences, generally to the agency’s favor.

The table below shows FY 2018-2019 appropriations to TJJD across all methods of finance by functional area.

Probation	FY 2018	FY 2019	Biennium
<i>Grants</i>	\$156,160,163	\$156,297,035	\$312,457,198
<i>Administration & JCMS</i>	\$2,758,113	\$2,758,112	\$5,516,225
Total, Probation	\$158,918,276	\$159,055,147	\$317,973,423

State Residential Programs & Parole	FY 2018	FY 2019	Biennium
<i>State Residential</i>	\$140,274,762	\$140,047,725	\$280,322,487
<i>Parole Supervision/Programs</i>	\$3,795,524	\$3,733,452	\$7,528,976
Total, State Residential Programs & Parole	\$144,070,286	\$143,781,177	\$287,851,463

System Administration/Oversight	FY 2018	FY 2019	Biennium
<i>Training/Monitoring</i>	\$4,854,111	\$4,854,110	\$9,708,221
<i>Indirect Administration</i>	\$13,801,176	\$13,126,283	\$26,927,459
Total, System Administration/Oversight	\$18,655,287	\$17,980,393	\$36,635,680

Special Capital Projects	FY 2018	FY 2019	Biennium
<i>Deferred Maintenance</i>	\$12,100,000	\$-	\$12,100,000
<i>Cybersecurity Initiatives</i>	\$7,471,613	\$65,000	\$7,536,613
Total, Special Capital Projects	\$19,571,613	\$65,000	\$19,636,613

Grand Total, TJJD	\$341,215,462	\$320,881,717	\$662,097,179
<i>Independent Ombudsman</i>	\$896,225	\$924,587	\$1,820,812

These appropriations address certain long-term and urgent capital needs and ensure maintenance of most core services at current levels. TJJD has identified three critical funding gaps for the coming two years: a large drop in funding for basic probation services, inadequate funding to maintain state and federal youth supervision ratio requirements for the projected residential population, and insufficient funding to make its performance measure target for the use of contract residential placements for committed youth. These challenges were presented by both agency and probation department (county) staff, and considered at length by the appropriating committees throughout the process. However, during a session marked by significant fiscal constraints, requests for additional funding in these areas could not be granted. Considerable staff time within TJJD this summer is being devoted to developing plans to respond to these critical funding gaps. Examples of agency efforts include maximizing probation grant funding and flexibility under State Aid Formula Funding by limiting funds distributed through targeted programs and conducting a top-to-bottom functional review of all agency divisions and positions to identify potential operational efficiencies.

Parallel to the regular appropriations process, the 85th Legislature also considered TJJD's request for supplemental funding to address operational needs in FY 2017. The agency's request of about \$4.5 million was directly tied to the state residential population. That population has been significantly above FY 2016-2017 projections used in the previous appropriations process, while costs of operations on a per-youth basis have stayed flat or increased. TJJD was able to manage this challenge in FY 2016 through a collection of one-time measures and reductions to certain operational areas. However, several approaches taken that year could not be repeated in FY 2017. To manage the agency's supplemental funding request down from initial projections of \$10-12 million to a level that could gain support in the current fiscal environment, TJJD took several signif-

icant actions affecting all agency operations other than probation grants. One of the more dramatic steps was to cease paying overtime as it accrues (choosing instead to have employees "bank" those hours) while also initiating new tools to very actively manage the accrual of overtime in state facilities. As a result of internal measures, and thanks to supplemental appropriations from the 85th Legislature, TJJD will conclude the 2016-2017 biennium having operated within available resources, with the only lingering effect being modest overtime balances.

With all of this in mind, as we look ahead to the 2018-2019 biennium, the guiding initiative impacting the probation side of the juvenile justice system will continue to be the regionalization of probation activities. This program will be operating at "full steam" in the coming two years, with its ongoing goals of enhancing regional programs and services, increasing probation departments' ability to serve youth locally, and diverting youth from commitment to TJJD. Other initiatives from the 84th Legislature related to existing probation programs will also carry forward, such as following a grant structure that mirrors appropriations while maximizing flexibility and setting aside funds to support probation programs with recidivism reduction goals based on documented, data-driven, and research-based practices. On the state residential side of the system, the Youth in Custody Practice Model initiative, which also began in the 2016-2017 biennium, will continue to inform ongoing agency efforts to redesign programs and services for youth, as well as efforts to support and engage staff. This initiative has as its goal to achieve the best outcomes possible for TJJD's ever-evolving, and increasingly "deep-end," residential population.

In summary, the appropriations process for the 2018-2019 biennium was characterized by a tight fiscal environment and directives for agencies to make do with less. While TJJD ended the session with adequate funding to meet most core operational needs and new funding to address certain critical capital projects, there are

significant challenges to be faced on both the “front” and “back” ends of the juvenile justice system. Relatively few policy shifts came out of the 85th Legislature, but TJJD looks forward to working with its partners across

the state on ongoing initiatives to realize our collective goal of an effective continuum of services that promotes positive youth outcomes.

**Texas Juvenile Justice Department
Appropriations and Riders for the 2018-2019 Biennium**

Appropriation Strategy	FY 2018	FY 2019
A. Goal: Community Juvenile Justice		
A.1.1. Strategy: Prevention and Intervention	\$3,012,177	\$3,012,177
A.1.2. Strategy: Basic Probation Supervision	\$35,778,526	\$35,915,398
A.1.3. Strategy: Community Programs	\$44,900,650	\$44,900,650
A.1.4. Strategy: Pre and Post Adjudication Facilities	\$24,782,157	\$24,782,157
A.1.5. Strategy: Commitment Diversion Initiatives	\$19,492,500	\$19,492,500
A.1.6. Strategy: Juvenile Justice Alternative Ed Programs	\$6,250,000	\$6,250,000
A.1.7. Strategy: Mental Health Services Grants	\$12,804,748	\$12,804,748
A.1.8. Strategy: Regional Diversion Alternatives	\$9,139,405	\$9,139,405
A.1.9. Strategy: Probation System Support	\$2,758,113	\$2,758,112
Total, Goal A:	\$158,918,276	\$159,055,147
B. Goal: State Services and Facilities		
B.1.1. Strategy: Assessment, Orientation, Placement	\$2,101,773	\$2,101,773
B.1.2. Strategy: Institutional Operations and Overhead	\$14,713,036	\$14,553,036
B.1.3. Strategy: Institutional Supervision and Food Service	\$62,040,815	\$62,097,290
B.1.4. Strategy: Education	\$16,269,556	\$16,269,555
B.1.5. Strategy: Halfway House Operations	\$10,086,594	\$10,086,594
B.1.6. Strategy: Health Care	\$9,494,366	\$9,368,932
B.1.7. Strategy: Psychiatric Care	\$1,082,979	\$1,084,905
B.1.8. Strategy: Integrated Rehabilitation Treatment	\$12,687,251	\$12,687,250
B.1.9. Strategy: Contract Residential Placements	\$5,906,404	\$5,906,404
B.1.10. Strategy: Residential System Support	\$2,367,871	\$2,367,870
B.2.1. Strategy: Office of Inspector General	\$2,293,561	\$2,293,561
B.2.2. Strategy: Health Care Oversight	\$926,573	\$926,572
B.3.1. Strategy: Construct and Renovate Facilities	\$12,403,983	\$303,983
Total, Goal B:	\$152,374,762	\$140,047,725
C. Goal: Parole Services		
C. C.1.1. Strategy: Parole Direct Supervision	\$2,353,089	\$2,291,017
C. C.1.2. Strategy: Parole Programs and Services	\$1,442,435	\$1,442,435
Total, Goal C:	\$3,795,524	\$3,733,452

D. Goal: Office of Independent Ombudsman		
D.1.1. Strategy: Office of Independent Ombudsman	\$896,225	\$924,587
E. Goal: Juvenile Justice System		
E.1.1. Strategy: Training and Certification	\$1,859,107	\$1,859,107
E.1.2. Strategy: Monitoring and Inspections	\$2,774,862	\$2,774,861
E.1.3. Strategy: Interstate Agreement	\$220,142	\$220,142
Total, Goal E:	\$4,854,111	\$4,854,110
F. Goal: Indirect Administration		
F.1.1. Strategy: Central Administration	\$8,577,810	\$8,305,809
F.1.2. Strategy: Information Resources	\$12,694,979	\$4,885,474
Total, Goal F:	\$21,272,789	\$13,191,283
Total Appropriation	\$342,111,687	\$321,806,304
Description	FY 2016	FY 2017
A. Goal: Community Juvenile Justice		
A.1.1. Strategy: Prevention and Intervention	\$3,137,684	\$3,137,685
A.1.2. Strategy: Basic Probation Supervision	\$41,464,872	\$40,571,064
A.1.3. Strategy: Community Programs	\$44,359,374	\$45,441,926
A.1.4. Strategy: Pre and Post Adjudication Facilities	\$25,814,997	\$25,814,497
A.1.5. Strategy: Commitment Diversion Initiatives	\$19,492,500	\$19,492,500
A.1.6. Strategy: Juvenile Justice Alternative Ed Programs	\$6,250,000	\$6,250,000
A.1.7. Strategy: Mental Health Services Grants	\$12,804,748	\$12,804,748
A.1.8. Strategy: Regional Diversion Alternatives	\$435,490	\$9,139,405
A.1.9. Strategy: Probation System Support	\$2,476,954	\$2,476,955
Total, Goal A:	\$156,236,619	\$2,476,955
B. Goal: State Services and Facilities		
B.1.1. Strategy: Assessment, Orientation, Placement	\$2,021,924	\$2,021,924
B.1.2. Strategy: Institutional Operations and Overhead	\$13,637,898	\$13,637,898
B.1.3. Strategy: Institutional Supervision and Food Service	\$58,110,656	\$55,270,092
B.1.4. Strategy: Education	\$15,709,509	\$15,241,206
B.1.5. Strategy: Halfway House Operations	\$9,738,097	\$8,982,926
B.1.6. Strategy: Health Care	\$8,905,512	\$8,691,471
B.1.7. Strategy: Mental Health (Psychiatric Care)	\$841,595	\$784,272
B.1.8. Strategy: Integrated Rehabilitation Treatment	\$12,577,591	\$11,767,965
B.1.9. Strategy: Contract Residential Placements	\$6,514,978	\$8,919,672
B.1.10. Strategy: Residential System Support	\$2,802,214	\$2,802,214
B.2.1. Strategy: Office of Inspector General	\$2,184,961	\$2,184,961

B.2.2. Strategy: Health Care Oversight	\$995,233	\$995,233
B.3.1. Strategy: Construct and Renovate Facilities	\$302,796	\$302,796
Total, Goal B:	\$134,342,964	\$131,602,630
C. Goal: Parole Services		
C. C.1.1. Strategy: Parole Direct Supervision	\$2,777,638	\$2,534,133
C. C.1.2. Strategy: Parole Programs and Services	\$1,443,121	\$1,419,415
Total, Goal C:	\$4,220,759	\$3,953,548
D. Goal: Office of Independent Ombudsman		
D.1.1. Strategy: Office of Independent Ombudsman	\$1,007,961	\$941,461
E. Goal: Juvenile Justice System		
E.1.1. Strategy: Training and Certification	\$1,676,997	\$1,664,911
E.1.2. Strategy: Monitoring and Inspections	\$2,296,156	\$2,290,299
E.1.3. Strategy: Interstate Agreement	\$260,007	\$260,007
Total, Goal E:	\$4,233,160	\$4,215,217
F. Goal: Indirect Administration		
F.1.1. Strategy: Central Administration	\$8,878,871	\$8,697,709
F.1.2. Strategy: Information Resources	\$5,936,364	\$5,465,176
Total, Goal F:	\$14,815,235	\$14,162,885
Total Appropriation	\$314,856,698	\$320,004,521

Appropriation Riders to TJJD Budget

- Performance Measure Targets.** The following is a listing of the key performance target levels for the Texas Juvenile Justice Department. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Texas Juvenile Justice Department. In order to achieve the objectives and service standards established by this Act, the Texas Juvenile Justice Department shall make every effort to attain the following designated key performance target levels associated with each item of appropriation. [Modified due to length.]
- Capital Budget.** None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below shall be expended only for the purposes shown and are not available for expenditure for other purposes. Amounts appropriated above and identified on this provision as appropriations either for "Lease payments to the Master Lease Purchase Program" or for items with an "(MLPP)" notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance
- Authority pursuant to the provisions of Government Code §1232.103.

Appropriation of Other Agency Funds. Any unexpended balances remaining in Independent School District Funds (not to exceed \$155,000 and included in the amounts above), the Student Benefit Fund (not to exceed \$140,000 and included in the amounts above), the Canteen Revolving Funds (not to exceed \$7,500 and included in the amounts above), any gifts, grants, and donations as of August 31, 2015, and August 31, 2016 (estimated to be \$0), and any revenues accruing to those funds are appropriated to those funds for the succeeding fiscal years. Funds collected by vocational training shops at Juvenile Justice Department institutions, including unexpended balances as of August 31, 2015 (not to exceed \$21,000 and included in the amounts above), are hereby appropriated for the purpose of purchasing and maintaining parts, tools, and other supplies necessary for the operation of those shops.
- Restrictions, State Aid.** None of the funds appropriated above and allocated to local juvenile proba-

tion boards shall be expended for salaries or expenses of juvenile board members. None of the funds appropriated above and allocated to local juvenile probation boards shall be expended for salaries of personnel that exceed 112 percent of the previous year.

5. **Revolving Funds.** The Juvenile Justice Department may establish out of any funds appropriated herein a revolving fund not to exceed \$10,000 in the Central Office, and \$10,000 in each institution, field office, or facility under its direction. Payments from these revolving funds may be made as directed by the department. Reimbursement to such revolving funds shall be made out of appropriations provided for in this Article.
6. **Student Employment.** Subject to the approval of the Juvenile Justice Department, students residing in any Juvenile Justice Department facility may be assigned necessary duties in the operations of the facility and be paid on a limited basis out of any funds available to the respective institutions or facility not to exceed \$50,000 a year for each institution and \$10,000 a year for any other facility.
7. **Appropriation and Tracking of Title IV-E Receipts.** The provisions of Title IV-E of the Social Security Act shall be used in order to increase funds available for juvenile justice services. The Juvenile Justice Department (JJD) shall certify to the Texas Department of Family and Protective Services that federal financial participation can be claimed for Title IV-E services provided by counties. JJD shall direct necessary general revenue funding to ensure that the federal match for the Title IV-E Social Security Act is maximized for use by participating counties. Such federal receipts are appropriated to JJD for the purpose of reimbursing counties for services provided to eligible children. In accordance with Article IX, Section 8.02(a) of this Act, when reporting Federal Funds to the Legislative Budget Board, JJD must report funds expended in the fiscal year that funds are disbursed to counties, regardless of the year in which the claim was made by the county, received by JJD, or certified by JJD.
8. **Federal Foster Care Claims.** Out of appropriations made above, the Texas Department of Family and Protective Services and the Juvenile Justice Department shall document possible foster care claims for children in juvenile justice programs and maintain an interagency agreement to implement strategies and responsibilities necessary to claim additional federal foster care funding; and consult with juvenile officials from other states and national experts in designing better foster care funding initiatives.
9. **Support Payment Collections.** The Juvenile Justice Department shall annually report to the Governor and the Legislative Budget Board the number of active accounts, including the amounts owed to the state pursuant to the Texas Family Code §54.06 (a) court orders, and the total amount of funds collected.
10. **Employee Medical Care.** Appropriations made in this Act for the Juvenile Justice Department not otherwise restricted in use may also be expended to provide medical attention by medical staff and infirmaries at Juvenile Justice Department facilities, or to pay necessary medical expenses, including the cost of broken eyeglasses and other health aids, for employees injured while performing the duties of any hazardous position which is not reimbursed by workers' compensation and/or employees' state insurance. For the purpose of this section, "hazardous position" shall mean one for which the regular and normal duties inherently involve the risk or peril of bodily injury or harm. Appropriations made in this Act not otherwise restricted in use may also be expended for medical tests and procedures on employees that are required by federal or state law or regulations when the tests or procedures are required as a result of the employee's job assignment or when considered necessary due to potential or existing litigation.
11. **Safety.** In stances in which regular employees of facilities operated by the Juvenile Justice Department are assigned extra duties on special tactics and response teams, supplementary payments, not to exceed \$200 per month for team leaders and \$150 per month for team members, are authorized in addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classifications and assigned salary ranges.
12. **Charges to Employees and Guests.**
 - a. Collections for services rendered to Juvenile Justice Department employees and guests shall be made by a deduction from the recipient's salary or by cash payment in advance. Such deductions and other receipts for these services from employees and guests are hereby appropriated to the facility. Refunds of excess collections shall be made from the appropriation to which the collection was deposited.
 - b. As compensation for services rendered and notwithstanding any other provision in this Act, any

facility under the jurisdiction of the Juvenile Justice Department may provide free meals for food service personnel and volunteer workers and may furnish housing facilities, meals, and laundry service in exchange for services rendered by interns, chaplains in training, and student nurses.

13. **Juvenile Justice Department Alternative Education Program (JJAEP).** Funds transferred to the Juvenile Justice Department (JJD) pursuant to Texas Education Agency (TEA) Rider 28 and appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, shall be allocated as follows: \$1,500,000 at the beginning of each fiscal year to be distributed on the basis of juvenile age population among the mandated counties identified in Chapter 37, Texas Education Code, and those counties with populations between 72,000 and 125,000 which choose to participate under the requirements of Chapter 37.

The remaining funds shall be allocated for distribution to the counties mandated by § 37.011(a) Texas Education Code, at the rate of \$96 per student per day of attendance in the JJAEP for students who are required to be expelled as provided under §37.007, Texas Education Code. Counties are not eligible to receive these funds until the funds initially allocated at the beginning of each fiscal year have been expended at the rate of \$96 per student per day of attendance. Counties in which populations exceed 72,000 but are 125,000 or less, may participate in the JJAEP and are eligible for state reimbursement at the rate of \$96 per student per day.

JJD may expend any remaining funds for summer school programs. Funds may be used for any student assigned to a JJAEP. Summer school expenditures may not exceed \$3.0 million in any fiscal year.

Unspent balances in fiscal year 2016 shall be appropriated to fiscal year 2017 for the same purposes in Strategy A.1.6.

The amount of \$96 per student day for the JJAEP is an estimated amount and not intended to be an entitlement. Appropriations for JJAEP are limited to the amounts transferred from the Foundation School Program pursuant to TEA Rider 28. The amount of \$96 per student per day may vary depending on the total number of students actually attending the JJAEPs. Any unexpended or unobligated appropriations shall lapse at the end of fiscal year 2017 to the Foundation School Fund No. 193.

JJD may reduce, suspend, or withhold Juvenile Justice Alternative Education Program funds to counties that do not comply with standards, accountability measures, or Texas Education Code Chapter 37.

14. **Funding for Additional Eligible Students in JJAEPs.** Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs, a maximum of \$500,000 in each fiscal year (for a maximum of 90 attendance days per child), is allocated for counties with a population of at least 72,000 which operate a JJAEP under the standards of Chapter 37, Texas Education Code. The county is eligible to receive funding from the Juvenile Justice Department at the rate of \$96 per day per student for students who are required to be expelled under § 37.007, Texas Education Code, and who are expelled from a school district in a county that does not operate a JJAEP.
15. **JJAEP Accountability.** Out of funds appropriated above in Strategy A.1.6, Juvenile Justice Alternative Education Programs (JJAEP), the Juvenile Justice Department (JJD) shall ensure that JJAEPs are held accountable for student academic and behavioral success. JJD shall submit a performance assessment report to the Legislative Budget Board and the Governor by May 1, 2018. The report shall include, but is not limited to, the following:
- a. an assessment of the degree to which each JJAEP enhanced the academic performance and behavioral improvement of attending students;
 - b. a detailed discussion on the use of standard measures used to compare program formats and to identify those JJAEPs most successful with attending students;
 - c. student passage rates on the State of Texas Assessments of Academic Readiness (STAAR) in the areas of reading and math for students enrolled in the JJAEP for a period of 75 days or longer;
 - d. standardized cost reports from each JJAEP and their contracting independent school district(s) to determine differing cost factors and actual costs per each JJAEP program by school year;
 - e. average cost per student attendance day for JJAEP students. The cost per day information shall include an itemization of the costs of providing educational services mandated in the Texas Education Code §37.011. This itemization shall separate

the costs of mandated educational services from the cost of all other services provided in JJAEPs. Mandated educational services include facilities, staff, and instructional materials specifically related to the services mandated in Texas Education Code, §37.011. All other services include, but are not limited to, programs such as family, group, and individual counseling, military-style training, substance abuse counseling, and parenting programs for parents of program youth; and

- f. inclusion of a comprehensive five-year strategic plan for the continuing evaluation of JJAEPs which shall include oversight guidelines to improve: school district compliance with minimum program and accountability standards, attendance reporting, consistent collection of costs and program data, training, and technical assistance needs.

16. **Appropriations Transfers between Fiscal Years.**

In addition to the transfer authority provided elsewhere in this Act, the Juvenile Justice Department may transfer appropriations in an amount not to exceed \$10,000,000 made for fiscal year 2017 to fiscal year 2016 subject to the following conditions provided by this section:

- a. Transfers under this section may be made only if (1) juvenile correctional populations exceed appropriated areas of daily population targets or (2) for any other emergency expenditure, including expenditures necessitated by public calamity.
- b. A transfer authorized by this section must receive prior approval from the Governor and the Legislative Budget Board.
- c. The Comptroller of Public Accounts shall cooperate as necessary to assist the completion of a transfer and spending under this section.

17. **State-owned Housing Authorized.** The chief superintendent, assistant superintendent, and the director of security are authorized to live in state-owned housing at a rate determined by the department. Other Juvenile Justice Department employees may live in state operated housing as set forth in Article IX, §11.02, Reporting Related to State Owned Housing, of this Act. Fees for employee housing are hereby appropriated to be used for maintaining employee housing and shall at least cover the agency cost of maintenance and utilities for the housing provided.

18. **Unexpended Balances – Hold Harmless Provision.** Any unexpended balances as of August 31,

2016, in Strategy A.1.2, Basic Probation Supervision (estimated to be \$400,000), above are hereby appropriated to the Juvenile Justice Department in fiscal year 2017 for the purpose of providing funding for juvenile probation departments whose allocation would otherwise be affected as a result of reallocation related to population shifts.

19. **Appropriation: Refunds of Unexpended Balances from Local Juvenile Probation Departments.**

The Juvenile Justice Department (JJD) shall maintain procedures to ensure that the state is refunded all unexpended and unencumbered balances of state funds held as of the close of each fiscal year by local juvenile probation departments. All fiscal year 2016 and fiscal year 2017 refunds received from local juvenile probation departments by TJJD are appropriated above in Strategy A.1.3, Community Programs. Any juvenile probation department refunds received in excess of \$2,300,000 for the 2016-17 biennium shall lapse to the General Revenue Fund.

20. **Salaries, Education Professionals.**

- d. Each principal, supervisor, and classroom teacher employed in an institution operated by the Juvenile Justice Department (JJD) shall receive a monthly salary to be computed as follows: The applicable monthly salary rate specified in §21.402, Texas Education Code, as amended, shall be multiplied by ten to arrive at a ten month salary rate. Such rate shall be divided by the number of days required in §21.401, Texas Education Code, for 10-month employees, and the resulting daily rate shall be multiplied by the number of on-duty days required of JJD educators, resulting in the adjusted annual salary. The adjusted annual salary is to be divided by 12 to arrive at the monthly rate. Salary rates for educational aides commencing employment before September 1, 1999, shall be calculated in the same manner, using 60 percent of the salary rate specified in §21.402, Texas Education Code.
- e. JJD may authorize salary rates at amounts above the adjusted annual salary determined in the preceding formula, but such rates, including longevity for persons commencing employment on September 1, 1983, or thereafter, and excluding hazardous duty pay, shall never exceed the rates of pay for like positions paid in the public schools of the city in which the JJD institution is located. Any authorized local increments will be in addition to adjusted annual salaries. When no similar position exists in the public schools of the city in which the JJD facility is located, the JJD may au-

thorize a salary rate above the adjusted annual salary determined in the formula provided by Section a.

- f. There is hereby appropriated to JJD from any unexpended balances on hand as of August 31, 2018, funds necessary to meet the requirements of this section in fiscal year 2019 in the event adjustments are made in the salary rates specified in the Texas Education Code or in salary rates paid by the public schools where JJD facilities are located.
21. **Training for GED and Reading Skills.** Out of funds appropriated above in Strategy B.1.4, Education, the Juvenile Justice Department shall prioritize reading at grade level and preparation for the GED in its educational program. A report containing statistical information regarding student performance on the Test of Adult Basic Education (TABE) shall be submitted to the Legislative Budget Board and the Governor on or before December 1, 2018.
22. **Salary Adjustment Authorized.** Notwithstanding other provisions of this Act, the Juvenile Justice Department is authorized to adjust salaries and pay an additional evening, night, or weekend shift differential not to exceed 15 percent of the monthly pay rate of Juvenile Correctional Officers I, Juvenile Correctional Officers II, Juvenile Correctional Officers III, Juvenile Correctional Officers IV, Juvenile Correctional Officers V, and Juvenile Correctional Officers VI to rates within the designated salary group for the purpose of recruiting, employing and retaining career juvenile correctional personnel. Merit raises are permitted for all Juvenile Correctional Officers who are not receiving or are no longer eligible to receive step adjustments on the career ladder system.
23. **Appropriations Prohibited for Purposes of Payment to Certain Employees.** None of the appropriations made by this Act to the Juvenile Justice Department (JJD) may be distributed to or used to pay an employee of JJD who is required to register as a sex offender under Chapter 62 Code of Criminal Procedure, or has been convicted of an offense described in Article 42.12, Section 3g, Code of Criminal Procedure.
24. **Managed Health Care and Mental Health Services Contract(s).** Out of funds appropriated above, the Juvenile Justice Department (JJD) shall develop and manage a provider contract, or contracts, to deliver the most effective managed health care and mental health (psychiatric) services for the best value. Potential service providers shall not be entitled to pass-through funding from JJD appropriations.
25. **JJAEP Disaster Compensation.** Out of funds appropriated above in Strategy A.1.6, the Juvenile Justice Department may compensate a mandatory JJAEP for missed mandatory student attendance days in which disaster, flood, extreme weather condition, or other calamity has a significant effect on the program's attendance.
26. **Reporting Requirements to the Legislative Budget Board.** From funds appropriated above, the Juvenile Justice Department shall maintain a specific accountability system for tracking funds targeted at making a positive impact on youth. The Juvenile Justice Department shall implement a tracking and monitoring system so that the use of all funds appropriated can be specifically identified and reported to the Legislative Budget Board. In addition to any other requests for information, the agency shall produce an annual report on the following information for the previous fiscal year to the Legislative Budget Board by December 1st of each year:
- a. The report shall include detailed monitoring, tracking, utilization, and effectiveness information on all funds appropriated in Goal A, Community Juvenile Justice. The report shall include information on the impact of any new initiatives and all programs tracked by the Juvenile Justice Department. Required elements include, but are not limited to, prevention and intervention programs, residential placements, enhanced community-based services for serious and chronic felons such as sex offender treatment, intensive supervision, and specialized supervision, community-based services for misdemeanants no longer eligible for commitment to the Juvenile Justice Department, Commitment Diversion Initiatives, and Regional Diversion Alternatives.
 - b. The report shall include information on all training, inspection, monitoring, investigation, and technical assistance activities conducted using funds appropriated in Goals A and E. Required elements include, but are not limited to training conferences held, practitioners trained, facilities inspected, and investigations conducted.
 - c. The annual report submitted to the Legislative Budget Board pursuant to this provision must be accompanied by supporting documentation detailing the sources and methodologies utilized to assess program effectiveness and any other sup-

porting material specified by the Legislative Budget Board.

- d. The annual report submitted to the Legislative Budget Board pursuant to this provision must contain a certification by the person submitting the report that the information provided is true and correct based upon information and belief together with supporting documentation.
- e. The annual report submitted to the Legislative Budget Board pursuant to this provision must contain information on each program receiving funds from Strategy A.1.1, Prevention and Intervention, including all outcome measures reported by each program and information on how funds were expended by each program.

In addition to the annual report described above, the Juvenile Justice Department shall report juvenile probation population data as requested by the Legislative Budget Board on a monthly basis for the most recent month available. The Juvenile Justice Department shall report to the Legislative Budget Board on all populations specified by the Legislative Budget Board, including, but not limited to, additions, releases, and end-of-month populations. End of fiscal year data shall be submitted indicating each reporting county to the Legislative Budget Board no later than two months after the close of each fiscal year. The Juvenile Justice Department will use Legislative Budget Board population projections for probation supervision and state correctional populations when developing its legislative appropriations request for the 2020-21 biennium.

Upon the request of the Legislative Budget Board, the Juvenile Justice Department shall report expenditure data by strategy, program, or in any other format requested, including substrategy expenditure detail.

The Comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to the Juvenile Justice Department in Goal F, Indirect Administration, if the Legislative Budget Board certifies to the Comptroller of Public Accounts that the Juvenile Justice Department is not in compliance with any of the provisions of this Section.

27. **Commitment Diversion Initiatives.** Out of the funds appropriated above in Strategy A.1.5, Commitment Diversion Initiatives, \$19,492,500 in General Revenue Funds in fiscal year 2018 and \$19,492,500 in General Revenue Funds in fiscal year 2019, may be expended only for the purposes of providing programs for the diversion of youth from the Juvenile Justice Department. The programs may include, but

are not limited to, residential, community-based, family, and aftercare programs. The allocation of State funding for the program is not to exceed a daily rate based on the level of care the juvenile receives. The Juvenile Justice Department shall maintain procedures to ensure that the State is refunded all unexpended and unencumbered balances of State funds at the end of each fiscal year.

These funds shall not be used by local juvenile probation departments for salary increases or costs associated with the employment of staff hired prior to September 1, 2009.

The juvenile probation departments participating in the diversion program shall report to the Juvenile Justice Department regarding the use of funds within thirty days after the end of each quarter. The Juvenile Justice Department shall report to the Legislative Budget Board regarding the use of the funds within thirty days after receipt of each county's quarterly report. Items to be included in the report include, but are not limited to, the amount of funds expended, the number of youth served by the program, the percent of youth successfully completing the program, the types of programming for which the funds were used, the types of services provided to youth served by the program, the average actual cost per youth participating in the program, the rates of recidivism of program participants, the number of youth committed to the Juvenile Justice Department, any consecutive length of time over six months a juvenile served by the diversion program resides in a secure corrections facility, and the number of juveniles transferred to criminal court under Family Code, §54.02.

The Juvenile Justice Department shall maintain a mechanism for tracking youth served by the diversion program to determine the long-term success for diverting youth from state juvenile correctional incarceration and the adult criminal justice system. A report on the program's results shall be included in the report that is required under Juvenile Justice Department Rider 26 to be submitted to the Legislative Budget Board by December 1st of each year. In the report, the Juvenile Justice Department shall report the cost per day and average daily population of all programs funded by Strategy A.1.5, Commitment Diversion Initiatives, for the previous fiscal year.

The Comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to the Juvenile Justice Department in Goal F, Indirect Administration, if the Legislative Budget Board certifies to the Comptroller of Public Accounts that the Juvenile Justice Department is not in compliance with any of the provisions of this Section.

28. **Local Assistance.** Funds appropriated above in Strategy F.1.1, Central Administration, shall be used to increase technical assistance on program design and evaluation for programs operated by juvenile probation departments. This shall include, but not be limited to:

- a. providing in-depth consultative technical assistance on program design, implementation, and evaluation to local juvenile probation departments;
- b. assisting juvenile probation departments in developing logic models for all programs;
- c. developing recommended performance measures by program type;
- d. facilitating partnerships with universities, community colleges, or larger probation departments to assist departments with statistical program evaluations where feasible;
- e. following current research on juvenile justice program design, implementation, and evaluation; and,
- f. disseminating best practices to juvenile probation departments.

Staff who perform these duties shall be included in the agency's research function and shall not be responsible for monitoring departments' compliance with standards.

29. **Mental Health Services Grants.** Out of funds appropriated above in Strategy A.1.7, Mental Health Services Grants, the Juvenile Justice Department shall allocate \$12,804,748 in fiscal year 2018 and \$12,804,748 in fiscal year 2019 to fund mental health services provided by local juvenile probation departments. Funds subject to this provision shall be used by local juvenile probation departments only for providing mental health services to juvenile offenders. Funds subject to this provision may not be utilized for administrative expenses of local juvenile probation departments nor may they be used to supplant local funding.

30. **Probation Grants. Probation Grants.** From funds appropriated above in Goal A, Community Juvenile Justice, the Juvenile Justice Department shall develop a juvenile probation grant structure that:

- a. adheres to the budget structure in the agency's bill pattern;

- b. is straightforward in its requirements, providing flexibility to juvenile probation departments within the confines of the agency budget structure and other provisions of this Act; and,
- c. requires juvenile probation departments to report expenditures in accordance with the agency budget structure and agency grant requirements.

31. **Regional Diversion Alternatives.**

- a. Out of funds appropriated above the Texas Juvenile Justice Department (TJJD) is appropriated \$9,139,405 in fiscal year 2018 and \$9,139,405 in fiscal year 2019 in General Revenue in Strategy A.1.8, Regional Diversion Alternatives, for the implementation of a regionalization program to keep juveniles closer to home in lieu of commitment to the juvenile secure facilities operated by the TJJD.
- b. Out of funds appropriated above, \$494,000 in fiscal year 2018 and \$494,000 in fiscal year 2019 in General Revenue Funds and seven full-time equivalent positions are appropriated in Strategy D.1.1, Office of the Independent Ombudsman, for the expansion of duties of the office to local secure facilities.

32. **Contingency for Behavioral Health Funds.** Notwithstanding appropriation authority granted above, the Comptroller of Public Accounts shall not allow the expenditure of General Revenue- Related behavioral health funds for the Texas Juvenile Justice Department in Strategies A.1.1, Prevention and Intervention; A.1.3, Community Programs; A.1.4, Pre and Post Adjudication Facilities; A.1.5, Commitment Diversion Initiatives; A.1.7, Mental Health Services Grants; B.1.1, Assessment, Orientation, and Placement; B.1.6, Health Care; B.1.7, Mental Health (Psychiatric) Care; B.1.8, Integrated Rehabilitation Treatment; and C.1.2, Parole Programs and Services, in fiscal year 2018 or fiscal year 2019, as identified in Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures, if the Legislative Budget Board provides notification to the Comptroller of Public Accounts that the agency's planned expenditure of those funds in fiscal year 2018 or fiscal year 2019 does not satisfy the requirements of Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.

33. **Youth Transport.** In instances in which Juvenile Correctional Officers of facilities operated by the Juvenile Justice Department are assigned duties to transport youth between locations, supplementary payments, not to exceed \$30 per day during which the employee performs such duties, are authorized in

addition to the salary rates stipulated by the provisions of Article IX of this Act relating to the position classification and assigned salary ranges.

34. **Appropriation: Unexpended Balances of General Obligation Bond Proceeds.** In addition to the amounts appropriated above are unexpended and unobligated balances of General Obligation Bond Proceeds for projects that have been approved under the provisions of Article IX, Section 17.02 of Senate Bill 1, Eighty-third Legislature, Regular Session, 2013, remaining as of August 31, 2017, (estimated to be \$4,500,000), for repair and rehabilitation of existing facilities, for the 2018-19 biennium.

In addition to the amounts appropriated above are unexpended and unobligated balances of General Obligation Bond Proceeds for projects that have been approved under the provisions of Article IX, Section 17.11 of Senate Bill 1, Eighty-first Legislature, Regular Session, 2009, remaining as of August 31, 2017, (estimated to be \$0), for repair and rehabilitation of existing facilities, for the 2018-19 biennium.

In addition to the amounts appropriated above are unexpended and unobligated balances of General Obligation Bond Proceeds for projects that have been approved under the provisions of Article IX, Sections 19.70 and 19.71 of House Bill 1, Eightieth Legislature, Regular Session, 2007, remaining as of August 31, 2017, (estimated to be \$0), for repair and rehabilitation of existing facilities, for the 2018-19 biennium.

Any unexpended balances in General Obligation Bond Proceeds described herein and remaining as of August 31, 2018, are hereby appropriated for the same purposes for the fiscal year beginning September 1, 2018.

35. **Harris County Leadership Academy.** Out of funds appropriated above in Strategy A.1.4, Pre and Post-Adjudication Facilities, the amount of \$1,000,000 in General Revenue Funds in each fiscal year shall be expended for the Harris County Leadership Academy.

1. Title 3 and Related Provisions

Family Code

Family Code Sec. 51.03. DELINQUENT CONDUCT; CONDUCT INDICATING A NEED FOR SUPERVISION. (b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(3) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(4) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;

(5) ~~[(6)]~~ notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b), Penal Code; or

(6) ~~[(7)]~~ notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.

Commentary by Kaci Singer

Source: HB 29/SB 1488

Effective Date: September 1, 2017

Summary of Changes: These are non-substantive amendments as a result of multiple bills last session that made changes to the definition of conduct indicating a need for supervision. It is now clear that a reference to Section 51.03(b)(5) is a reference to prostitution and references to Section 51.03(b)(6) is a reference to sexting.

Family Code Sec. 51.13. EFFECT OF ADJUDICATION OR DISPOSITION. (e) A finding that a child engaged in conduct indicating a need for supervision as described by Section 51.03(b)(6) ~~[51.03(b)(7)]~~ is a conviction only for the purposes of Sections 43.261(c) and (d), Penal Code.

Commentary by Kaci Singer

Source: HB 29/SB 1488

Effective Date: September 1, 2017

Summary of Changes: This is a conforming amendment related to changes in the definition of conduct indicating a need for supervision; sexting was renumbered to Section 51.03(b)(6).

Family Code Sec. 52.011. DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY PROBATE COURT. (a) In this section, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a law enforcement officer takes a child who is a ward into custody under Section 52.01(a)(2) or (3), the law enforcement officer or other person having custody of the child shall notify the court with jurisdiction over the child's guardianship of the child's detention or arrest.

Commentary by Kaci Singer

Source: SB 1096

Effective Date: September 1, 2017

Applicability: The law enforcement officer or other person with custody of a ward is not required to comply with this section until July 1, 2018, which is the date by which the Office of Court Administration is required to establish the database and give access to DPS.

Summary of Changes: In 2015, HB 3424 directed the Office of Court Administration to examine the feasibility of a guardianship database that would help law enforcement officer know if the person they are having contact with is under guardianship. This bill implements the recommendations of the Texas Judicial Council to address the issues that arise when law enforcement encounters persons who are under guardianship. It creates a searchable database that is available to law enforcement. When law enforcement takes a child into custody who is a ward, which is a person for whom a guardian has been appointed in a probate matter, the law enforcement officer or other person with custody of the child must notify the court with jurisdiction over the child's guardianship. The notice must be made as soon as practicable but no later than the first working day after the date a law enforcement officer take the child into custody. The language "or other person having custody of the child" is vague; however, because it is conceivable that the juvenile probation department is contemplated by that language, juvenile probation departments may wish to develop protocol with local law enforcement regarding who will be responsible for making this notification. Only properly trained individuals may have access to the database. All information in the database is confidential.

Family Code Sec. 52.031. FIRST OFFENDER PROGRAM. (a) A juvenile board may establish a first

offender program under this section for the referral and disposition of children taken into custody, or accused prior to the filing of a criminal charge, of:

- (1) conduct indicating a need for supervision;
- (2) a Class C misdemeanor, other than a traffic offense; or
- (3) delinquent conduct other than conduct that constitutes:

(A) a felony of the first, second, or third degree, an aggravated controlled substance felony, or a capital felony; or

(B) a state jail felony or misdemeanor involving violence to a person or the use or possession of a firearm, location-restricted [~~illegal~~] knife, or club, as those terms are defined by Section 46.01, Penal Code, or a prohibited weapon, as described by Section 46.05, Penal Code.

Commentary by Kaci Singer

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Other provisions in this bill removed the term “illegal knife” from the Penal Code, creating instead the term “location-restricted knife,” defined as a knife with a blade over 5 and one-half inches long; all other categories of knives that were included in the definition of illegal knife were deleted (throwing knives/stars, daggers, dirks, poniards, stilettos, Bowie knives, and swords). It is no longer generally illegal to carry a knife with a blade over 5 and one-half inches long; rather, it is only illegal to carry such knife in certain locations. The exception is that it is generally illegal for a person under the age of 18 to carry a location-restricted knife on or about his or her person, with some exceptions. This change is a conforming change replacing the term “illegal knife” with the term “location-restricted” knife in the statute giving juvenile boards the authority to establish a first offender program with law enforcement agencies. See the Penal Code and Education Code sections of this newsletter for more detail on the changes in the law.

Family Code Sec. 53.01. PRELIMINARY INVESTIGATION AND DETERMINATIONS; NOTICE TO PARENTS. (d) Unless the juvenile board approves a written procedure proposed by the office of prosecuting attorney and chief juvenile probation officer which provides otherwise, if it is determined that the person is a child and, regardless of a finding of probable cause, or a lack thereof, there is an allegation that the child engaged in delinquent conduct of the grade of felony, or conduct constituting a misdemeanor offense involving violence to a person or the use or possession of a firearm, location-restricted [~~illegal~~] knife, or club, as those terms are de-

finied by Section 46.01, Penal Code, or prohibited weapon, as described by Section 46.05, Penal Code, the case shall be promptly forwarded to the office of the prosecuting attorney, accompanied by:

- (1) all documents that accompanied the current referral; and
- (2) a summary of all prior referrals of the child to the juvenile court, juvenile probation department, or a detention facility.

Commentary by Kaci Singer

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This is an additional conforming change related to the bill that removed the term “illegal knife” and replaced it with the term “location-restricted knife,” as explained above.

Family Code Sec. 53.01. PRELIMINARY INVESTIGATION AND DETERMINATIONS; NOTICE TO PARENTS. (b-1) The person who is conducting the preliminary investigation shall, as appropriate, refer the child's case to a community resource coordination group, a local-level interagency staffing group, or other community juvenile service provider for services under Section 53.011, if the person determines that:

- (1) the child is younger than 12 years of age;
- (2) there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision;
- (3) the child's case does not require referral to the prosecuting attorney under Subsection (d) or (f);
- (4) the child is eligible for deferred prosecution under Section 53.03; and
- (5) the child and the child's family are not currently receiving services under Section 53.011 and would benefit from receiving the services.

Commentary by Kaci Singer

Source: HB 1204

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: If a child under the age of 12 is referred to the juvenile probation department and intake staff finds probable cause, intake staff is required, as appropriate, to refer the child’s case to a community resource coordination group (CRCG), a local-level interagency staffing group, or another community juvenile service provider if the case is eligible for deferred prosecution, does not require referral to the prosecutor under the law, and the child and child’s family are not already receiving services. This means that the following do not

result in a referral to the CRCG: a misdemeanor involving violence to a person or the use or possession of a firearm, location-restricted knife, club, or prohibited weapon or any felony, unless the juvenile board has adopted an alternative referral plan.

Family Code Sec. 53.011. SERVICES PROVIDED TO CERTAIN CHILDREN AND FAMILIES.

(a) In this section:

(1) "Community resource coordination group" has the meaning assigned by Section 531.421, Government Code.

(2) "Local-level interagency staffing group" means a group established under the memorandum of understanding described by Section 531.055, Government Code.

(b) On receipt of a referral under Section 53.01(b-1), a community resource coordination group, a local-level interagency staffing group, or another community juvenile services provider shall evaluate the child's case and make recommendations to the juvenile probation department for appropriate services for the child and the child's family.

(c) The probation officer shall create and coordinate a service plan or system of care for the child or the child's family that incorporates the service recommendations for the child or the child's family provided to the juvenile probation department under Subsection (b). The child and the child's parent, guardian, or custodian must consent to the services with knowledge that consent is voluntary.

(d) For a child who receives a service plan or system of care under this section, the probation officer may hold the child's case open for not more than three months to monitor adherence to the service plan or system of care. The probation officer may adjust the service plan or system of care as necessary during the monitoring period. The probation officer may refer the child to the prosecuting attorney if the child fails to successfully participate in required services during that period.

Commentary by Kaci Singer

Source: HB 1204

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: This section defines the community resource coordination group (CRCG) and local-level interagency staffing group. Under Section 531.421, Government Code, a CRCG is a group established under a memorandum of understanding adopted under Section 531.055, Government Code, which is a local-level interagency staffing group; thus, the two are the same thing and will be referred to as CRCG for simplicity. Upon receipt of the referral from the juvenile probation department intake as described above, the CRCG or other com-

munity juvenile services provider is required to evaluate the case and make recommendations to the juvenile probation department for appropriate services for the child. The probation officer is required to create and coordinate a service plan or system of care for the child or the child's family that incorporates the recommendations made. The child and the child's parent must consent to the services, but must be made aware that such consent is voluntary. The probation officer may keep the child's case open for up to three months to monitor the child's compliance and may adjust the service plan or system of care as necessary. If the child does not successfully participate in the required services, the case may be referred to the prosecutor. There is no explicit requirement that the case be dismissed if the child is successful, but it would seem that is likely the intent, similar to deferred prosecution. However, this is separate from deferred prosecution and some differences bear noting. For example, Section 53.01(c) provides that an incriminating statement made a participant to a person giving advice under deferred prosecution may not be used against the declarant in a court hearing. No similar provision exists under this new law, suggesting that such protection is not available. Additionally, while deferred prosecution sets out the juvenile board's ability to adopt a fee schedule and limitations on those fees, there is no mention of fees in the new law. Finally, it is unclear if a person who is unsuccessful under this program would be eligible for deferred prosecution; given that referral to the prosecutor is the only option given for a child who does not successfully participate, it is arguable that prosecutorial-deferred or court-deferred prosecution are available but not probation department-initiated deferred prosecution.

Family Code Sec. 54.04 DISPOSITION HEARINGS. (h) At the conclusion of the dispositional hearing, the court shall inform the child of:

(1) the child's right to appeal, as required by Section 56.01; and

(2) the procedures for the sealing of the child's records under Subchapter C-1, Chapter 58 [Section 58.003].

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to records created on, before, or after the effective date

Summary of Changes: This is a conforming change related to the repeal of Section 58.003, Family Code, and the adoption of the new Subchapter C-1 of Chapter 58. See Legislation Affecting Juvenile Records for full commentary on the provisions of SB 1304.

Family Code Sec. 54.04012 TRAFFICKED PERSONS PROGRAM. (d) Following a child's success-

ful completion of the program, the court may order the sealing of the records of the case in the manner provided by Subchapter C-1, Chapter 58 [Sections 58.003(e-7) and (e-8)].

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to records created on, before, or after the effective date

Summary of Changes: This is a conforming change related to the repeal of Section 58.003, Family Code, and the adoption of the new Subchapter C-1 of Chapter 58. See Legislation Affecting Juvenile Records for full commentary on the provisions of SB 1304.

Family Code Sec. 54.040. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) If a child is found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [51.03(b)(7)], the juvenile court may enter an order requiring the child to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

Commentary by Kaci Singer

Source: HB 29/SB 1488

Effective Date: September 1, 2017

Summary of Changes: This is a conforming change related to the definition of conduct indicating a need for supervision; sexting was renumbered to 51.03(b)(6).

Family Code Sec. 54.10. HEARINGS BEFORE REFEREE. (e) Except as provided by Subsection (f), the [The] hearings provided by Sections 54.03, 54.04, and 54.05 may not be held before a referee if the grand jury has approved of the petition and the child is subject to a determinate sentence.

(f) When the state and a child who is subject to a determinate sentence agree to the disposition of the case, wholly or partly, a referee or associate judge may hold a hearing for the purpose of allowing the child to enter a plea or stipulation of evidence. After the hearing under this subsection, the referee or associate judge shall transmit the referee's or associate judge's written findings and recommendations regarding the plea or stipulation of evidence to the juvenile court judge for consideration. The juvenile court judge may accept or reject the plea or stipulation of evidence in accordance with Section 54.03(j).

Commentary by Kaci Singer

Source: HB 678

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: Under current law, only the juvenile court judge may preside over determinate sentence cases, including if the case is a plea. This change allows associate judges and referees to accept true pleas and stipulations of evidence in determinate sentence cases, as long as the state and the child agree. The juvenile court judge may accept or reject the plea or stipulation of evidence just as in any other case.

Alcoholic Beverage Code

Alcoholic Beverage Code Sec. 106.04 CONSUMPTION OF ALCOHOL BY A MINOR. (f) Except as provided by Subsection (g), Subsection (a) does not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

(1) a health care provider treating the victim of the sexual assault;

(2) an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

(3) the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.

(g) A minor is entitled to raise the defense provided by Subsection (f) in the prosecution of an offense under this section only if the minor is in violation of this section at the time of the commission of a sexual assault that is:

(1) reported by the minor under Subsection (f); or

(2) committed against the minor and reported by another person under Subsection (f).

(h) A minor who commits a sexual assault that is reported under Subsection (f) is not entitled to raise the defense provided by Subsection (f) in the prosecution of the minor for an offense under this section.

Commentary by Carolyn Beck

Source: SB 966

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This change in statute is intended to encourage the reporting of sexual assaults by protecting certain minors (under 21) from being cited for alcohol consumption by a minor (MIC). The protection applies to a minor victim of sexual assault or to a minor who reports the sexual assault but, in either case, only if the minor was in possession of alcohol at the time of the sexual assault.

The assault must be reported to a health care provider treating the victim, to an employee of a law enforcement agency, including college or university campus police, or to the Title IX coordinator of a college/university or another employee of the college/university responsible for responding to reports of sexual assault. The protection does not apply to the person who commits a sexual assault.

Some may find the language in the bill confusing because it begins with an inapplicability clause but later references a defense to prosecution. Further clarity may be necessary since the minor who reports the sexual assault is only provided protection from prosecution if the minor was consuming alcohol at the time of the assault. That caveat may make sense for the victim, but not for the person reporting the assault.

Alcoholic Beverage Code Sec. 106.05. POSSESSION OF ALCOHOL BY A MINOR. (e) Except as provided by Subsection (f), Subsection (a) does not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

(1) a health care provider treating the victim of the sexual assault;

(2) an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

(3) the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.

(f) A minor is entitled to raise the defense provided by Subsection (e) in the prosecution of an offense under this section only if the minor is in violation of this section at the time of the commission of a sexual assault that is:

(1) reported by the minor under Subsection (e); or

(2) committed against the minor and reported by another person under Subsection (e).

(g) A minor who commits a sexual assault that is reported under Subsection (e) is not entitled to raise the defense provided by Subsection (e) in the prosecution of the minor for an offense under this section.

Commentary by Carolyn Beck

Source: SB 966

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This change to Section 106.05 of the Alcoholic Beverage Code is intended to encourage the reporting of sexual assaults by protecting certain minors (under 21) from being cited for minor in possession of

alcohol (MIP). The protection applies to a minor victim of sexual assault or to a minor who reports the sexual assault but, in either case, only if the minor was consuming alcohol at the time of the sexual assault. The assault must be reported to a health care provider treating the victim, to an employee of a law enforcement agency, including college or university campus police, or to the Title IX coordinator of a college/university or another employee of the college/university responsible for responding to reports of sexual assault. The protection does not apply to the person who commits a sexual assault. Some may find the language in the bill confusing because it begins with an inapplicability clause but later references a defense to prosecution. Similarly, both the victim and the minor who report the sexual assault are only protected from prosecution if the minor was in possession of alcohol at the time of the sexual assault. Law enforcement officer may need guidance on how to cite a minor for possession of alcohol during an assault when law enforcement was likely not present to witness the violation.

Alcoholic Beverage Code Sec. 106.12 EXPUNGEMENT OF CONVICTION OR ARREST RECORDS OF A MINOR. EXPUNCTION [~~EXPUNGEMENT~~] OF CONVICTION OR ARREST RECORDS OF A MINOR.

Commentary by Carolyn Beck

Source: HB 2059

Effective Date: September 1, 2017

Applicability: This is a non-substantive change to the heading of the cited provision.

Summary of Changes: Amends the heading of Section 106.12 of the Alcoholic Beverage Code to replace the term “expungement” with “expunction” and to add “arrest records.”

Alcoholic Beverage Code Sec. 106.12 EXPUNGEMENT OF CONVICTION OR ARREST RECORDS OF A MINOR. EXPUNCTION [~~EXPUNGEMENT~~] OF CONVICTION OR ARREST RECORDS OF A MINOR. (c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, prosecutorial and law enforcement records, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

(d) Any person placed under a custodial or non-custodial arrest for not more than one violation of this code while a minor and who was not convicted of the violation may apply to the court in which the person was charged to have the records of the arrest expunged. The

application must contain the applicant's sworn statement that the applicant was not arrested for a violation of this code other than the arrest the applicant seeks to expunge. If the court finds the applicant was not arrested for any other violation of this code while a minor, the court shall order all complaints, verdicts, prosecutorial and law enforcement records, and other documents relating to the violation to be expunged from the applicant's record.

(e) The court shall charge an applicant a fee in the amount of \$30 for each application for expunction [~~expungement~~] filed under this section to defray the cost of notifying state agencies of orders of expunction [~~expungement~~] under this section.

(f) The procedures for expunction provided under this section are separate and distinct from the expunction procedures under Chapter 55, Code of Criminal Procedure.

Commentary by Carolyn Beck

Source: HB 2059

Effective Date: September 1, 2017

Applicability: Applies to the expunction of records of a conviction or arrest made before, on, or after the effective date.

Summary of Changes: The amendments to Section 106.12, Alcoholic Beverage Code, authorize certain persons, who were arrested as minors but not convicted of an offense relating to alcoholic beverages, to petition the court with original jurisdiction of the offense to have the records of the arrest expunged. The court shall order the expunction upon a finding that the applicant was not arrested for any other violation of the Alcoholic Beverage Code while a minor. This provision also adds prosecutorial and law enforcement records to the types of records to be expunged when a person who was convicted of an alcohol-related offense applies for expunction.

Code of Criminal Procedure

Code of Criminal Procedure Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (1) "Electronic recording" means an audio-visual electronic recording, or an audio recording if an audiovisual electronic recording is unavailable, that is authentic, accurate, and unaltered.

(2) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of this state, that employs peace officers who, in the routine performance of the officers' duties, conduct custodial interrogations of persons suspected of committing criminal offenses.

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned

or operated by the law enforcement agency for the purpose of detaining persons in connection with the suspected violation of a penal law. The term does not include a courthouse.

(b) Unless good cause exists that makes electronic recording infeasible, a law enforcement agency shall make a complete and contemporaneous electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of an offense under:

(1) Section 19.02, Penal Code (murder);

(2) Section 19.03, Penal Code (capital murder);

(3) Section 20.03, Penal Code (kidnapping);

(4) Section 20.04, Penal Code (aggravated kidnapping);

(5) Section 20A.02, Penal Code (trafficking of persons);

(6) Section 20A.03, Penal Code (continuous trafficking of persons);

(7) Section 21.02, Penal Code (continuous sexual abuse of young child or children);

(8) Section 21.11, Penal Code (indecenty with a child);

(9) Section 21.12, Penal Code (improper relationship between educator and student);

(10) Section 22.011, Penal Code (sexual assault);

(11) Section 22.021, Penal Code (aggravated sexual assault); or

(12) Section 43.25, Penal Code (sexual performance by a child).

(c) For purposes of Subsection (b), an electronic recording of a custodial interrogation is complete only if the recording:

(1) begins at or before the time the person being interrogated enters the area of the place of detention in which the custodial interrogation will take place or receives a warning described by Section 2(a), Article 38.22, whichever is earlier; and

(2) continues until the time the interrogation ceases.

(d) For purposes of Subsection (b), good cause that makes electronic recording infeasible includes the following:

(1) the person being interrogated refused to respond or cooperate in a custodial interrogation at which an electronic recording was being made, provided that:

(A) a contemporaneous recording of the refusal was made; or

(B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the person's refusal but the person was unwilling to have the refusal recorded.

and the peace officer or agent contemporaneously, in writing, documented the refusal;

(2) the statement was not made as the result of a custodial interrogation, including a statement that was made spontaneously by the accused and not in response to a question by a peace officer;

(3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;

(4) exigent public safety concerns prevented or rendered infeasible the making of an electronic recording of the statement; or

(5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation commenced that the person being interrogated was not taken into custody for or being interrogated concerning the commission of an offense listed in Subsection (b).

(e) A recording of a custodial interrogation that complies with this article is exempt from public disclosure as provided by Section 552.108, Government Code.

Commentary by Jenna Reblin

Source: SB 1253

Effective Date: September 1, 2017

Applicability: Applies to a custodial interrogation occurring on or after the effective date; however, compliance with this statute does not impact the admissibility of interrogations occurring before March 1, 2018 (see Article 38.22, Code of Criminal Procedure, herein).

Summary of Changes: As amended, Article 2.32, Code of Criminal Procedure, will now create statewide procedures for recording of custodial interrogations performed by Texas law enforcement agencies. These changes require law enforcement agencies to make a complete recording of any custodial interrogation that occurs in a place of detention of a person suspected or charged with murder, capital murder, kidnapping, aggravated kidnapping, trafficking of persons, and other listed offenses. The electronic recording is considered complete only if the recording begins at or before the earlier of the time the person receives Miranda warnings or the time the person being interrogated enters the area of the place of detention where the interrogation will take place and the recording continues until the time the interrogation ceases. Good cause exceptions are available if it is not feasible to make the recording in compliance with this article, such as: if the person being interrogated refuses to cooperate with an electronic recording of the interrogation and the refusal is documented in writing by the law enforcement officer; a statement was not made as a result of a custodial interrogation, including statements made spontaneously by the

accused, and the statement was not in response to a question by a peace officer; the recording equipment did not function correctly, the peace officer did not operate the electronic recording equipment properly, or the equipment stopped operating without the knowledge of the officer; the recording could not be made because of critical public safety concerns; or the officer believed at the time that the person was not in custody for one of the applicable offenses. Recordings made under this article are exempt from public disclosure. The change in law is intended to improve the quality of investigations from the beginning in hopes to reduce the number of wrongful convictions. Under prior law, there were no uniform standards in regard to the recording of custodial interrogations. This Code of Criminal Procedure provision is applicable only to adult cases and not juvenile cases. Statements in juvenile cases are governed by Section 51.095 of the Family Code.

Code of Criminal Procedure Art. 12.01. [LIMITATIONS] FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

...Provisions of Art. 12.01 not amended have been omitted.

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit under Section 32.32, Penal Code;

(E) money laundering;

(F) credit card or debit card abuse under Section 32.31, Penal Code;

(G) fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H) exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

(I) Medicaid fraud under Section 35A.02, Penal Code; or

(J) [(H)] bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6);

Commentary by Jenna Reblin

Source: SB 998

Effective Date: September 1, 2017

Applicability: Applies to an offense that has not been barred by limitation before the effective date.

Summary of Changes: This amendment is intended to assist with offenses related to the financial exploitation of vulnerable populations. In the past, the statute of limitations often expired before a case involving elder fraud abuse was discovered by family, legal advocates, or the court. Now instead of three years, the statute of limitations is seven years.

Code of Criminal Procedure Art. 13.37. OBSTRUCTION OR RETALIATION. An offense under Section 36.06(a)(1), Penal Code, may be prosecuted in any county in which:

- (1) the harm occurs; or
- (2) the threat to do harm originated or

was received.

Commentary by Jenna Reblin

Source: HB 268

Effective Date: September 1, 2017

Applicability: Applies to the venue for retaliation offenses on or after the effective date.

Summary of Changes: This newly created article expands the venue for the prosecution of retaliation offenses. The proper venue for the offense of retaliation may be in the county in which the harm was done or the place from which the threat was originated. This allows district attorneys and victims to evaluate each case and pursue charges in the most appropriate venue to protect the victim.

Code of Criminal Procedure Art 18.01. SEARCH WARRANT. (b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as provided by Article 18.011, the affidavit becomes ~~is~~ public information when the search warrant for which the affidavit was presented is ~~is~~ executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Commentary by Jenna Reblin

Source: HB 3237

Effective Date: May 26, 2017

Applicability: Applies to sworn affidavits filed on or after the effective date.

Summary of Changes: This bill changes Art. 18.01, Code of Criminal Procedure, so that a search warrant is not public until it has been authorized and executed. Under the current law, the warrant is public information after the sworn affidavit is filed which may result in advance notice of the search in some circumstances.

Code of Criminal Procedure Art. 18.10. HOW RETURN MADE. Not later than three whole days after executing a search warrant, the officer shall return the search warrant. Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which the warrant ~~is~~ has been executed. The officer ~~and~~ shall also ~~likewise~~ deliver to the magistrate a copy of the inventory of the property taken into his possession under the warrant. The failure of an officer to make a timely return of an executed search warrant or to submit an inventory of the property taken into the officer's possession under the warrant does not bar the admission of evidence under Article 38.23. The officer who seized the property shall retain custody of it until the magistrate issues an order directing the manner of safekeeping the property. The property may not be removed from the county in which it was seized without an order approving the removal, issued by a magistrate in the county in which the warrant was issued; provided, however, nothing herein shall prevent the officer, or his department, from forwarding any item or items seized to a laboratory for scientific analysis.

Commentary by Jenna Reblin

Source: HB 3237

Effective Date: May 26, 2017

Applicability: Applies to search warrants executed on or after the effective date.

Summary of Changes: Art. 18.10, Code of Criminal Procedure, now requires officers to return a search warrant not later than three whole days after its execution. The failure of the officer to return the search warrant within three days or submit an inventory of the property taken under the warrant does not bar the admission of the evidence. There is no change other than the three day limit, and even if the officer does not return the search warrant within three days, the evidence is still admissible.

Code of Criminal Procedure Art. 24A.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a subpoena, search warrant, or other court order that:

(1) relates to the investigation or prosecution of a criminal offense under:

(A) Section 21.02, 21.11, 22.011, or 22.021, Penal Code;

(B) Chapter 20A, Penal Code;

(C) Section 33.021, Penal Code; or

(D) Chapter 43, Penal Code;

and

(2) is served on or issued with respect to an online ~~Internet~~ service provider that provides service in this state.

Commentary by Jenna Reblin

Source: SB 1203

Effective Date: September 1, 2017

Applicability: Applies to subpoenas, search warrants, or other court orders issued on or after the effective date.

Summary of Changes: Article 24A.001, Code of Criminal Procedure, is amended to expand the 10-day expedited response requirement to apply to continuous sexual abuse of a young child or children, indecency with a child, sexual assault, aggravated sexual assault, trafficking of persons, and public indecency. Online solicitation of a minor remains one of the offenses that this article applies to as it was the only offense listed in Art. 24A.001 prior to this amendment. The change in Art. 24A.001(2) also replaces 'internet service provider' with the term 'online service provider' to make sure that all online entities with critical information relevant to trafficking and other offenses are covered.

Code of Criminal Procedure Art. 24A.0015. DEFINITION. In this chapter, "online service provider" means an Internet service provider, search engine, web hosting company, web browsing company, manufacturer of devices providing online application platforms, or company providing online social media platforms.

Commentary by Jenna Reblin

Source: SB 1203

Effective Date: September 1, 2017

Applicability: Applies to online service providers on or after the effective date.

Summary of Changes: Art. 24A.0015, Code of Criminal Procedure, defines online service provider. The purpose of updating this definition is to ensure that all online entities are covered that may have critical information relevant to trafficking and other offenses.

Code of Criminal Procedure Art. 24A.002. RESPONSE REQUIRED; DEADLINE FOR RESPONSE. (a) Except as provided by Subsection (b), not later than the 10th day after the date on which an online [Internet] service provider is served with or otherwise receives a subpoena, search warrant, or other court order described by Article 24A.001, the online [Internet] service provider shall:

- (1) fully comply with the subpoena, warrant, or order; or
- (2) petition a court to excuse the online [Internet] service provider from complying with the subpoena, warrant, or order.

(b) As soon as is practicable, and in no event later than the second business day after the date the online [Internet] service provider is served with or otherwise receives a subpoena, search warrant, or other court order described by Article 24A.001, the online [Internet] ser-

vice provider shall fully comply with the subpoena, search warrant, or order if the subpoena, search warrant, or order indicates that full compliance is necessary to address a situation that threatens a person with death or other serious bodily injury.

Commentary by Jenna Reblin

Source: SB 1203

Effective Date: September 1, 2017

Applicability: Applies to subpoenas, search warrants, or other court orders issued on or after the effective date.

Summary of Changes: The amendment to Art. 24A.002, Code of Criminal Procedure, is a conforming amendment to Article 24A.0015 discussed above.

Code of Criminal Procedure Art. 24A.003. DISOBEYING SUBPOENA, WARRANT, OR ORDER. An online [Internet] service provider that disobeys a subpoena, search warrant, or other court order described by Article 24A.001 and that was not excused from complying with the subpoena, warrant, or order under Article 24A.002(a)(2) may be punished in any manner provided by law.

Commentary by Jenna Reblin

Source: SB 1203

Effective Date: September 1, 2017

Applicability: Applies to subpoenas, search warrants, or other court orders issued on or after the effective date.

Summary of Changes: Art. 24A.003, Code of Criminal Procedure, is a conforming amendment to Article 24A.0015 discussed above.

Code of Criminal Procedure Art. 24A.051. PRESERVING INFORMATION. (a) On written request of a law enforcement agency in this state or a federal law enforcement agency and pending the issuance of a subpoena or other court order described by Article 24A.001, an online [Internet] service provider that provides service in this state shall take all steps necessary to preserve all records or other potential evidence in a criminal trial that is in the possession of the online [Internet] service provider.

(b) Subject to Subsection (c), an online [Internet] service provider shall preserve information under Subsection (a) for a period of 90 days after the date the online [Internet] service provider receives the written request described by Subsection (a).

(c) An online [Internet] service provider shall preserve information under Subsection (a) for the 90-day period immediately following the 90-day period described by Subsection (b) if the requesting law enforcement agency in writing requests an extension of the preservation period.

Commentary by Jenna Reblin

Source: SB 1203

Effective Date: September 1, 2017

Applicability: Applies to subpoenas, search warrants, or other court orders issued on or after the effective date.

Summary of Changes: The amendment to Art. 24A.051, Code of Criminal Procedure replaces “internet service provider” with “online service provider.” The purpose is to ensure that all online entities are covered that may have critical information relevant to trafficking and other offenses.

Code of Criminal Procedure Art. 38.22. WHEN STATEMENT MAY BE USED. Sec. 9. Notwithstanding any other provision of this article, no oral, sign language, or written statement that is made by a person accused of an offense listed in Article 2.32(b) and made as a result of a custodial interrogation occurring in a place of detention, as that term is defined by Article 2.32, is admissible against the accused in a criminal proceeding unless:

(1) an electronic recording was made of the statement, as required by Article 2.32(b); or

(2) the attorney representing the state offers proof satisfactory to the court that good cause, as described by Article 2.32(d), existed that made electronic recording of the custodial interrogation infeasible.

Commentary by Jenna Reblin

Source: SB 1253

Effective Date: September 1, 2017

Applicability: Applies to the use of a statement resulting from a custodial interrogation that occurs on or after March 1, 2018, regardless of whether the criminal offense giving rise to that interrogation is committed before, on, or after that date.

Summary of Changes: This amendment relates to the electronic recording of custodial interrogations. Article 2.32, Code of Criminal Procedure, creates the requirements for electronic recordings of custodial interrogations. Article 38.22, Section 9 ties in with the provisions from Article 2.32 created for statements of persons accused of one of the listed offenses. No statement is admissible against a person accused of one of the offenses listed in Article 2.32 unless an electronic recording was made of the statement as required by Article 2.32(b) or the attorney for the state offers proof that one of the good cause exceptions listed in Article 2.32(d) are met. Before this bill, there were no uniform standards in regard to the recording of custodial interrogations and this Article will create statewide procedures for the recording of custodial interrogations performed by Texas law enforcement agencies. Since this provision is in the Code of Criminal Procedure, it is applicable only to adult cases and not to juvenile. Juvenile cases will still be covered by Section 51.095, Family Code.

Code of Criminal Procedure Art. 38.371. EVIDENCE IN PROSECUTIONS OF CERTAIN OFFENSES INVOLVING FAMILY VIOLENCE. (a) This article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, that is committed under:

(1) Section 22.01, ~~22.02,~~ or 22.04, Penal Code, against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(2) Section 25.07 or 25.072, Penal Code, if the offense is based on a violation of an order or a condition of bond in a case involving family violence.

Commentary by Jenna Reblin

Source: SB 1250

Effective Date: September 1, 2017

Applicability: Applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date.

Summary of Changes: Article 37.381, Code of Criminal Procedure, as amended, provides that evidence regarding the relationship of the parties is admissible in certain cases involving family violence so that it also applies to injury to a child, disabled individual, or elderly individual cases under Section 22.04, Penal Code. This provision was added because of the vulnerable nature of the potential victims and underreported nature of crimes involving children or disabled or elderly individuals.

Code of Criminal Procedure Article 42.01. JUDGMENT. Sec. 12. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0192.

Commentary by Jenna Reblin

Source: SB 7

Effective Date: September 1, 2017

Applicability: Applies to a judgment of conviction entered on or after the effective date.

Summary of Changes: Section 12 is added to Article 42.01, Code of Criminal Procedure, to require judgments to reflect affirmative findings that the commission of certain offenses was related to the employment of a public school employee who is a member of the Teacher Retirement System of Texas (TRS). This is necessary because Section 824.009, Government Code, added by SB 7, provides that members of TRS convicted of continuous sexual abuse of young child or children (Section 21.02, Penal Code), improper relationship between educator and student (Section 21.12, Penal Code), sexual assault (Section 22.011, Penal Code), or aggravated sexual assault (Section 22.021, Penal Code), are ineligible to receive a retirement service annuity if the victim was a student. The

affirmative finding is necessary for TRS to have the information it needs to comply with this provision.

Code of Criminal Procedure Art. 42.018. NOTICE PROVIDED BY CLERK OF COURT. (a) This article applies only to:

(1) ~~[(A)]~~ conviction or deferred adjudication community supervision granted on the basis of an offense for which a conviction or grant of deferred adjudication community supervision requires the defendant to register as a sex offender under Chapter 62; or

(2) conviction of:-
~~[(A)]~~ an offense under Title 5, Penal Code,~~[-or~~
~~[(B)]~~ an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62; and

~~[(2)]~~ if the victim of the offense was ~~[(is)]~~ under 18 years of age at the time the offense was committed.

(b) Not later than the fifth day after the date a person who holds a certificate issued under Subchapter B, Chapter 21, Education Code, is convicted or granted deferred adjudication on the basis of an offense, the clerk of the court in which the conviction or deferred adjudication is entered shall provide to the State Board for Educator Certification written notice of the person's conviction or deferred adjudication, including the offense on which the conviction or deferred adjudication was based.

Commentary by Jenna Reblin

Source: SB 7

Effective Date: September 1, 2017

Applicability: Applies to a judgment of conviction or granting of deferred adjudication entered on or after the effective date.

Summary of Changes: Current law requires the clerk of court to provide notice to the State Board for Educator Certification whenever a person with a certificate issued by the State Board of Educator Certification is convicted or receives deferred adjudication for a registerable sex offense or an offense under Title 5, Penal Code (Offenses Against the Person), if the victim of the offense is under 18 years of age. This change amends the law so that notice is required upon conviction or the granting of deferred adjudication community supervision for a registerable sex offense, regardless of the age of the victim. Notice is now required for an offense under Title 5, Penal Code, with a victim under the age of 18 only on conviction, not on the granting of deferred adjudication community supervision.

Code of Criminal Procedure Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE. (a) In the trial of an offense described by Section 824.009, Gov-

ernment Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the offense committed was related to the defendant's employment described by Section 824.009(b), Government Code, while a member of the Teacher Retirement System of Texas.

(b) A judge who makes the affirmative finding described by this article shall make the determination and provide the notice required by Section 824.009(l), Government Code, as applicable.

Commentary by Jenna Reblin

Source: SB 7

Effective Date: September 1, 2017

Applicability: Applies to a judgment of conviction entered on or after the effective date.

Summary of Changes: This article was added to require the judge in a trial for an offense by a public school employee to make an affirmative finding of fact and enter the finding in the case if it is determined that the offense was related to the person's employment with the public school system while a member of the Texas Retirement System. The judge who makes the affirmative finding must provide the notice required by Government Code Section 824.009(l). The goal of these changes is to reduce risk factors faced by school districts by closing the gaps and increasing the penalties for conduct relating to inappropriate student and educator relationships.

Code of Criminal Procedure Article 42.014. FINDING THAT OFFENSE WAS COMMITTED BECAUSE OF BIAS OR PREJUDICE. (a) In the trial of an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed, or intentionally selected the person's property that was damaged or affected as a result of the offense, because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference or by status as a peace officer or judge.

Commentary by Jenna Reblin

Source: HB 2908

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Article 42.014(a), Code of Criminal Procedure, was amended to include certain crimes committed because of bias or prejudice due to a person's

status as a peace officer or judge. This provision is in response to recent tragic events that highlight the need for more protection of peace officers and judges.

Health and Safety Code

Health and Safety Code Sec. 161.325. MENTAL HEALTH PROMOTION AND INTERVENTION, SUBSTANCE ABUSE PREVENTION AND INTERVENTION, AND SUICIDE PREVENTION. (a-1) The list must include programs in the following areas:

(1) early mental health intervention;
 (2) mental health promotion ~~[and positive youth development]~~;
 (3) substance abuse prevention;
 (4) substance abuse intervention; ~~[and]~~
 (5) suicide prevention;
 (6) ~~grief-informed and trauma-informed practices;~~

(7) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(8) positive behavior interventions and supports and positive youth development; and

(9) safe and supportive school climate.

(d) A [The board of trustees of each] school district may develop practices and procedures [may adopt a policy] concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

(1) include [establishes] a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(2) include [establishes] a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(3) establish [establishes] that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention; and

(4) set [sets] out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention.

(e) The practices and procedures developed under Subsection (d) [policy] must prohibit the use without the prior consent of a student's parent or guardian of a

medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

(f) The practices [policy] and [any necessary] procedures ~~developed [adopted]~~ under Subsection (d) must be included in:

(1) the annual student handbook; and

(2) the district improvement plan under Section 11.252, Education Code.

(i) Nothing in this section is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Practices [Policy] and procedures ~~developed [adopted]~~ in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. Nothing in this section shall be construed as giving school districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

Commentary by Nydia Thomas

Source: SB 179

Effective Date: September 1, 2017

Applicability: Applies to practices and programs established by school districts on or after the effective date.

Summary of Changes: HB 179 was enacted in response to growing public concerns regarding harassment and bullying in its various forms, including online cyberbullying, and the detrimental impact on the mental health and well-being of school-aged youth. The amendments to Section 161.325, Health and Safety Code, give school districts the tools to establish policies and programs to enhance the availability and effectiveness of counseling and rehabilitation services. In addition, schools and law enforcement may work together to investigate the off-campus occurrence of bullying. School districts will now be required to notify parents if it is believed that a child is an aggressor or a victim of bullying. The list of best practice-based intervention and prevention programs identified by the Texas Education Agency and the Department of State Health Services is amended to include grief-informed and trauma-informed practices, skill-building to managed emotion and establish positive relationships, and positive behavioral interventions and supports as well as programs that promote a safe and supportive school climate. The school district replaces the board of trustees as the entity responsible for adopting policies for the various listed programs. Prior parental consent is required to conduct a medical screening of a student in order to determine whether mental health or substance abuse intervention or suicide prevention is needed. The school district must publish the practices and procedures required in Section 161.325 in the student handbook and district improvement plan. These measures are aimed at ensuring

proper notice so that the parent can engage and take appropriate action to protect and assist the student.

Health and Safety Code Sec. 167.001. FEMALE GENITAL MUTILATION PROHIBITED. (a) A person commits an offense if the person:

(1) knowingly circumcises, excises, or infibulates any part of the labia majora or labia minora or clitoris of another person who is younger than 18 years of age;

(2) is a parent or legal guardian of another person who is younger than 18 years of age and knowingly consents to or permits an act described by Subdivision (1) to be performed on that person; or

(3) knowingly transports or facilitates the transportation of another person who is younger than 18 years of age within this state or from this state for the purpose of having an act described by Subdivision (1) performed on that person.

(d) It is not a defense to prosecution under this section that:

(1) the person on whom the circumcision, excision, or infibulation was performed or was to be performed, or another person authorized to consent to medical treatment of that person, including that person's parent or legal guardian, consented to the circumcision, excision, or infibulation;

(2) the circumcision, excision, or infibulation is required by a custom or practice of a particular group; or

(3) the circumcision, excision, or infibulation was performed or was to be performed as part of or in connection with a religious or other ritual.

Commentary by Nydia Thomas

Source: SB 323

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Section 167.001, Health and Safety Code, regarding female genital mutilation is amended to make it a criminal offense to transport or permit the transport of a person for purposes of performing human genital mutilation. The law also eliminates the ability of a person accused of the offense from raising the defense that consent was obtained from the victim or his or her guardian or that the act is protected as a religious practice, custom, or ritual.

Health and Safety Code Sec. 171.101. PARTIAL BIRTH ABORTIONS: DEFINITIONS. In this subchapter:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(A) for the purpose of performing an overt act that the person knows will kill the

partially delivered living fetus, deliberately and intentionally vaginally delivers a living fetus until:

(i) for a head-first presentation, the entire fetal head is outside the body of the mother; or

(ii) for a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother; and

(B) performs the overt act described in Paragraph (A), other than completion of delivery, that kills the partially delivered living fetus.

(2) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

Commentary by Nydia Thomas

Source: SB 8

Effective Date: September 1, 2017

Applicability: Applies to partial birth abortions that are performed on or after the effective date.

Summary of Changes: Chapter 171, Health and Safety Code, includes a number of provisions that outline definitions, prohibited conduct, and penalties associated with anti-abortion measures enacted by the Legislature this session. Commentary related to these measures has been included to the extent that it describes new prohibited conduct of note to law enforcement, prosecutors, and other juvenile justice practitioners. Section 171.001 adds definitions for partial-birth abortion and physician.

Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A physician or other person may not knowingly perform a partial-birth abortion.

(b) Subsection (a) does not apply to a physician who performs a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

Commentary by Nydia Thomas

Source: SB 8

Effective Date: September 1, 2017

Applicability: Applies to partial birth abortions that are performed on or after the effective date.

Summary of Changes: Section 171.102, Health and Safety Code, ensures that Texas law conforms to the existing federal ban on partial birth abortions. As added, the new provision makes it a crime for a physician or other person to perform a partial-birth abortion other than those necessary to save the life of a mother whose life is endangered as a result of physical injury, illness, or other condition.

Health and Safety Code Sec. 171.103. CRIMINAL PENALTY. A person who violates Section 171.102 commits an offense. An offense under this section is a state jail felony.

Commentary by Nydia Thomas

Source: SB 8

Effective Date: September 1, 2017

Applicability: Applies to partial birth abortions performed on or after the effective date.

Summary of Changes: Newly added Section 171.102, Health and Safety Code, makes it an offense to perform a partial birth abortion. Related Section 171.103 classifies the offense as a state jail felony.

Amendment Summary Controlled Substances Act

Editor's Note: *The statutory language containing chemical substance formulas can often be very lengthy and complicated to readers. We have, therefore, provided only descriptive summaries of the legislative amendments affecting the Texas Controlled Substances Act found in Chapter 481 of the Health and Safety Code.*

Commentary by Nydia Thomas

Source: Various

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This session, the Legislature added or updated chemical compounds outlined in the Health and Safety Code to include certain synthetic opioids and designer medications. The following legislative amendments attempt to capture controlled substance formulations that were not previously assigned to a penalty group and to facilitate the ability to respond quickly to the emergence of synthetic and designer drugs that pose a danger to the public. Statutory amendments are added each session to assist prosecutors around the state in charging and moving forward with cases under the Controlled Substances Act.

HB 2612 gives prosecutors the ability to file civil actions under the Deceptive Trade Practices – Consumer Protection Act against individuals who produce, distribute, sell, or participate in activities involving synthetic substances.

HB 2671 amends the Health and Safety Code Section 481.102 to include Phenazepam, (i.e., U-47700, and AH-7921), a synthetic opioid, within the Penalty Group 1 formulations. Section 481.104(a) specifies that any quantity of substances such as Carisoprodol, Etizolam, or

Tramadol and any materials, compound, mixture, or preparation may be charged under Penalty Group 3.

HB 2804 amends Section 481.0355 to permit the commissioner of the Department of State Health Services (DSHS) to respond to the appearance and distribution of a controlled substance that poses an imminent hazard to public safety. In order to “emergency schedule” a controlled substance, the DSHS commissioner must consider four factors instead of twelve to determine whether an imminent threat exists. HB 2804 also clarifies the administrative and rulemaking process involved in designating synthetic drugs and other substances that may cause death or cause a person to engage in behavior that poses a danger to the user or the public.

SB 227 repeals Section 481.103(d), removing language from the Texas Controlled Substances Act that presented obstacles to the prosecution of cases involving persons charged with possessing or delivering federally approved drugs under Penalty Group 2.

Health and Safety Code Sec. 821.021. DEFINITIONS. (1) "Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, [ø] caused to fight with another animal, or subjected to conduct prohibited by Section 21.09, Penal Code.

Commentary by Nydia Thomas

Source: SB 1232

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring on or after the effective date.

Summary of Changes: The amendment to Section 821.021(1) expands the definition of cruelly treated to include the reference to the new offense under Section 21.109, Penal Code (Bestiality).

Health and Safety Code Sec. 821.023. HEARING; ORDER OF DISPOSITION OR RETURN OF ANIMAL. (a-1) A finding in a court of competent jurisdiction that a person is guilty of an offense under Section 21.09, Penal Code, is prima facie evidence at a hearing authorized by Section 821.022 that any animal in the person's possession has been cruelly treated, regardless of whether the animal was subjected to conduct prohibited by Section 21.09, Penal Code.

Commentary by Nydia Thomas

Source: SB 1232

Effective Date: September 1, 2017

Applicability: Applies to hearings held on or after the effective date.

Summary of Changes: Under prior law, offenses involving sexual crimes against animals were classified as public lewdness, but applied only if the conduct occurred in public or, if in private, only if the actor was reckless about whether someone was present who would be offended by the conduct. This session, Texas joins a majority of state jurisdictions around the country with laws that prohibit sexual conduct with animals and fowl, whether in public or in private. As enacted, Section 21.09 (Bestiality) was added to the Penal Code as a state jail felony requiring sex offender registration for this reportable conviction or adjudication. The new law also includes enhancement provisions if the conduct occurs in the presence of a child or results in the death of or serious harm to the animal. Related provisions contained in the Health and Safety Code authorize a judge to order the surrender of animals, to prohibit ownership, or to make other dispositions. As added, Section 821.023, relating to seizure of a cruelly treated animal, specifies that a guilty finding for bestiality is prima facie evidence that any animal in the person's possession has been cruelly treated even if the animal was not the subject of the offending conduct.

Health and Safety Code. Sec. 821.023. HEARING; ORDER OF DISPOSITION OR RETURN OF ANIMAL. Section 821.023(b) is repealed.

Commentary by Nydia Thomas

Source: SB 1232/SB 762

Effective Date: September 1, 2017

Applicability: Statements made during animal seizure hearings on or after the effective date.

Summary of Changes: Section 821.023, Subsection (b) is repealed. Under prior law, the statement of an owner was not admissible in trial for certain offenses.

Human Resources Code

Human Resources Code Sec. 142.007. POST-DISCHARGE SERVICES. (a) For purposes of this section, "post-discharge services" means community-based services offered after a child is discharged from probation to support the child's vocational, educational, behavioral, or other goals and to provide continuity for the child as the child transitions out of juvenile probation services. The term includes:

- (1) behavioral health services;
- (2) mental health services;
- (3) substance abuse services;
- (4) mentoring;
- (5) job training; and
- (6) educational services.

(b) Provided that existing resources are available, a juvenile board or juvenile probation department may provide post-discharge services to a child for not

more than six months after the date the child is discharged from probation, regardless of the age of the child on that date.

(c) A juvenile board or juvenile probation department may not require a child to participate in post-discharge services.

Commentary by Nydia Thomas

Source: SB 1548

Effective Date: September 1, 2017

Applicability: Applies to probation discharge on or after the effective date.

Summary of Changes: Section 142.007, Human Resources Code, authorizes juvenile boards and juvenile probation departments to provide post-discharge (i.e., aftercare services) for six months after the completion of probation. Bexar County was involved in proposing this legislation in an effort to provide substance abuse, behavioral and mental health, education mentoring, and job training to youth within the first six months after discharge. Research suggests that during this transition period, youth are at the highest risk of re-offending. As enacted, the amendment describes examples of "post discharge services." The program is not mandatory, but may be established by juvenile boards and probation departments if existing funds are available and without regard to the child's age at the time of discharge. The statute clarifies that departments are prohibited from ordering participation in the program.

Human Resources Code Sec. 152.0521. COMAL COUNTY. (a) The Comal County Juvenile Board is composed of:

- (1) the county judge;
- (2) the judge of each county court at law in the county;
- (3) the judge of the 22nd District Court;
- (4) the judge of the 207th District Court;
- (5) [(4)] the judge of the 433rd District Court;
- (6) the [(5) an additional] judge of the 274th District Court [district courts having jurisdiction in Comal County, to be appointed biennially by the local administrative district judge]; and
- (7) [(6)] the criminal district attorney of Comal County.

Commentary by Nydia Thomas

Source: SB 2255

Effective Date: September 1, 2017

Applicability: Applies to juvenile board composition and operation on or after the effective date.

Summary of Changes: Chapter 152 of the Human Resources Code contains the enabling legislation for juvenile boards around the state. Subchapter D contains an alphabetical listing of specific county legislation. The amendments to Section 152.02521, Human Resources Code make changes to the composition of the Comal County Juvenile Board to include the judge of the 22nd District Court. In addition, language that required the biennial appointment of a district judge has been removed. Instead, the judge of the 274th District Court will serve as a designated member on the juvenile board in Comal County.

Human Resources Code Sec. 152.0821. FISHER COUNTY. (a) Fisher County is included in the 32nd Judicial District Juvenile Board [~~Fisher, Mitchell, and Nolan counties juvenile board~~]. The juvenile board is composed of:

~~[(1) a county judge from Fisher, Mitchell, or Nolan County elected by a majority vote of the county judges from those counties;~~

~~[(2) the 32nd Judicial District judge or the judge of the county court at law in Nolan County who is selected by agreement between those two judges;~~

~~[(3) one person appointed by the Nolan County Commissioners Court;~~

~~[(4) subject to Subsection (f), the city manager of Sweetwater or another person appointed by the Sweetwater City Commission;~~

~~[(5) subject to Subsection (g), the superintendent of the Sweetwater Independent School District or another person appointed by the board of trustees of the Sweetwater Independent School District;~~

~~[(6) one person appointed by the Mitchell County Commissioners Court;~~

~~[(7) one person appointed by the Fisher County Commissioners Court;~~

~~[(8) the county attorney of Fisher, Mitchell, or Nolan County selected by a majority vote of the county judges of those counties; and~~

~~[(9) one person selected by majority vote of the county judges of Fisher, Mitchell, and Nolan counties, subject to confirmation by a vote of the commissioners courts of each of those counties].~~

(b) Section 152.1831 applies to the 32nd Judicial District Juvenile Board. [~~The chairman of the board is the county judge appointed under Subsection (a)(1). The chairman presides at meetings scheduled by the board.~~]

Commentary by Nydia Thomas

Source: HB 4280

Effective Date: June 15, 2017

Applicability: Applies to juvenile board composition and operation on or after the effective date.

Summary of Changes: The majority of local juvenile boards in Texas were created in 1989. Since that time, the

enabling statutes of Fisher, Nolan, and Mitchell Counties have been amended only once, in 1999. Generally, Fisher, Nolan, and Mitchell Counties have operated as a multi-county juvenile board with the powers and duties of each county spelled out in Chapter 152, Subchapter D of the Human Resources Code. In this first of a series of amendments, the enabling statute for Fisher County makes conforming changes to clarify that it is included in the 32nd Judicial District Juvenile Board and specifies that the provisions of Section 152.1831 apply to the multi-county juvenile board.

Human Resources Code Sec. 152.0821. FISHER COUNTY. The following sections are repealed: Sections 152.0821(c), (d), (e), (f) and (g).

Commentary by Nydia Thomas

Source: HB 4280

Effective Date: June 15, 2017

Applicability: Applies to juvenile board composition and operation on or after the effective date.

Summary of Changes: This is a conforming change related to the repeal of Section 152.0821, Subsections (c), (d), (e), (f) and (g) pertaining to the membership, compensation, payment, expenses and duties of Fisher County under prior law.

Human Resources Code Sec. 152.1741. MITCHELL COUNTY. (a) Mitchell County is included in the 32nd Judicial District Juvenile Board [~~Fisher, Mitchell, and Nolan counties juvenile board~~]. The juvenile board is composed of:

~~[(1) a county judge from Fisher, Mitchell, or Nolan County elected by a majority vote of the county judges from those counties;~~

~~[(2) the 32nd Judicial District judge or the judge of the county court at law in Nolan County who is selected by agreement between those two judges;~~

~~[(3) one person appointed by the Nolan County Commissioners Court;~~

~~[(4) subject to Subsection (f), the city manager of Sweetwater or another person appointed by the Sweetwater City Commission;~~

~~[(5) subject to Subsection (g), the superintendent of the Sweetwater Independent School District or another person appointed by the board of trustees of the Sweetwater Independent School District;~~

~~[(6) one person appointed by the Mitchell County Commissioners Court;~~

~~[(7) one person appointed by the Fisher County Commissioners Court;~~

~~[(8) the county attorney of Fisher, Mitchell, or Nolan County selected by majority vote of the county judges of those counties; and~~

~~[(9) one person selected by majority vote of the county judges of Fisher, Mitchell, and Nolan~~

counties, subject to confirmation by a vote of the commissioners courts of each of those counties].

(b) Section 152.1831 applies to the 32nd Judicial District Juvenile Board. [~~The chairman of the board is the county judge appointed under Subsection (a)(1). The chairman presides at meetings scheduled by the board.~~]

Commentary by Nydia Thomas

Source: HB 4280

Effective Date: June 15, 2017

Applicability: Applies to juvenile board composition and operation on or after the effective date.

Summary of Changes: The only mechanism for local juvenile boards to make changes to its enabling statute is through legislative enactment. Section 152.1741 applies to Mitchell County, one of the three counties under the multi-county juvenile board comprised of Fisher, Nolan, and Mitchell Counties. This amendment makes conforming changes to clarify that Mitchell County is included in the 32nd Judicial District Juvenile Board and specifies that the provisions of Section 152.1831 apply to the multi-county juvenile board.

Human Resources Code Sec. 152.1741. MITCHELL COUNTY. The following sections are repealed: Section 152.1741(c), (d), (f), and (g).

Commentary by Nydia Thomas

Source: HB 4280

Effective Date: June 15, 2017

Applicability: Applies to juvenile board composition and operation on or after the effective date.

Summary of Changes: This is a conforming change related to the repeal of Section 152.1741, Subsections (c), (d), (f), and (g) pertaining to Mitchell County under prior law.

Human Resources Code Sec. 152.1831. NOLAN COUNTY. (a) Nolan County is included in the 32nd Judicial District Juvenile Board [~~Fisher, Mitchell, and Nolan counties juvenile board~~]. The juvenile board is composed of the county judges, statutory county judges, and district judges in Fisher, Mitchell, and Nolan Counties[-

...Redundant language stricken from Section 152.1831(a) has been omitted.

(b) The juvenile board shall elect one of the members as chairman [~~of the board is the county judge appointed under Subsection (a)(1). The chairman presides at meetings scheduled by the board~~].

(c) The commissioners courts of the counties may pay the members of the juvenile board an annual supplemental compensation from the general fund or any other available fund of the counties. [~~The appointed~~

~~members serve without compensation. Each member serves a two year term.~~]

(d) The juvenile board shall hold regular meetings on dates set by the board and special meetings at the call of the chairman. [~~The Nolan County Commissioners Court, the Sweetwater City Commission, and the board of trustees of the Sweetwater Independent School District may agree to provide the funds for the salaries of the personnel assigned to Nolan County and the other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County. The commissioners court, city council, and board of trustees shall each provide one third of the funds.~~]

(g) The juvenile board shall designate the treasurer or auditor of Fisher County, Mitchell County, or Nolan County to serve as the board's fiscal officer. [~~The board member appointed by the Sweetwater Independent School District under Subsection (a)(5) may be appointed only if that school district agrees to provide funds for the salaries of the personnel assigned to Nolan County and other expenses the board chairman certifies as necessary to provide adequate juvenile services to Nolan County as provided by Subsection (d).~~]

(h) The juvenile board shall appoint an advisory council composed of one person from each county.

Commentary by Nydia Thomas

Source: HB 4280

Effective Date: June 15, 2017

Applicability: Applies to juvenile board composition and operation on or after the effective date.

Summary of Changes: As amended this session, Section 152.1831, the Nolan County Juvenile Board enabling statute, must be consulted in order to understand the composition, duties, and powers of the 32nd Judicial District Juvenile Board. The juvenile board consists of the judges of the county, statutory county, and district courts in Fisher, Mitchell, and Nolan Counties. The chairman serves as presiding officer and is elected from the juvenile board membership. A county treasurer or auditor may be designated as fiscal officer. As enacted, the commissioners court is authorized to pay an annual supplemental compensation from the general revenue of the county or any other available funding source. The juvenile board is required to establish and appoint an advisory council comprised of one person from each county. The amendments also specify duties requiring the board to hold regular and special (i.e., ad hoc) meetings at the call of the chair.

Penal Code

Penal Code Sec. 20.02. UNLAWFUL RESTRAINT. (c) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the person restrained was a child younger than 17 years of age; ~~or~~

(2) a felony of the third degree if:

(A) the actor recklessly exposes the victim to a substantial risk of serious bodily injury;

(B) the actor restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or

(C) the actor while in custody restrains any other person; or

(3) notwithstanding Subdivision (2)(B), a felony of the second degree if the actor restrains an individual the actor knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

Commentary by Jenna Reblin

Source: HB 2908

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: In response to recent events, HB 2908 enhances criminal penalties for certain crimes against peace officers and judges. As added, Section 20.02(c)(3), Penal Code, classifies the offense of unlawful restraint as a second degree felony if the actor restrains a person known to be a peace officer or judge who is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty.

Penal Code Sec. 22.01. ASSAULT. (b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; ~~or~~

(5) a person the actor knows is emergency services personnel while the person is providing emergency services; or

(6) a pregnant individual to force the individual to have an abortion.

Commentary by Jenna Reblin

Source: HB 2552

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This amendment is intended to deter human trafficking by increasing the criminal penalty for an offense against a victim of human trafficking. Section 22.01(b)(6), Penal Code increases the offense classification for assault causing bodily injury to a third degree felony if committed against a person who is pregnant in order to force them to have an abortion.

Penal Code Sec. 22.01. ASSAULT. (b) 1) Notwithstanding Subsection (b), an offense under Subsection (a)(1) is a felony of the third degree if the offense is committed:

(1) while the actor is committed to a civil commitment facility; and

(2) against:

(A) an officer or employee of the Texas Civil Commitment Office;

(i) while the officer or employee is lawfully discharging an official duty at a civil commitment facility; or

(ii) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee; or

(B) a person who contracts with the state to perform a service in a civil commitment facility or an employee of that person:

(i) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by the state to provide the service; or

(ii) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract.

(b-2) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

(f) For the purposes of Subsections (b)(2)(A) and (b-2)(2) [~~(b-1)(2)~~]:

(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

Commentary by Jenna Reblin

Source: SB 1576

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: As amended, Section 22.01, Penal Code, makes an assault against an officer, employee, or contractor in a civil commitment facility a third degree felony. This penalty applies if the assault occurs while the employee, officer, or contractor is lawfully discharging an official duty at the facility, in retaliation, or on account of the exercise or performance of an official duty. This provision also contains non-substantive changes to renumber subsections. This bill works to enhance the security and protection of employees at civil commitment facilities.

Penal Code Sec. 22.01. ASSAULT. (b-2) Notwithstanding Subsection (b)(1), an offense under Subsection (a)(1) is a felony of the second degree if the offense is committed against a person the actor knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

Commentary by Jenna Reblin

Source: HB 2908

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This bill adds Section 22.01(b-2) to the Penal Code and makes the offense of assault a second degree felony if it is committed against someone the actor knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge and the actor intentionally, knowingly, or recklessly causes bodily injury. These changes are aimed at increasing the protection of peace officers and judges.

Penal Code Sec. 22.01. ASSAULT. (c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; ~~or~~

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant; or

(3) a Class A misdemeanor if the offense is committed against a pregnant individual to force the individual to have an abortion.

Commentary by Jenna Reblin

Source: HB 2552

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This change to current law is intended to address and deter human trafficking by increasing criminal penalties. Penal Code 22.01(c)(3) is added to increase the offense level from a Class C misdemeanor to a Class A misdemeanor when an assault is committed under Section 22.01(a)(2) or (3) of the Penal Code against a pregnant individual to force the individual to have an abortion. The elements of Section 22.01(a)(2) are met when someone intentionally or knowingly threatens another with imminent bodily injury. Similarly, the elements of Section 22.01(a)(3) are met when a person intentionally or knowingly causes physical contact with another person knowing the other will regard the contact as offensive or provocative.

Penal Code Sec. 22.01. ASSAULT. (f) For the purposes of Subsections (b)(2)(A) and (b-2)(2) [~~(b-1)(2)~~]:

(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

Commentary by Jenna Reblin

Source: SB 1576

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This amendment updates Section 22.01(f) of the Penal Code changing the listed subsection to (b-2)(2). Section 22.01(b-2), was created from the existing text of Section 22.01(b-1), and made no further changes. The amendment in Section 22.01(f) does not change previous law and it reflects the same language as before, but has just been changed to (b-2) instead of (b-1). Subsection (b-2)(2) is an enhancement for an assault bodi-

ly injury if it is shown at trial that the defendant has previously been convicted of an offense including, murder, kidnapping, aggravated kidnapping, and indecency with a child against a family member or person with whom they have a dating relationship.

Penal Code Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, boarding home facility, intermediate care facility for persons with an intellectual or developmental disability [~~mental retardation~~], or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that the actor [~~he~~] would no longer provide any of the care described by Subsection (d)₁ [2] and

[~~2~~] notified in writing the parents or a person, other than the actor, [~~himself~~] acting in loco parentis to the child, elderly individual, or disabled individual that the actor [~~he~~] would no longer provide any of the care described by Subsection (d); or

(2) [~~3~~] notified in writing the Department of Family and Protective [~~and Regulatory~~] Services that the actor [~~he~~] would no longer provide any of the care described by [~~set forth in~~] Subsection (d).

Commentary by Jenna Reblin

Source: HB 3019

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: HB 3019 seeks to address the concern for individuals injured while at boarding homes or other facilities due to the negligence of the operators. Subsections 22.04(a-1) and (i) of the Penal Code add the term “boarding home facility” and change the language to intellectual or developmental disability. It also updates the agency name of the predecessor to Department of Family Protective Services. These are non-substantive changes.

Penal Code Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (c)(3) "Disabled individual" means a person:

(A) with one or more of the following:

(i) autism spectrum disorder, as defined by Section 1355.001, Insurance Code;

(ii) developmental disability, as defined by Section 112.042, Human Resources Code;

(iii) intellectual disability, as defined by Section 591.003, Health and Safety Code;

(iv) severe emotional disturbance, as defined by Section 261.001, Family Code; [✗]

(v) traumatic brain injury, as defined by Section 92.001, Health and Safety Code; or

(vi) mental illness, as defined by Section 571.003, Health and Safety Code; or

(B) who otherwise by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

Commentary by Jenna Reblin

Source: HB 3019

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: HB 3019 seeks to address the concern for individuals injured while at boarding homes and other facilities due to the negligence of the operators. Section 22.04(c)(3) redefines the term “disabled person” to include a person with mental illness as defined in Section 571.003 of the Health and Safety Code.

Penal Code Sec. 22.04 INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that the actor [he] would no longer provide any of the care described by Subsection (d); and

(2) notified in writing the parents or a person, other than the actor, [himself] acting in loco parentis to the child, elderly individual, or disabled individual that the actor [he] would no longer provide any of the care described by Subsection (d); or

(3) notified in writing the Department of Family and Protective [and Regulatory] Services that the actor [he] would no longer provide any of the care described by [set forth in] Subsection (d).

Commentary by Jenna Reblin

Source: HB 3019

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This amendment relates to prosecution for the offense of injury to a child, elderly individual, or disabled individual. In particular, this modifies

current law to extend protections to persons at boarding home facilities. Other non-substantive changes to Section 22.04(i) update gender-neutral references and the agency name of the Department of Family and Protective Services.

Penal Code Sec. 22.07, TERRORISTIC THREAT (c-1) Notwithstanding Subsection (c)(2), an offense under Subsection (a)(2) is a state jail felony if the offense is committed against a person the actor knows is a peace officer or judge.

Commentary by Jenna Reblin

Source: HB 2908

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: HB 2908 amends the hate crime statute to include certain crimes committed because of bias or prejudice against another person due to his or her status as a peace officer or judge. This amendment enhances terroristic threat from a Class A misdemeanor to a state jail felony if the offense is committed against a person the actor knows is a peace officer or judge.

Penal Code, Sec. 22.11 HARASSMENT BY PERSONS IN CERTAIN [~~CORRECTIONAL~~] FACILITIES; HARASSMENT OF PUBLIC SERVANT.

Commentary by Jenna Reblin

Source: SB 1576

Effective Date: September 1, 2017

Summary of Changes: This is a non-substantive conforming change to the heading of this provision.

Penal Code Section 22.11 HARASSMENT BY PERSONS IN CERTAIN [~~CORRECTIONAL~~] FACILITIES; HARASSMENT OF PUBLIC SERVANT. (a) A person commits an offense if, with the intent to assault, harass, or alarm, the person:

(1) while imprisoned or confined in a correctional or detention facility, causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal; [✗]

(2) while committed to a civil commitment facility, causes:

(A) an officer or employee of the Texas Civil Commitment Office to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal;

(i) while the officer or employee is lawfully discharging an official duty at a civil commitment facility; or

(ii) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee; or

(B) a person who contracts with the state to perform a service in the facility or an employee of that person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal;

(i) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by the state to provide the service; or

(ii) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract; or

(3) causes another person the actor knows to be a public servant to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of the public servant's official power or performance of an official duty.

(e) For purposes of Subsection (a)(3) [~~(a)(2)~~], the actor is presumed to have known the person was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

Commentary by Jenna Reblin

Source: SB 1576

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: SB 1576 works to enhance security at Texas Civil Commitment Centers (TCCC) by prohibiting the introduction of drugs, alcohol, or weapons into the facilities and enhancing penalties for assaults on the staff at these facilities by sexually violent predators. The amendments to Section 22.11(a)(2) make it an offense for a person who is committed to a civil commitment facility to cause an employee or officer of TCCC or a person who contracts with the state to work at a TCCC facility to come into contact with any bodily fluid of the person, another person, or an animal while they are exercising their duties at the facility or in retaliation for their official position.

Penal Code Sec. 28.03 CRIMINAL MISCHIEF.

(b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$100; or

(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$100 or more but less than \$750;

(3) a Class A misdemeanor if:

(A) the amount of pecuniary loss is \$750 or more but less than \$2,500; or

(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;

(4) a state jail felony if the amount of pecuniary loss is:

(A) \$2,500 or more but less than \$30,000;

(B) less than \$2,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(C) less than \$2,500, if the property was a fence used for the production or containment of:

(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or

(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code; or

(D) less than \$30,000 and the actor causes wholly or partly impairment or interruption of public communications, public transportation, public gas or power supply, or other public service, or causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas or power supply;

(5) a felony of the third degree if:

(A) the amount of the pecuniary loss is \$30,000 or more but less than \$150,000; or

(B) the actor, by discharging a firearm or other weapon or by any other means, causes the death of one or more head of cattle or bison or one or more horses;

(6) a felony of the second degree if the amount of pecuniary loss is \$150,000 or more but less than \$300,000; or

(7) a felony of the first degree if the amount of pecuniary loss is \$300,000 or more.

(k) Subsection (a)(1) or (2) does not apply if the tangible personal property of the owner was a head of cattle or bison killed, or a horse killed, in the course of the actor's:

(1) actual discharge of official duties as a member of the United States armed forces or the state

military forces as defined by Section 437.001, Government Code; or

(2) regular agricultural labor duties and practices.

Commentary by Jenna Reblin

Source: HB 2817

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This amendment enhances criminal mischief to a third degree felony if the offense causes the death of one or more head of bison or cattle or one or more horses using a firearm, weapon, or any other means. The exception to this enhancement is if the cattle, bison, or horse was killed in the course of official duties as a member of the military or for regular agricultural labor duties and practices. HB 2817 was written to address inconsistencies in the criminal penalties for killing another person's cattle.

Penal Code Sec. 30.01 DEFINITIONS.
(4) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(5) "Wholesale distributor of prescription drugs" means a wholesale distributor, as defined by Section 431.401, Health and Safety Code.

Commentary by Jenna Reblin

Source: HB 1178

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: As amended, Section 30.01 of the Penal Code adds the definitions of controlled substance and wholesale distributor of prescription drugs. These changes are an effort to address the increase in the number of burglaries and thefts at pharmacies due to opioid abuse.

Penal Code Sec. 30.02 BURGLARY. (c) Except as provided in Subsection (c-1) or (d), an offense under this section is a:

(1) state jail felony if committed in a building other than a habitation; or

(2) felony of the second degree if committed in a habitation.

(c-1) An offense under this section is a felony of the third degree if:

(1) the premises are a commercial building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, nursing facility, or warehouse; and

(2) the person entered or remained concealed in that building with intent to commit a theft of a controlled substance.

Commentary by Jenna Reblin

Source: HB 1178

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: There are no current laws that enhance offenses committed at a pharmacy. This amendment makes burglary a third degree felony if the offense is committed in a commercial building, including a pharmacy, clinic, hospital, nursing facility, or warehouse, and the person enters the building with the intent to commit theft of a controlled substance.

Penal Code Sec. 30.04. BURGLARY OF VEHICLES. (d) An offense under this section is a Class A misdemeanor, except that:

(1) the offense is a Class A misdemeanor with a minimum term of confinement of six months if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section; ~~and~~

(2) the offense is a state jail felony if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section; or

(B) the vehicle or part of the vehicle broken into or entered is a rail car; and

(3) the offense is a felony of the third degree if:

(A) the vehicle broken into or entered is owned or operated by a wholesale distributor of prescription drugs; and

(B) the actor breaks into or enters that vehicle with the intent to commit theft of a controlled substance.

Commentary by Jenna Reblin

Source: HB 1178

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: As amended, Section 30.04 of the Penal Code makes burglary of a vehicle a state jail felony if the person breaks into vehicle owned or operated by a wholesale distributor of prescription drugs and the person broke into or entered the vehicle with the intent to commit theft of a controlled substance.

Penal Code Sec. 30.05. CRIMINAL TRESPASS. [(b) For purposes of this section] (12) "Institution

of higher education" has the meaning assigned by Section 61.003, Education Code.

Commentary by Jenna Reblin

Source: SB 1649

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Current law does not include institutions of higher education within the offense classification scheme for criminal trespass. As part of the effort to improve campus safety, institutions of higher education are added to Penal Code Sec. 30.05(b)(12). This change increases the penalties for criminal trespass on college campuses and universities in Texas to deter offenses and improve campus safety.

Penal Code Sec. 30.05. CRIMINAL TRESPASS. (d) An offense under this section is:

(1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);

(2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is committed:

(A) on agricultural land and within 100 feet of the boundary of the land; or

(B) on residential land and within 100 feet of a protected freshwater area; and

(3) a Class A misdemeanor if:

(A) the offense is committed:

(i) in a habitation or a shelter center;

(ii) on a Superfund site; or

(iii) on or in a critical infrastructure facility; [ø]

(B) the offense is committed on or in property of an institution of higher education and it is shown on the trial of the offense that the person has previously been convicted of:

(i) an offense under this section relating to entering or remaining on or in property of an institution of higher education; or

(ii) an offense under Section 51.204(b)(1), Education Code, relating to trespassing on the grounds of an institution of higher education; or

(C) the person carries a deadly weapon during the commission of the offense.

(d-1) For the purposes of Subsection (d)(3)(B), a person has previously been convicted of an offense described by that paragraph if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently

discharged from deferred adjudication community supervision.

(d-2) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(B), the defendant may raise the issue as to whether, at the time of the instant offense or the previous offense, the defendant was engaging in speech or expressive conduct protected by the First Amendment to the United States Constitution or Section 8, Article I, Texas Constitution. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(B) does not apply.

Commentary by Jenna Reblin

Source: SB 1649

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: SB 1649 is intended to increase the penalties for criminal trespass on college campuses and universities in Texas to deter offenses and improve campus safety. The additions to Section 30.05(d)(3)(B) and Section 30.05(d-1) and (d-2) of the Penal Code make it a Class A rather than Class B misdemeanor if criminal trespass occurs on or in property of a public institution of higher education if the person has a prior conviction of such conduct. A prior conviction is defined as an adjudication of guilty or a plea of no contest or guilty in exchange for a grant of deferred adjudication. An affirmative defense may be raised if the defendant was engaging in speech or conduct protected by the First Amendment.

Penal Code Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN. (f) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

Commentary by Jenna Reblin

Source: HB 435

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: As amended, Section 30.06 of the Penal Code adds Subsection (f) to provide that it is a defense to prosecution for Trespass by License Holder with a Concealed Handgun if the person is volunteer emergency services personnel.

Section 30.07 Penal Code TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (g) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

Commentary by Jenna Reblin

Source: HB 435

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Section 30.07 of the Penal Code is amended by adding Subsection (g) to provide that it is a defense to prosecution for Trespass by License Holder with an Openly Carried Handgun if the person is volunteer emergency services personnel.

Penal Code Sec 31.03. BURGLARY OF COIN-OPERATED OR COIN COLLECTION MACHINE.
(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$100;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is \$100 or more but less than \$750;

(B) the value of the property stolen is less than \$100 and the defendant has previously been convicted of any grade of theft; or

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;

(3) a Class A misdemeanor if the value of the property stolen is \$750 or more but less than \$2,500;

(4) a state jail felony if:

(A) the value of the property stolen is \$2,500 or more but less than \$30,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$30,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;

(C) the property stolen is a firearm, as defined by Section 46.01;

(D) the value of the property stolen is less than \$2,500 and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election; or

(F) the value of the property stolen is less than \$20,000 and the property stolen is:

- (i) aluminum;
- (ii) bronze;
- (iii) copper; or
- (iv) brass;

(5) a felony of the third degree if the value of the property stolen is \$30,000 or more but less than \$150,000, or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$150,000; [ø]

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$150,000; or

(C) a controlled substance, having a value of less than \$150,000, if stolen from:

(i) a commercial building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, nursing facility, or warehouse; or

(ii) a vehicle owned or operated by a wholesale distributor of prescription drugs;

(6) a felony of the second degree if:

(A) the value of the property stolen is \$150,000 or more but less than \$300,000; or

(B) the value of the property stolen is less than \$300,000 and the property stolen is an automated teller machine or the contents or components of an automated teller machine; or

(7) a felony of the first degree if the value of the property stolen is \$300,000 or more.

Commentary by Jenna Reblin

Source: HB 1178

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: HB 1178 addresses the issue of increased burglaries and thefts at pharmacies due to opioid abuse. There are no current laws that enhance offenses committed at a pharmacy. This addition to Section 31.03 of the Penal Code makes theft a third degree felony if a controlled substance having a value of less than \$150,000 is stolen from a commercial building in which a controlled substance is generally stored or a vehicle owned or operated by a wholesale distributor of prescription drugs.

Penal Code, Sec. 31.03. THEFT.
(h)(5) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(6) "Wholesale distributor of prescription drugs" means a wholesale distributor, as defined by Section 431.401, Health and Safety Code.

Commentary by Jenna Reblin

Source: HB 1178

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Section 31.03 of the Penal Code addresses the issue of increased burglaries and thefts at

pharmacies due to opioid abuse. There are no current laws that enhance offenses committed at a pharmacy. This amendment adds the definitions of controlled substance and wholesale distributor of prescription drugs to the offense of theft.

Penal Code Sec 31.18. CARGO THEFT. (b) A person commits an offense if the person:

(1) knowingly or intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, abandons, or disposes of:

(A) stolen cargo; or

(B) cargo explicitly represented to the person as being stolen cargo; or

(2) is employed as a driver lawfully contracted to transport a specific cargo by vehicle from a known point of origin to a known point of destination and, with the intent to conduct, promote, or facilitate an activity described by Subdivision (1) [~~Subsection (b)(1)~~], knowingly or intentionally:

(A) fails to deliver the entire cargo to the known point of destination as contracted; or

(B) causes the seal to be broken on the vehicle or on an intermodal container containing any part of the cargo.

Commentary by Jenna Reblin

Source: SB 1488

Effective Date: September 1, 2017

Applicability: Non-Substantive Changes.

Summary of Changes: This bill is one of the comprehensive non-substantive revisions of the Texas statutes. The entire bill reclassifies and rearranges the statutes in a more logical order.

Penal Code Sec. 31.19. THEFT OF PETROLEUM PRODUCT. (a) In this section, "petroleum product" means crude oil, natural gas, or condensate.

(b) A person commits an offense if the person unlawfully appropriates a petroleum product with intent to deprive the owner of the petroleum product by:

(1) possessing, removing, delivering, receiving, purchasing, selling, moving, concealing, or transporting the petroleum product; or

(2) making or causing a connection to be made with, or drilling or tapping or causing a hole to be drilled or tapped in, a pipe, pipeline, or tank used to store or transport a petroleum product.

(c) Appropriation of a petroleum product is unlawful if it is without the owner's effective consent.

(d) An offense under this section is:

(1) a state jail felony if the total value of the petroleum product appropriated is less than \$10,000;

(2) a felony of the third degree if the total value of the petroleum product appropriated is \$10,000 or more but less than \$100,000;

(3) a felony of the second degree if the total value of the petroleum product appropriated is \$100,000 or more but less than \$300,000; or

(4) a felony of the first degree if the total value of the petroleum product appropriated is \$300,000 or more.

Commentary by Jenna Reblin

Source: SB 1871

Effective Date: September 1, 2017

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: The newly created offense under Section 31.19 of the Penal Code [Theft of Petroleum Product] is in response to the increasing number of oil field fuel and equipment thefts in Texas. It is currently illegal to steal petroleum products and oil and gas equipment; this bill is meant to target this issue with steeper penalties for persons who commit these types of offenses. Reducing the oil sold illegally would minimize economic damage to the oil and gas industry. This offense is classified as a felony offense with the degree based on the total value of the products or gas equipment stolen.

Penal Code, Sec. 32.21. FORGERY. (d) Subject to Subsection (e-1), an [An] offense under this section is a state jail felony if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution, or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) Subject to Subsection (e-1), an [An] offense under this section is a felony of the third degree if the writing is or purports to be:

(1) part of an issue of money, securities, postage or revenue stamps;

(2) a government record listed in Section 37.01(2)(C); or

(3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

(e-1) If it is shown on the trial of an offense under this section that the actor engaged in the conduct to obtain or attempt to obtain a property or service, an offense under this section is:

(1) a Class C misdemeanor if the value of the property or service is less than \$100;

(2) a Class B misdemeanor if the value of the property or service is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the value of the property or service is \$750 or more but less than \$2,500;

(4) a state jail felony if the value of the property or service is \$2,500 or more but less than \$30,000;

(5) a felony of the third degree if the value of the property or service is \$30,000 or more but less than \$150,000;

(6) a felony of the second degree if the value of the property or service is \$150,000 or more but less than \$300,000; and

(7) a felony of the first degree if the value of the property or service is \$300,000 or more.

(e-2) Notwithstanding any other provision of this section, an ~~[A]~~ offense under this section, other than an offense described for purposes of punishment by Subsection (e-1)(7), is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Commentary by Jenna Reblin

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This session, the Legislature created new offense levels under Section 32.21 of the Penal Code (Forgery). Sections 32.21 (d), (e), and (e-1) contain conforming amendments that specify that the provisions are subject to subsection (e-1) and create offenses for each level. The offense levels are based on whether it can be shown on trial that the actor engaged in conduct to obtain or attempt to obtain a property or service depending on the value. The amendment also includes an enhancement when the offense is committed against an elderly person. The exception does not apply to the first degree level offense. Section 32.21(g) authorizes the actor to be prosecuted under this section and another if the conduct constitutes an offense under both.

Penal Code Sec. 33.01. DEFINITIONS. (2) "Aggregate amount" means the amount of: (A) any direct or indirect loss incurred by a victim, including the value of money, property, or service stolen, appropriated, or rendered unrecoverable by the offense; or

(B) any expenditure required by the victim to:

(i) determine whether data or ~~verify that~~ a computer, computer network, computer program, or computer system was ~~not~~ altered, ac-

quired, appropriated, damaged, deleted, or disrupted by the offense; or

(ii) attempt to restore, recover, or replace any data altered, acquired, ~~appropriated~~, damaged, deleted, or disrupted.

(11-a) "Decryption," "decrypt," or "decrypted" means the decoding of encrypted communications or information, whether by use of a decryption key, by breaking an encryption formula or algorithm, or by the interference with a person's use of an encryption service in a manner that causes information or communications to be stored or transmitted without encryption.

(13-a) "Encrypted private information" means encrypted data, documents, wire or electronic communications, or other information stored on a computer or computer system, whether in the possession of the owner or a provider of an electronic communications service or a remote computing service, and which has not been accessible to the public.

(13-b) "Encryption," "encrypt," or "encrypted" means the encoding of data, documents, wire or electronic communications, or other information, using mathematical formulas or algorithms in order to preserve the confidentiality, integrity, or authenticity of, and prevent unauthorized access to, such information.

(13-c) "Encryption service" means a computing service, a computer device, computer software, or technology with encryption capabilities, and includes any subsequent version of or update to an encryption service.

(15-a) "Privileged information" means:

(A) protected health information, as that term is defined by Section 182.002, Health and Safety Code;

(B) information that is subject to the attorney-client privilege; or

(C) information that is subject to the accountant-client privilege under Section 901.457, Occupations Code, or other law, if the information is on a computer, computer network, or computer system owned by a person possessing a license issued under Subchapter H, Chapter 901, Occupations Code.

Commentary by Jenna Reblin

Source: HB 9

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The amendments to Section 33.01 addresses public concerns about modern cyber-crimes. The revisions to this statute address the use of ransomware, malware, and other methods that are not contemplated or prosecuted under current law. Certain definitions, such as "decryption," "encrypted private information," "encryption, encrypt, or encrypted," "encryption service," and "privileged information" have been

added to Section 33.01 and other terms such as “aggregate amount” have been redefined.

Penal Code Sec.33.01. DEFINITIONS.
(3) "Communication [“Communications] common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

Commentary by Jenna Reblin

Source: HB 2931

Effective Date: January 1, 2019

Applicability: This is a non-substantive change.

Summary of Changes: The amendment to Penal Code Section 33.01(3) makes corrective grammatical changes (i.e., makes the term ‘communications’ singular instead of plural in reference to a communication common carrier) and makes other non-substantive conforming changes.

Penal Code Sec. 33.022. ELECTRONIC ACCESS INTERFERENCE. (a) A person, other than a network provider or online service provider acting for a legitimate business purpose, commits an offense if the person intentionally interrupts or suspends access to a computer system or computer network without the effective consent of the owner.

(b) An offense under this section is a third degree felony.

(c) It is a defense to prosecution under this section that the person acted with the intent to facilitate a lawful seizure or search of, or lawful access to, a computer, computer network, or computer system for a legitimate law enforcement purpose.

Commentary by Jenna Reblin

Source: HB 9

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This amendment addresses the prosecution of modern cybercrimes. The revisions to this statute address the use of ransomware, malware, and other methods that are not contemplated or prosecuted under current law. An offense committed under this section is a third degree felony for intentionally interrupting or suspending access to a computer system or network without the effective consent of the owner with an exception for law enforcement purposes.

Penal Code Sec. 33.023. ELECTRONIC DATA TAMPERING. (a) In this section, "ransomware" means a computer contaminant or lock that restricts access by an unauthorized person to a computer, computer system, or computer network or any data in a computer, computer

system, or computer network under circumstances in which a person demands money, property, or a service to remove the computer contaminant or lock, restore access to the computer, computer system, computer network, or data, or otherwise remediate the impact of the computer contaminant or lock.

(b) A person commits an offense if the person intentionally alters data as it transmits between two computers in a computer network or computer system through deception and without a legitimate business purpose.

(c) A person commits an offense if the person intentionally introduces ransomware onto a computer, computer network, or computer system through deception and without a legitimate business purpose.

(d) Subject to Subsections (d-1) and (d-2), an offense under this section is a Class C misdemeanor.

(d-1) Subject to Subsection (d-2), if it is shown on the trial of the offense that the defendant acted with the intent to defraud or harm another, an offense under this section is:

(1) a Class C misdemeanor if the aggregate amount involved is less than \$100 or cannot be determined;

(2) a Class B misdemeanor if the aggregate amount involved is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the aggregate amount involved is \$750 or more but less than \$2,500;

(4) a state jail felony if the aggregate amount involved is \$2,500 or more but less than \$30,000;

(5) a felony of the third degree if the aggregate amount involved is \$30,000 or more but less than \$150,000;

(6) a felony of the second degree if the aggregate amount involved is \$150,000 or more but less than \$300,000; and

(7) a felony of the first degree if the aggregate amount involved is \$300,000 or more.

(d-2) If it is shown on the trial of the offense that the defendant knowingly restricted a victim's access to privileged information, an offense under this section is:

(1) a state jail felony if the value of the aggregate amount involved is less than \$2,500;

(2) a felony of the third degree if:
(A) the value of the aggregate amount involved is \$2,500 or more but less than \$30,000; or

(B) a client or patient of a victim suffered harm attributable to the offense;

(3) a felony of the second degree if:
(A) the value of the aggregate amount involved is \$30,000 or more but less than \$150,000; or

(B) a client or patient of a victim suffered bodily injury attributable to the offense; and

(4) a felony of the first degree if:

(A) the value of the aggregate amount involved is \$150,000 or more; or

(B) a client or patient of a victim suffered serious bodily injury or death attributable to the offense.

(e) When benefits are obtained, a victim is defrauded or harmed, or property is altered, appropriated, damaged, or deleted in violation of this section, whether or not in a single incident, the conduct may be considered as one offense and the value of the benefits obtained and of the losses incurred because of the fraud, harm, or alteration, appropriation, damage, or deletion of property may be aggregated in determining the grade of the offense.

(f) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

(g) Software is not ransomware for the purposes of this section if the software restricts access to data because:

(1) authentication is required to upgrade or access purchased content; or

(2) access to subscription content has been blocked for nonpayment.

Commentary by Jenna Reblin

Source: HB 9

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: As amended, this provision targets the offending conduct and not the technology or medium used to commit the cybercrime. This section defines "ransomware" for prosecution purposes in a way that captures wrongdoers without preventing service providers from employing network security measures. A person commits the offense of electronic data tampering for intentionally introducing ransomware onto a computer, network, or system through deception and without a legitimate business cause. If it is shown on the trial of the offense that the defendant acted with the intent to defraud or harm another, an offense under Subsection (d-2) is a misdemeanor or felony depending on the aggregate amount involved. If the defendant knowingly restricted the victim's access to information, it is a state jail felony if the aggregate amount involved is less than \$2,500 and a third degree felony if the value is \$2,500 or more but less than \$30,000 or a client or patient of a victim suffered harm attributable to the offense. It is a second degree felony if the aggregate amount is \$30,000 or more but less than \$150,000 or the client or patient of a victim suffered bodily injury as a result of the offense. A person who commits this offense may be prosecuted under this section and another section if applicable to the actions. The statute also clarifies that software is not ransomware if the software restricts access to data because authentication is required to upgrade or access purchased content or if ac-

cess to subscription content has been blocked for nonpayment.

Penal Code Sec. 33.024. UNLAWFUL DECRYPTION. (a) A person commits an offense if the person intentionally decrypts encrypted private information through deception and without a legitimate business purpose.

(b) Subject to Subsections (b-1) and (b-2), an offense under this section is a Class C misdemeanor.

(b-1) Subject to Subsection (b-2), if it is shown on the trial of the offense that the defendant acted with the intent to defraud or harm another, an offense under this section is:

(1) a Class C misdemeanor if the value of the aggregate amount involved is less than \$100 or cannot be determined;

(2) a Class B misdemeanor if the value of the aggregate amount involved is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the value of the aggregate amount involved is \$750 or more but less than \$2,500;

(4) a state jail felony if the value of the aggregate amount involved is \$2,500 or more but less than \$30,000;

(5) a felony of the third degree if the value of the aggregate amount involved is \$30,000 or more but less than \$150,000;

(6) a felony of the second degree if the value of the aggregate amount involved is \$150,000 or more but less than \$300,000; and

(7) a felony of the first degree if the value of the aggregate amount involved is \$300,000 or more.

(b-2) If it is shown on the trial of the offense that the defendant knowingly decrypted privileged information, an offense under this section is:

(1) a state jail felony if the value of the aggregate amount involved is less than \$2,500;

(2) a felony of the third degree if:
(A) the value of the aggregate amount involved is \$2,500 or more but less than \$30,000; or

(B) a client or patient of a victim suffered harm attributable to the offense;

(3) a felony of the second degree if:
(A) the value of the aggregate amount involved is \$30,000 or more but less than \$150,000; or

(B) a client or patient of a victim suffered bodily injury attributable to the offense; and

(4) a felony of the first degree if:
(A) the value of the aggregate amount involved is \$150,000 or more; or

(B) a client or patient of a victim suffered serious bodily injury or death attributable to the offense.

(c) It is a defense to prosecution under this section that the actor's conduct was pursuant to an agreement entered into with the owner for the purpose of:

(1) assessing or maintaining the security of the information or of a computer, computer network, or computer system; or

(2) providing other services related to security.

(d) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

Commentary by Jenna Reblin

Source: HB 9

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This cybercrime-related amendment creates a new offense under Section 33.024 of the Penal Code (Unlawful Decryption). It is an offense if the person intentionally decrypts encrypted private information through deception and without a legitimate business purpose. An offense under this section is a Class C misdemeanor. If it is shown on trial that the defendant acted with intent to defraud or harm another, an offense under section (b-1) is a misdemeanor or felony depending on the aggregate amount involved. Similarly, if the defendant knowingly decrypted privileged information, an offense is a certain felony depending on the aggregate amount and if the client or patient of the victim was injured. It is a defense to prosecution that the actor's conduct was due to an agreement entered into with the owner to get the information or for security purposes. An actor may be prosecuted under this section and any applicable code section.

Penal Code Sec. 33.03. DEFENSES. It is an affirmative defense to prosecution under Section 33.02 or 33.022 that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

Commentary by Jenna Reblin

Source: HB 9

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: New Section 33.022 of the Penal Code (Electronic Access Interference), provides a defense if the act was committed in the course of employment for a communication carrier or electronic utility and the act was necessary incident to the rendition of the service or protection of the rights or property of the communication carrier or electric utility.

Penal Code Sec. 33.03. DEFENSES. It is an affirmative defense to prosecution under Section 33.02 that the actor was an officer, employee, or agent of a communication [~~communications~~] common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communication [~~communications~~] common carrier or electric utility.

Commentary by Jenna Reblin

Source: HB 2931

Effective Date: January 1, 2019

Applicability: This is a non-substantive change.

Summary of Changes: Section 33.01(3) of the Penal Code makes corrective grammatical changes (i.e., makes the term 'communications' singular instead of plural in reference to a communication common carrier) and other non-substantive conforming changes.

Penal Code Sec. 37.12 FALSE IDENTIFICATION AS PEACE OFFICER; MISREPRESENTATION OF PROPERTY. (a) A person commits an offense if:

(1) the person makes, provides to another person, or possesses a card, document, badge, insignia, shoulder emblem, or other item, including a vehicle, bearing an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer; and

(2) the person who makes, provides, or possesses the item bearing the insignia knows that the person so identified by the item is not commissioned as a peace officer or reserve law enforcement officer as indicated on the item.

(b) It is a defense to prosecution under this section that:

(1) the card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse; or

(2) the person identified as a peace officer or reserve law enforcement officer by the item bearing the insignia was commissioned in that capacity when the item was made.

(b-1) It is an exception to the application of this section that [~~or~~

~~[(3)]~~ the item was used or intended for use exclusively for decorative purposes or in an artistic or dramatic presentation.

(c-1) For purposes of this section, an item bearing an insignia of a law enforcement agency includes an item that contains the word "police," "sheriff," "constable," or "trooper."

(d) A person commits an offense if the person intentionally or knowingly misrepresents an object, including a vehicle, as property belonging to a law enforcement agency. For purposes of this subsection, intentionally or knowingly misrepresenting an object as property belonging to a law enforcement agency includes intentionally or knowingly displaying an item bearing an insignia of a law enforcement agency in a manner that would lead a reasonable person to interpret the item as property belonging to a law enforcement agency.

Commentary by Jenna Reblin

Source: HB 683

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This provision makes it illegal for a private security officer to use law enforcement insignia and badges, including on a vehicle. There is an exception for art or if the item was used for decorative purposes. Section 32.12(c-1) adds that insignia includes use of the words "police," "sheriff," "constable," or "trooper." A person commits an offense under this section for misrepresenting an object, including a vehicle, as property belonging to a law enforcement agency. It is intentionally or knowingly if the insignia would lead a reasonable person to believe the item is property belonging to a law enforcement agency.

Penal Code, Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION.

Commentary by Jenna Reblin

Source: SB 343

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This heading conforms to amendments contained in this statute.

Penal Code Sec. 39.07. FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST.

(a) A person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail commits an offense if the person:

(1) has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement; and

(2) knowingly fails to comply with the detainer request.

(b) An offense under this section is a Class A misdemeanor.

(c) It is an exception to the application of this section that the person who was subject to an immigration detainer request described by Subsection (a)(1) had provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.

Commentary by Jenna Reblin

Source: SB 4

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: SB 4, also known as the 'Sanctuary Cities' bill, creates a new offense under Section 39.07 [Failure to Comply with Immigration Detainer Request]. The offense is a Class A misdemeanor if a sheriff, chief of police, constable, or person who has the authority to administer a jail has custody of a person subject to a detainer request issued by Immigration and Custom Enforcement (ICE) and knowingly fails to comply with the detainer request. It also creates an exception if the person subject to the detainer request had provided proof they are a U.S. citizen or that the person has lawful immigration status into the United States.

Penal Code Sec. 42.07. HARASSMENT.
(b)(1) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:

(A) a communication initiated through the use of ~~by~~ electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, an Internet website, any other Internet-based communication tool, or facsimile machine; and

(B) a communication made to a pager.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) the actor has previously been convicted under this section; or

(2) the offense was committed under Subsection (a)(7) and:

(A) the offense was committed against a child under 18 years of age with the intent that the child:

(i) commit suicide; or
(ii) engage in conduct causing serious bodily injury to the child; or

(B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

Commentary by Jenna Reblin

Source: SB 179

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: SB 179, known as David's Law, was created to protect juveniles from cyberbullying. David was a teenager who took his own life after being cyberbullied by other students at his high school. His family and others who had lost children as a result of cyberbullying requested that there be more punishment for persons who encourage others to harm or kill themselves through social media or other electronic communications. Section 42.07(b)(1) redefines "electronic communication" and adds multiple communication methods by which the offense can be committed. Currently, an offense under this section is a Class B misdemeanor unless the actor has a previous conviction for harassment, in which case it is a Class A misdemeanor. David's law adds another way to enhance the penalty to a Class A misdemeanor if the offense was committed through electronic communication reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another, the victim was under 18 years of age, and the communication was sent with the intent that the victim commit suicide or engage in conduct causing serious bodily injury. It also makes this offense a Class A misdemeanor if the actor had previously violated a temporary restraining order or injunction.

Penal Code Sec. 42.08. ABUSE OF CORPSE.
(b) An offense under this section is a state jail felony, except that an offense under Subsection (a)(5) is a Class A misdemeanor.

Commentary by Jenna Reblin

Source: SB 524

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: The amendment to Section 42.08, Penal Code, makes the abuse of a corpse a state jail felony. Under current law, abuse of a corpse is a Class A misdemeanor. The only exception is under Subsection 42.08(a)(5), which classifies the offense as a Class A misdemeanor when the actor vandalizes, damages, or

treats in an offensive manner the space in which a human corpse has been interred or otherwise permanently laid to rest.

Penal Code Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

(c-1) An offense under Subsection (b)(1) or (2) is a felony of the third degree, except that the offense is a felony of the second degree if the person has previously been convicted under Subsection (b)(1), (2), (7), or (8) or under Section 42.09.

(c-2) An offense under Subsection (b)(7) or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted [two times] under this section [two times under Section 42.09,] or [one time under this section and one time] under Section 42.09.

Commentary by Jenna Reblin

Source: SB 762/SB 1232

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: SB 762 Section 1 and SB 1232 Section 3 make identical changes to Penal Code Section 42.092(c), (c-1), and (c-2). These provisions increase the penalty for violent animal cruelty offenses, specifically, cruelty to non-livestock animals. Section 42.092 adds Subsection (c-1) which provides that it is a third degree felony offense if the person intentionally, knowingly, or recklessly tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal or, without the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal. It also makes it a second degree felony if the person has previously been convicted under Subsections (b)(1),(b)(2), (b)(7) (causes on animal to fight with another if neither animal is a dog), (b)(8) (uses a live animal as a lure in dog race training or in dog coursing on a racetrack), or the person has been convicted for cruelty to livestock animals. New Subsection (c-2) enhances an offense under Subsections (b)(7) or (b)(8) to a third degree felony if the person has previously been convicted under cruelty to non-livestock animals or cruelty to livestock animals.

Penal Code Sec. 46.01 DEFINITIONS.
(6) "Location-restricted [Illegal] knife" means a[
[(A)] knife with a blade over five and one-half inches[;
[(B) hand instrument designed to cut or stab another by being thrown;

~~[(C) dagger, including but not limited to a dirk, stiletto, and poniard;~~
~~[(D) bowie knife;~~
~~[(E) sword; or~~
~~[(F) spear].~~

Commentary by Jenna Reblin

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The purpose of the amendment to 46.01(6), Penal Code is to clarify to the public and police what and where knives are allowed and prohibited. This provision defines the term ‘location restricted’ knife and deletes the definition of illegal knife along with terms associated with different types of knives. The reference to prohibited knives with a blade over five and one-half inches remains.

Penal Code Sec. 46.01. DEFINITIONS. (18) "Volunteer emergency services personnel" includes a volunteer firefighter, an emergency medical services volunteer as defined by Section 773.003, Health and Safety Code, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001, Occupations Code, who is performing law enforcement duties.

Commentary by Jenna Reblin

Source: HB 435

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This amendment adds new Subsection (18), which defines the term “volunteer emergency services personnel,” in Section 46.01, Penal Code.

Penal Code Sec. 46.01 DEFINITIONS. (18) "Improvised explosive device" means a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. The term does not include:

(A) unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval; or

(B) an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary explosive.

Commentary by Jenna Reblin

Source: HB 913

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This amendment adds the term “improvised explosive device” to the list of prohibited weapons. It is a third degree felony to possess, manufacture, transport, repair, or sell an improvised explosive device. The statute specifies that an “improvised explosive device” is a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. This does not include unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval. It also does not include an exploding target used for firearms practice that is sold in kit form and contains the components of a binary explosive.

Penal Code Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if the person: (1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun[, illegal knife,] or club; and (2) [if the person] is not:

(A) [(+)] on the person's own premises or premises under the person's control; or

(B) [(2)] inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

(a-4) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife;

(2) is younger than 18 years of age at the time of the offense; and

(3) is not:

(A) on the person's own premises or premises under the person's control;

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; or

(C) under the direct supervision of a parent or legal guardian of the person.

(b) Except as provided by Subsection (c) or (d), an offense under this section is a Class A misdemeanor.

(d) An offense under Subsection (a-4) is a Class C misdemeanor.

Commentary by Jenna Reblin

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after effective date.

Summary of Changes: The amendment to Section 46.02, Penal Code, relates to certain weapons offenses with a knife and replaces “illegal knife” with the term “location-

restricted knife.” A location-restricted knife is defined as a knife with a blade longer than five and one-half inches. The Legislature enacted this statewide law to provide greater clarity to the police and public regarding the types of knives and the locations where these weapons are prohibited or allowed. As amended, Section 46.02(a) removes the term “illegal knife.” Subsection (a-4) states that a person commits an offense if the person intentionally, knowingly, or recklessly carries on his or her person a location-restricted knife, is younger than 18 years of age at the time of the offense, and is not on his or own premises or en route to a motor vehicle or watercraft owned or under that person’s control or, if in another location, is not under the supervision of a parent or legal guardian. New subsection (d) specifies that an offense committed under subsection (a-4) is a Class C misdemeanor.

Penal Code Sec. 46.03. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted ~~[illegal]~~ knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of an institution of higher education or private or independent institution of higher education, on any grounds or building on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a location-restricted knife:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a location-restricted knife is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility licensed under Chapter 242, Health and Safety Code, unless the person has written authorization of the hospital or nursing facility administration, as appropriate;

(5) on the premises of a mental hospital, as defined by Section 571.003, Health and Safety Code, unless the person has written authorization of the mental hospital administration;

(6) in an amusement park; or

(7) on the premises of a church, synagogue, or other established place of religious worship.

(g) Except as provided by Subsection (g-1), an [An] offense under this section is a felony of the third degree [felony].

(g-1) If the weapon that is the subject of the offense is a location-restricted knife, an offense under this section is a Class C misdemeanor, except that the offense is a felony of the third degree if the offense is committed under Subsection (a)(1).

Commentary by Jenna Reblin

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: Section 46.03 of the Penal Code is amended to add Section (a-1), which lists where weapons are prohibited. Subsection (a-1) states that a person commits an offense if intentionally, knowingly, or recklessly possessing a location-restricted knife on the prem-

ises of: a business that has alcohol permit for sales of 51% or more; at a high school, college, interscholastic, or professional sporting event where an event is taking place, unless the person is a participant in an event where the location-restricted knife is used; a correctional facility; a hospital, unless the person has written authorization of the hospital or nursing administration; a mental hospital, unless the person has written authorization from the mental hospital administration; an amusement park; or a church, synagogue, or other established place of worship. An offense under Section 46.03 is a third degree felony except it is a Class C misdemeanor if the weapon is a location-restricted knife. The offense is a third degree felony if the conduct occurs on the physical premises of a school or educational institution while activities are being conducted or on a school bus or mode of transportation, even if the bus is not on the school premises.

Penal Code Sec. 46.03 PLACES WEAPONS PROHIBITED. (c)(2) "Amusement park" and "premises" have [~~"Premises"~~ as] the meanings [~~meaning~~] assigned by Section 46.035.

Commentary by Jenna Reblin

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This provision relates to weapons offenses. As amended, Section 46.03(c)(2) of the Penal Code rearranges certain statutory language but makes no substantive change in the law.

Penal Code Sec. 46.05 PROHIBITED WEAPONS. (a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or classified as a curio or relic by the United States Department of Justice:

- (A) an explosive weapon;
- (B) a machine gun;
- (C) a short-barrel firearm; or
- (D) a firearm silencer;

- (2) knuckles;
- (3) armor-piercing ammunition;
- (4) a chemical dispensing device;
- (5) a zip gun; [~~or~~]
- (6) a tire deflation device; or
- (7) an improvised explosive device.

(e) An offense under Subsection (a)(1), (3), (4), [~~or~~] (5), or (7) is a felony of the third degree. An offense

under Subsection (a)(6) is a state jail felony. An offense under Subsection (a)(2) is a Class A misdemeanor.

Commentary by Jenna Reblin

Source: HB 913

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The term "improvised explosive device" is added to the list of prohibited weapons in Section 46.05(a) of the Penal Code. Section 46.05(e) specifies that an offense under certain subsections, including section (7) regarding the possession, manufacture, transport, repair, or sale of an improvised explosive device, is a third degree felony.

Penal Code Sec. 46.05 PROHIBITED WEAPONS. (a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice:

- (A) an explosive weapon;
- (B) a machine gun; or
- (C) a short-barrel firearm; [~~or~~]
- ~~(D) a firearm silencer;~~

- (2) knuckles;
- (3) armor-piercing ammunition;
- (4) a chemical dispensing device;
- (5) a zip gun; [~~or~~]
- (6) a tire deflation device; or
- (7) a firearm silencer, unless the fire-

arm silencer is classified as a curio or relic by the United States Department of Justice or the actor otherwise possesses, manufactures, transports, repairs, or sells the firearm silencer in compliance with federal law.

(e) An offense under Subsection (a)(1), (3), (4), [~~or~~] (5), or (7) is a felony of the third degree. An offense under Subsection (a)(6) is a state jail felony. An offense under Subsection (a)(2) is a Class A misdemeanor.

Commentary by Jenna Reblin

Source: HB 1819

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The Legislature enacted these amendments to address concerns regarding individuals seeking to purchase firearm silencers for hearing protection. The consequences for possessing, manufacturing,

transporting, repairing, or selling a firearm silencer are changed under this provision. Section 46.05(a)(1) specifies that a firearm silencer is a prohibited weapon unless the silencer is classified as curio or relic by the Department of Justice or if the person possesses the silencer in compliance with federal law. Firearm silencer has been deleted from Section 46.05(1)(D). Section 46.05(e) provides that an offense under certain subsections including subsection 46.05(a)(7) is a third degree felony.

Penal Code Sec. 46.06. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. (a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years of age any firearm, club, or location-restricted ~~[illegal]~~ knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; or

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.

Commentary by Jenna Reblin

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This is a conforming change related to updated terms for “illegal knife” to “location-restricted knife.”

Penal Code Sec. 46.15 APPLICABILITY.

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an

establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer, qualified retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies;

(6) the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; ~~or~~

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code; or

(10) a person who is volunteer emergency services personnel if the person is:

(A) carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code; and

(B) engaged in providing emergency services.

Commentary by Jenna Reblin

Source: HB 435

Effective Date: September 1, 2017

Applicability: Applies to volunteer emergency services personnel who may carry a weapon on or after the effective date.

Summary of Changes: This amendment changes the law regarding volunteer emergency personnel who carry handguns. It provides legal protections to volunteer emergency service personnel who carry licensed handguns while engaged in providing emergency services. In Subsections 46.15(a)(6) and (7) of the Penal Code, the attorney general, a U.S. attorney, assistant U.S. attorney, and assistant attorney general are added to the list of individuals for whom the offenses of unlawful carrying of a weapon and places weapons prohibited do not apply. Section 46.15(a)(10) also specifies that unlawful carrying of a weapon and places weapons prohibited do not apply to a person who is a volunteer emergency services personnel if the person is carrying a handgun under the authority of Subchapter H, Chapter 411 of the Government Code and is engaged in emergency services.

Penal Code Section 46.15. NONAPPLICABILITY. (e) ~~[The provisions of] Section 46.02(a-4) does [46.02 prohibiting the carrying of an illegal knife do]~~ not apply to an individual carrying a location-restricted knife ~~[bowie knife or a sword]~~ used in a historical demonstration or in a ceremony in which the knife ~~[or sword]~~ is significant to the performance of the ceremony.

Commentary by Jenna Reblin

Source: HB 1935

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: As amended, Section 46.15(e), Penal Code, includes a reference to Section 46.02(a-4), which is the unlawful carrying of weapons statute, and updates the language regarding a location-restricted knife for certain persons who use a knife that would otherwise be restricted in a historical demonstration or ceremony where the knife is significant to the performance of the ceremony. The purpose is make the law applicable statewide and to clarify the circumstances and locations where knives are allowed or prohibited.

Penal Code Sec. 49.09 ENHANCED OFFENSES AND PENALTIES. (b-1) An offense under Section 49.07 is:

(1) a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to ~~[a peace officer,]~~ a firefighter~~[-]~~ or emergency medical services personnel while in the actual discharge of an official duty; or

(2) a felony of the first degree if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer or judge while the officer or judge was in the actual discharge of an official duty.

Commentary by Jenna Reblin

Source: HB 2908

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: In response to recent events, Section 49.09(b-1) of the Penal Code enhances criminal penalties for certain crimes against peace officers and judges. Intoxication assault is now a first degree felony if the person commits the offense and causes serious bodily injury to a judge or peace officer while the judge or peace officer is in the actual discharge of an official duty.

2. Legislation Affecting Education

Education Code Sec. 7.028. LIMITATION ON COMPLIANCE MONITORING. (a) Except as provided by Section 29.001(5), 29.010(a), or 39.057, the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, Subchapter A, Chapter 37, or Section 38.003, and the use of funds provided for such a program under Subchapter C, Chapter 42, only as necessary to ensure:

- (1) compliance with federal law and regulations;
- (2) financial accountability, including compliance with grant requirements; and
- (3) data integrity for purposes of:
 - (A) the Public Education Information Management System (PEIMS); and
 - (B) accountability under Chapters [Chapter] 39 and 39A.

(2) Section 7.055(b)(32), Education Code, is amended to read as follows:

(32) The commissioner shall perform duties in connection with the public school accountability system as prescribed by Chapters [Chapter] 39 and 39A.

Commentary by Karol Davidson

Source: SB 1488

Effective Date: September 1, 2017

Applicability: Applies to changes in law on or after the effective date.

Summary of Changes: This session, Chapter 39A was added to the Education Code. Chapter 39A sets out the interventions and sanctions the Commissioner of the Texas Education Agency (TEA) can impose when a school district does not satisfy accreditation criteria, academic performance standards, and financial accountability standards. Section 7.028, Education Code is amended to give the commissioner of TEA authority to monitor compliance for the areas covered in Chapter 39A.

Education Code Sec. 8.061. DYSLEXIA SPECIALIST. Each regional education service center shall employ as a dyslexia specialist a person licensed as a dyslexia therapist under Chapter 403, Occupations Code, to provide school districts served by the center with support and resources that are necessary to assist students with dyslexia and the families of students with dyslexia.

Commentary by Karol Davidson

Source: HB 1886

Effective Date: June 15, 2017

Applicability: Applies to the provision of services to students with dyslexia and students receiving special education services beginning with the 2017 – 2018 School Year.

Summary of Changes: In HB 1886, the legislature is making a concerted effort to address dyslexia in school-aged children between the ages of five and 17 with the goal of having early identification and intervention services to improve a child's academic performance. Section 8.061, Education Code, is added to require regional service centers to hire individuals licensed as dyslexia therapists to work as dyslexia specialists. These individuals would provide schools with support and resources necessary to assist students with dyslexia.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE (b) In recognition of the challenges faced by students who are homeless or in substitute care, the agency shall assist the transition of students who are homeless or in substitute care from one school to another by:

(1) ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is homeless or in substitute care while enrolled at another school;

(4) developing procedures to ensure that a new school relies on decisions made by the previous school regarding placement in courses or educational programs of a student who is homeless or in substitute care and places the student in comparable courses or educational programs at the new school, if those courses or programs are available;

(5) promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(6) ~~(5)~~ establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(7) [(6)] entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(8) [(7)] encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(9) [(8)] requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school previously attended by the student, and to provide comparable services to the student during the referral process or until the new school develops an individualized education program for the student;

(10) [(9)] requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; and

(G) use of corporal punishment as provided by Section 37.0011;

(11) [(10)] developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(12) [(11)] ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed;

(13) [(12)] ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided

by a public institution of higher education for which a high school student may earn joint high school and college credit; ~~and~~

(14) [(13)] designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(15) [(14)] providing other assistance as identified by the agency.

Commentary by Karol Davidson

Source: SB 1220

Effective Date: June 1, 2017

Applicability: Applies to transition services provided to students who are homeless or who reside in substitute care beginning the 2017 – 2018 school year.

Summary of Changes: In order to ease academic transitions and to ensure continuity of education services for students who are homeless or in substitute care, SB 1220 re-enacts and amends Section 25.007(b), Texas Education Code, to require the Texas Education Agency (TEA) to develop procedures to ensure that a new school relies on decisions made by the previous school regarding courses or educational programs when a student who is homeless or in foster care transfers to a new school. In doing so, TEA must require the new school to: 1) provide the student with the same or comparable courses and educational programs that the student received at the previous school; and 2) for students who receive special education services, provide comparable services as the previous school until the new school develops an individual education program (IEP).

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE (c) The commissioner may establish rules to implement this section and to facilitate the transition between schools of children who are homeless or in substitute care.

Commentary by Karol Davidson

Source: SB 1220

Effective Date: June 1, 2017

Applicability: Applies educational services provided by schools beginning the 2017 – 2018 school year.

Summary of Changes: Section 25.007(c), Texas Education Code is added to give the commissioner of TEA the authority to adopt rules to implement requirements for schools to provide transition assistance to students who are homeless or in substitute care as required in Section 25.007(a), Education Code.

Education Code Sec. 25.007. TRANSITION ASSISTANCE FOR STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE. (b) In recognition of

the challenges faced by students who are homeless or in substitute care, the agency shall assist the transition of students who are homeless or in substitute care from one school to another by:

(1) ensuring that school records for a student who is homeless or in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school;

(2) developing systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school;

(3) developing procedures for awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student who is homeless or in substitute care while enrolled at another school;

(4) promoting practices that facilitate access by a student who is homeless or in substitute care to extracurricular programs, summer programs, credit transfer services, electronic courses provided under Chapter 30A, and after-school tutoring programs at nominal or no cost;

(5) establishing procedures to lessen the adverse impact of the movement of a student who is homeless or in substitute care to a new school;

(6) entering into a memorandum of understanding with the Department of Family and Protective Services regarding the exchange of information as appropriate to facilitate the transition of students in substitute care from one school to another;

(7) encouraging school districts and open-enrollment charter schools to provide services for a student who is homeless or in substitute care in transition when applying for admission to postsecondary study and when seeking sources of funding for postsecondary study;

(8) requiring school districts, campuses, and open-enrollment charter schools to accept a referral for special education services made for a student who is homeless or in substitute care by a school previously attended by the student;

(9) requiring school districts, campuses, and open-enrollment charter schools to provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

(A) requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), or special education under Section 29.003;

(B) admission, review, and dismissal committee meetings;

(C) manifestation determination reviews required by Section 37.004(b);

(D) any disciplinary actions under Chapter 37 for which parental notice is required;

(E) citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;

(F) reports of restraint and seclusion required by Section 37.0021; and

(G) use of corporal punishment as provided by Section 37.0011;

(10) developing procedures for allowing a student who is homeless or in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;

(11) ensuring that a student who is homeless or in substitute care who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed;

(12) ensuring that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Section 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit; ~~and~~

(13) designating at least one agency employee to act as a liaison officer regarding educational issues related to students in the conservatorship of the Department of Family and Protective Services; and

(14) ~~(13)~~ providing other assistance as identified by the agency.

Commentary by Karol Davidson

Source: SB 1488

Effective Date:

Applicability: This bill applies to schools that provide educational services to students who are homeless or are living in "substitute care" (foster care) in the 2017 – 2018 school year.

Summary of Changes: SB 1488 re-enacts Section 25.007, Education Code, with no substantive changes. Changes to Section 25.007 were made in another bill. Please see the commentary on SB 1220 above for information on those changes.

Education Code, Sec. 25.081. OPERATION OF SCHOOLS. (f) A school district may not provide student instruction on Memorial Day. If a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under Subsection (a).

Commentary by Karol Davidson

Source: HB 441

Effective Date: June 15, 2017

Applicability: Applies to school schedules beginning the 2017 – 2018 school year.

Summary of Changes: Section 25.081, Education Code, is amended by adding subsection (f), prohibiting a school district from providing instruction on Memorial Day. The bill also requires TEA to approve fewer minutes of instruction if a school must require school attendance on Memorial Day in order to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, or other such calamity.

Education Code Sec. 25.081, OPERATION OF SCHOOLS. (a) Except as authorized under Subsection (b) of this section, Section 25.084, or Section 29.0821, for each school year each school district must operate ~~so that the district provides~~ for at least 75,600 minutes, including time allocated for ~~of~~ instruction, ~~including~~ intermissions, and recesses~~;~~ for students.

(b) The commissioner may approve the operation of schools ~~instruction of students~~ for fewer than the number of minutes required under Subsection (a) if disaster, flood, extreme weather conditions, fuel curtailment, or another calamity causes the closing of schools.

(c) If the commissioner does not approve reduced operation ~~instruction~~ time under Subsection (b), a school district may add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes ~~of instruction~~ lost due to school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(d) The commissioner may adopt rules to implement this section, including rules:

(1) for the application, on the basis of the minimum minutes of operation ~~instruction~~ required by Subsection (a), of any provision of this title that refers to a minimum number of days of instruction under this section;

(2) to determine the minutes of operation that are equivalent to a day;

(3) defining minutes of operation and instructional time; and

(4) establishing the minimum number of minutes of instructional time required for a full-day and a half-day program to meet the time requirements under Subsection (a).

(e) A school district or education program is exempt from the minimum minutes of operation requirement if the district's or program's average daily attendance is calculated under Section 42.005(j) [For purposes of this code, a reference to a day of instruction means 420 minutes of instruction].

(f) The commissioner may proportionally reduce the amount of funding a district receives under Chapter 41, 42, or 46 and the average daily attendance calculation for the district if the district operates on a calendar that provides fewer minutes of operation than required under Subsection (a).

Commentary by Karol Davidson

Source: HB 2442

Effective Date: June 15, 2017

Applicability: Applies to the requirements for instructional hours beginning with the 2018-2019 school year.

Summary of Changes: Section 25.081, Education Code, provides the requirements for the minimum number of minutes a school must operate each school year. The amendments in HB 2442 change references to minimum number of instructional minutes to minimum time a school must operate. The change clarifies that the requirement for minimum minutes in Section 25.081 (75,600 minutes) applies to the operations of the school, which includes intermissions and recesses in addition to instructional time.

Section (e) is amended to remove the statutory requirement for a day of instruction to be 420 minutes. Instead, the commissioner of TEA is given authority in section (d) to: (1) determine the minutes of operation that are equivalent to a day, (2) define minutes of operation and instructional time, and (3) establish the minimum number of minutes of instructional time required for a full-day and a half-day of school that is calculated into the 75,600 minutes of school operation each year.

Section (e) exempts a district or charter school from the minimum operation and instructional minutes required in Section 25.081 if the school provides at least 43,200 minutes of instructional time per year for students enrolled in an educational program listed in Section 42.005, Education Code, including a dropout recovery program, DAEP, school program located at a residential treatment center or psychiatric or medical hospital, and a school program offered at a correctional facility (includes a secure detention facility and post adjudication correctional facility). For residential facilities operated by a juvenile justice program, this amendment will allow flexibility for the facility to work with the school district to ensure appropriate time to meet both the educational needs and rehabilitative and other treatment needs of a student in a juvenile justice facility or program.

It should be noted that Section 25.081(f) gives the commissioner of TEA authority to proportionally reduce the amount of funding a district receives and the average daily attendance calculation if the district operates on a calendar that provides fewer than 75,600 minutes.

Education Code Sec. 25.082 SCHOOL DAY; PLEDGES OF ALLEGIANCE; MINUTE OF SILENCE. Sec. 25.082. [~~SCHOOL DAY;~~] PLEDGES OF ALLEGIANCE; MINUTE OF SILENCE.

Commentary by Karol Davidson

Source: HB 2442

Effective Date: June 15, 2017

Applicability: Applies to the requirements beginning with the 2018-2019 school year.

Summary of Changes: This is a heading change to reflect that information relating to the length of the school day is no longer in Section 25.082.

Education Code Sec. 25.082. PLEDGES OF ALLEGIANCE; MINUTE OF SILENCE. (a) is repealed.

Commentary by Karol Davidson

Source: HB 2442

Effective Date: June 15, 2017

Applicability: Applies to school operation requirements beginning the 2018 -2019 school year.

Summary of Changes: Section 25.082(a) is repealed. The repeal eliminates the requirement for a school day to be at least seven hours each day, including intermissions and recesses. The required length of day for school operation and instructional time will be determined by the commissioner as authorized in section 25.081, Education Code.

Education Code Sec. 25.0822. PATRIOTIC SOCIETY ACCESS TO STUDENTS. (a) In this section, "patriotic society" means a youth membership organization listed in Title 36 of the United States Code with an educational purpose that promotes patriotism and civic involvement.

(b) At the beginning of each school year, the board of trustees of an independent school district shall adopt a policy to allow the principal of a public school campus to provide representatives of a patriotic society with the opportunity to speak to students during regular school hours about membership in the society and the ways in which membership may promote a student's educational interest and level of civic involvement, leading to the student's increased potential for self-improvement and ability to contribute to improving the student's school and community.

(c) The board policy shall give a principal complete discretion over the specific date and time of the opportunity required to be provided under this section, except that the policy shall allow the principal to limit:

(1) the opportunity provided to a patriotic society to a single school day; and

(2) any presentation made to students as a result of the opportunity to 10 minutes in length.

Commentary by Karol Davidson

Source: SB 1556

Effective Date: September 1, 2017

Applicability: Applies to the 2017 – 2018 school year.

Summary of Changes: Section 25.0822, relating to Patriotic Society Access to Students, is added to Chapter 25, Education Code. This section requires public schools to allow a patriotic society access to public schools to speak, for not more than 10 minutes, to students about membership in the society and the ways in which membership may promote a student's educational interests, and level of civic involvement. The principal will have complete discretion to determine the date and time for the activity. Examples of a patriotic society include the American Legion, Disabled American Veterans, Boy Scouts of America, Girl Scouts of the United States of America, and Big Brothers/Big Sisters of America. A list of organizations designated as a patriotic society can be found in Title 36 of the United States Code.

Education Code Sec. 25.087. EXCUSED ABSENCES. (b-5) A school district shall excuse a student who is 17 years of age or older from attending school to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard, provided that:

(1) the district may not excuse for this purpose more than four days of school during the period the student is enrolled in high school; and

(2) the district verifies the student's activities related to pursuing enlistment in a branch of the armed services or the Texas National Guard.

(b-6) Each school district shall adopt procedures to verify a student's activities as described by Subsection (b-5).

(d) A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), or (c) may not be penalized for that absence and shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district. A student whose absence is excused under Subsection (b), (b-1), (b-2), (b-4), (b-5), or (c) shall be allowed a reasonable time to make up school work missed on those days. If the student satisfactorily completes the school work, the day of absence shall be counted as a day of compulsory attendance.

Commentary by Karol Davidson

Source: SB 1152

Effective Date: May 28, 2017

Applicability: Applies to students seeking enlistment in the armed services beginning the 2017 – 2018 school year.

Summary of Changes: Section 25.087 is amended by adding subsections (b-5) and (b-6). A school district is required to excuse a student who is 17 years of age or

older from attending school to pursue enlistment in a branch of the United States armed services or the Texas National Guard. The number of days for excused absence is limited to four. The district must verify the activities of the student are related to pursuing enlistment in a branch of the armed services.

Education Code Sec. 29.011. TRANSITION PLANNING. (a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate ~~parental~~ involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in

which the student is enrolled;

(3) if the student is at least 18 years of age, ~~appropriate parental~~ involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(A) is invited to participate by the student or the school district in which the student is enrolled; or

(B) has the student's consent to participate pursuant to a supported decision-making agreement under Chapter 1357, Estates Code;

(4) appropriate ~~any~~ postsecondary education options, including preparation for postsecondary-level coursework;

(5) an appropriate ~~a~~ functional vocational evaluation;

(6) appropriate employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;

(8) appropriate independent living goals and objectives; ~~and~~

(9) appropriate circumstances for facilitating a referral of ~~referring~~ a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits

available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)); and

(10) the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Chapter 1357, Estates Code.

(a-1) A student's admission, review, and dismissal committee shall annually review the issues described by Subsection (a) and, if necessary, update the portions of the student's individualized education program that address those issues.

(a-2) The commissioner shall develop and post on the agency's Internet website a list of services and public benefits for which referral may be appropriate under Subsection (a)(9).

(b) The commissioner shall require each school district or shared services arrangement to designate at least one employee to serve as the district's or shared services arrangement's designee on transition and employment services for students enrolled in special education programs under this subchapter. The commissioner shall develop minimum training guidelines for a district's or shared services arrangement's designee. An individual designated under this subsection must provide information and resources about effective transition planning and services, including each issue described by Subsection (a), and interagency coordination to ensure that local school staff communicate and collaborate with:

(1) students enrolled in special education programs under this subchapter and the parents of those students; and

(2) as appropriate, local and regional staff of the:

(A) Health and Human Services Commission;

(B) Texas Workforce Commission ~~[Department of Aging and Disability Services];~~

(C) ~~[Department of Assistive and Rehabilitative Services;~~

~~(D)]~~ Department of State Health Services; and

(D) ~~(E)]~~ Department of Family and Protective Services.

(c) The commissioner shall review and, if necessary, update the minimum training guidelines developed under Subsection (b) at least once every four years. In reviewing and updating the guidelines, the commissioner shall solicit input from stakeholders.

Commentary by Karol Davidson

Source: HB 1886 and SB 748

Effective Date: June 15, 2017

Applicability: Applies to the provision of services to students with dyslexia and students receiving special education services beginning the 2017 – 2018 school year.

Summary of Changes: SB 1886 makes amendments to address transition planning for students in special education programs. Currently, Section 29.011, Education Code, lists things that might be included in a student’s IEP if appropriate. As amended, individuals other than those at the school district and the student’s parents can be involved if appropriate. If the student is over 18 years of age, parents or “other persons” can participate in the transition planning if the student or school invites participation or if the student consents to a supported decision making agreement (SDMA) under Chapter 1357, Estates Code, that allows participation. SDMA’s were specifically included in Section 29.011 to ensure that schools, students, and parents are aware that, once a youth turns 18, a guardianship is not the only method for someone to have authority to assist a student with making education decisions.

SB 1886 also adds wording to clarify that a transition plan and services recommended in the plan should be “appropriate” for the student. This amendment is consistent with the language used by the United States Supreme Court in *Andrew F. v. Douglas*, that services should be “appropriate in light of the child’s circumstances.” No. 15-827, Slip. Op. (U.S. March 22, 2017).

Transition plans should address appropriate circumstances for facilitating a referral of a student or the student’s parent to a governmental agency for services or public benefits, including referral to a government agency to place the student on a wait list for public benefits available to the student, such as a waiver program for “medical assistance” that covers part or all of the cost of home or community-based services (other than room and board) for individuals who would otherwise need a level of care provided in a hospital or a nursing facility or intermediate care facility for individuals with intellectual disabilities.

The Admission, Review and Dismissal (ARD) committee must review and update the Section 29.011 issues at least annually and the commissioner must maintain a list of the services and public benefits described in 29.011(a)(9) on its website. At least every four years, the commissioner is required to review and, if necessary, update the minimum training guidelines described by 29.011(b).

Education Code Sec. 29.0112. TRANSITION AND EMPLOYMENT GUIDE. (b) The transition and employment guide must be written in plain language and contain information specific to this state regarding:

- (1) transition services;

- (2) employment and supported employment services;

- (3) social security programs;

- (4) community and long-term services and support, including the option to place the student on a waiting list with a governmental agency for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c));

- (5) postsecondary educational programs and services, including the inventory maintained by the Texas Higher Education Coordinating Board under Section 61.0663;

- (6) information sharing with health and human services agencies and providers;

- (7) guardianship and alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code;

- (8) self-advocacy, person-directed planning, and self-determination; and

- (9) contact information for all relevant state agencies.

(e) A school district shall:

- (1) post the transition and employment guide on the district’s website if the district maintains a website; ~~and~~

- (2) provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at:

- (A) the first meeting of the student’s admission, review, and dismissal committee at which transition is discussed; and ~~or~~

- (B) the first committee meeting at which transition is discussed that occurs after the date on which the guide is updated; and

- (3) on request, provide a printed copy of the guide to a student or parent [becomes available, if a student has already had an admission, review, and dismissal committee meeting discussing transition].

Commentary by Karol Davidson

Source: HB 1886

Effective Date: June 15, 2017

Applicability: Applies to the provision of services to students with dyslexia and students receiving special education services beginning the 2017 – 2018 school year.

Summary of Changes: Section 29.0112(b), Education Code, is amended to require the Texas Education Agency (TEA) to develop a transition and employment guide, for the use of students enrolled in special education programs, that contains information on statewide services and programs that assist students in the transition to life outside the public school system. Section (b) is amended to require the guide to be written in plain English and to include options for student placement on waiting lists for

public benefits available to each student for home and community based services.

In Section 29.011(b)(2), a school district must also provide written information and, if necessary, assistance to a *student or* parent regarding how to access the electronic version of the guide at the first Admission, Review and Dismissal (ARD) committee meeting at which transition is discussed that occurs after the date on which the guide is updated. On request, the school must provide a printed copy of the guide to a student or parent if a student has already had an ARD committee meeting discussing transition.

Education Code, Sec. 29.017. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY. c) Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall:

(1) provide to the student and the student's parents:

(A) written notice regarding the transfer of rights under this section; and

(B) information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently; and

(2) ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

(c-1) In accordance with 34 C.F.R. Section 300.520 [300.517], the school district shall provide written notice to [notify] the student and the student's parents of the transfer of rights under this section. The notice must include the information and resources provided under Subsection (c)(1)(B).

(c-2) If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.

(c-3) The commissioner shall develop and post on the agency's Internet website a model form for use by school districts in notifying students and parents as required by Subsections (c) and (c-1). The form must include the information and resources described by Subsection (c). The commissioner shall review and update the form, including the information and resources, as necessary.

(d) The commissioner shall develop and post on the agency's Internet website the information and resources described by Subsections (c), (c-1), and (c-2).

(e) Nothing in this section prohibits a student from entering into a supported decision-making agreement under Chapter 1357, Estates Code, after the transfer of rights under this section.

(f) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.520(b) [300.517(b)].

Commentary by Karol Davidson

Source: HB 1886 and SB 748

Effective Date: June 15, 2017

Applicability: Applies to the provision of services to students with dyslexia and students receiving special education services beginning the 2017 – 2018 school year.

Summary of Changes: Section 29.011(c) is amended to require a school district, not later than one year before the 18th birthday of a student with a disability, to provide the student and the student's parents with written notice regarding the transfer of rights to make educational decisions from the parent to the student when the student is 18 years of age. The school must also provide information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently. The school must ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

Education Code Sec.37.001 STUDENT CODE OF CONDUCT. (a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative

education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

- (A) self-defense;
 - (B) intent or lack of intent at the time the student engaged in the conduct;
 - (C) a student's disciplinary history; or
 - (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- (5) provide guidelines for setting the length of a term of:
- (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007;
- (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
- (7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; ~~and~~
- (8) provide, as appropriate for students at each grade level, methods, including options, for:
- (A) managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;
 - (B) disciplining students; and
 - (C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists; and
- (9) include an explanation of the provisions regarding refusal of entry to or ejection from district property under Section 37.105, including the appeal process established under Section 37.105(h).

Commentary by Jill Mata

Source: SB 1553

Effective Date: June 15, 2017

Applicability: Applies to the 2017-2018 school year.

Summary of Changes: This amendment corrects the practices of some school districts that discouraged parents from participating in meetings held as part of the special education of their children by issuing the parents criminal trespass warnings that often cannot be appealed under district policy. The bill sought to address this issue by revising the law relating to the refusal of entry to or ejection from school district property and providing for an appeal process. This specific addition to the statute requires the school's written code of conduct to include an explanation of the provisions regarding refusal of entry to or ejection from district property under Section 37.105, including the appeal process established under Section 37.105(h).

Education Code Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

- (1) "Bullying" has the meaning assigned by Section 37.0832.
- (2) "Intimate visual material" has the meaning assigned by Section 98B.001, Civil Practice and Remedies Code.
- (b) A student may be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 or expelled if the student:
 - (1) engages in bullying that encourages a student to commit or attempt to commit suicide;
 - (2) incites violence against a student through group bullying; or
 - (3) releases or threatens to release intimate visual material of a minor or a student who is 18 years of age or older without the student's consent.
- (c) Nothing in this section exempts a school from reporting a finding of intimate visual material of a minor.

Commentary by Karol Davidson

Source: SB 179

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring or offenses committed on or after the effective date.

Summary of Changes: In 2017, statutes addressing bullying and cyberbullying were expanded and significantly revised. Section 37.0052, Education Code, is added to Chapter 37, allowing a school to expel or place a student in a disciplinary alternative education program if the student engages in bullying that encourages a student to commit or attempt to commit suicide; incites violence against a student through group bullying; or releases or threatens to release intimate visual material of a minor or a student who is 18 years of age or older without the student's consent. Bullying is defined in section 37.0832, Education Code. Intimate visual material is defined in Section 98B.001, Civil Practices and Remedies Code.

Education Code, Sec. 37.008. DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS. (a) Each school district shall provide a disciplinary alternative education program that:

- (1) is provided in a setting other than a student's regular classroom;
- (2) is located on or off of a regular school campus;
- (3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;
- (4) focuses on English language arts, mathematics, science, history, and self-discipline;

(5) provides for students' educational and behavioral needs;

(6) provides supervision and counseling; and

(7) employs only teachers who meet all certification requirements established under Subchapter B, Chapter 21[; ~~and~~

~~[(8) provides not less than the minimum amount of instructional time per day required by Section 25.082(a)].~~

Commentary by Karol Davidson

Source: HB 2442

Effective Date: June 15, 2017

Applicability: Applies to disciplinary alternative education programs beginning the 2018 – 2019 school year.

Summary of Changes: Currently, Section 37.008(a)(8), Education Code, requires disciplinary alternative education programs to provide the minimum instruction time required by Section 25.082(a), at least a 7 hours school day including intermissions and recesses. The section does not, however, reference required minimum instruction time. Fortunately section 25.082(a) is repealed beginning school year 2018 – 2019. Additionally, with the amendments to sections 42.005 and 32.082(a), schools are required to provide at least 43,200 minutes of instructional time at disciplinary alternative education programs. The commissioner of TEA will define minutes of operation and instructional time.

Education Code Sec. 37.008. DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS. (c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39 or 39A.

Commentary by Karol Davidson

Source: SB 1488

Effective Date: September 1, 2017

Applicability: Applies to disciplinary alternative education programs beginning the effective date.

Summary of Changes: Section 37.008(c), Education Code, is amended to add references to Section 39A, Education Code. Subchapter E, Chapter 39, Education Code (titled Accreditation, Interventions, and Sanctions), was repealed and the requirements moved to Chapter 39A (Accountability, Interventions, and Sanctions). There were no substantive changes to the statutory requirements.

Education Code Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a) The principal of a

public primary or secondary school, or a person designated by the principal under Subsection (c), may make a report to any school district police department, if applicable, or the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if, after an investigation is completed, the principal has reasonable grounds to believe that a student engaged in conduct that constitutes an offense under Section 22.01 or 42.07(a)(7), Penal Code.

(b) A person who makes a report under this section may include the name and address of each student the person believes may have participated in the conduct.

(c) The principal of a public primary or secondary school may designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report under this section.

(d) A person who is not a school employee but is employed by an entity that contracts with a district or school to use school property is not required to make a report under this section and may not be designated by the principal of a public primary or secondary school to make a report. A person who voluntarily makes a report under this section is immune from civil or criminal liability.

(e) A person who takes any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action.

(f) Notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act under this section.

(g) A school district and school personnel and school volunteers are immune from suit resulting from an act under this section, including an act under related policies and procedures.

(h) An act by school personnel or a school volunteer under this section, including an act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district or the district's employees.

Commentary by Karol Davidson

Source: SB 179

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring or offenses committed on or after the effective date.

Summary of Changes: SB 179 is known as “David’s Law” after a San Antonio student who took his life after cyberbullying directed at him by other students. Section 37.051 is added to Chapter 37 of the Education Code to provide schools with more options for preventing bullying or cyberbullying. If, after an investigation, a principal or designee of a principal has reason to believe a student

engaged in conduct that constitutes assault (as provided in Penal Code 22.01) or harassment (as provided in Penal Code 42.07(a)(7)), the principal or designee can report the incident to the appropriate law enforcement agency. The principal cannot designate a case manager as a person having authority to report the conduct to law enforcement. Individuals who make a report to law enforcement, are immune from civil and criminal liability associated with making the report to law enforcement. Individuals do not have a right assert a civil, criminal, or administrative cause of action regarding incident that was or could have been reported as provided in Section 37.051. Harassment in Section 42.07(a), Penal Code, includes conduct done with the intent to harass, annoy, alarm, or torment another person by sending repeated electronic communications in a manner reasonably likely to harass, alarm, annoy, or torment.

Education Code Sec. 37.020. REPORTS RELATING TO EXPULSIONS AND DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PLACEMENTS. (d) For each placement in a Junior Reserve Officers' Training Corps program under Subchapter A-1, the district shall report:

(1) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) information indicating whether the placement was based on:

(A) conduct violating the student code of conduct adopted under Section 37.001;

(B) conduct for which placement in a disciplinary alternative education program or juvenile justice alternative education program is otherwise required or permitted by this subchapter; or

(C) conduct occurring while a student was enrolled in another district and for which placement in a Junior Reserve Officers' Training Corps program is permitted by Section 37.038;

(3) the number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program;

(4) the number of placements that were inconsistent with the guidelines included in the student code of conduct under Section 37.033(a)(4);

(5) information regarding the academic performance of the student on assessment instruments required under Section 39.023, as applicable, during the year preceding, during the year of, and during the year following placement in the program, to the extent available; and

(6) information indicating whether the student dropped out of school, to the extent available.

(e) Subsection (d) and this subsection expire September 1, 2019.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: The Junior Reserve Officer's Training Corps (JROTC) program begins the spring semester of the 2017 – 2018 school year. The requirements to report information on the JROTC ends September 1, 2019.

Summary of Changes: Subsection (d) and (e) are added to Section 37.020, Education Code, requiring schools to report specific information regarding students placed in the JROTC. The requirements and criteria for placement in the JROTC program are located in Subchapter A-1 of Chapter 37, Education Code. For each student placed in the JROTC, the school district is required to report information identifying each student, information regarding the conduct that led to placement in the JROTC, the number of days the student was placed in the JROTC, the academic performance of the students on assessment instruments, dropout information, and the number of placements that were inconsistent with the guidelines in the district's student code of conduct.

Education Code Sec. 37.031. ESTABLISHMENT OF PILOT PROGRAM. (a) A pilot program is established under this subchapter for placement of high school students in Junior Reserve Officers' Training Corps programs as an alternative, in accordance with Section 37.032, to placement in disciplinary alternative education programs or juvenile justice alternative education programs.

(b) The pilot program applies only to a student enrolled in a high school:

(1) located in a municipality that:

(A) has a population of 200,000 or more;

(B) is located on an international border; and

(C) has more than 20 percent of the population 18 to 24 years of age who have not graduated from high school, according to the most recent American Community Survey five-year estimates compiled by the United States Census Bureau; and

(2) designated by the agency under Subsection (c).

(c) The agency shall designate not more than two high schools that are located in a municipality described by Subsection (b)(1) and that offer Junior Reserve Officers' Training Corps programs to participate in the pilot program. The commissioner by rule shall adopt additional criteria that promote positive student educational outcomes for the agency to use in making designations under this subchapter.

(d) The application of this subchapter to a student enrolled in a high school located in a municipality described by Subsection (b)(1) is not affected if, after the high school is designated under Subsection (c), the high

school graduation rate in the municipality changes and the municipality no longer meets the requirements of Subsection (b)(1)(C).

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students placed in a JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: Section 37.031 is added to Chapter 37 establishing a Junior Reserve Officers' Training Corps pilot program as an alternative to placement of students in a disciplinary alternative education program. The pilot program applies to students enrolled in a school located in a municipality that has a population greater than 200,000, is located on an international border, and has more than 20% of the population 18 to 24 years of age who have not graduated from high school. Only schools in Webb County meet the criteria to participate in the pilot program. The commissioner of TEA is required to designate not more than two high schools that offer a JROTC program to participate in the pilot program.

Education Code Sec. 37.032. PARTICIPATION REQUIREMENTS AND EXCEPTIONS. (a) Notwithstanding any other provision of Subchapter A and except as provided by Subsection (c), a student subject to this subchapter who is otherwise required or permitted under Subchapter A to be placed in a disciplinary alternative education program or juvenile justice alternative education program may, instead of that placement, choose to participate in a Junior Reserve Officers' Training Corps program if the student meets the initial eligibility requirements for the program.

(b) A student who chooses to participate in a Junior Reserve Officers' Training Corps program as authorized under this subchapter shall continue to attend the student's regularly assigned classes, except that the student's schedule may be modified to the extent necessary to provide for attendance in the program.

(c) This subchapter does not apply if:

(1) the student is removed from class and placed into another appropriate classroom or into in-school suspension under Section 37.002 or is suspended under Section 37.005;

(2) the student engages in conduct described by Section 37.006(a)(2)(B) or Section 37.007(a)(2) or (b)(2)(C);

(3) the continued presence of the student in the regular classroom threatens the safety of other students or teachers; or

(4) the student engages in conduct for which the student is required to be expelled from the student's regular campus under federal law.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students placed in a JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: The Junior Reserve Officer Training Corp pilot program can be used as a disciplinary option to place students who would otherwise be placed in a DAEP or JJAEP. A student cannot be placed in the JROTC program if the student is removed from class and placed in another class or in-school suspension or is suspended from school. A student is also ineligible if the student's conduct includes an assault causing bodily injuring while the student is on school property, within 300 feet of school property, or at a school sponsored activity; is an offense that holds a mandatory expulsion as required by Section 37.007(a)(2), Education Code; or is an offense that involves the possession of a gun on school property. A student in the JROTC program must continue to take all regularly assigned classes; however, the class schedule can be adjusted to allow attendance in the JROTC program.

Education Code Sec. 37.033. STUDENT CODE OF CONDUCT. (a) In addition to the requirements for the student code of conduct under Section 37.001, the student code of conduct for a school district that includes a school designated under Section 37.031(c) must, consistent with this subchapter and as applied to the designated school:

(1) specify conditions that authorize a principal or other appropriate administrator to permit a student to choose to participate in a Junior Reserve Officers' Training Corps program as an alternative to placement in a disciplinary alternative education program or juvenile justice alternative education program;

(2) specify that consideration will be given, as a factor in each decision concerning alternative participation in a Junior Reserve Officers' Training Corps program, to:

(A) self-defense;

(B) intent or lack of intent at the time the student engaged in the conduct;

(C) a student's disciplinary history; or

(D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

(3) provide guidelines that promote positive student educational outcomes for students choosing to participate in a Junior Reserve Officers' Training Corps program as an alternative to placement in a disciplinary alternative education program or juvenile justice alternative education program;

(4) provide guidelines for setting the length of a term of participation in a Junior Reserve Officers' Training Corps program as an alternative to placement in a disciplinary alternative education program or juvenile justice alternative education program; and

(5) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in the student's choice to participate in a Junior Reserve Officers' Training Corps program as an alternative to placement in a disciplinary alternative education program or a juvenile justice alternative education program.

(b) This section does not require the student code of conduct to specify a minimum term of participation in a Junior Reserve Officers' Training Corps program.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: Section 37.003, Education Code (Student Code of Conduct), is added to require school districts to include in the student code of conduct the criteria for placement in the JROTC and advises that before placement in the JROTC, the school will consider factors such as whether the conduct occurred as self-defense; the intent or lack of intent of the student to engage in the conduct; a student's disciplinary history; or whether a disability substantially impairs the student's capacity to understand that the conduct was wrong. The student code of conduct must also include guidelines for the JROTC program to promote positive educational outcomes, guidelines for setting the length of time a student will be required to participate in the JROTC, and procedures for notifying parents of a student's option to be placed in the JROTC instead of a DAEP or JJAEP.

Education Code Sec. 37.034. DETERMINATION REGARDING CERTAIN CONDUCT. Section 37.006(e) applies to this subchapter.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: When a school reviews student conduct to determine whether there is reasonable cause to believe a student should participate in the JROTC pilot program, the school may consider all available information, including information that is provided to the su-

perintendent of the school district as required by Article 15.27 of the Code of Criminal Procedure.

Education Code Sec. 37.035. NOTICE TO PARENTS. (a) Before a student may participate in a Junior Reserve Officers' Training Corps program as authorized under this subchapter, the school district shall notify the student's parent or guardian of the student's proposed placement. The notice must include the reason for the proposed placement.

(b) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to the student's placement as authorized under this subchapter that is generally provided by the district or school to a student's parent or guardian.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: Section 37.035, Education Code, is added to require schools to notify a student's parent or guardian prior to placing a student in the JROTC program. Since placement in the JROTC is voluntary, a student does not have the statutory right to request a hearing on or to appeal the decision that a student engaged in conduct that allows placement in the JROTC.

Education Code Sec. 37.036. TERM OF PLACEMENT. (a) The board of trustees of the school district or the board's designee shall set a term for a student's participation in a Junior Reserve Officers' Training Corps program as authorized under this subchapter. The term must be for a period consistent with the guidelines adopted under the student code of conduct in accordance with Section 37.033(a)(4). If the period of placement is inconsistent with the guidelines adopted under the student code of conduct, the notice under Section 37.035(a) must provide an explanation of the inconsistency.

(b) Before a student may participate in a Junior Reserve Officers' Training Corps program as authorized under this subchapter for a period that extends beyond the end of a school year, the board of trustees or the board's designee must determine that the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct. The period of participation may not exceed one year unless, after review, the board or the board's designee determines that extended placement is in the best interest of the student.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to a school participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: The board of trustees for a school district or a designee for the board is responsible for setting the length of time a student must participate in the JROTC. The length of time a student is required to participate in the JROTC must be consistent with the requirements provided in the student code of conduct. A student can only be required to participate in the JROTC beyond the end of the school year if the student is determined to have engaged in serious or persistent misconduct. A student can be required to participate in the JROTC for longer than a year if the board of trustees determines the placement is in the best interest of the student.

Education Code Sec. 37.037. NOTICE TO EDUCATORS. (a) The board of trustees of the school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who is participating in a Junior Reserve Officers' Training Corps program as authorized under this subchapter.

(b) Each educator shall keep the information received under this section confidential from any person not entitled to the information under this section, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law.

(c) The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this section or Section 37.038.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: Each teacher responsible for providing instruction to a student participating in the JROTC must be advised of the student's participation. JROTC participation is confidential and can only be shared with student's parent or guardian or person entitled to the information. A teacher's certification can be revoked or suspended if the teacher intentionally discloses the confidential information to someone not entitled to receive the information.

Education Code Sec. 37.038. TRANSFER OF STUDENT UNDER PILOT PROGRAM. (a) If a student participating in a Junior Reserve Officers' Training Corps program as authorized under this subchapter enrolls in another school district before the expiration of the designated period of participation, the board of trustees of the

school district in which the student was participating in the program shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order.

(b) Each educator shall keep the information received under this section confidential from any person not entitled to the information under this section, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law.

(c) Subject to Subsection (d), the school district in which the student enrolls may continue the Junior Reserve Officers' Training Corps program placement under the terms of the order or may allow the student to attend regular classes without completing the designated period of participation.

(d) If the school the student attends in the school district in which the student enrolls does not offer a Junior Reserve Officers' Training Corps program, the student may be placed in a disciplinary alternative education program or a juvenile justice alternative education program under the procedures provided by this subchapter for the remainder of the term set under Section 37.036.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: When a student participating in the JROTC program transfers to a new school before completing the program, the board of trustees of the prior school must send the student's JROTC placement order to the new school at the same time other school records are sent to the new school. If the new school has a JROTC program, the student can be placed in the JROTC program under the same terms as in the placement order or be allowed to attend classes without completing the program. If the school does not offer JROTC, the student can be placed in a JJAEP or DAEP for the remainder of the time required by the JROTC placement order.

Education Code Sec. 37.039. PROCEDURE FOR ADDRESSING FAILURE TO COMPLETE DESIGNATED PERIOD OF PARTICIPATION OR SUBSEQUENT CONDUCT AFTER PROGRAM PARTICIPATION. A student who chooses to participate in a Junior Reserve Officers' Training Corps program as authorized under this subchapter is subject to the provisions of Subchapter A relating to removal from class and placement in

a disciplinary alternative education program or juvenile justice alternative education program if the student:

(1) except as provided by Section 37.038(c), fails to complete the designated period of participation under the terms of an order as authorized by this section; or

(2) after completion of any participation in a Junior Reserve Officers' Training Corps program as authorized under this subchapter, engages in subsequent conduct requiring or permitting the student to be removed from class and placed in a disciplinary alternative education program or juvenile justice alternative education program under Subchapter A.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: A student in the JROTC program can be placed in a DAEP or JJAEP if the student does not complete the program in the designated period of time for participation in the program or if the student engages in new conduct that requires or permits the student to be placed in a DAEP or JJAEP.

Education Code Sec. 37.040. APPLICABILITY TO SUBCHAPTER A. Sections 37.002, 37.006, and 37.007 are subject to this subchapter.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: Unless otherwise specified by statute, a student who engages in conduct that could result in removal from class by a teacher, placement in a disciplinary alternative education program, or expulsion from school may be allowed to participate in the JROTC program.

Education Code Sec. 37.041. REVIEW OF PROGRAM; REPORT. Not later than January 1, 2019, the commissioner shall review the pilot program established under this subchapter and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education a written report regarding the progress made by the pilot program in improving student educational outcomes.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to students participating in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: The commissioner of TEA is required to submit a report to the legislature by January 1, 2019, regarding any progress made with improving student educational outcomes through participation in the JROTC.

Education Code Sec. 37.042. EXPIRATION. This subchapter expires September 1, 2019.

Commentary by Karol Davidson

Source: HB 156

Effective Date: June 12, 2017

Applicability: Applies to participation in the JROTC pilot program beginning the spring semester of the 2017 – 2018 school year.

Summary of Changes: The JROTC pilot program ends September 1, 2019.

Education Code Sec. 37.0811 SCHOOL MARSHALS; PUBLIC SCHOOLS.

Commentary by Karol Davidson

Source: HB 867

Effective Date: June 15, 2017

Applicability: Public school authority to appoint school marshals.

Summary of Changes: The heading of Section 37.0811 is amended to add Public Schools to clearly denote this section as specific to public schools and open enrollment charter schools.

Education Code Sec. 37.0811 SCHOOL MARSHALS; PUBLIC SCHOOLS. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may appoint not more than the greater of:

(1) one school marshal per 200 [400] students in average daily attendance per campus; or

(2) for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction.

(d) Any written regulations adopted for purposes of Subsection (c) must provide that a school marshal may carry a concealed handgun as described by Subsection (c), except that if the primary duty of the school marshal involves regular, direct contact with students, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a

locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty. The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by the Texas Commission on Law Enforcement [designed to disintegrate on impact for maximum safety and minimal danger to others].

Commentary by Karol Davidson

Source: HB 867

Effective Date: June 15, 2017

Applicability: Applies to public and charter schools authority to appoint school marshals on or after the effective date.

Summary of Changes: The number of school marshals a school can appoint is changed to either one per every 200 students in ADA or one marshal for each building on the campus at which students regularly receive instructions. The firearms carried by a school marshal must be loaded only with frangible "duty" ammunition approved for use by the Texas Commission on Law Enforcement.

Education Code Sec. 37.0813. SCHOOL MARSHALS: PRIVATE SCHOOLS. (a) The governing body of a private school may appoint not more than the greater of:

(1) one school marshal per 200 students enrolled in the school; or

(2) one school marshal per building of the school at which students regularly receive classroom instruction.

(b) The governing body of a private school may select for appointment as a school marshal under this section an applicant who is an employee of the school and certified as eligible for appointment under Section 1701.260, Occupations Code.

(c) A school marshal appointed by the governing body of a private school may carry or possess a handgun on the physical premises of a school, but only in the manner provided by written regulations adopted by the governing body.

(d) Any written regulations adopted for purposes of Subsection (c) must provide that a school marshal may carry a concealed handgun as described by Subsection (c), except that if the primary duty of the school marshal involves regular, direct contact with students in a classroom setting, the marshal may not carry a concealed handgun but may possess a handgun on the physical premises of a school in a locked and secured safe within the marshal's immediate reach when conducting the marshal's primary duty. The written regulations must also require that a handgun carried by or within access of a school marshal may be loaded only with frangible duty ammunition approved for that purpose by the Texas Commission on Law Enforcement.

(e) A school marshal may access a handgun under this section only under circumstances that would justify the use of deadly force under Section 9.32 or 9.33, Penal Code.

(f) A private school employee's status as a school marshal becomes inactive on:

(1) expiration of the employee's school marshal license under Section 1701.260, Occupations Code;

(2) suspension or revocation of the employee's license to carry a handgun issued under Subchapter H, Chapter 411, Government Code;

(3) termination of the employee's employment with the private school; or

(4) notice from the governing body that the employee's services as school marshal are no longer required.

(g) The identity of a school marshal appointed under this section is confidential, except as provided by Section 1701.260(j), Occupations Code, and is not subject to a request under Chapter 552, Government Code.

(h) If a parent or guardian of a student enrolled at a private school inquires in writing, the school shall provide the parent or guardian written notice indicating whether any employee of the school is currently appointed a school marshal. The notice may not disclose information that is confidential under Subsection (g).

(i) This section does not apply to a school whose students meet the definition provided by Section 29.916(a)(1).

Commentary by Karol Davidson

Source: HB 867

Effective Date: June 15, 2017

Applicability: Applies to private school authority to appoint school marshals on or after the effective date.

Summary of Changes: Section 37.0813, Education Code is added to give private schools more options for providing security. Private schools that are not designated as a "home-school" are given the authority to appoint school marshals. The statutory requirements of Section 37.0813 for school marshals at private schools are substantially the same as the requirements for public schools in Section 37.0811, Education Code.

Education Code Sec. 37.0815. TRANSPORTATION OR STORAGE OF FIREARM AND AMMUNITION BY LICENSE HOLDER IN SCHOOL PARKING AREA. (a) A school district or open-enrollment charter school may not prohibit a person, including a school employee, who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district or charter school, provided

that the handgun, firearm, or ammunition is not in plain view.

(b) This section does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Section 37.125 of this code, Section 46.03 or 46.035, Penal Code, or other law.

Commentary by Karol Davidson

Source: SB 1566

Effective Date: September 1, 2017

Applicability: Applies to public schools and open-enrollment charter school authority to limit the possession of a firearm on school property on or after the effective date.

Summary of Changes: Newly added Section 37.0815 prohibits schools from limiting an individual's right to transport or store a firearm or ammunition in a locked vehicle parked in a parking area of a school. A firearm cannot be in plain view while stored in the vehicle. This statute applies to an employee of a school who transports or stores a firearm or ammunition in a locked vehicle in a parking area of a school as well as a member of the general public.

Education Code Sec, 37.0832. Education Code BULLYING PREVENTION POLICIES AND PROCEDURES. (a) In this section:

(1) "Bullying":

(A) [~~—~~"bullying"] means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves [~~—~~subject to Subsection (b),] engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements provided by Subsection (a-1). [~~that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district]~~ and that:

(i) [(1)] has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; [~~or~~]

(ii) [(2)] is sufficiently severe, persistent, ~~or~~ [~~and~~] pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

(iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or

(iv) infringes on the rights of the victim at school; and

(B) includes cyberbullying.

(2) "Cyberbullying" means bullying that is done through the use of any electronic communication device, including through the use of a cellular or oth-

er type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.

(a-1) This section applies to:

(1) bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property;

(2) bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and

(3) cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying:

(A) interferes with a student's educational opportunities; or

(B) substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that:

(1) prohibits the bullying of a student;

(2) prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;

(3) establishes a procedure for providing notice of an incident of bullying to:

(A) a parent or guardian of the alleged victim on or before the third business day after the date the incident is reported; and

(B) a parent or guardian of the alleged bully within a reasonable amount of time after the incident;

(4) establishes the actions a student should take to obtain assistance and intervention in response to bullying;

(5) sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;

(6) establishes procedures for reporting an incident of bullying, including procedures for a student to anonymously report an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred;

(7) prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; and

(8) requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals

with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(f) Each school district may establish a district-wide policy to assist in the prevention and mediation of bullying incidents between students that:

(1) interfere with a student's educational opportunities; or

(2) substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity.

Commentary by Karol Davidson

Source: SB 179

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring or offenses committed on or after the effective date.

Summary of Changes: SB 179 is known as David's Law, after a San Antonio student who took his life after cyberbullying. As amended, Section 37.0832(a), Education Code is intended to keep pace with changes in technology and to provide schools with more tools to combat and prevent bullying, including cyberbullying.

The definition of bullying includes not only a single significant act but also a pattern of acts by one or more students that exploits an imbalance of power; materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or infringes on the rights of the victim at school. The definition includes cyberbullying, which is defined as bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.

Bullying includes: (1) conduct that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property; (2) bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and (3) cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying: (A) interferes with a student's educational opportunities; or (B) substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

School districts will have the authority to establish district-wide policies to assist in the prevention and mediation of bullying incidents between students that interfere with a student's ability to participate in educational op-

portunities or that substantially disrupts the operation of a classroom, school, or school sponsored event.

Education Code Sec.37.0832 BULLYING PREVENTION POLICIES AND PROCEDURES. (b) is repealed.

Commentary by Karol Davidson

Source: SB 179

Effective Date: September 1, 2017

Applicability: Applies to conduct occurring or offenses committed on or after the effective date.

Summary of Changes: Section 37.0832(b), Education Code, is repealed but is incorporated into the definition of bullying in section 37.0832(a).

Education Code Sec. 37.105 UNAUTHORIZED PERSONS: REFUSAL OF ENTRY, EJECTION, IDENTIFICATION. (a) A school administrator, school resource officer, or school district peace officer [The board of trustees] of a school district [or its authorized representative] may refuse to allow a person [without legitimate business] to enter on or [property under the board's control and] may eject a [any undesirable] person from [the] property under the district's control if the person refuses [on the person's refusal] to leave peaceably on request and:

(1) the person poses a substantial risk of harm to any person; or

(2) the person behaves in a manner that is inappropriate for a school setting and:

(A) the administrator, resource officer, or peace officer issues a verbal warning to the person that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; and

(B) the person persists in that behavior.

(b) Identification may be required of any person on the property.

(c) Each school district shall maintain a record of each verbal warning issued under Subsection (a)(2)(A), including the name of the person to whom the warning was issued and the date of issuance.

(d) At the time a person is refused entry to or ejected from a school district's property under this section, the district shall provide to the person written information explaining the appeal process established under Subsection (h).

(e) If a parent or guardian of a child enrolled in a school district is refused entry to the district's property under this section, the district shall accommodate the parent or guardian to ensure that the parent or guardian may participate in the child's admission, review, and dismissal committee or in the child's team established under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), in accordance with federal law.

(f) The term of a person's refusal of entry to or ejection from a school district's property under this section may not exceed two years.

(g) A school district shall post on the district's Internet website and each district campus shall post on any Internet website of the campus a notice regarding the provisions of this section, including the appeal process established under Subsection (h).

(h) The commissioner shall adopt rules to implement this section, including rules establishing a process for a person to appeal to the board of trustees of the school district the decision under Subsection (a) to refuse the person's entry to or eject the person from the district's property.

Commentary by Karol Davidson

Source: SB 1553

Effective Date: June 15, 2017

Applicability: Applies to individuals removed and refused admission to a school beginning the 2017 – 2018 school year.

Summary of Changes: Section 37.105(a) allows a school to refuse entrance or remove a person from property under control of a school if the person is on property without a legitimate reason. SB 1553 amends the section to allow a school to deny entrance or remove a person from property under control of a school only if the person poses a substantial risk of harm to any person or if the person behaves in a manner that is not appropriate for a school setting. The school must first issue the person a verbal warning that the school intends to refuse entry or remove the person. If the person is a parent, the school must allow the parent access to the school to attend admission, review, and dismissal committee or disability accommodation meetings. A refusal cannot last longer than two years. The school must also post information on the school's authority to remove or deny entrance to school property on the school internet website.

Education Code Sec. 37.108 MULTHAZARD EMERGENCY OPERATIONS PLAN; SAFETY AND SECURITY AUDIT. (e) A school district shall include in its multihazard emergency operations plan a policy for school district property selected for use as a polling place under Section 43.031, Election Code. In developing the policy under this subsection, the board of trustees may consult with the local law enforcement agency with jurisdiction over the school district property selected as a polling place regarding reasonable security accommodations that may be made to the property. This subsection may not be interpreted to require the board of trustees to obtain or contract for the presence of law enforcement or security personnel for the purpose of securing a polling place located on school district property. Failure to comply with this subsection does not affect the requirement of the board of trustees to make a school facility available for

use as a polling place under Section 43.031, Election Code.

Commentary by Karol Davidson

Source: HB 332

Effective Date: September 1, 2017

Applicability: Applies to schools districts that are used as polling places beginning September 1, 2017.

Summary of Changes: Section 37.108(e), Education Code, is added to require a school to include in its Multi-hazard Emergency Operations Plan a policy for school district property selected to be used as a polling place. This provision is added to address concerns regarding the adequacy of security measures when schools are used as polling places during early voting and on elections days. Schools are encouraged to consult with local law enforcement to determine the reasonable security accommodations but are not required to contract with law enforcement or a security company for security services. A school district is required to make schools available for use as a polling place regardless of whether the district complies with the statute.

Education Code Sec. 37.125. EXHIBITION OF FIREARMS. EXHIBITION, USE, OR THREAT OF EXHIBITION OR USE OF FIREARMS. (a) A person commits an offense if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally:

(1) exhibits or [;] uses[; or threatens to exhibit or use] a firearm:

(A) [(4)] in or on any property, including a parking lot, parking garage, or other parking area, that is owned by a private or public school; or

(B) [(2)] on a school bus being used to transport children to or from school-sponsored activities of a private or public school;

(2) threatens to exhibit or use a firearm in or on property described by Subdivision (1)(A) or on a bus described by Subdivision (1)(B) and was in possession of or had immediate access to the firearm; or

(3) threatens to exhibit or use a firearm in or on property described by Subdivision (1)(A) or on a bus described by Subdivision (1)(B).

(b) An offense under Subsection (a)(1) or (2) [this section] is a third degree felony.

(c) An offense under Subsection (a)(3) is a Class A misdemeanor.

Commentary by Karol Davidson

Source: HB 2880

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Currently, any offense committed that involves the use, possession, or threat to use or possess a firearm on school property or a school bus is a third degree felony. HB 2880 amends the offense level so that it is based on whether the offense involves the exhibition, use, possession, or threat to use or possess a firearm. The offense level is a third degree felony if a person exhibits or uses a firearm on school property or a bus or threatens to exhibit or use a firearm and was in immediate possession of or had immediate access to the firearm. The offense is a Class A misdemeanor if a person threatens to exhibit, use, or possess a firearm on school property or a school bus and does not possess or have immediate access to the firearm.

Education Code Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL MATERIAL DEPICTING MINOR ENGAGED IN SEXUAL CONDUCT. (a) In this section:

(1) "Bullying" has the meaning assigned by Section 37.0832 [25.0342].

(2) "Cyberbullying" has the meaning assigned by Section 37.0832 [~~means the use of any electronic communication device to engage in bullying or intimidation~~].

Commentary by Karol Davidson

Source: HB 179

Effective Date: September 1, 2017

Applicability: Applies to the Texas School Safety Center "The Center" programs on dangers of student sharing visual materials depicting a minor engaged in sexual conduct.

Summary of Changes: Cyberbullying includes instances in which a student posts pictures of another student engaged in sexual conduct on social media. Section 37.218, Education Code is amended to require The Center to add cyberbullying as a component of the programs it offers for use by school districts to address dangers of a student sharing visual materials depicting a minor engaged in sexual conduct.

Education Code Sec. 38.003. SCREENING AND TREATMENT FOR DYSLEXIA AND RELATED DISORDERS. (a) Students enrolling in public schools in this state shall be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.

(b-1) Unless otherwise provided by law, a student determined to have dyslexia during screening or testing under Subsection (a) or accommodated because of dyslexia may not be rescreened or retested for dyslexia for the purpose of reassessing the student's need for ac-

commodations until the district reevaluates the information obtained from previous screening or testing of the student.

Source: HB 1886

Effective Date: June 15, 2017

Applicability: Applies to the provision of services to students with dyslexia and students receiving special education services beginning the 2017 – 2018 school year.

Summary of Changes: Section 38.003(a), Education Code, is amended to require students enrolling in public schools to be screened or tested, as appropriate, rather than only tested for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education. The program must include screening at the end of the school year for each student in kindergarten and each student in the first grade.

Section 29.011(b-1), Education Code, prohibits a student determined to have dyslexia during *screening* or testing, or a student accommodated because of dyslexia, from being *rescreened* or retested for dyslexia for the purpose of reassessing the student's need for accommodations until the school reevaluates the information obtained from previous screening or testing of the student.

Education Code Sec. 38.0032. DYSLEXIA TRAINING OPPORTUNITIES. (a) The agency shall annually develop a list of training opportunities regarding dyslexia that satisfy the requirements of Section 21.054(b). The list of training opportunities must include at least one opportunity that is available online.

(b) A training opportunity included in the list developed under Subsection (a) must:

(1) comply with the knowledge and practice standards of an international organization on dyslexia; and

(2) enable an educator to:
(A) understand and recognize dyslexia; and

(B) implement instruction that is systematic, explicit, and evidence-based to meet the educational needs of a student with dyslexia.

Source: HB 1886

Effective Date: June 15, 2017

Applicability: Applies to the provision of services to students with dyslexia and students receiving special education services beginning the 2017 – 2018 school year.

Summary of Changes: The Texas Education Agency (TEA) must annually develop a list of training opportunities regarding dyslexia that satisfy the requirements in Section 21.054(b) relating to continuing education requirements for an educator who teaches students with dyslexia. The list of training opportunities must include at least one opportunity that is available online. Training opportunities must comply with the knowledge and prac-

tice standards of an international organization on dyslexia and must enable an educator to understand and recognize dyslexia and implement instruction that is systematic, explicit, and evidence-based to meet the educational needs of a student with dyslexia.

COMMUNITIES IN SCHOOLS ADVISORY COMMITTEE. *[No Statutory Reference]* (a) The Communities in Schools advisory committee is abolished.

Commentary by Karol Davidson

Source: SB 526

Effective Date: September 1, 2017

Applicability: Applies to the Communities in Schools Advisory Committee on or after the effective date.

Summary of Changes: The Communities in Schools (CIS) is a program which partners with educators, students, and parents to identify needs of students who are at-risk of dropping out of school. Once the needs are identified, Communities in Schools customizes supports for students and families and provides individual case management services, engaging the community as part of this process. The advisory committee for the CIS is abolished along with other advisory committees that do not need to be formally codified or are inactive.

Code of Criminal Procedure

Code of Criminal Procedure Art. 2.127. SCHOOL MARSHALS. (a) Except as provided by Subsection (b), a school marshal may:

(1) make arrests and exercise all authority given peace officers under this code, subject to written regulations adopted by:

(A) the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code;

(B) the governing body of a private school under Section 37.0813, Education Code; [;] or

(C) the governing board of a public junior college under Section 51.220, Education Code; [;] and

(2) only act as necessary to prevent or abate the commission of an offense that threatens serious bodily injury or death of students, faculty, or visitors on school premises.

(a-1) In this section, "private school" means a school that:

(1) offers a course of instruction for students in one or more grades from prekindergarten through grade 12;

(2) is not operated by a governmental entity; and

(3) is not a school whose students meet the definition provided by Section 29.916(a)(1), Education Code.

(d) A person may not serve as a school marshal unless the person is:

(1) licensed under Section 1701.260, Occupations Code; and

(2) appointed by:

(A) the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code;

(B) the governing body of a private school under Section 37.0813, Education Code; [;] or

(C) the governing board of a public junior college under Section 51.220, Education Code.

Commentary by Karol Davidson

Source: HB 867

Effective Date: June 15, 2017

Applicability: Applies to private schools that appoint school marshals on or after the effective date.

Summary of Changes: Private schools were given the authority to appoint school marshals. Article 2.127, Code of Criminal Procedure, which gives school marshals the authority to make arrests and exercise all authorities of a peace officer, is expanded to include school marshals appointed by private schools.

Family Code

Family Code Sec. 264.1211. CAREER DEVELOPMENT AND EDUCATION PROGRAM.

(a) The department shall collaborate with local workforce development boards, foster care transition centers, community and technical colleges, schools, and any other appropriate workforce industry resources to create a program that: (1) assists foster care youth and former foster care youth in obtaining:

(A) a high school diploma or a high school equivalency certificate; and

(B) industry certifications that are necessary for occupations that are in high demand;

(2) provides career guidance to foster care youth and former foster care youth; and

(3) informs foster care youth and former foster care youth about the tuition and fee waivers for institutions of higher education that are available under Section 54.366, Education Code.

(b) Not later than September 1, 2018, the department, in collaboration with the Texas Education Agency, shall produce a report on the program created under Subsection (a). The report must include recommen-

dations for legislative or other action to further develop the program. The department shall submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with jurisdiction over education. This subsection expires September 1, 2019.

Commentary by Karol Davidson

Source: SB 1220

Effective Date: June 1, 2017

Applicability: Applies to requirements affecting the Department of Family and Protective Services (DFPS) on or after the effective date.

Summary of Changes: Section 264.1211, Family Code, is added to require the Department of Family and Protective Services to work with local workforce development boards, foster care transition centers, and technical colleges and schools to develop a program to assist foster youth with obtaining high school diplomas or high school equivalency certificates, industry certificates, and career guidance. DFPS is also required to provide foster youth with information regarding opportunities for tuition and fee waivers to attend institutions of higher learning. DFPS and the Texas Education Agency are required to submit a report on the program and outcomes to the legislature not later than September 1, 2018.

Occupations Code

Occupations Code Sec. 1701.001 LAW ENFORCEMENT OFFICERS. (8) "School marshal" means a person who:

(A) is ~~[employed and]~~ appointed to serve as a school marshal by:

(i) the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code;

(ii) the governing body of a private school under Section 37.0813, Education Code; [;] or

(iii) the governing board of a public junior college under ~~[Article 2.127, Code of Criminal Procedure, and in accordance with and having the rights provided by]~~ Section ~~[37.0811 or] 51.220, Education Code;~~

(B) is licensed under Section 1701.260; and

(C) has powers and duties described by Article 2.127, Code of Criminal Procedure.

Commentary by Karol Davidson

Source: HB 867

Effective Date: June 15, 2017

Applicability: Applies to school marshals appointed and schools approved to appoint school marshals on or after the effective date.

Summary of Changes: The definition of a school marshal in the Occupations Code is revised to include private schools. References to statutory provisions affecting school marshals that were changed during this session and prior sessions are updated.

Occupations Code Sec. 1701.260. TRAINING FOR HOLDERS OF LICENSE TO CARRY A HANDGUN; CERTIFICATRIION OF ELIGIBILITY FOR APPOINTMENT AS SCHOOL MARSHAL.(a) The commission shall establish and maintain a training program open to any employee of a school district, open-enrollment charter school, private school, or public junior college who holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

(a-1) In this section, "private school" has the meaning assigned by Article 2.127, Code of Criminal Procedure.

(j) The commission shall submit the identifying information collected under Subsection (b) for each person licensed by the commission under this section to:

(1) the director of the Department of Public Safety;

(2) the person's employer, if the person is employed by a school district, open-enrollment charter school, private school, or public junior college;

(3) the chief law enforcement officer of the local municipal law enforcement agency if the person is employed at a campus of a school district, open-enrollment charter school, private school, or public junior college located within a municipality;

(4) the sheriff of the county if the person is employed at a campus of a school district, open-enrollment charter school, private school, or public junior college that is not located within a municipality; and

(5) the chief administrator of any peace officer commissioned under Section 37.081 or 51.203, Education Code, if the person is employed at a school district or public junior college that has commissioned a peace officer under either section.

Commentary by Karol Davidson

Source: HB 867

Effective Date: June 15, 2017

Applicability: School marshals appointed by a private school on or after the effective date.

Summary of Changes: Training requirements for school marshals in Section 1701.260, Occupations Code, are expanded to require school marshals appointed by a private school to comply with the training requirements.

3. Legislation Affecting Investigations of Child Abuse or Neglect

Family Code

Family Code Sec. 261.001. DEFINITIONS.

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481,

Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; [ø#]

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

(M) forcing or coercing a child to enter into a marriage.

(3) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(4) "Neglect":

(A) includes:

(i) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) the following acts or omissions by a person:

(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding

failure caused primarily by financial inability unless relief services had been offered and refused;

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; ~~or~~

(iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(i) the child has a severe emotional disturbance;

(ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school; ~~or~~

(E) personnel or a volunteer at a public or private child-care facility that provides

services for the child or at a public or private residential institution or facility where the child resides; or

(F) an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.

Commentary by Kaci Singer

Source: HB 249/SB 11

Effective Date: September 1, 2017

Summary of Changes: These bills were filed as part of the overhaul of the Department of Family and Protective Services in an effort to make investigations of abuse, neglect, and exploitation consistent for that agency. The definition of abuse was modified to include forcing or coercing a child to enter into a marriage. The definition of exploitation was added and is identical to the language in Section 261.401, Family Code, which was repealed. Additionally, the definition of negligence was modified to include the definition that was in Section 261.401, Family Code. Finally, the definition of "person responsible for a child's care, custody, or welfare" was amended to include an employee, volunteer or other person working in a child care facility, as defined in Chapter 42, Human Resources Code.

Family Code Sec. 261.002. CENTRAL REGISTRY. (b) The executive commissioner shall adopt rules necessary to carry out this section. The rules shall:

(1) prohibit the department from making a finding of abuse or neglect against a person in a case in which the department is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child; ~~and~~

(2) establish guidelines for reviewing the records in the registry and removing those records in which the department was named managing conservator of a child who has a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child;

(3) require the department to remove a person's name from the central registry maintained under this section not later than the 10th business day after the date the department receives notice that a finding of abuse and neglect against the person is overturned in:

(A) an administrative review or an appeal of the review conducted under Section 261.309(c);

(B) a review or an appeal of the review conducted by the office of consumer affairs of the department; or

(C) a hearing or an appeal conducted by the State Office of Administrative Hearings; and

(4) require the department to update any relevant department files to reflect an overturned finding of abuse or neglect against a person not later than the 10th business day after the date the finding is overturned in a review, hearing, or appeal described by Subdivision (3).

Commentary by Kaci Singer

Source: HB 2849

Effective Date: September 1, 2017

Summary of Changes: Some individuals have experienced issues when their names have not been removed from the central registry after an abuse or neglect finding has been overturned by the Department of Family and Protective Services (DFPS). This law now requires DFPS to adopt rules that require the removal of the name no later than the 10th business day after receiving notice that the finding of abuse or neglect has been overturned in an administrative review, appeal of the administrative review, review or appeal conducted by DFPS' Office of Consumer Affairs, or a hearing or appeal conducted by the State Office of Administrative Hearings (SOAH). Additionally, the rules must require DFPS to update any relevant files within 10 days.

Family Code Sec. 261.004. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION. In this chapter:

(1) a reference to the executive commissioner or the executive commissioner of the Health and Human Services Commission means the commissioner of the department; and

(2) a reference to the Health and Human Services Commission means the department.

Commentary by Kaci Singer

Source: HB 5

Effective Date: September 1, 2017

Summary of Changes: This session, DFPS was separated from the Health and Human Services Commission (HHSC). This statute makes it clear that even if the term executive commissioner or HHSC is used in Chapter 261, Family Code, it means either DFPS or the commissioner of DFPS.

Family Code. Sec. 261.004. TRACKING OF RECURRENCE OF CHILD ABUSE OR NEGLECT REPORTS. (a) The department shall collect and monitor data regarding repeated reports of abuse or neglect:

(1) involving the same child, including reports of abuse or neglect of the child made while the child resided in other households and reports of

abuse or neglect of the child by different alleged perpetrators made while the child resided in the same household; or

(2) by the same alleged perpetrator.

(b) In monitoring reports of abuse or neglect under Subsection (a), the department shall group together separate reports involving different children residing in the same household.

(c) The department shall consider any report collected under Subsection (a) involving any child or adult who is a part of a child's household when making case priority determinations or when conducting service or safety planning for the child or the child's family.

Commentary by Kaci Singer

Source: SB 11

Effective Date: September 1, 2017

Summary of Changes: DFPS is required to collect and monitor data about repeated reports of abuse or neglect involving the same child or the same perpetrator and to group together different reports involving children in the same household. DFPS is to use that information when making case priority determinations or when conducting service or safety planning.

Family Code Sec. 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT. (b) If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001 [~~or 261.401~~], the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Commentary by Kaci Singer

Source: HB 249

Effective Date: September 1, 2017

Applicability: Applies to a report of suspected abuse, neglect, or exploitation made on or after the effective date

Summary of Changes: This is the section of law that requires professionals, including juvenile probation officers and juvenile detention or correctional officers, who are licensed by the state or who are employees of a facility licensed, certified, or operated by the state and who have direct contact with children in the normal course of official duties, to make a report within 48 hours after suspecting a child has been or may be abused or neglected or is the victim of sexual assault. The failure to make such a report is a Class A misdemeanor, except it is a state jail felony if the person intended to conceal the abuse or neglect.

As part of the effort to make definitions consistent for the purpose of DFPS investigations, Section 261.401, Family Code, was repealed. Section 261.401, Family Code, contained the definitions of abuse, neglect, and exploitation applicable to juveniles in TJJD or other juvenile justice facilities or programs. As filed, this was meant to be a non-substantive conforming change. However, throughout the legislative process, the definitions applicable to TJJD and juvenile justice facilities and programs were relocated to Section 261.405. However, that section number was not inserted here. The impact of this is that, while it is still an offense to fail to report abuse or neglect as defined by Section 261.001, it is technically not an offense if the conduct met the definition of Section 261.405 but not Section 261.001. In the interest of protecting children (and in complying with TJJD standards, as applicable), it is advisable to continue reporting abuse, neglect, or exploitation in the same manner as has always been required.

Family Code Sec. 261.204. ANNUAL CHILD FATALITY REPORT. (a) Not later than March 1 of each year, the ~~[The]~~ department shall publish an ~~[annual]~~ aggregated report using information compiled from each child fatality investigation for which the department made a finding regarding abuse or neglect, including cases in which the department determined the fatality was not the result of abuse or neglect. The report must protect the identity of individuals involved and contain the following information:

- (1) the age and sex of the child and the county in which the fatality occurred;
- (2) whether the state was the managing conservator of the child or whether the child resided with the child's parent, managing conservator, guardian, or other person entitled to the possession of the child at the time of the fatality;
- (3) the relationship to the child of the individual alleged to have abused or neglected the child, if any;
- (4) the number of any department abuse or neglect investigations involving the child or the individual alleged to have abused or neglected the child during the two years preceding the date of the fatality and the results of the investigations;

(5) whether the department offered family-based safety services or conservatorship services to the child or family;

(6) the types of abuse and neglect alleged in the reported investigations, if any; and

(7) any trends identified in the investigations contained in the report.

Commentary by Kaci Singer

Source: HB 1549

Effective Date: September 1, 2017

Summary of Changes: This amendment specifies March 1 as the date by which the annual DFPS report related to abuse and neglect must be published.

Family Code Sec. 261.301. INVESTIGATION OF REPORT. (b) A state agency shall investigate a report that alleges abuse, ~~[or]~~ neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by that agency as provided by Subchapter E. In conducting an investigation for a facility operated, licensed, certified, registered, or listed by the department, the department shall perform the investigation as provided by:

- (1) Subchapter E; and
- (2) the Human Resources Code.

(c) The department is not required to investigate a report that alleges child abuse, ~~[or]~~ neglect, or exploitation by a person other than a person responsible for a child's care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.

Commentary by Kaci Singer

Source: HB 249/SB 11

Effective Date: September 1, 2017

Applicability: Applies to a report of suspected abuse, neglect, or exploitation made after the effective date.

Summary of Changes: Exploitation is added to the allegations that must be investigated by a state agency responsible for operating, licensing, certifying, registering, or listing the facility where the alleged conduct occurred.

Family Code Sec. 261.301 INVESTIGATION OF REPORT. (j) In geographic areas with demonstrated need, the department shall designate employees to serve specifically as investigators and responders for after-hours reports of child abuse or neglect.

Commentary by Kaci Singer

Source: HB 1549

Effective Date: September 1, 2017

Summary of Changes: DFPS is now required, in geographic areas with demonstrated need, to designate employees to service as investigators and responders for after-hours reports of child abuse or neglect.

Family Code Sec. 261.301. INVESTIGATION OF REPORT. (j) In an investigation of a report of abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare, the department shall determine whether the person is an active duty member of the United States armed forces or the spouse of a member on active duty. If the department determines the person is an active duty member of the United States armed forces or the spouse of a member on active duty, the department shall notify the United States Department of Defense Family Advocacy Program at the closest active duty military installation of the investigation.

Commentary by Kaci Singer

Source: HB 2124

Effective Date: September 1, 2017

Applicability: Applies to a report of suspected abuse, neglect, or exploitation made after the effective date.

Summary of Changes: When conducting an investigation, DFPS is required to determine if the alleged perpetrator is an active member of the military or the spouse of an active member of the military; if so, DFPS must notify the closest Department of Defense Family Advocacy Program.

Family Code Sec. 261.3017. CONSULTATION WITH PHYSICIAN NETWORKS AND SYSTEMS REGARDING CERTAIN MEDICAL CONDITIONS. (a) In this section:

(1) "Network" means the Forensic Assessment Center Network.

(2) "System" means the entities that receive grants under the Texas Medical Child Abuse Resources and Education System (MEDCARES) authorized by Chapter 1001, Health and Safety Code.

(b) Any agreement between the department and the network or between the Department of State Health Services and the system to provide assistance in connection with abuse and neglect investigations conducted by the department must require the network and the system to have the ability to obtain consultations with physicians, including radiologists, geneticists, and endocrinologists, who specialize in identifying unique health conditions, including:

- (1) ricketts;
- (2) Ehlers-Danlos Syndrome;
- (3) osteogenesis imperfecta;
- (4) vitamin D deficiency; and
- (5) other similar metabolic bone diseases or connective tissue disorders.

(c) If, during an abuse or neglect investigation or an assessment provided under Subsection (b), the department or a physician in the network determines that a child requires a specialty consultation with a physician, the department or the physician shall refer the child's case to the system for the consultation, if the system has available capacity to take the child's case.

(d) In providing assessments to the department as provided by Subsection (b), the network and the system must use a blind peer review process to resolve cases where physicians in the network or system disagree in the assessment of the causes of a child's injuries or in the presence of a condition listed under Subsection (b).

Commentary by Kaci Singer

Source: HB 2848

Effective Date: September 1, 2017

Summary of Changes: The stated purpose of this bill is to prevent families from false allegations of abuse or neglect and to raise awareness of certain metabolic bone diseases or connective tissues disorders that produce symptoms that might lead a doctor to erroneously believe a child with such a condition has been abused or neglected. Under this statute, any agreement between DFPS and the Forensic Assessment Center Network (network) and any agreement between DSHS and the Texas Medical Child Abuse Resources and Education System (system) to provide assistance in connection with abuse and neglect investigations must require the network and the system to have the ability to consult with doctors and other medical professionals who specialize in identifying the unique health conditions listed.

Family Code Sec. 261.3017. ABBREVIATED INVESTIGATION AND ADMINISTRATIVE CLOSURE OF CERTAIN CASES. (a) A department caseworker may refer a reported case of child abuse or neglect to a department supervisor for abbreviated investigation or administrative closure at any time before the 60th day after the date the report is received if:

(1) there is no prior report of abuse or neglect of the child who is the subject of the report;

(2) the department has not received an additional report of abuse or neglect of the child following the initial report;

(3) after contacting a professional or other credible source, the caseworker determines that the child's safety can be assured without further investigation, response, services, or assistance; and

(4) the caseworker determines that no abuse or neglect occurred.

(b) A department supervisor shall review each reported case of child abuse or neglect that has remained open for more than 60 days and administratively close the case if:

- (1) the supervisor determines that:

(A) the circumstances described by Subsections (a)(1)-(4) exist; and

(B) closing the case would not expose the child to an undue risk of harm; and

(2) the department director grants approval for the administrative closure of the case.

(c) A department supervisor may reassign a reported case of child abuse or neglect that does not qualify for abbreviated investigation or administrative closure under Subsection (a) or (b) to a different department caseworker if the supervisor determines that reassignment would allow the department to make the most effective use of resources to investigate and respond to reported cases of abuse or neglect.

(d) The executive commissioner shall adopt rules necessary to implement this section.

(e) In this section, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Commentary by Kaci Singer

Source: SB 190

Effective Date: June 9, 2017

Summary of Changes: The intent of this statute is to improve DFPS caseload management efficiencies by creating a mechanism for referral of a case to a supervisor for abbreviated investigation or administrative closure before the 60th day if certain criteria exist and to require a supervisor to review each case open for more than 60 days and administratively close the case if certain criteria exist. It also allows for reassignment of cases to make the most effective use of resources to investigate and respond. DFPS' executive commissioner is to adopt rules to implement this statute.

Family Code Sec. 261.304 INVESTIGATION OF ANONYMOUS REPORT. (b) An investigation under this section may include a visit to the child's home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit. ~~and~~ an interview with and examination of the child, and an interview with the child's parents. In addition, the department may interview any other person the department believes may have relevant information.

Commentary by Kaci Singer

Source: SB 1063

Effective Date: September 1, 2017

Applicability: Investigations occurring on or after the effective date

Summary of Changes: This change is meant to prohibit DFPS from visiting the child's home in instances in which the report of alleged abuse or neglect was anonymous and the alleged abuse or neglect can be either confirmed or clearly ruled out without a home visit.

Family Code Section 261.401 AGENCY INVESTIGATION. Sec 261.401(a) is repealed.

Commentary by Kaci Singer

Source: HB 249/SB11

Effective Date: September 1, 2017

Applicability: Applies to reports of abuse, neglect, or exploitation occurring on or after the effective date

Summary of Changes: Section 261.401(a), Family Code, contains definitions of abuse, neglect, and exploitation applicable to state agencies that operate, license, certify, register, or list a facility in which children are located or that provide oversight of programs that serve children. As part of the DFPS overhaul, DFPS wanted to eliminate these definitions and use only one set of definitions for their investigations. Since these definitions also impact TJJD, TJJD requested that they remain intact. The definitions were moved to Section 261.405 so that the definitions TJJD relies upon in its investigations are relocated but unchanged.

Family Code Section 261.401 AGENCY INVESTIGATION. (b) Except as provided by Section 261.404 and Section 531.02013(1)(D), Government Code, a state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

Commentary by Kaci Singer

Source: HB 249

Effective Date: September 1, 2017

Summary of Changes: This language is designed to ensure investigations of certain entities remain with DFPS.

Family Code Sec. 261.405 INVESTIGATIONS IN JUVENILE JUSTICE PROGRAMS AND FACILITIES. (a) Notwithstanding Section 261.001, in ~~[H]~~ this section:

(1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emo-

tional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

(2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(3) "Juvenile justice facility" means a facility operated wholly or partly by the juvenile board, by another governmental unit, or by a private vendor under a contract with the juvenile board, county, or other governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a public or private juvenile pre-adjudication secure detention facility, including a holdover facility;

(B) a public or private juvenile post-adjudication secure correctional facility except for a facility operated solely for children committed to the Texas Juvenile Justice Department; and

(C) a public or private non-secure juvenile post-adjudication residential treatment facility that is not licensed by the Department of Family and Protective Services or the Department of State Health Services.

(4) ~~(2)~~ "Juvenile justice program" means a program or department operated wholly or partly by the juvenile board or by a private vendor under a contract with a juvenile board that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a juvenile justice alternative education program;

(B) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court; and

(C) a juvenile probation department.

(5) "Neglect" means a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

Commentary by Kaci Singer

Source: HB 249/SB 11

Effective Date: September 1, 2017

Applicability: Applies to investigations of alleged abuse, neglect, or exploitation occurring on or after September 1, 2017.

Summary of Changes: These definitions are currently located in Section 261.401(a), which was repealed. The

definitions were relocated to this section. They are unchanged.

Family Code Sec. 261.405 INVESTIGATIONS IN JUVENILE JUSTICE PROGRAMS AND FACILITIES. (c) The Texas Juvenile Justice Department shall make a prompt, thorough ~~conduct an~~ investigation as provided by this chapter if that department receives a report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility. The primary purpose of the investigation shall be the protection of the child.

Commentary by Kaci Singer

Source: HB 249/SB 11

Effective Date: September 1, 2017

Applicability: Applies to investigations of alleged abuse, neglect, or exploitation occurring on or after September 1, 2017.

Summary of Changes: These changes make Section 261.405(c) consistent with Section 261.401(b). This change was necessary at one point in the legislative process because Section 261.401 was being amended in such a way that subsection (b) would not have been applicable to TJJD. That was changed during the legislative process, but this was not. Though potentially superfluous, it does not create a conflict.

4. Legislation Affecting Justice of the Peace and Municipal Courts

Office of Court Administration Study of Fine Only Misdemeanor Records

SB 47

AN ACT relating to a study on the availability of information regarding convictions and deferred dispositions for certain misdemeanors punishable by fine only.

(a) The Office of Court Administration of the Texas Judicial System shall conduct a study on how records regarding misdemeanors punishable by fine only, other than traffic offenses, are held in different Texas counties.

(b) The study must address, with respect to each county:

(1) the public availability of conviction records for misdemeanors punishable by fine only;

(2) the public availability of records relating to suspension of sentence and deferral of final disposition under Article 45.051, Code of Criminal Procedure, for misdemeanors punishable by fine only;

(3) the public availability of records described by Subdivision (1) or (2) of this subsection that are related to a child younger than 18 years of age;

(4) whether public access to and availability of records described by Subdivisions (1)-(3) of this subsection have been expanded or restricted by the county over time;

(5) whether local agencies holding records described by Subdivisions (1)-(3) of this subsection destroy those records;

(6) the reasons and criteria for any destruction of records described by Subdivisions (1)-(3) of this subsection; and

(7) the retention schedule of each local agency holding records described by Subdivisions (1)-(3) of this subsection, if the agency routinely destroys those records.

(c) Not later than January 1, 2019, the Office of Court Administration shall issue a report on the study required under this section to the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the house of representatives and the senate.

(d) This section expires September 1, 2019.

Commentary by Nydia Thomas

Source: SB 47

Effective Date: September 1, 2017

Applicability: Applies to the establishment of a study group on or after the effective date.

Summary of Changes: The Office of Court Administration (OCA) will be required to examine the public availa-

bility of Class C misdemeanor records relating to children under the age of 18 as well as current practices and criteria for destroying certain justice and municipal court records in Texas counties. OCA must report its findings to legislative leadership no later than January 1, 2019. The duties and responsibilities of the study group will end on September 1, 2019.

Office of Court Administration Study of Juvenile Justice Terms

HB 1204

...(a) The Office of Court Administration of the Texas Judicial System shall conduct a study to examine the use of the terms "juvenile," "child," and "minor" throughout the criminal justice and juvenile justice statutes of this state and the varying definitions assigned those terms. The study shall also determine whether:

(1) adjudication under the adult criminal justice system of juveniles charged with misdemeanors punishable by fine only is just and efficient; and

(2) certain procedures under the juvenile justice system if used in the adjudication of juveniles charged with misdemeanors punishable by fine only would provide a more just and efficient process for responding to violations of the law by juvenile offenders.

(b) In conducting the study under Subsection (a) of this section, the Office of Court Administration of the Texas Judicial System shall consult with the chair of the senate criminal justice committee, the chair of the juvenile justice and family issues committee of the house of representatives, and the chair of the corrections committee of the house of representatives.

(c) Not later than December 1, 2018, the Office of Court Administration of the Texas Judicial System shall submit a report containing the results of the study conducted under Subsection (a) of this section to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the senate and the house of representatives.

(d) This section expires December 1, 2019.

Commentary by Kaci Singer

Source: HB 1204

Effective Date: September 1, 2017

Applicability: Applies to the establishment of a study group on or after the effective date.

Summary of Changes: The Office of Court Administration (OCA) is required to examine the use of the terms "juvenile," "child," and "minor" in the criminal and juve-

nile justice statutes in Texas and the varying definitions assigned to those terms. The study is also to determine whether adjudication under the adult criminal justice system for fine only misdemeanors committed by juveniles is just and efficient and whether certain procedures in the juvenile justice system should be used in the adjudication of juveniles charged with misdemeanors punishable by fine only.

Code of Criminal Procedure

Code of Criminal Procedure Art. 14.06. MUST TAKE OFFENDER BEFORE MAGISTRATE. (b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains:

(1) written notice of the time and place the person must appear before a magistrate;

(2) [;] the name and address of the person charged;

(3) [;] the offense charged;

(4) information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount;[;] and

(5) the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

Commentary by Kaci Singer

Source: HB 351/SB 1913

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This change is part of major reforms made to address persons who are held jail because of an inability to pay fines and court costs. Now, when a police officer issues a citation to any person, including a child, for a Class C misdemeanor, the citation must include information regarding alternatives to the full payment of fines or costs if convicted. The alternatives include community service, as discussed herein.

Code of Criminal Procedure Art. 27.14. PLEA OF GUILTY OR NOLO CONTENDERE IN MISDEMEANOR. (b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) ~~[of this article]~~, mail or deliver in person to the court a plea of "guilty" or a plea of "nolo contendere" and a waiver of jury trial. The defendant may also request in writing that the court notify the defendant, at the address stated in the request, of the amount of an appeal bond that the court will approve. If the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. If the court receives a plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant either in person or by regular ~~[certified]~~ mail ~~[; return receipt requested;]~~ of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond that the court will approve. Except as otherwise provided by this code, the ~~[The]~~ defendant shall pay any fine or costs assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice.

Commentary by Kaci Singer

Source: HB 351/SB 1913

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: When a defendant enters a plea of guilty or nolo contendere, the court must give the defendant certain notices. Those notices now include information regarding alternatives to the full payment of any fine or costs assessed against the defendant if the defendant is unable to pay the full amount. The notices may be given in person or now by regular mail, as opposed to certified mail, return receipt requested.

Code of Criminal Procedure Art. 42.15. FINES AND COSTS. (a-1) Notwithstanding any other provision of this article, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Article 27.13, 27.14(a), or 27.16(a), a court shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the court determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the court shall determine whether the fine and costs should be:

(1) required to be paid at some later date or in a specified portion at designated intervals;

(2) discharged by performing community service under, as applicable, Article 43.09(f), Article 45.049, Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, or Article 45.0492, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011;

(3) waived in full or in part under Article 43.091 or 45.0491; or

(4) satisfied through any combination of methods under Subdivisions (1)-(3).

(b) Subject to Subsections (c) and (d) and Article 43.091, when imposing a fine and costs, a court may direct a defendant:

(1) to pay the entire fine and costs when sentence is pronounced;

(2) to pay the entire fine and costs at some later date; or

(3) to pay a specified portion of the fine and costs at designated intervals.

Commentary by Kaci Singer

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: If a defendant enters a plea in open court, the court must now inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the court determines the defendant does not have the resources to immediately pay all or part of the amount owing, the court must determine if the fine and costs should be paid at a later date or in specified intervals; if they should be discharged by performing community service as provided in various statutes; if they should be waived in full or in part; or if they should be satisfied through any combination of methods.

Code of Criminal Procedure Art. 42.15. FINES AND COSTS. (a-1) Notwithstanding any other provision of this article, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Article 27.13, 27.14(a), or 27.16(a), a court shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the court determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the court shall determine whether the fine and costs should be:

(1) subject to Subsection (c), required to be paid at some later date or in a specified portion at designated intervals;

(2) discharged by performing community service under, as applicable, Article 43.09(f), Article 45.049, Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, or Article 45.0492, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011;

(3) waived in full or in part under Article 43.091 or 45.0491; or

(4) satisfied through any combination of methods under Subdivisions (1)-(3).

(b) Subject to Subsections (c) and (d) and Article 43.091, when imposing a fine and costs, a court may direct a defendant:

(1) to pay the entire fine and costs when sentence is pronounced;

(2) to pay the entire fine and costs at some later date; or

(3) to pay a specified portion of the fine and costs at designated intervals.

(c) When imposing a fine and costs in a misdemeanor case, if the court determines that the defendant is unable to immediately pay the fine and costs, the court shall allow the defendant to pay the fine and costs in specified portions at designated intervals.

Commentary by Kaci Singer

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: This differs from the version in HB 351, discussed above, only by the reference “subject to Subsection (c)” found in (a-1)(1). Subsection (c) requires the court to allow a defendant to pay fines and costs in specified portions at designated intervals if unable to immediately pay.

Code of Criminal Procedure Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN ~~INDIGENT~~ DEFENDANTS AND FOR CHILDREN. A court may waive payment of all or part of a fine or costs ~~[cost]~~ imposed on a defendant ~~[who defaults in payment]~~ if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) each alternative method of discharging the fine or cost under Article 43.09 or 42.15 would impose an undue hardship on the defendant.

Commentary by Kaci Singer

Source: HB 351/SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Under current law, the court may waive payment if a defendant is indigent or was a child at the time of the offense only after the defendant defaults. With this change, the court may waive payment of all or part of a fine or costs at any time if the court determines both that the person is indigent, does not have sufficient resources or income to pay, or was a child at the time of the offense and that the alternative methods of discharging the fine or cost under Article 43.09 or Article 42.15 would impose an undue hardship on the defendant.

Code of Criminal Procedure Art. 44.2812. CONFIDENTIAL RECORDS RELATED TO FINE-ONLY MISDEMEANOR. (a) Except as provided by Subsection (b) and Article 45.0218(b), following the fifth anniversary of the date of a final conviction of, or of a dismissal after deferral of disposition for, a misdemeanor offense punishable by fine only, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, that are held or stored by or for an appellate court and relate to the person who was convicted of, or who received a dismissal after deferral of disposition for, the offense are confidential and may not be disclosed to the public.

(b) This article does not apply to:

(1) an opinion issued by an appellate court; or

(2) records, files, and information described by Subsection (a) that relate to an offense that is sexual in nature, as determined by the holder of the records, files, or information.

Commentary by Kaci Singer

Source: HB 681

Effective Date: September 1, 2017

Applicability: Applies to the disclosure of information on or after the effective date of the act, regardless of when the offense that is the subject of the information was committed.

Summary of Changes: Under current law, Class C misdemeanors, with the exception of those committed by children under the age of 17, are open to the public. Under this provision, five years from the date of a final conviction or of a dismissal after deferral of disposition, the records and files held or stored by or for an appellate court are confidential and may not be disclosed to the public. The provision does not apply to an opinion issued by an appellate court or records that related to an offense that is sexual in nature, as determined by the holder of the records. This provision does not apply to the records of a child because they are covered under Article 44.2811,

which makes them confidential without any waiting period.

Code of Criminal Procedure Art. 45.0216 EX-PUNCTION OF CERTAIN CONVICTION RECORDS.(f) The court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) [~~51.03(b)(7)~~], Family Code, while the person was a child.

Commentary by Kaci Singer

Source: HB 29/SB 1488

Effective Date: September 1, 2017

Summary of Changes: This is a non-substantive change which renumbers the definition of conduct indicating a need for supervision. Section 51.03(b)(6) refers to sexting.

Code of Criminal Procedure, Art. 45.0218. CONFIDENTIAL RECORDS RELATED TO FINE-ONLY MISDEMEANOR. (a) Except as provided by Subsections (b) and (c), following the fifth anniversary of the date of a final conviction of, or of a dismissal after deferral of disposition for, a misdemeanor offense punishable by fine only, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, that are held or stored by or for a municipal or justice court and relate to the person who was convicted of, or who received a dismissal after deferral of disposition for, the offense are confidential and may not be disclosed to the public.

(b) Records, files, and information subject to Subsection (a) may be open to inspection only:

(1) by judges or court staff;

(2) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(3) by the Department of Public Safety;

(4) by the attorney representing the state;

(5) by the defendant or the defendant's counsel;

(6) if the offense is a traffic offense, an insurance company or surety company authorized to write motor vehicle liability insurance in this state; or

(7) for the purpose of complying with a requirement under federal law or if federal law requires the disclosure as a condition of receiving federal highway funds.

(c) This article does not apply to records, files, and information described by Subsection (a) that relate to an offense that is sexual in nature, as determined by the holder of the records, files, or information.

Commentary by Kaci Singer

Source: HB 681

Effective Date: September 1, 2017

Applicability: Applies to the disclosure of information on or after the effective date of the act, regardless of when the offense that is the subject of the information was committed.

Summary of Changes: Under current law, Class C misdemeanors, with the exception of those committed by children under the age of 17, are open to the public. Under this provision, five years from the date of a final conviction or of a dismissal after deferral of disposition, the records and files held or stored by or for a justice or municipal court are confidential and may not be disclosed to the public. The provision does not apply to an opinion issued by an appellate court or records that relate to an offense that is sexual in nature, as determined by the holder of the records. This provision does not apply to the records of a child since they are covered under Article 45.0217, which makes them confidential without any waiting period.

Code of Criminal Procedure Art. 45.041 JUDGMENT. (a-1) Notwithstanding any other provision of this article, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Article 27.14(a) or 27.16(a), the justice or judge shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the justice or judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the justice or judge shall determine whether the fine and costs should be:

(1) required to be paid at some later date or in a specified portion at designated intervals;

(2) discharged by performing community service under, as applicable, Article 45.049, Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, or Article 45.0492, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011;

(3) waived in full or in part under Article 45.0491; or

(4) satisfied through any combination of methods under Subdivisions (1)-(3).

(b) Subject to Subsections (b-2) and (b-3) and Article 45.0491, the justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced;

(B) the entire fine and costs at some later date; or

(C) a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense; and

(3) to satisfy any other sanction authorized by law.

Commentary by Nydia Thomas

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.041, Code of Criminal Procedure, relates to justice and municipal court judgments. New Subsection (a-1) authorizes the judge to inquire whether a defendant has sufficient resources or income to immediately pay a fine or cost. If the defendant is unable to pay, the court can determine whether to order the person to pay the amount over a specified interval; waive the fine or cost in full or part; discharge the amount through community service; or satisfy the obligation using one or a combination of the described methods. This provision is subject to the Article 45.0491, which authorizes the court to waive the payment of fines and cost upon a determination that the child or defendant before the court is indigent.

Code of Criminal Procedure Art. 45.041 JUDGMENT. (a-1) Notwithstanding any other provision of this article, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Article 27.14(a) or 27.16(a), the justice or judge shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the justice or judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the justice or judge shall determine whether the fine and costs should be:

(1) subject to Subsection (b-2), required to be paid at some later date or in a specified portion at designated intervals;

(2) discharged by performing community service under, as applicable, Article 45.049, Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Ses-

sion, 2011, or Article 45.0492, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011;

(3) waived in full or in part under Article 45.0491; or

(4) satisfied through any combination of methods under Subdivisions (1)-(3).

(b) Subject to Subsections (b-2) and (b-3) and Article 45.0491, the justice or judge may direct the defendant:

(1) to pay:

(A) the entire fine and costs when sentence is pronounced;

(B) the entire fine and costs at some later date; or

(C) a specified portion of the fine and costs at designated intervals;

(2) if applicable, to make restitution to any victim of the offense; and

(3) to satisfy any other sanction authorized by law.

(b-2) When imposing a fine and costs, if the justice or judge determines that the defendant is unable to immediately pay the fine and costs, the justice or judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.

Commentary by Kaci Singer

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: This differs from the version in HB 351, discussed above, only by the reference “subject to Subsection (b-2)” found in (a-1)(1). Subsection (b-2) requires the court to allow a defendant to pay fines and costs in specified portions at designated intervals if unable to immediately pay.

Code of Criminal Procedure Art. 45.045. CAPI-AS PRO FINE. (a-2) Before a court may issue a capias pro fine for the defendant's failure to satisfy the judgment according to its terms:

(1) the court must provide by regular mail to the defendant notice that includes:

(A) a statement that the defendant has failed to satisfy the judgment according to its terms; and

(B) a date and time when the court will hold a hearing on the defendant's failure to satisfy the judgment according to its terms; and

(2) either:

(A) the defendant fails to appear at the hearing; or

(B) based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.

(a-3) The court shall recall a capias pro fine if, before the capias pro fine is executed:

(1) the defendant voluntarily appears to resolve the amount owed; and

(2) the amount owed is resolved in any manner authorized by this chapter.

Commentary by Nydia Thomas

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a capias pro fine issued on or after the effective date.

Summary of Changes: A *capias pro fine* is a special type of arrest warrant that may be issued when a defendant does not satisfy the terms of a judgment of the justice or municipal court. Regarding defendants who are minors, *capias pro fines* may only be issued when the individual is at least 17 years of age for an offense committed while under age 17. In those limited circumstances, the court must have initiated contempt proceedings to collect the fine before utilizing this last resort measure, which could potentially result in adult sanctions. As amended, Article 45.045. Code of Criminal Procedure, outlines in Subsections (a-2) and (a-3) the procedural steps that the court must take before issuing a *capias*. Notice, by regular mail, must be provided in a statement that specifies: 1) the defendant failed to satisfy the judgment; and 2) the date and time of the hearing. The court may then issue a *capias* if the defendant fails to appear at the hearing or, even if the defendant appears, the court finds that a *capias* should be issued based on evidence presented at the hearing. The *capias* must be recalled if the defendant appears to resolve, and does in fact resolve, the amount before the *capias* is executed.

Code of Criminal Procedure Art. 45.045 CAPI-AS PRO FINE. (a-2) The court may not issue a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and:

(1) the defendant fails to appear at the hearing; or

(2) based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.

(a-3) The court shall recall a capias pro fine if, before the capias pro fine is executed:

(1) the defendant voluntarily appears to resolve the amount owed; and

(2) the amount owed is resolved in any manner authorized by this chapter.

Commentary by Nydia Thomas

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a *capias pro fine* issued on or after the effective date.

Summary of Changes: This session, there were two amendments containing different language regarding the process for issuing a *capias pro fine* under Article 45.045 (a-2) and (a-3), Code of Criminal Procedure. This version specifies that a *capias* may not issue unless the court holds a hearing on the defendant's ability to satisfy the judgment. The court must find that the defendant failed to appear or it must consider other evidence presented at a hearing. The *capias* shall be recalled if the defendant satisfies the fine or cost before execution of the *capias*.

Code of Criminal Procedure Art. 45.049. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS. (b) In the justice's or judge's order requiring a defendant to perform ~~participate in~~ community service ~~[work]~~ under this article, the justice or judge must specify:

(1) the number of hours of community service the defendant is required to perform; and

(2) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service ~~[work]~~.

(c) The justice or judge may order the defendant to perform community service ~~[work]~~ under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) ~~only~~ for:

(A) a governmental entity;

(B) ~~or~~ a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(c-1) An ~~[A governmental]~~ entity ~~[or nonprofit organization]~~ that accepts a defendant under this article to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service ~~[work]~~ and report on the defendant's community service ~~[work]~~ to the justice or judge who ordered the ~~[community]~~ service.

(d) A justice or judge may not order a defendant to perform more than 16 hours per week of community service under this article unless the justice or judge determines that requiring the defendant to perform ~~[work]~~ additional hours does not impose an undue ~~[work-a]~~ hardship on the defendant or the defendant's dependents.

(e) A defendant is considered to have discharged not less than \$100 ~~[\$50]~~ of fines or costs for each eight hours of community service performed under this article.

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community service ~~[manual labor]~~ performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(g) This subsection applies only to a defendant who is charged with a traffic offense or an offense under Section 106.05, Alcoholic Beverage Code, and is a resident of this state. If under Article 45.051(b)(10), Code of Criminal Procedure, the judge requires the defendant to perform community service as a condition of the deferral, the defendant is entitled to elect whether to perform the required ~~[governmental entity or nonprofit organization community]~~ service in:

(1) the county in which the court is located; or

(2) the county in which the defendant resides, but only if the applicable entity ~~[or organization]~~ agrees to:

(A) supervise, either on-site or remotely, the defendant in the performance of the defendant's community service ~~[work]~~; and

(B) report to the court on the defendant's community service ~~[work]~~.

Commentary by Kaci Singer

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.049, Code of Criminal Procedure, relates to community service in satisfaction of a fine or cost ordered by the justice or municipal court. Both HB 351 and SB 1913 modified this statute in similar, but not identical, ways. Both HB 351 and SB 1913 change the language from "participate in" community service to "perform" community service, require the judge to specify not only the number of hours the defendant

must perform but also the date by which documentation verifying completion must be presented to the court, allow community service to be performed at education institutions and organizations that are not non-profits, and increase from \$50 to \$100 the amount of fines or costs considered to be discharged for each 8 hours of community service performed. Both also modify the language so that attending a work and job skills training program, a preparatory class for the high school equivalency examination, or a similar activity is considered performing community service. The two bills differ, however, in that HB 351 also allows attending an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, and any similar activity to be considered community service while SB 1913 does not. Despite the differences, it is unlikely the two bills will be considered in conflict, thereby allowing them both to be given effect and allowing courts to order and grant community service in accordance with the more inclusive list of activities in HB 351.

Code of Criminal Procedure Art. 45.049. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS.

Language identical to that featured in HB 351, as shown above, has been omitted.

...(c) The justice or judge may order the defendant to perform community service [~~work~~] under this article:

(1) by attending a work and job skills training program, a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, or similar activity; or

(2) [~~only~~] for:

(A) a governmental entity;

(B) [~~or~~] a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

Commentary by Kaci Singer

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.049, Code of Criminal Procedure, as amended by SB 1913, includes only attending a work and job skills training program, a preparatory class for the high school equivalency examination, or a similar activity as additional activities considered to be performing community service. HB 351 also adds attend-

ing an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, and any similar activities to the list of community service activities. Despite the differences, it is unlikely the two bills will be considered in conflict, thereby allowing them both to be given effect and allowing courts to order and grant community service in accordance with the more inclusive list of activities in HB 351.

Code of Criminal Procedure Art 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN [~~INDIGENT~~] DEFENDANTS AND FOR CHILDREN. (a) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of a fine or costs imposed on a defendant [~~who defaults in payment~~] if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine or [~~and~~] costs under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

Commentary by Nydia Thomas

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Newly titled Article 45.0491, Code of Criminal Procedure, authorizes a justice or municipal court to waive payment if the defendant is determined to be indigent or does not have sufficient resources to pay all or part of a fine or cost. As such, the court has authority to order the waiver without having to wait for the defendant to default in payment.

Code of Criminal Procedure Art 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN.

Language identical to that featured in HB 351, as shown above, has been omitted.

...(b) A defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine or costs if the defendant:

(1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or

(2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

Commentary by Nydia Thomas

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Two amendments to Section 45.0491 contained different language regarding waiver of fines and costs in justice or municipal court. SB 1913 provides additional language to give the court and practitioners guidance on determining whether a defendant is indigent. Subsection (b) specifies that a defendant is presumed indigent if he or she is in the conservatorship of the Department of Family and Protective Services (DFPS) or was under conservatorship at the time of the offense. In addition, this presumption is also afforded to a homeless child or unaccompanied youth as defined under federal law and to one who was so designated at the time of the offense.

Code of Criminal Procedure Art. 45.0492. [as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011]. COMMUNITY SERVICE [~~OR TUTORING~~] IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS. (b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or costs by performing community service [~~or attending a tutoring program that is satisfactory to the court~~]. A defendant may discharge an obligation to perform community service [~~or attend a tutoring program~~] under this article by paying at any time the fine and costs assessed.

(c) In the justice's or judge's order requiring a defendant to perform [~~participate in~~] community service [~~work or a tutoring program~~] under this article, the justice or judge must specify:

(1) the number of hours of community service the defendant is required to perform; and

(2) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service [~~work or attend tutoring~~].

(d) The justice or judge may order the defendant to perform community service [~~work~~] under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program;

(G) a tutoring program; or

(H) any similar activity; or

(2) [~~only~~] for:

(A) a governmental entity;

(B) [~~or~~] a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(d-1) An [~~A governmental~~] entity [~~or nonprofit organization~~] that accepts a defendant under this article to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service [~~work~~] and report on the defendant's community service [~~work~~] to the justice or judge who ordered the [~~community~~] service.

(f) A justice or judge may not order a defendant to perform more than 16 hours of community service per week [~~or attend more than 16 hours of tutoring per week~~] under this article unless the justice or judge determines that requiring the defendant to perform additional hours [~~of work or tutoring~~] does not impose an undue [~~cause a~~] hardship on the defendant or the defendant's family. For purposes of this subsection, "family" has the meaning assigned by Section 71.003, Family Code.

(g) A defendant is considered to have discharged not less than \$100 [~~\$50~~] of fines or costs for each eight hours of community service performed [~~or tutoring program attended~~] under this article.

(h) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service [~~, nonprofit organization, or tutoring program~~] is not liable for damages arising from an act or failure to act in connection with community service [~~an activity~~] performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, grossly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Commentary by Kaci Singer

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: In 2011, two different bills created Article 45.0492, Code of Criminal Procedure. The version set out here is the one created by HB 350 (2011) and is applicable only to defendants under the age of 17 who are assessed fines or court costs for a Class C misdemeanor occurring in a building or on the grounds of the

primary or secondary school at which the defendant was enrolled at the time of the offense. This version allows a defendant to discharge a fine or costs by performing community service or attending tutoring. This session, two different bills modified this version of Article 45.0492 in similar, but not identical, ways. Both HB 351 and SB 1913 change the language from “participate in” community service to “perform” community service, require the judge to specify not only the number of hours the defendant must perform but also the date by which documentation verifying completion must be presented to the court, allow community service to be performed at education institutions and organizations that are not non-profits, and increase from \$50 to \$100 the amount of fines or costs considered to be discharged for each 8 hours of community service performed. Both also modify the language so that attending tutoring is now considered performing community service and add attending a work and job skills training program, a preparatory class for the high school equivalency examination, or a similar activity to the list of activities considered to be performing community service. The two bills differ, however, in that HB 351 also allows attending an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, and any similar activity to be considered community service while SB 1913 does not. Despite the differences, it is unlikely the two bills will be considered in conflict, thereby allowing them both to be given effect and allowing courts to order and grant community service in accordance with the more inclusive list of activities in HB 351. The repeal of subsection (e) in both versions is non-substantive because the concept of the tutoring program agreeing to supervise the defendant is inherent in the changes to consider attendance at a tutoring program to be community service and the requirement in subsection (d-1) that an entity accepting a defendant to perform community service must agree to supervise the defendant and report his or her progress to the court.

Code of Criminal Procedure Art. 45.0492. [as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011]. COMMUNITY SERVICE ~~[OR TUTORING]~~ IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS.

Language identical to that featured in HB 351, as shown above, has been omitted.

...(d) The justice or judge may order the defendant to perform community service [work] under this article:

(1) by attending a tutoring program, work and job skills training program, preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, or similar activity; or

(2) [only] for:___

(A) a governmental entity;

(B) [or] a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

Commentary by Kaci Singer

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.0492, Code of Criminal Procedure, as amended by SB 1913, includes only attending a work and job skills training program, a preparatory class for the high school equivalency examination, or a similar activity as additional activities considered to be performing community service. HB 351 also adds attending an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, and any similar activities to the list of community service activities. Despite the differences, it is unlikely the two bills will be considered in conflict, thereby allowing them both to be given effect and allowing courts to order and grant community service in accordance with the more inclusive list of activities in HB 351.

Code of Criminal Procedure Art. 45.0492. [as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011]. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS. (a) This article applies only to a defendant younger than 17 years of age who is assessed a fine or costs for a Class C misdemeanor.

(b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(c) In the justice's or judge's order requiring a defendant to perform community service under this article, the justice or judge shall specify:

(1) the number of hours of community service the defendant is required to perform, ~~[and may]~~ not to exceed [order more than] 200 hours; and

(2) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service.

(d) The justice or judge may order the defendant to perform community service [~~work~~] under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) [~~only~~] for:

(A) a governmental entity;

(B) [~~or~~] a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(d-1) An [A governmental] entity [or nonprofit organization] that accepts a defendant under this article to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service [work] and report on the defendant's community service [work] to the justice or judge who ordered the [community] service.

(e) A justice or judge may not order a defendant to perform more than 16 hours of community service per week under this article unless the justice or judge determines that requiring the defendant to perform additional hours [of work] does not impose an undue [cause a] hardship on the defendant or the defendant's family. For purposes of this subsection, "family" has the meaning assigned by Section 71.003, Family Code.

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(g) A local juvenile probation department or a court-related services office may provide the administra-

tive and other services necessary for supervision of a defendant required to perform community service under this article.

(h) A defendant is considered to have discharged not less than \$100 of fines or costs for each eight hours of community service performed under this article.

Commentary by Kaci Singer

Source: HB 351

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: In 2011, two different bills created Article 45.0492, Code of Criminal Procedure. The version set out here is the one created by HB 1964 (2011) and is applicable to defendants under the age of 17 who are assessed fines or court costs for a Class C misdemeanor regardless of where the offense occurred (HB 350, which created the other version, is limited to offenses occurring on school property). This version allows a defendant to discharge a fine or costs by performing community service but not by attending tutoring (which is allowed by the HB 350 version). This session, two different bills modified this version of Article 45.0492 in similar, but not identical, ways. Both HB 351 and SB 1913 change the language from "participate in" community service to "perform" community service, require the judge to specify not only the number of hours the defendant must perform but also the date by which documentation verifying completion must be presented to the court, allow community service to be performed at education institutions and organization that are not non-profits, and increase from \$50 to \$100 the amount of fines or costs considered to be discharged for each 8 hours of community service performed. Both also expand what may be considered community service, although they do it in different ways. SB 1913 modifies the language so that attending a work and job skills training program, a preparatory class for the high school equivalency examination, or a similar activity is considered community service. HB 351 includes those activities as well as attendance at an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, or any similar activity as community service. SB 1913 does not include these additional activities. Despite the differences, it is unlikely the two bills will be considered in conflict, thereby allowing them both to be given effect and allowing courts to order and grant community service in accordance with the more inclusive list of activities in HB 351. It is important to note that the difference in this version of Article 45.0492 and the version created by HB 350 in 2011 (discussed above) is that attendance at a tutoring program is not considered community service under this version; therefore, tutoring is only authorized to be considered community service for a Class C misdemeanor

occurring on the property of the school the defendant attends.

Code of Criminal Procedure Art. 45.0492. [as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011]. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS.

Language identical to that featured in HB 351, as shown above, has been omitted.

(d) The justice or judge may order the defendant to perform community service [work] under this article:

(1) by attending a work and job skills training program, preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, or similar activity; or

(2) [only] for:

(A) a governmental entity;

(B) [or] a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

Commentary by Kaci Singer

Source: SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a sentencing proceeding that commences before, on, or after the effective date.

Summary of Changes: Article 45.0492, Code of Criminal Procedure, as amended by SB 1913, includes only attending a work and job skills training program, a preparatory class for the high school equivalency examination, or a similar activity as additional activities that are considered community service. HB 351 also adds attending an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, and any similar activities to the list of community service activities. Despite the differences, it is unlikely the two bills will be considered in conflict, thereby allowing them both to be given effect and allowing courts to order and grant community service in accordance with the more inclusive list of activities in HB 351.

Code of Criminal Procedure Art. 45.050. FAILURE TO PAY FINE; FAILURE TO APPEAR; CONTEMPT: JUVENILES. (b) A justice or municipal court may not order the confinement of a child for:

(1) the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only; ~~[or]~~

(2) the failure to appear for an offense committed by the child; or

(3) contempt of another order of a justice or municipal court.

Commentary by Nydia Thomas

Source: HB 3272

Effective Date: September 1, 2017

Applicability: Applies to proceedings on or after the effective date.

Summary of Changes: Article 45.050, Code of Criminal Procedure, prohibits justice and municipal courts from confining a child for failing to pay a fine or for contempt of a dispositional order of the court. As enacted, Subsection (b) adds the prohibition to confine for failure to appear for an offense committed by a child.

Code of Criminal Procedure Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. In issuing the order of deferral, the judge may impose a special expense fee on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The special expense fee may be collected at any time before the date on which the period of probation ends. The judge may elect not to impose the special expense fee for good cause shown by the defendant. If the judge orders the collection of a special expense fee, the judge shall require that the amount of the special expense fee be credited toward the payment of the amount of the fine imposed by the judge. An order of deferral under this subsection terminates any liability under a [~~bail bond or an appearance~~] bond given for the charge.

Commentary by Nydia Thomas

Source: HB 351/SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a bond executed on or after the effective date.

Summary of Changes: This change to Article 45.051 specifies that an order of deferral terminates liability under a bond. Prior language that terminated liability for a bail bond or appearance bonds was removed.

Code of Criminal Procedure Art. 45.0511. DRIVING SAFETY COURSE OR MOTORCYCLE OPERATOR COURSE DISMISSAL PROCEDURES.

(t) An order of deferral under Subsection (c) terminates any liability under a ~~[bail bond or appearance]~~ bond given for the charge.

Commentary by Nydia Thomas

Source: HB 351/SB 1913

Effective Date: September 1, 2017

Applicability: Applies to a bond executed on or after the effective date.

Summary of Changes: This change to Article 45.0511, Code of Criminal Procedure, relating to driving safety and motorcycle operation specifies that an order of deferral terminates liability under a bond. Prior language that terminated liability for a bail bond or appearance bond was removed.

Government Code

Government Code Sec. 30.00014. APPEAL.

(a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record. The state has the right to appeal as provided by Article 44.01, Code of Criminal Procedure. The county criminal courts or county criminal courts of appeal in the county in which the municipality is located or the municipal courts of appeal have jurisdiction of appeals from a municipal court of record. If there is no county criminal court, county criminal court of appeal, or municipal court of appeal, the county courts at law have jurisdiction of an appeal. If a county does not have a county court at law under Chapter 25, the county court has jurisdiction of any appeal.

Commentary by Nydia Thomas

Source: HB 4147

Effective Date: September 1, 2017

Applicability: Clarifies existing law regarding a judgment or conviction that occurs in a municipal court of record and is appealed to a county court.

Summary of Changes: Section 30.00014 of the Government Code gives a defendant a right to appeal a judgment or conviction of a municipal court. As amended, this provision will clarify in law that the constitutional county court has jurisdiction to hear any appeal if the county does not have a county criminal court, county criminal court of appeal, municipal court of appeal, or county court at law.

Transportation Code

Transportation Code Sec. 521.292. DEPARTMENT'S DETERMINATION FOR LICENSE SUSPENSION. (a) The department shall suspend the person's license if the department determines that the person:

(1) has operated a motor vehicle on a highway while the person's license was suspended, canceled, disqualified, or revoked, or without a license after an application for a license was denied;

(2) is a habitually reckless or negligent operator of a motor vehicle;

(3) is a habitual violator of the traffic laws;

(4) has permitted the unlawful or fraudulent use of the person's license;

(5) has committed an offense in another state or Canadian province that, if committed in this state, would be grounds for suspension;

(6) has been convicted of two or more separate offenses of a violation of a restriction imposed on the use of the license;

(7) has been responsible as a driver for any accident resulting in serious personal injury or serious property damage;

(8) is under 18 years of age ~~[the holder of a provisional license issued under Section 521.123]~~ and has been convicted of two or more moving violations committed within a 12-month period; or

(9) has committed an offense under Section 545.421.

Commentary by Nydia Thomas

Source: HB 3272

Effective Date: September 1, 2017

Applicability: Applies to an action to suspend, revoke or cancel a driver's license or personal identification on or after the effective date.

Summary of Changes: Section 521.292, Transportation Code, requires the Department of Public Safety (DPS) to suspend a driver's license or provisional license of a person after making certain findings. As amended, DPS must suspend the driver's license of a person under the age of 18 who has been convicted of two or more moving violations committed within a 12-month period. Previously this law applied only to a person with a provisional license (i.e. learner's permit).

Transportation Code Sec. 521.294. DEPARTMENT'S DETERMINATION FOR LICENSE REVOCATION. The department shall revoke the person's license if the department determines that the person:

(1) is incapable of safely operating a motor vehicle;

(2) has not complied with the terms of a citation issued by a jurisdiction that is a party to the Nonresident Violator Compact of 1977 for a traffic violation to which that compact applies;

(3) has failed to provide medical records or has failed to undergo medical or other examinations as required by a panel of the medical advisory board;

(4) has failed to pass an examination required by the director under this chapter; or

(5) ~~has been reported by a court under Section 521.3452 for failure to appear unless the court files an additional report on final disposition of the case;~~

~~[(6) has been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of a fine for a misdemeanor punishable only by fine, other than a failure reported under Section 521.3452, committed by a person who is at least 14 years of age but younger than 17 years of age when the offense was committed, unless the court files an additional report on final disposition of the case; or~~

(7) has committed an offense in another state or Canadian province that, if committed in this state, would be grounds for revocation.

Commentary by Nydia Thomas

Source: HB 3272

Effective Date: September 1, 2017

Applicability: Applies to an action to suspend, revoke or cancel a driver's license or personal identification on or after the effective date.

Summary of Changes: The amendment to Section 521.294, Transportation Code, strikes language that would require DPS to revoke the license of minors for failure to appear in justice or municipal court for a Chapter 521, Transportation Code, alcohol violation. Text in subdivision 6 was also deleted, thereby removing the mandatory license suspension for individuals who failed to appear or who defaulted on a payment of a fine or court cost in the preceding two years for an offense committed when the person was at least 14 and not yet 17 years of age.

Transportation Code Sec. 521.300. HEARING: LOCATION; PRESIDING OFFICER. (a-1) A hearing under this subchapter may be conducted by telephone or video conference call if the presiding officer provides notice to the affected parties.

Commentary by Nydia Thomas

Source: HB 3272

Effective Date: September 1, 2017

Applicability: Applies to an action to suspend, revoke or cancel a driver's license or personal identification on or after the effective date.

Summary of Changes: Section 521.300, Transportation Code, permits DPS to conduct a hearing relating to the denial, suspension, or revocation of a driver's license or personal identification license by telephone or video conference call upon notice to the affected parties.

Transportation Code Sec. 521.314. CANCELLATION AUTHORITY. The department may cancel a license or certificate if it determines that the holder:

(1) is ~~was~~ not entitled to the license or certificate; ~~or~~

(2) failed to give required information in the application for the license or certificate; or

(3) paid the required fee for the license or certificate by check or credit card that was returned to the department or not honored by the funding institution or credit card company due to insufficient funds, a closed account, or any other reason.

Commentary by Nydia Thomas

Source: HB 3272

Effective Date: September 1, 2017

Applicability: Applies to an action to suspend, revoke or cancel a driver's license or personal identification on or after the effective date.

Summary of Changes: As amended, Section 521.314, Transportation Code, allows DPS to cancel a license or certificate if the person is not entitled to a license. This change in verb tense is for clarifying purposes. Newly added subdivision (3) provides that the cancellation is authorized if the holder paid the required fee for the license or certificate by check or credit card that was returned or not honored due to insufficient funds, a closed account, or any other reason.

5. Legislation Affecting Juvenile Records

Family Code Chapter 58, SUBCHAPTER A. CREATION AND CONFIDENTIALITY OF JUVENILE RECORDS. The heading to Subchapter A, Chapter 58, Family Code, is amended to read as follows: SUBCHAPTER A. CREATION AND CONFIDENTIALITY OF JUVENILE RECORDS

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to citations on or after the effective date.

Summary of Changes: This amendment renames Subchapter A. Chapter 58, Family Code, from “Records” to “Creation and Confidentiality of Juvenile Records” to provide specificity regarding the subject of the subchapter.

Family Code Sec. 58.001. LAW ENFORCEMENT COLLECTION AND TRANSMITTAL OF RECORDS OF CHILDREN.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to law enforcement records relating to children collected on or after the effective date.

Summary of Changes: The heading of Section 58.001, Family Code, was modified to better reflect that it applies to law enforcement and that it applies to both the collection and transmittal of records of children.

Family Code Sec. 58.001. COLLECTION OF RECORDS OF CHILDREN. The following sections are repealed: Section 58.001(b).

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: Section 58.001(b) provided that the records may be shared as set forth in Subsection B. However, Subchapter B applies to the ability of the Department of Public Safety (DPS) to share records. The provision authorizing law enforcement entities to share records exists in Subchapter A. The reference is unnecessary as sharing of records has its own designated section.

Family Code Sec. 58.002. PHOTOGRAPHS AND FINGERPRINTS OF CHILDREN. (a) Except as provided by Chapter 63, Code of Criminal Procedure, a

child may not be photographed or fingerprinted without the consent of the juvenile court unless the child is:

(1) taken into custody; or

(2) referred to the juvenile court for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail, regardless of whether the child has been taken into custody.

(b) On or before December 31 of each year, the head of each municipal or county law enforcement agency located in a county shall certify to the juvenile board for that county that the photographs and fingerprints required to be destroyed under Section 58.001 have been destroyed. The juvenile board may ~~shall~~ conduct or cause to be conducted an audit of the records of the law enforcement agency to verify the destruction of the photographs and fingerprints and the law enforcement agency shall make its records available for this purpose. If the audit shows that the certification provided by the head of the law enforcement agency is false, that person is subject to prosecution for perjury under Chapter 37, Penal Code.

(c) This section does not prohibit a law enforcement officer from photographing or fingerprinting a child who is not in custody or who has not been referred to the juvenile court for conduct that constitutes a felony or misdemeanor punishable by confinement in jail if the child's parent or guardian voluntarily consents in writing to the photographing or fingerprinting of the child. Consent of the child's parent or guardian is not required to photograph or fingerprint a child described by Subsection (a)(1) or (2).

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date of creation.

Summary of Changes: The modifications in Subsections (a) and (c) of 58.002 are intended to correct confusion with regard to whether parental consent is required for law enforcement to fingerprint and photograph a child referred to juvenile court for a felony or jailable misdemeanor but not taken into custody. Some have opined that subsection (c) is meant to require parental consent before photographing or fingerprinting a child in the instance of a non-custodial referral. However, the language in Subsection (c) does not, nor is it meant to, require parental consent; it simply provides that nothing in Section 58.002 is meant to prohibit law enforcement from photographing and fingerprinting a child not in custody, such as when parents choose to do so in “missing child kits.” In other words, even though Subsection (a) provides that the only children whom law enforcement may fingerprint or photograph without juvenile court consent are those taken into custody or referred to juvenile court for a felony or

jailable misdemeanor but not taken into custody, juvenile court consent is not required for children who do not fall into these categories if the parent consents in writing to the photographing or fingerprinting.

Evidence for this interpretation comes from the history of Section 58.002. Prior to 1999, subsection (a) provided that fingerprinting and photographing without juvenile court consent was allowed only for those taken into custody. In 1999, subsection (a) was amended to add the language to make it clear juvenile court consent was not required for a law enforcement officer to fingerprint or photograph a child referred to juvenile court for a felony or jailable misdemeanor without being taken into custody. In the 1999 Juvenile Law Section Special Legislative Newsletter, Neil Nichols explained, "The added language is intended to correct some confusion that a child may not be fingerprinted and photographed if the child is referred to the juvenile court without being taken into custody. That interpretation conflicts with §58.104 which requires children referred for delinquent conduct to be fingerprinted for the juvenile justice information system."

Unfortunately, Subsection (c) was not amended in 1999 to include the language related to non-custodial referrals, creating a lack of uniformity in the section that may have contributed to the current confusion. The purpose of the change now is to create uniformity and eliminate the confusion by making it clear that parental consent is not required to fingerprint or photograph a child referred to juvenile court for a felony or jailable misdemeanor without being taken into custody, as is consistent with Section 58.104, which specifies such information is included in the juvenile justice information system.

Subsection (b) requires the head of each municipal or county law enforcement agency to certify to the juvenile board that the photographs and fingerprints required to be destroyed under Section 58.001 (when the child's case is not referred to juvenile court within 10 days) have been destroyed. Currently, it also requires the juvenile board to audit the records to verify the destruction. The juvenile board now has the option to conduct such audit but is not mandated to do so. The portion of the law that provides that if an audit shows that the certification is false, the person who made the certification is subject to prosecution for perjury, has not been changed.

Family Code Sec. 58.0021. FINGERPRINTS OR PHOTOGRAPHS FOR COMPARISON IN INVESTIGATION. (b) A law enforcement officer may take temporary custody of a child to take the child's photograph, or may obtain a photograph of a child from a juvenile probation department in possession of a photograph of the child, if:

(2) the officer has probable cause to believe that the child's photograph will be of material assistance in the investigation of that conduct.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant photographs, regardless of the date of creation.

Summary of Changes: This change allows law enforcement to obtain a photograph of a child from a juvenile probation department that has a photograph if the officer has probable cause to believe the child has engaged in delinquent conduct and to believe the photograph will be of material assistance in the investigation of the conduct. This change will contribute to efficiency by allowing law enforcement to obtain an existing photograph without having to take a child into temporary custody to photograph the child.

Family Code Sec. 58.003. SEALING OF RECORDS is repealed.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date of creation.

Summary of Changes: The sealing laws that currently exist have been repealed. New sealing laws have been added to a newly created Subchapter C-1 of Chapter 58. The changes are discussed herein. It does bear noting that sealing for specialty courts was repealed and not replaced in the new Subchapter. The rationale is that it is important for probation departments and juvenile courts to know what services have been provided to children. While the statute on specialty court sealing allows officials in the county or judicial district that provided the services to maintain a list even after the records are sealed, the sealing means that the information is not available to other counties or judicial districts. The lack of information can result in inefficiencies and repeated use of programs that are not having the impact sought.

Another portion of the law that was repealed and not replaced in the new section is the requirement that a court seal records when all charges are found not true. This was likely an oversight that hopefully will be revisited next session.

Family Code Sec. 58.003. SEALING OF RECORDS. (c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court, on the court's own motion and without a hearing, shall order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(5) [~~51.03(b)(6)~~] or taken into custody to determine whether the child engaged in conduct indicating a need for supervision described by Section 51.03(b)(5) [~~51.03(b)(6)~~]. This subsection applies

only to records related to conduct indicating a need for supervision described by Section 51.03(b)(5) [~~51.03(b)(6)~~].

Commentary by Kaci Singer

Source: HB 29

Effective Date: September 1, 2017

Summary of Changes: This was a non-substantive change related to numbering conflicts that existed in the definition of conduct indicating a need for supervision after multiple bills changed that definition in 2015. Because Section 58.003 was repealed in a substantive change, these changes should not have effect.

Family Code Sec. 58.004. REDACTION OF VICTIM'S PERSONALLY IDENTIFIABLE INFORMATION. (a) Notwithstanding any other law, before disclosing any juvenile court record [~~or file~~] of a child as authorized by this chapter or other law, the custodian of the record [~~or file~~] must redact any personally identifiable information about a victim of the child's delinquent conduct or conduct indicating a need for supervision who was under 18 years of age on the date the conduct occurred.

(b) This section does not apply to information that is:

- (1) necessary for an agency to provide services to the victim;
- (2) necessary for law enforcement purposes; [~~or~~]
- (3) shared within the statewide juvenile information and case management system established under Subchapter E;
- (4) shared with an attorney representing the child in a proceeding under this title; or
- (5) shared with an attorney representing any other person in a juvenile or criminal court proceeding arising from the same act or conduct for which the child was referred to juvenile court.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date of creation.

Summary of Changes: Section 58.004 was first created in 2015, requiring that before any juvenile court record of a child was disclosed, the custodian must redact any personally identifiable information about a victim under the age of 18 when the conduct occurred. Exceptions to the redaction were made if the information was necessary to provide services to the victim, necessary for law enforcement purposes, or shared in JCMS. No exception was made if the disclosure was to a defense attorney, despite the constitutional right to confront one's accuser and the

need for such information by the defense. This provision now makes it clear that non-redacted records are to be provided to an attorney representing the child in a juvenile court proceeding as well as to an attorney representing any other person in a juvenile or criminal court proceeding arising from the same act or conduct for which the child was referred to juvenile court. The term 'file' has been deleted here and throughout Chapter 58 because there is no practical distinction between the word "record" and the word "file," but the fact that they are both used has led to confusion as people have tried to determine what distinction is intended.

Family Code Sec. 58.005. CONFIDENTIALITY OF FACILITY RECORDS. (a) This section applies only to the inspection, copying, and maintenance of a record [~~Records and files~~] concerning a child and to the storage of information from which a record could be generated, including personally identifiable information, [~~and~~] information obtained for the purpose of diagnosis, examination, evaluation, or treatment of the child or for making a referral for treatment of the [a] child, and other records or information, created by or in the possession of:

- (1) the Texas Juvenile Justice Department;
- (2) an entity having custody of the child under a contract with the Texas Juvenile Justice Department; or
- (3) another [~~by a~~] public or private agency or institution [~~providing supervision of a child by arrangement of the juvenile court or~~] having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department.

(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;
- (5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
- (6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
- (7) with permission from [~~leave of~~] the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) This section does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or [apply to information collected under Section 58.104 or under Subchapter] D-1.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date of creation.

Summary of Changes: Prior to 2003, Section 58.005 applied to treatment records of a child. In 2003, this statute was amended to include "records and files of a child, including personally identifiable information." Since that time, there has been continued interpretation by some that this continued to mean only treatment records while others interpret it to be all records, including treatment records, in the possession of an entity having custody of the juvenile pursuant to court order. There has also been continued confusion regarding which statute is applicable between this and Section 58.007 when the entity with custody is a facility operated by a juvenile probation department. To eliminate confusion and create parity, Section 58.005 has been modified to make it clear that it applies to all records in the possession of any facility having custody of a child, including the Texas Juvenile Justice Department, a facility contracting with the Texas Juvenile Justice Department, or a facility operated by or under contract with a juvenile board or juvenile probation department. The entity's records related to children, including any information from which a record could be generated, may be shared only as provided by this section.

Family Code, Sec. 58.0051. INTERAGENCY SHARING OF EDUCATIONAL RECORDS. (2) "Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

(A) a state or local juvenile justice agency as defined by Section 58.101;

(B) health and human services agencies, as defined by Section 531.001, Government Code, and the Health and Human Services Commission;

(C) the Department of Family and Protective Services;

(D) the Department of Public Safety;

(E) [~~(D)~~] the Texas Education Agency;

(F) [~~(E)~~] an independent school district;

(G) [~~(F)~~] a juvenile justice alternative education

program;

(H) [~~(G)~~] a charter school;

(I) [~~(H)~~] a local mental health or mental retardation authority;

(J) [~~(I)~~] a court with jurisdiction over juveniles;

(K) [~~(J)~~] a district attorney's office;

(L) [~~(K)~~] a county attorney's office; and

(M) [~~(L)~~] a children's advocacy center established under Section 264.402.

Commentary by Kaci Singer

Source: HB 5

Effective Date: September 1, 2017

Summary of Changes: This change reflects the designation of the Department of Family and Protective Services as a separate agency from the Health and Human Services Commission.

Family Code Sec. 58.0052. INTERAGENCY SHARING OF CERTAIN NONEDUCATIONAL RECORDS. (b-1) In addition to the information provided under Subsection (b), the Department of Family and Protective Services and the Texas Juvenile Justice Department shall coordinate and develop protocols for sharing with each other, on request, any other information relating to a multi-system youth necessary to:

(1) identify and coordinate the provision of services to the youth and prevent duplication of services;

(2) enhance rehabilitation of the youth;

and

(3) improve and maintain community

safety.

Commentary by Kaci Singer

Source: HB 7

Effective Date: September 1, 2017

Summary of Changes: Section 58.0052 currently requires juvenile service providers to, upon request, share certain information with one another regarding a multi-system youth (personal health information and history of governmental services provided to the youth, including identity, medical records, assessment results, special needs, program placements, and psychological diagnoses) if the information is necessary to identify a multi-system youth, coordinate and monitor care for a multi-system youth, and improve the quality of juvenile services provided to a multi-system youth. This change requires DFPS and TJJD to coordinate and develop protocols for sharing that information as well as any other information necessary to identify and coordinate the provision of services to the youth and prevent duplication of services, enhance rehabilitation of the youth, and improve and maintain community safety.

Family Code Sec. 58.0052. INTERAGENCY SHARING OF CERTAIN NONEDUCATIONAL RECORDS. (a) In this section:

(1) "Juvenile justice agency" has the meaning assigned by Section 58.101.

(2) "Juvenile service provider" has the meaning assigned by Section 58.0051.

(3) [(2)] "Multi-system youth" means a person who:

(A) is younger than 19 years of age; and

(B) has received services from two or more juvenile service providers.

(4) [(3)] "Personal health information" means personally identifiable information regarding a multi-system youth's physical or mental health or the provision of or payment for health care services, including case management services, to a multi-system youth. The term does not include clinical psychological notes or substance abuse treatment information.

(b-1) At the request of a state or local juvenile justice agency, the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services shall, not later than the 14th business day after the date of the request, share with the juvenile justice agency information in the possession of the department or contractor that is necessary to improve and maintain community safety or that assists the agency in the continuation of services for or providing services to a multi-system youth who:

(1) is or has been in the temporary or permanent managing conservatorship of the department;

(2) is or was the subject of a family-based safety services case with the department;

(3) has been reported as an alleged victim of abuse or neglect to the department;

(4) is the perpetrator in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred; or

(5) is a victim in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred.

(b-2) At the request of the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services, a state or local juvenile justice agency shall share with the department or contractor information in the possession of the juvenile justice agency that is necessary to improve and maintain community safety or that assists the department or contractor in the continuation of services for or providing services to a multi-system youth who is or has been in the custody or control of the juvenile justice agency.

Commentary by Kaci Singer

Source: HB 1521

Effective Date: June 15, 2017

Applicability: Applies to records shared on or after the effective date, regardless of when the record was created

Summary of Changes: In addition to the other sharing requirements under Section 58.0052, DFPS or a single source continuum contractor that provides foster care ser-

vices under contract with DFPS must share with a requesting local or state juvenile justice agency (TJJD) or juvenile probation department or juvenile facility information in its possession that is necessary to improve and maintain community safety or that assists the juvenile justice agency in providing or continuing services to a multi-system youth who is or has been in DFPS conservatorship; is or was the subject of family-based services with DFPS; has been reported to DFPS as an alleged victim of abuse or neglect; or is the perpetrator or victim in a case in which DFPS concluded there was reason to believe abuse or neglect occurred. The information must be shared no later than the 14th business day after the request. Additionally, state and local juvenile justice agencies must, upon request, share information with DFPS or a single source continuum contractor providing foster care services if the information is necessary to improve and maintain community safety or assist DFPS or the contractor in providing services to a multi-system youth who is or has been in the custody or control of the juvenile justice agency. Single source continuum contractors are non-profit entities with an organizational mission focused on child welfare that contract with DFPS to provide foster care service delivery.

Family Code Sec. 58.0052. INTERAGENCY SHARING OF CERTAIN NONEDUCATIONAL RECORDS. (b) Subject to Subsection (c), at [A*] the request of a juvenile service provider, another juvenile service provider shall disclose to that provider a multi-system youth's personal health information or a history of governmental services provided to the multi-system youth, including:

- (1) identity records;
- (2) medical and dental records;
- (3) assessment or diagnostic test results;
- (4) special needs;
- (5) program placements; ~~and~~
- (6) psychological diagnoses; and
- (7) other related records or information.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to records shared on or after the effective date, regardless of when the record was created.

Summary of Changes: Expands the records that are to be shared between juvenile service providers regarding multi-system youth so that they include dental records, diagnostic test results, and all other related records or information about the juvenile.

Family Code Sec. 58.006. DESTRUCTION OF CERTAIN RECORDS is repealed.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: Section 58.006, related to destruction of records when there is no probable cause, was repealed and the content was moved to newly created Section 58.263.

Family Code Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR, AND COURT [PHYSICAL] RECORDS [OR FILES]. (a) This section applies only to the inspection, copying, and maintenance of a ~~[physical]~~ record ~~[or file]~~ concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a ~~[physical]~~ record ~~[or file]~~ could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1. This section does not apply to a record ~~[or file]~~ relating to a child that is:

(1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2) maintained by a municipal or justice court; or

(3) subject to disclosure under Chapter 62, Code of Criminal Procedure.

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, [and files] of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney representing [for] a party in a [to the] proceeding under this title;

(4) a person or entity to whom the child is referred for treatment or services, if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(5) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(6) [(5)] with permission from [leave of] the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b-1) A person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.

(g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record of adjudication, certify and provide the prosecuting attorney with a copy of the record. If a record has been sealed under this chapter, the juvenile court may not provide a copy of the record to a prosecuting attorney under this subsection.

(i) In addition to the authority to release information under Subsection (b)(6) [~~(b)(5)~~], a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of when they were created.

Summary of Changes: This section was modified to remove its applicability to law enforcement records and to make it clear that it applies to probation department, prosecutor, and court records. References to “file” and “physical” were deleted to eliminate confusion and make it clear this applies to all records and information from which a record could be generated, regardless of format. The section was amended to clarify that only an attorney representing a party to a Title 3 proceeding (parties: child, parent, State) in a Title 3 proceeding may have access to the records. For example, an attorney representing a parent in a non-Title 3 proceeding, such as a divorce case, is not entitled to have access to the records under this provision. Access is now given to a person or entity to whom the child has been referred for treatment or services, as long as that person or entity has entered into a written confidentiality agreement to protect the disclosed information; this is consistent with Section 58.005. Subsection (b-1) contains the substance of what is currently Section 58.210(c), which was repealed as part of the repeal of Subchapter C, in order to ensure that juveniles preparing a motion or application for sealing are still entitled to access their records. Subsection (g) was amended to make it clear that once a record has been sealed, a prosecuting attorney is not entitled to have access to the record under Section 58.007. The only mechanism for the prosecutor to have access to a sealed record is as set out in Section 58.260, discussed herein.

Family Code Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR, AND COURT [PHYSICAL] RECORDS [OR FILES]. The fol-

lowing sections are repealed: Section 58.007(c), (d), (e), and (f).

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: The repealed sections all related to the ability of law enforcement to share records. These provisions have been relocated to Section 58.008 without substantive revision.

Family Code Sec. 58.0071. DESTRUCTION OF CERTAIN PHYSICAL RECORDS AND FILES. This section is repealed.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: This section regarding spring cleaning destruction was repealed. However, the substance of the section was added to newly created Section 58.264, discussed herein.

Family Code Sec. 58.00711. RECORDS RELATING TO CHILDREN CHARGED WITH, CONVICTED OF, OR RECEIVING DEFERRED DISPOSITION FOR FINE-ONLY MISDEMEANORS. This section is repealed.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: The repealed section relates to the confidentiality of fine-only misdemeanors in justice and municipal court. It was added in 2011, when those records were made confidential. Since Title 3 is about juvenile court and juvenile records only, this provision is misplaced. It is duplicative of language in Chapter 45, Code of Criminal Procedure, which is the proper location for such a provision.

Family Code Sec. 58.0072. DISSEMINATION OF JUVENILE JUSTICE INFORMATION. (c) The Texas Juvenile Justice Department may grant the following entities access to juvenile justice information for research and statistical purposes or for any other purpose approved by the department:

- (1) criminal justice agencies as defined by Section 411.082, Government Code;
- (2) the Texas Education Agency, as authorized under Section 37.084, Education Code;
- (3) any agency under the authority of the Health and Human Services Commission; ~~or~~
- (4) the Department of Family and Protective Services; or

(5) a public or private university.

Commentary by Kaci Singer

Source: HB 5

Effective Date: September 1, 2017

Summary of Changes: This change was made to reflect changes made to separate DFPS from HHSC. However, this section was renumbered to Section 58.009 and modified substantively, so this change should be read into that section to give both effect.

Family Code Sec. 58.008. CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS. (a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and to the storage of information, by electronic means or otherwise, concerning the child from which a record could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B. This section does not apply to a record relating to a child that is:

(1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2) maintained by a municipal or justice court; or

(3) subject to disclosure under Chapter 62, Code of Criminal Procedure.

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

(c) The law enforcement records of a person with a determinate sentence who is transferred to the Texas Department of Criminal Justice may be transferred to a central state or federal depository for adult records after the date of transfer and may be shared in accordance with the laws governing the adult records in the depository.

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or any other law.

(f) If a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of when they were created.

Summary of Changes: The subsections that were located in Section 58.007 that addressed the ability of law enforcement to share juvenile records were moved to this new section since they differ from the sharing allowed by probation departments, courts, and prosecutors. The provisions were not substantively changed. It bears noting that Subsection (b) includes a reference to "Subsection (d)," which is how the provision read when in Section 58.007. However, the former Subsection (d) language now is located in Section 58.008(c) and that is the subsection that should have been referenced in Subsection (b).

Family Code Sec. 58.009. DISSEMINATION OF JUVENILE JUSTICE INFORMATION BY THE TEXAS JUVENILE JUSTICE DEPARTMENT.

(a) Except as provided by this section, juvenile justice information collected and maintained by the Texas Juvenile Justice Department for statistical and research purposes is confidential information for the use of the department and may not be disseminated by the department.

(b) Juvenile justice information consists of information of the type described by Section 58.104, including statistical data in any form or medium collected, maintained, or submitted to the Texas Juvenile Justice Department under Section 221.007, Human Resources Code.

(c) The Texas Juvenile Justice Department may grant the following entities access to juvenile justice information for research and statistical purposes or for any other purpose approved by the department:

(1) criminal justice agencies as defined by Section 411.082, Government Code;

(2) the Texas Education Agency, as authorized under Section 37.084, Education Code;

(3) any agency under the authority of the Health and Human Services Commission; or

(4) a public or private university.

(d) The Texas Juvenile Justice Department may grant the following entities access to juvenile justice information only for a purpose beneficial to and approved by the department to:

(1) a person working on a research or statistical project that:

(A) is funded in whole or in part by state or federal funds; and

(B) meets the requirements of and is approved by the department; or

(2) a person working on a research or statistical project that:

(A) meets the requirements of and is approved by the department; and

(B) [governmental entity that] has a specific agreement with the department that, [if the agreement]:

(i) [(A)] specifically authorizes access to information;

(ii) [(B)] limits the use of information to the purposes for which the information is given;

(iii) [(C)] ensures the security and confidentiality of the information; and

(iv) [(D)] provides for sanctions if a requirement imposed under Subparagraph (i), (ii), or (iii) [Paragraph (A), (B), or (C)] is violated.

(e) The Texas Juvenile Justice Department shall grant access to juvenile justice information for legislative purposes under Section 552.008, Government Code.

(f) The Texas Juvenile Justice Department may not release juvenile justice information in identifiable form, except for information released under Subsection (c)(1), (2), or (3) or under the terms of an agreement entered into under Subsection (d)(2). For purposes of this subsection, identifiable information means information that contains a juvenile offender's name or other personal identifiers or that can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular juvenile offender.

(g) Except as provided by Subsection (e), the [The] Texas Juvenile Justice Department is permitted but not required to release or disclose juvenile justice information to any person [not] identified under this section.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to juvenile justice records maintained by TJJD for research and statistical purposes, regardless of when they were created.

Summary of Changes: Current Section 58.0072 was renumbered to Section 58.009 and the heading was modified to include the reference to TJJD. TJJD has the ability to share records with certain entities for research and statistical purposes. Under current law, individual research-

ers may be provided the information only if the research project is funded in whole or in part by state or federal funds. With this change, TJJD will be able to release information to an individual conducting a research or statistical project that is for a purpose beneficial to or approved by TJJD, regardless of how the project is funded. A written agreement regarding the information will be required, as is currently required for research and statistical projects. Subsection (g) was modified to make it clear that, with the exception of a release for legislative purposes under Section 552.008, Government Code, this is a section of law that allows but does not require TJJD to release juvenile justice information.

Family Code Sec. 58.102. JUVENILE JUSTICE INFORMATION SYSTEM. (c) The department may not collect, ~~or~~ retain, or share information relating to a juvenile except as provided by ~~this~~ chapter ~~prohibits~~.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to juvenile records maintained by DPS, regardless of when the records were created.

Summary of Changes: This statute has been changed so that it accurately reflects that the language of Chapter 58 sets out the limited instances in which juvenile records may be shared rather than sets out the instances in which sharing is prohibited. Sharing is generally prohibited unless expressly allowed by the law. The changes in Section 58.102 are designed to conform to this concept.

Family Code Sec. 58.104. TYPES OF INFORMATION COLLECTED. (a) Subject to Subsection (f), the juvenile justice information system shall consist of information relating to delinquent conduct committed or alleged to have been committed by a juvenile offender that, if the conduct had been committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only, including information relating to:

- (1) the juvenile offender;
- (2) the intake or referral of the juvenile offender into the juvenile justice system;
- (3) the detention of the juvenile offender;
- (4) the prosecution of the juvenile offender;
- (5) the disposition of the juvenile offender's case, including the name and description of any program to which the juvenile offender is referred; ~~and~~
- (6) the probation or commitment of the juvenile offender; and

(7) the termination of probation supervision or discharge from commitment of the juvenile offender.

(b) To the extent possible and subject to Subsection (a), the department shall include in the juvenile justice information system the following information for each juvenile offender taken into custody, detained, or referred under this title for delinquent conduct:

- (1) the juvenile offender's name, including other names by which the juvenile offender is known;
- (2) the juvenile offender's date and place of birth;
- (3) the juvenile offender's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- (4) the juvenile offender's state identification number, and other identifying information, as determined by the department;
- (5) the juvenile offender's fingerprints;
- (6) the juvenile offender's last known residential address, including the census tract number designation for the address;
- (7) the name and identifying number of the agency that took into custody or detained the juvenile offender;
- (8) the date of detention or custody;
- (9) the conduct for which the juvenile offender was taken into custody, detained, or referred, including level and degree of the alleged offense;
- (10) the name and identifying number of the juvenile intake agency or juvenile probation office;
- (11) each disposition by the juvenile intake agency or juvenile probation office;
- (12) the date of disposition by the juvenile intake agency or juvenile probation office;
- (13) the name and identifying number of the prosecutor's office;
- (14) each disposition by the prosecutor;
- (15) the date of disposition by the prosecutor;
- (16) the name and identifying number of the court;
- (17) each disposition by the court, including information concerning probation or custody of a juvenile offender by a juvenile justice agency ~~or probation~~;
- (18) the date of disposition by the court;
- (19) the date any probation supervision, including deferred prosecution supervision, was terminated;
- (20) any commitment or release under supervision by the Texas Juvenile Justice Department;
- (21) ~~(20)~~ the date of any commitment or release under supervision by the Texas Juvenile Justice Department; and

(22) [(21)] a description of each appellate proceeding.

(f) Records maintained by the department in the depository are subject to being sealed under Subchapter C-1 [Section 58.003].

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to records in the Juvenile Justice Information System.

Summary of Changes: Section 58.104 sets out what information is collected by DPS in the Juvenile Justice Information System (JJIS). This section was modified to clarify that the system also includes information related to alleged delinquent conduct, not only proven delinquent conduct. It was also amended to make it clear that the system includes information regarding the date a child is discharged from probation or deferred prosecution or the date the child is discharged from TJJD. These dates are important to have a complete record with DPS and are also important in the context of sealing and sex offender registration. A person becomes eligible for sealing by application after a certain amount of time has passed since the date of discharge. Recording the discharge date enables an easier calculation of this eligibility date. Additionally, if a juvenile is required to register as a sex offender, that duty expires 10 years after discharge; recording this information in JJIS allows for an easier calculation of this expiration date.

Family Code Sec. 58.106. DISSEMINATION OF CONFIDENTIAL INFORMATION IN JUVENILE JUSTICE INFORMATION SYSTEM. Subsection (a-1) is repealed.

(a-2) Information disseminated under Subsection (a) [~~or (a-1)~~] remains confidential after dissemination and may be disclosed by the recipient only as provided by this title.

(b) Subsection (a) does [Subsections (a) and (a-1) ~~do~~] not apply to a document maintained by a juvenile justice or law enforcement agency that is the source of information collected by the department.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all records in the Juvenile Justice Information System (JJIS), regardless of the date of creation.

Summary of Changes: Section 58.106(a) provides that DPS may disseminate information in the Juvenile Justice Information System (JJIS) to: the military (with permission of the juvenile); a criminal justice agency; a non-criminal justice agency authorized by federal statute or executive order to receive the information; a juvenile jus-

tice agency; TJJD; the office of independent ombudsman of TJJD; a court exercising jurisdiction over a juvenile; and DFPS for certain background check purposes. Section 58.106(a-1) allows DPS to also disseminate information in JJIS to any noncriminal justice agency that is allowed under Section 411.083, Government Code, to have access to adult criminal history record information; the only exception is that unadjudicated misdemeanors may not be disclosed to those entities. The repeal of Section 58.106(a-1) extends this protection to all juvenile records, meaning they can no longer be released by DPS to the same extent that adult records can be released. This is consistent with the limitations on release by probation departments, courts, and law enforcement agencies and is also consistent with the goals of the juvenile justice system set out in Section 51.01, which includes “to remove, where appropriate, the taint of criminality from children committing certain unlawful acts.” Subsections (a-2) and (b) were modified to reflect the repeal of (a-1) and subsection (b) was modified to make it clear that the information that may be released under subsection (a) is only the summary information that exists in JJIS and not the documents that are the source of that summary information.

Family Code, Sec. 58.111. LOCAL DATA ADVISORY BOARDS. The commissioners court of each county may create a local data advisory board to perform the same duties relating to the juvenile justice information system as the duties performed by a local data advisory board in relation to the criminal history record system under Article 66.354 [~~60.09~~], Code of Criminal Procedure.

Commentary by Kaci Singer

Source: HB 2931

Effective Date: January 1, 2019

Summary of Changes: This is a nonsubstantive numbering change as part of an ongoing project to provide non-substantive revisions of the Code of Criminal Procedure, which began during the 83rd Legislature (2013).

Family Code, Sec. 58.112. REPORT TO THE LEGISLATURE is transferred to Chapter 203, Human Resources Code, and redesignated as Section 203.019, Human Resources Code.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: Section 58.112 requires TJJD to make a report to the legislature concerning the ages, races, and counties of residence of children certified as adults, committed to TJJD, placed on probation, or discharged without any disposition. This section has now been moved to Chapter 203, Human Resources Code,

which includes other reports TJJJ is required to make to the legislature.

Family Code, Chapter 58, Subchapter C. AUTOMATIC RESTRICTION OF ACCESS TO RECORDS: This Subchapter is repealed.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date created.

Summary of Changes: Restricted access was created to give juveniles some automatic protection, without action by the juvenile, from having their records shared as extensively as adult records are shared while still allowing law enforcement agencies to have those records. Over time, restricted access has become a complicated and unwieldy process. With the repeal of Section 58.106(a-1), all juvenile records will now have better protection from disclosure. Additionally, through the creation of a sealing without application process, which builds on the “automatic sealing” process created in 2015, there is a mechanism for certain juveniles to obtain additional protection in the form of sealing without having to take any action.

Family Code Sec. 58.202. EXEMPTED RECORDS. The following records are exempt from this subchapter:

(1) sex offender registration records maintained by the department or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and

(2) records relating to a criminal combination or criminal street gang maintained by the department or a local law enforcement agency under Chapter 67 [6+], Code of Criminal Procedure.

Commentary by Kaci Singer

Source: HB 2931

Effective Date: January 1, 2019

Summary of Changes: This is a nonsubstantive numbering change as part of an ongoing project to provide a nonsubstantive revision of the Code of Criminal Procedure, which began during the 83rd Legislature (2013). Because this section was repealed by SB 1304, this change will have no impact.

Family Code, Chapter 58, Subchapter C-1. SEALING AND DESTRUCTION OF JUVENILE RECORDS.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: A new Subchapter C-1 has been created to contain the statutes relating to sealing and destruction of juvenile records.

Family Code Sec. 58.251. DEFINITIONS. In this subchapter:

(1) "Electronic record" means an entry in a computer file or information on microfilm, microfiche, or any other electronic storage media.

(2) "Juvenile matter" means a referral to a juvenile court or juvenile probation department and all related court proceedings and outcomes, if any.

(3) "Physical record" means a paper copy of a record.

(4) "Record" means any documentation related to a juvenile matter, including information contained in that documentation.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: Terms used in new Subchapter C-1 have been defined.

Family Code Sec. 58.252. EXEMPTED RECORDS. The following records are exempt from this subchapter:

(1) records relating to a criminal combination or criminal street gang maintained by the Department of Public Safety or a local law enforcement agency under Chapter 61, Code of Criminal Procedure;

(2) sex offender registration records maintained by the Department of Public Safety or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and

(3) records collected or maintained by the Texas Juvenile Justice Department for statistical and research purposes, including data submitted under Section 221.007, Human Resources Code, and personally identifiable information.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to relevant records, regardless of when created.

Summary of Changes: Gang database and sex offender registration records maintained by DPS are not subject to sealing or destruction under this subchapter. Additionally, records maintained by TJJJ for statistical and research purposes are not subject to sealing or destruction.

Family Code Sec. 58.253. SEALING RECORDS WITHOUT APPLICATION: DELINQUENT

CONDUCT. (a) This section does not apply to the records of a child referred to a juvenile court or juvenile probation department solely for conduct indicating a need for supervision.

(b) A person who was referred to a juvenile probation department for delinquent conduct is entitled to have all records related to the person's juvenile matters, including records relating to any matters involving conduct indicating a need for supervision, sealed without applying to the juvenile court if the person:

(1) is at least 19 years of age;

(2) has not been adjudicated as having engaged in delinquent conduct or, if adjudicated for delinquent conduct, was not adjudicated for delinquent conduct violating a penal law of the grade of felony;

(3) does not have any pending delinquent conduct matters;

(4) has not been transferred by a juvenile court to a criminal court for prosecution under Section 54.02;

(5) has not as an adult been convicted of a felony or a misdemeanor punishable by confinement in jail; and

(6) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to relevant records, regardless of the date they were created.

Summary of Changes: In 2015, the legislature created “automatic sealing.” There were administrative complications in implementing those provisions. Sealing without application is designed to build on the concept of “automatic sealing,” which initiates the sealing process independent of a request from the juvenile. Because of the complexity of sealing, even when done by operation of law, the term “automatic sealing” was modified to “sealing without application.” Additionally, this term distinguishes this type of sealing from “sealing with application.” A juvenile who has been adjudicated for a misdemeanor but not a felony or who has been referred to juvenile court for delinquent conduct but not adjudicated, regardless of if the delinquent conduct was a felony or misdemeanor, is eligible for sealing without application at the age of 19 if the juvenile has no pending delinquent conduct matters, was not certified as an adult, has not been convicted of a class B misdemeanor or higher as an adult, and has no pending adult charges of a Class B misdemeanor or higher. Juveniles referred only for conduct indicating a need for supervision are not included in this provision; they are addressed elsewhere. A juvenile adjudicated for a felony is not eligible for sealing without application but is eligible for sealing with an application, discussed herein.

Family Code Sec. 58.254. CERTIFICATION OF ELIGIBILITY FOR SEALING RECORDS WITHOUT APPLICATION FOR DELINQUENT CONDUCT.

(a) The Department of Public Safety shall certify to a juvenile probation department that has submitted records to the juvenile justice information system that the records relating to a person referred to the juvenile probation department appear to be eligible for sealing under Section 58.253.

(b) The Department of Public Safety may issue the certification described by Subsection (a) by electronic means, including by electronic mail.

(c) Except as provided by Subsection (d), not later than the 60th day after the date the juvenile probation department receives a certification under Subsection (a), the juvenile probation department shall:

(1) give notice of the receipt of the certification to the juvenile court; and

(2) provide the court with a list of all referrals received by the department relating to that person and the outcome of each referral.

(d) If a juvenile probation department has reason to believe the records of the person for whom the department received a certification under Subsection (a) are not eligible to be sealed, the juvenile probation department shall notify the Department of Public Safety not later than the 15th day after the date the juvenile probation department received the certification. If the juvenile probation department later determines that the person's records are eligible to be sealed, the juvenile probation department shall notify the juvenile court and provide the court the information described by Subsection (c) not later than the 30th day after the date of the determination.

(e) If, after receiving a certification under Subsection (a), the juvenile probation department determines that the person's records are not eligible to be sealed, the juvenile probation department and the Department of Public Safety shall update the juvenile justice information system to reflect that determination and no further action related to the records is required.

(f) Not later than the 60th day after the date a juvenile court receives notice from a juvenile probation department under Subsection (c), the juvenile court shall issue an order sealing all records relating to the person named in the certification.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to relevant records, regardless of date of creation.

Summary of Changes: This section establishes an entitlement to have records sealed without filing an application with the juvenile court if certain criteria are met and establishes a statutory process to implement sealing without application. Like it has always done for restricted access and is currently doing for “automatic sealing,” DPS notifies each probation department that has reported in-

formation to the Juvenile Justice Information System (JJIS) that the records of a particular juvenile appear eligible for sealing. The juvenile probation department must, within 60 days, give the juvenile court notice that it has received the certification from DPS and provide the court with a list of all referrals relating to the juvenile and the outcome of each referral. Not later than 60 days after receiving that notice, the court shall issue an order sealing all records relating to the juvenile. If, at the time it receives the notification from DPS, the juvenile probation department has reason to believe the records are not eligible, the probation department must, within 15 days, notify DPS. If it is determined the records are in fact not eligible for sealing, the juvenile probation department and DPS work together to update JJIS so that it is correct. If it is determined the records are eligible for sealing, the probation department has 30 days from the date of such determination to give the court notice and the list of referrals and outcomes. The court has 60 days to issue the sealing order. If a person is not eligible on the 19th birthday due to a pending juvenile or adult matter that is ultimately resolved in a manner that does not make the person ineligible for sealing, the probation department will receive the notice of eligibility from DPS once that resolution is recorded in the DPS system.

Family Code Sec. 58.255. SEALING RECORDS WITHOUT APPLICATION: CONDUCT INDICATING NEED FOR SUPERVISION. (a) A person who was referred to a juvenile probation department for conduct indicating a need for supervision is entitled to have all records related to all conduct indicating a need for supervision matters sealed without applying to the juvenile court if the person:

(1) is at least 18 years of age;
(2) has not been referred to the juvenile probation department for delinquent conduct;
(3) has not as an adult been convicted of a felony; and
(4) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

(b) The juvenile probation department shall:

(1) give the juvenile court notice that a person's records are eligible for sealing under Subsection (a); and

(2) provide the juvenile court with a list of all referrals relating to that person received by the department and the outcome of each referral.

(c) Not later than the 60th day after the date the juvenile court receives notice from the juvenile probation department under Subsection (b), the juvenile court shall issue an order sealing all records relating to the person named in the notice.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date of creation.

Summary of Changes: Because records relating to Conduct Indicating a Need for Supervision (CINS) are not recorded in the Juvenile Justice Information System, a sealing method that requires DPS to provide notice of potential eligibility does not work for CINS records. Likewise, since all counties do not use the same case management system, there is no mechanism for an electronic notification at the statewide level relating to CINS offenses. However, those juveniles referred to juvenile court for CINS and never referred for delinquent conduct are deserving of sealing protection. Therefore, under Section 58.255, when a person referred to a juvenile probation department for CINS but never for delinquent conduct turns 18 years of age, the person is entitled to have records sealed if the person has not been convicted of a felony as an adult and does not have a Class B misdemeanor or higher adult charge pending. The juvenile probation department is responsible for developing a method for identifying these individuals and for giving the court notice of the eligibility, the list of referrals, and the outcome of the referrals. The court must issue an order sealing within 60 days.

Family Code Sec. 58.256. APPLICATION FOR SEALING RECORDS. (a) Notwithstanding Sections 58.253 and 58.255, a person may file an application for the sealing of records related to the person in the juvenile court served by the juvenile probation department to which the person was referred. The court may not charge a fee for filing the application, regardless of the form of the application.

(b) An application filed under this section must include either the following information or the reason that one or more of the following is not included in the application:

(1) the person's:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) the conduct for which the person was referred to the juvenile probation department, including the date on which the conduct was alleged or found to have been committed;

(3) the cause number assigned to each petition relating to the person filed in juvenile court, if any, and the court in which the petition was filed; and

(4) a list of all entities the person believes have possession of records related to the person,

including the applicable entities listed under Section 58.258(b).

(c) Except as provided by Subsection (d), the juvenile court may order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

(1) is at least 18 years of age, or is younger than 18 years of age and at least two years have elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department;

(2) does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;

(3) was not transferred by a juvenile court to a criminal court for prosecution under Section 54.02;

(4) has not as an adult been convicted of a felony; and

(5) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

(d) A court may not order the sealing of the records of a person who:

(1) received a determinate sentence for engaging in:

(A) delinquent conduct that violated a penal law listed under Section 53.045; or

(B) habitual felony conduct as described by Section 51.031;

(2) is currently required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(3) was committed to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility under Section 54.04011, unless the person has been discharged from the agency to which the person was committed.

(e) On receipt of an application under this section, the court may:

(1) order the sealing of the person's records immediately, without a hearing; or

(2) hold a hearing under Section 58.257 at the court's discretion to determine whether to order the sealing of the person's records.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records, regardless of the date of creation.

Summary of Changes: This change is intended to restore the ability to apply to have records sealed, which was removed in 2015 when “automatic sealing” was created. A person who is not eligible for sealing under Section 58.253 (sealing without application), regardless of the reason for ineligibility (e.g. not yet 19, juvenile felony adjudication, adult misdemeanor conviction), may file an

application with the court requesting sealing. The application must include all of the information required in subsection (b) or the reason the information is not included.

The court may order sealing in all matters related to the juvenile if the applicant is at least 18 or, if not yet 18, at least two years have elapsed since the final discharge in each matter for which the person was referred to the juvenile probation department and other criteria are met. The rationale behind a delay before such sealing is to ensure that the records remain intact and available for juvenile probation departments for potential future referrals until some time has passed for the juvenile to demonstrate he or she is not likely to be referred again. Having information intact for future referrals is important to rehabilitative efforts. Additionally, because fewer entities may have access to the JJIS records under the law as changed by this bill, sealing now only removes access from criminal justice agencies, juvenile justice agencies, DFPS for background check purposes, and the military, to whom unsealed records may be released only with permission of the juvenile.

The other criteria that must exist for the court to order sealing is that the person was never certified as an adult, has not been convicted of a felony as an adult, and has no Class B misdemeanor or higher adult charges pending. As is current law, sealing is not available to a person who received a determinate sentence, who is currently required to register as a sex offender, or who was committed to TJJD or Travis County’s Local Commitment Program and has not yet been discharged.

A provision has been added to clarify that no court fees, to include filing fees, may be charged when a person files an application for sealing. Though this is typically understood to be current law, reports that some courts have charged filing fees necessitated this clarifying addition. There is no mandatory sealing or entitlement to sealing under this section; if the person meets the eligibility requirements, the court has discretion of whether or not to seal. The court may seal without a hearing or may hold a hearing before making its decision; however, there is no provision that allows the court to refuse to seal without first holding a hearing.

Family Code Sec. 58.257. HEARING REGARDING SEALING OF RECORDS. (a) A hearing regarding the sealing of a person's records must be held not later than the 60th day after the date the court receives the person's application under Section 58.256.

(b) The court shall give reasonable notice of a hearing under this section to:

(1) the person who is the subject of the records;

(2) the person's attorney who made the application for sealing on behalf of the person, if any;

(3) the prosecuting attorney for the juvenile court;

(4) all entities named in the application that the person believes possess eligible records related to the person; and

(5) any individual or entity whose presence at the hearing is requested by the person or prosecutor.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all hearings held on or after the effective date, regardless of when the records that are the subject of the hearing were created.

Summary of Changes: If a judge decides to hold a hearing on an application for sealing, the hearing must be held within 60 days. The court must give notice of the hearing to the subject of the records, that person's attorney, if any, the prosecuting attorney for the juvenile court, all entities named in the application as an entity believed to be in possession of the record, and any individual or entity that the person or prosecutor has requested be present at the hearing. This would typically be people supporting the person's application for sealing or, if the prosecutor objects to the sealing, people supporting that position.

Family Code Sec. 58.258. ORDER SEALING RECORDS. (a) An order sealing the records of a person under this subchapter must include either the following information or the reason one or more of the following is not included in the order:

(1) the person's:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) each instance of conduct indicating a need for supervision or delinquent conduct alleged against the person or for which the person was referred to the juvenile justice system;

(3) the date on which and the county in which each instance of conduct was alleged to have occurred;

(4) if any petitions relating to the person were filed in juvenile court, the cause number assigned to each petition and the court and county in which each petition was filed; and

(5) a list of the entities believed to be in possession of the records that have been ordered sealed, including the entities listed under Subsection (b).

(b) Not later than the 60th day after the date of the entry of the order, the court shall provide a copy of the order to:

(1) the Department of Public Safety;

(2) the Texas Juvenile Justice Department, if the person was committed to the department;

(3) the clerk of court;

(4) the juvenile probation department serving the court;

(5) the prosecutor's office;

(6) each law enforcement agency that had contact with the person in relation to the conduct that is the subject of the sealing order;

(7) each public or private agency that had custody of or that provided supervision or services to the person in relation to the conduct that is the subject of the sealing order; and

(8) each official, agency, or other entity that the court has reason to believe has any record containing information that is related to the conduct that is the subject of the sealing order.

(c) On entry of the order, all adjudications relating to the person are vacated and the proceedings are dismissed and treated for all purposes as though the proceedings had never occurred. The clerk of court shall:

(1) seal all court records relating to the proceedings, including any records created in the clerk's case management system; and

(2) send copies of the order to all entities listed in the order.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all sealing orders issued for an eligibility notice or application received by the court on or after the effective date.

Summary of Changes: Subsection (a) sets out what must be included in a sealing order, which is consistent with current Section 58.003(p). If any required item is not included, the order must include an explanation as to why it was not included. Within 60 days after entry of the order, the court must provide a copy of the order to each entity in subsection (b). School districts are not included in the list because they reached out to the workgroup and explained that sealing records puts them in conflict with information they are required to maintain for TEA and that their records are protected from disclosure under other confidentiality laws. Once a sealing order is entered, all adjudications are vacated and the proceedings are dismissed and treated as if they had never occurred. The clerk of court is required to seal all court records relating to the proceedings, including any records created in the clerk's case management system, and to send copies of the order to all entities listed in the order.

Family Code Sec. 58.259. ACTIONS TAKEN ON RECEIPT OF ORDER TO SEAL RECORDS.

(a) An entity receiving an order to seal the records of a

person issued under this subchapter shall, not later than the 61st day after the date of receiving the order, take the following actions, as applicable:

(1) the Department of Public Safety shall:

(A) limit access to the records relating to the person in the juvenile justice information system to only the Texas Juvenile Justice Department for the purpose of conducting research and statistical studies;

(B) destroy any other records relating to the person in the department's possession, including DNA records as provided by Section 411.151, Government Code; and

(C) send written verification of the limitation and destruction of the records to the issuing court;

(2) the Texas Juvenile Justice Department shall:

(A) seal all records relating to the person, other than those exempted from sealing under Section 58.252; and

(B) send written verification of the sealing of the records to the issuing court;

(3) a public or private agency or institution that had custody of or provided supervision or services to the person who is the subject of the records, the juvenile probation department, a law enforcement entity, or a prosecuting attorney shall:

(A) seal all records relating to the person; and

(B) send written verification of the sealing of the records to the issuing court; and

(4) any other entity that receives an order to seal a person's records shall:

(A) send any records relating to the person to the issuing court;

(B) delete all index references to the person's records; and

(C) send written verification of the deletion of the index references to the issuing court.

(b) Physical or electronic records are considered sealed if the records are not destroyed but are stored in a manner that allows access to the records only by the custodian of records for the entity possessing the records.

(c) If an entity that received an order to seal records relating to a person later receives an inquiry about a person or the matter contained in the records, the entity must respond that no records relating to the person or the matter exist.

(d) If an entity receiving an order to seal records under this subchapter is unable to comply with the order because the information in the order is incorrect or insufficient to allow the entity to identify the records that are subject to the order, the entity shall notify the issuing court not later than the 30th day after the date of receipt of the order. The court shall take any actions necessary and possible to provide the needed information to the entity,

including contacting the person who is the subject of the order or the person's attorney.

(e) If an entity receiving a sealing order under this subchapter has no records related to the person who is the subject of the order, the entity shall provide written verification of that fact to the issuing court not later than the 30th day after the date of receipt of the order.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all sealing orders issued for an eligibility notice or application received on or after the effective date.

Summary of Changes: This section sets out the actions to be taken by an entity that receives a sealing order. Under current law, all entities must send their records to the court and the court keeps them in case they are unsealed in the future. Under this new law, entities will take different actions. TJJD, juvenile probation departments, law enforcement entities, prosecuting attorneys, and public or private agencies that had custody of or provided supervision to the juvenile must seal their records themselves and send verification to the court that they have done so. Records are considered sealed if they are not destroyed but instead are stored in a manner that allows access to the records only by the sealing entity's custodian of records. With the exception of DPS, all other entities that receive a sealing order are still required to send the records to the issuing court, delete all index references, and send writing verification of such deletion to the court.

Under current law, DPS deletes all records in JJIS and destroys any other records in its possession, including DNA records. Under this new, DPS will still destroy the DNA and other records but it will not delete the information in JJIS. Instead, it will limit access to the information in JJIS to only TJJD for the purpose of conducting research and statistical studies. This change is necessary to preserve the records for the purpose of recidivism studies. The advent of "automatic sealing" in 2015, in addition to specialty sealing provisions and the increase in pro bono sealing projects around the state, has resulted in more records being sealing. Because the majority of records that are sealed are those of juveniles who are successful and never enter the adult system, their removal from the pool of all records examined for recidivism purposes results in an artificially inflated recidivism rate. This change is designed to prevent that from happening in the future.

If an entity that receives a sealing order is unable to comply because the order contains incorrect or insufficient information, the entity must notify the court within 30 days and the court must take any actions necessary and possible to provide the necessary information. If an entity receiving an order has no records related to the person in

the order, the entity must provide written verification of that fact to the court within 30 days.

After a record is sealed, any entity receiving a request for records must respond, "No records exist."

Family Code Sec. 58.260. INSPECTION AND RELEASE OF SEALED RECORDS. (a) A juvenile court may allow, by order, the inspection of records sealed under this subchapter or under Section 58.003, as that law existed before September 1, 2017, only by:

(1) a person named in the order, on the petition of the person who is the subject of the records;

(2) a prosecutor, on the petition of the prosecutor, for the purpose of reviewing the records for possible use:

(A) in a capital prosecution; or

(B) for the enhancement of punishment under Section 12.42, Penal Code; or

(3) a court, the Texas Department of Criminal Justice, or the Texas Juvenile Justice Department for the purposes of Article 62.007(e), Code of Criminal Procedure.

(b) After a petitioner inspects records under this section, the court may order the release of any or all of the records to the petitioner on the motion of the petitioner.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all records sealed, regardless of the date sealed.

Summary of Changes: This provision is a combination of current Section 58.003(g)(5), (h), and (k) and Article 62.007(e), Code of Criminal Procedure, which provide the instances when sealed records may be used.

Family Code Sec. 58.261. EFFECT OF SEALING RECORDS. (a) A person whose records have been sealed under this subchapter or under Section 58.003, as that law existed before September 1, 2017, is not required to state in any proceeding or in any application for employment, licensing, admission, housing, or other public or private benefit that the person has been the subject of a juvenile matter.

(b) If a person's records have been sealed, the information in the records, the fact that the records once existed, or the person's denial of the existence of the records or of the person's involvement in a juvenile matter may not be used against the person in any manner, including in:

(1) a perjury prosecution or other criminal proceeding;

(2) a civil proceeding, including an administrative proceeding involving a governmental entity;

(3) an application process for licensing or certification; or

(4) an admission, employment, or housing decision.

(c) A person who is the subject of the sealed records may not waive the protected status of the records or the consequences of the protected status.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all sealed records, regardless of when they were sealed.

Summary of Changes: This section sets out how a person is protected once his or her records are sealed. The person is not required to state in any proceeding or in any application for employment, licensing, admission, housing, or other public or private benefit that the person has been the subject of a juvenile matter. Additionally, if the records have been sealed, the fact that they once existed or the fact that the person has denied either the existence of the records or the fact that person was involved in a juvenile matter may not be used against the person in any manner. This includes in a perjury prosecution or other criminal proceeding, a civil proceeding, including a governmental administrative proceeding like a licensing action, an application for licensing or certification, or an admission, employment, or housing decision. The purpose of these changes is to make it clear that even if someone finds records that were ordered sealed but were not properly sealed or even if a juvenile admits his or her involvement in the juvenile system, that information cannot be used against him or her if the records have been sealed. Subsection (c) gives additional protection by providing that the juvenile may not waive the protected status of the records or the protections that the sealing provides.

Family Code Sec. 58.262. INFORMATION GIVEN TO CHILD REGARDING SEALING OF RECORDS. (a) When a child is referred to the juvenile probation department, an employee of the juvenile probation department shall give the child and the child's parent, guardian, or custodian a written explanation describing the process of sealing records under this subchapter and a copy of this subchapter.

(b) On the final discharge of a child, or on the last official action in the matter if there is no adjudication, a probation officer or official at the Texas Juvenile Justice Department, as appropriate, shall give the child and the child's parent, guardian, or custodian a written explanation regarding the eligibility of the child's records for sealing under this subchapter and a copy of this subchapter.

(c) The written explanation provided to a child under Subsections (a) and (b) must include the requirements for a record to be eligible for sealing, including an

explanation of the records that are exempt from sealing under Section 58.252, and the following information:

(1) that, regardless of whether the child's conduct was adjudicated, the child has a juvenile record with the Department of Public Safety and the Federal Bureau of Investigation;

(2) the child's juvenile record is a permanent record unless the record is sealed under this subchapter;

(3) except as provided by Section 58.260, the child's juvenile record, other than treatment records made confidential by law, may be accessed by a police officer, sheriff, prosecutor, probation officer, correctional officer, or other criminal or juvenile justice official unless the record is sealed as provided by this subchapter;

(4) sealing of the child's records under Section 58.253 or Section 58.255, as applicable, does not require any action by the child or the child's family, including the filing of an application or hiring of a lawyer, but occurs automatically at age 18 or 19 as applicable based on the child's referral and adjudication history;

(5) the child's juvenile record may be eligible for an earlier sealing date under Section 58.256, but an earlier sealing requires the child or an attorney for the child to file an application with the court;

(6) the impact of sealing records on the child; and

(7) the circumstances under which a sealed record may be reopened.

(d) The Texas Juvenile Justice Department shall adopt rules to implement this section and to facilitate the effective explanation of the information required to be communicated by this section.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all juveniles referred to or discharged from a juvenile probation department or TJJD on or after the effective date.

Summary of Changes: This section sets out the information that must be provided to a child and the child's parent to explain how sealing of records works. It also requires TJJD to adopt rules to implement this section and to facilitate the effective explanation of the information required to be communicated.

Family Code Sec. 58.263. DESTRUCTION OF RECORDS: NO PROBABLE CAUSE. The court shall order the destruction of the records relating to the conduct for which a child is taken into custody, including records contained in the juvenile justice information system, if:

(1) a determination is made under Section 53.01 that no probable cause exists to believe the child engaged in the conduct and the case is not referred to a prosecutor for review under Section 53.012; or

(2) a determination that no probable cause exists to believe the child engaged in the conduct is made by a prosecutor under Section 53.012.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all determinations of no probable cause that are made on or after the effective date.

Summary of Changes: This section requires a court to order the destruction of all records relating to the conduct for which a child is taken into custody if the juvenile probation intake officer determines there is no probable cause and does not forward the case to the prosecutor or if the prosecutor determines there is no probable cause. This is currently in Section 58.006.

Family Code Sec. 58.264. PERMISSIBLE DESTRUCTION OF RECORDS. (a) Subject to Subsections (b) and (c) of this section, Section 202.001, Local Government Code, and any other restrictions imposed by an entity's records retention guidelines, the following persons may authorize the destruction of records in a closed juvenile matter, regardless of the date the records were created:

(1) a juvenile board, in relation to the records in the possession of the juvenile probation department;

(2) the head of a law enforcement agency, in relation to the records in the possession of the agency; and

(3) a prosecuting attorney, in relation to the records in the possession of the prosecuting attorney's office.

(b) The records related to a person referred to a juvenile probation department may be destroyed if the person:

(1) is at least 18 years of age, and:

(A) the most serious conduct for which the person was referred was conduct indicating a need for supervision, whether or not the person was adjudicated; or

(B) the referral or information did not relate to conduct indicating a need for supervision or delinquent conduct and the juvenile probation department, prosecutor, or juvenile court did not take action on the referral or information for that reason;

(2) is at least 21 years of age, and:

(A) the most serious conduct for which the person was adjudicated was delinquent conduct that violated a penal law of the grade of misdemeanor; or

(B) the most serious conduct for which the person was referred was delinquent conduct and the person was not adjudicated as having engaged in the conduct; or

(3) is at least 31 years of age and the most serious conduct for which the person was adjudicated was delinquent conduct that violated a penal law of the grade of felony.

(c) If a record contains information relating to more than one person referred to a juvenile probation department, the record may only be destroyed if:

(1) the destruction of the record is authorized under this section; and

(2) information in the record that may be destroyed under this section can be separated from information that is not authorized to be destroyed.

(d) Electronic records are considered to be destroyed if the electronic records, including the index to the records, are deleted.

(e) Converting physical records to electronic records and subsequently destroying the physical records while maintaining the electronic records is not considered destruction of a record under this subchapter.

(f) This section does not authorize the destruction of the records of the juvenile court or clerk of court.

(g) This section does not authorize the destruction of records maintained for statistical and research purposes by the Texas Juvenile Justice Department in a juvenile information and case management system authorized under Section 58.403.

(h) This section does not affect the destruction of physical records and files authorized by the Texas State Library Records Retention Schedule.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all relevant records created on, before, or after the effective date.

Summary of Changes: This section is the so-called “spring cleaning destruction” provision that currently exists in Section 58.0071. The language was modified slightly to make it clear that records maintained by the juvenile court or clerk of court may not be destroyed under this section but that the physical records may be destroyed if they are first converted to electronic records. Language was also added to make it clear that, for all entities addressed in this section, converting physical records to an electronic format and subsequently destroying the physical records while maintaining the electronic records is not considered destruction. Records maintained in JCMS for TJJD statistical and research purposes may not be destroyed under this section.

Family Code Sec. 58.265. JUVENILE RECORDS NOT SUBJECT TO EXPUNCTION. Records to which this chapter applies are not subject to an order of expunction issued by any court.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to all juvenile records, regardless of the date of creation.

Summary of Changes: This provision was added to make it clear that juvenile records are not subject to an order of expunction. The mechanism for protecting juvenile records is sealing under this Chapter. Expunction statutes apply to criminal records, including justice and municipal court records relating to offenses committed by children, but they do not apply to records in the juvenile justice system.

Family Code Sec. 58.301. DEFINITIONS

(2) "Juvenile facility" means a facility that:

(A) serves juveniles under a juvenile court's jurisdiction; and

(B) is operated as a holdover facility, a pre-adjudication detention facility, a nonsecure facility, or a post-adjudication secure correctional facility.

(2-a) "Governmental juvenile [placement] facility" means a juvenile [residential placement] facility operated by a unit of government.

(5) "Partner agency" means a [governmental] service provider or juvenile [governmental placement] facility that is authorized by this subchapter to be a member of a local juvenile justice information system or that has applied to be a member of a local juvenile justice information system and has been approved by the county juvenile board or regional juvenile board committee as a member of the system.

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Summary of Changes: A definition for juvenile facility is added to the portion of the statute related to local juvenile justice information systems so that it now includes any private facility serving a juvenile under a juvenile court's jurisdiction as opposed to the current definition, which is limited to government-operated facilities.

Family Code Sec. 58.303. LOCAL JUVENILE JUSTICE INFORMATION SYSTEM. (b) A local juvenile justice information system may contain the following components:

(1) case management resources for juvenile courts, court clerks, prosecuting attorneys, and county juvenile probation departments;

(2) reporting systems to fulfill statutory requirements for reporting in the juvenile justice system;

(3) service provider directories and indexes of agencies providing services to children;

(4) victim-witness notices required under Chapter 57;

(5) electronic filing of complaints or petitions, court orders, and other documents filed with the court, including documents containing electronic signatures;

(6) electronic offense and intake processing;

(7) case docket management and calendaring;

(8) communications by email or other electronic communications between partner agencies;

(9) reporting of charges filed, adjudications and dispositions of juveniles by municipal and justice courts and the juvenile court, and transfers of cases to the juvenile court as authorized or required by Section 51.08;

(10) reporting to schools under Article 15.27, Code of Criminal Procedure, by law enforcement agencies, prosecuting attorneys, and juvenile courts;

(11) records of adjudications and dispositions, including probation conditions ordered by the juvenile court; ~~and~~

(12) warrant management and confirmation capabilities; ~~and~~

(13) case management for juveniles in juvenile facilities.

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Summary of Changes: This change allows a local juvenile justice information system to include case management components for juveniles in juvenile facilities, as defined by Section 58.301.

Family Code Sec. 58.303. LOCAL JUVENILE JUSTICE INFORMATION SYSTEM. The following is repealed.: Sec. 58.303(d)

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Summary of Changes: Section 58.303(d) currently provides that membership in a local juvenile justice information system is determined by Subchapter D of Chapter 58 and membership in a regional juvenile justice information system is determined by the regional juvenile board committee from among partner agencies that have applied for membership. This has been repealed.

Family Code, Sec. 58.304. TYPES OF INFORMATION CONTAINED IN A LOCAL JUVENILE INFORMATION SYSTEM. Sec. 58.304(d) is repealed and Sections 58.304(a) and (b), Family Code, are amended to read as follows:

(a) A ~~[Subject to Subsection (d), a]~~ local juvenile justice information system must consist of:

(1) information relating to all referrals to the juvenile court of any type, including referrals for conduct indicating a need for supervision and delinquent conduct; and

(2) information relating to:

(A) the juvenile;

(B) the intake or referral of the juvenile into the juvenile justice system for any offense or conduct;

(C) the detention of the juvenile;

(D) the prosecution of the juvenile;

(E) the disposition of the juvenile's case, including the name and description of any program to which the juvenile is referred; and

(F) the probation, placement, or commitment of the juvenile.

(b) To the extent possible and subject to Subsection (a) ~~[Subsections (a) and (d)]~~, the local juvenile justice information system may include the following information for each juvenile taken into custody, detained, or referred under this title:

(1) the juvenile's name, including other names by which the juvenile is known;

(2) the juvenile's date and place of birth;

(3) the juvenile's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(4) the juvenile's state identification number and other identifying information;

(5) the juvenile's fingerprints and photograph;

(6) the juvenile's last known residential address, including the census tract number designation for the address;

(7) the name, address, and phone number of the juvenile's parent, guardian, or custodian;

(8) the name and identifying number of the agency that took into custody or detained the juvenile;

(9) each date of custody or detention;

(10) a detailed description of the conduct for which the juvenile was taken into custody, detained, or referred, including the level and degree of the alleged offense;

(11) the name and identifying number of the juvenile intake agency or juvenile probation office;

(12) each disposition by the juvenile intake agency or juvenile probation office;

(13) the date of disposition by the juvenile intake agency or juvenile probation office;

(14) the name and identifying number of the prosecutor's office;

(15) each disposition by the prosecutor;

(16) the date of disposition by the prosecutor;

(17) the name and identifying number of the court;

(18) each disposition by the court, including information concerning custody of a juvenile by a juvenile justice agency or county juvenile probation department;

(19) the date of disposition by the court;

(20) any commitment or release under supervision by the Texas Juvenile Justice Department, including the date of the commitment or release;

(21) information concerning each appellate proceeding; ~~and~~

(22) electronic copies of all documents filed with the court; and

(23) information obtained for the purpose of diagnosis, examination, evaluation, treatment, or referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court.

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Summary of Changes: Section 58.304(d), which currently prohibits the inclusion in the local juvenile justice information system of information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court, is repealed, and subsection (b) is modified to allow this information to be included. Since the inception of the local juvenile justice information system statutes in 2001, this information has been excluded. According to the commentary in the *2001 Special Legislative Newsletter*, it was excluded “to help encourage openness in treatment settings.” Now that it is no longer excluded, those choosing to include this information in a shareable database may wish to consider if it will impact the treatment setting. Additionally, entities may wish to consider whether the inclusion of this information into such a database has implications for the entity under Chapter 181, Health and Safety Code, known as the Texas Medical Records Privacy Act.

Family Code Sec. 58.305. PARTNER AGENCIES. (a) A local juvenile justice information system shall to the extent possible include the following partner agencies within that county:

- (1) the juvenile court and court clerk;
- (2) justice of the peace and municipal courts;

(3) the county juvenile probation department;

(4) the prosecuting attorneys who prosecute juvenile cases in juvenile court, municipal court, or justice court;

(5) law enforcement agencies;

(6) each public school district in the county;

(7) ~~governmental~~ service providers approved by the county juvenile board; and

(8) juvenile ~~governmental placement~~ facilities approved by the county juvenile board.

(b) A local juvenile justice information system for a multicounty region shall to the extent possible include the partner agencies listed in Subsections (a)(1)-(6) for each county in the region and the following partner agencies from within the multicounty region that have applied for membership in the system and have been approved by the regional juvenile board committee:

(1) ~~governmental~~ service providers; and

(2) juvenile ~~governmental placement~~ facilities.

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Summary of Changes: This modifies the partner agencies in the local juvenile justice system to include private juvenile facilities.

Family Code Sec. 58.306. ACCESS TO INFORMATION LEVELS.(e) Except as provided by Subsection (i), Level 1 Access is by public school districts in the county or region served by the local juvenile justice information system.

(f) Except as provided by Subsection (i), Level 2 Access is by:

(1) justice of the peace courts that process juvenile cases; and

(2) municipal courts that process juvenile cases.

(g) Except as provided by Subsection (i), Level 3 Access is by:

(1) the juvenile court and court clerk;

(2) the prosecuting attorney;

(3) the county juvenile probation department;

(4) law enforcement agencies;

(5) governmental service providers that are partner agencies; ~~and~~

(6) governmental juvenile ~~placement~~ facilities that are partner agencies; and

(7) a private juvenile facility that is a partner agency, except the access is limited to information

that relates to a child detained or placed in the custody of the facility.

(i) Information described by Section 58.304(b)(23) may be accessed only by:

(1) the juvenile court and court clerk;

(2) the county juvenile probation department;

(3) a governmental juvenile facility that is a partner agency; and

(4) a private juvenile facility that is a partner agency, except the access is limited to information that relates to a child detained or placed in the custody of the facility.

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Applicability: Applies to records accessed on or after the effective date, regardless of date of creation.

Summary of Changes: This provides that the diagnostic and treatment information may be accessed only by the juvenile court and court clerk, county juvenile probation department, and both public and private juvenile facility partner agencies. The only limitation that the entity accessing it actually be providing services to the child relates to the private juvenile facility. Courts may wish to use caution when accessing this information if it has not been properly admitted before the court.

Family Code Sec. 58.307. CONFIDENTIALITY OF INFORMATION. (e) Information in a local juvenile justice information system, including electronic signature systems, shall be protected from unauthorized access by a system of access security and any access to information in a local juvenile information system performed by browser software shall be at the level of at least 2048-bit [~~128-bit~~] encryption. A juvenile board or a regional juvenile board committee shall require all partner agencies to maintain security and restrict access in accordance with the requirements of this title.

Commentary by Kaci Singer

Source: HB 3705

Effective Date: September 1, 2017

Summary of Changes: This change relates to the protections required to be in place in a local juvenile justice information system and requires browser software used to access the information be at a level of at least 2048-bit encryption.

Government Code

Government Code Sec. 411.151. EXPUNCTION OR REMOVAL OF DNA RECORDS. (a) The director shall expunge a DNA record of an individual from a DNA database if the person:

(1) notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55, Code of Criminal Procedure, and provides the director with a certified copy of the court order that expunges the DNA record; or

(2) provides the director with a certified copy of a court order issued under Subchapter C-1, Chapter 58 [~~Section 58.003~~], Family Code, that seals the juvenile record of the adjudication that resulted in the DNA record.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: This is a conforming numbering change related to the repeal of Section 58.003 and creation of the new Subchapter C-1 in Chapter 58, which includes the statutes on sealing.

Human Resources Code

Human Resources Code Sec. 203.019 REPORT TO THE LEGISLATURE. Not later than August 15 of each year, the Texas Juvenile Justice Department shall submit to the lieutenant governor, the speaker of the house of representatives, and the governor a report that contains the following statistical information relating to children referred to a juvenile court during the preceding year:

(1) the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings; and

(2) the ages, races, and counties of residence of the children committed to the Texas Juvenile Justice Department, placed on probation, or discharged without any disposition.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Summary of Changes: Section 58.112, Family Code was relocated to Section 203.019 Human Resources Code. The text was not changed.

6. Legislation Affecting Open Government

Government Code Sec. 551.001. DEFINITIONS.
 (4) "Meeting" means: (A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental

body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, ~~or~~ the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, ~~or~~ press conference, forum, appearance, or debate.

Commentary by Kathryn R. Gray

Source: SB 1440

Effective Date: September 1, 2017

Applicability: Applies to the attendance by a quorum of a governmental body at certain candidate events on or after the effective date.

Summary of Changes: Under the Open Meetings Act (the Act), generally every "meeting" of a governmental body must be public. The definition of "meeting" under the Act includes circumstances in which a quorum of members of the governmental body are gathered or joined in discussion. A concern was raised that this strict definition imposed a burden on small towns and cities where numerous officials were elected at large and incumbent officials' participation in debates and election activities

could present compliance issues for the Act. As a result, access to candidates and their political positions could be impaired. Therefore, Senate Bill 1440 amends the definition of "meeting" under Section 551.001(4) of the Government Code to specify that a "meeting" does not include the circumstances in which a quorum of the members of a governmental body are in attendance at a candidate forum, appearance, or public debate as long as no formal action is taken and any discussion of public business is incidental to the event.

Government Code Sec. 551.089. DEPARTMENT OF INFORMATION RESOURCES. DELIBERATION REGARDING SECURITY DEVICES OR SECURITY AUDITS; CLOSED MEETING ~~[DEPARTMENT OF INFORMATION RESOURCES]~~. This chapter does not require a governmental body ~~[the governing board of the Department of Information Resources]~~ to conduct an open meeting to deliberate:

(1) security assessments or deployments relating to information resources technology;

(2) network security information as described by Section 2059.055(b); or

(3) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

Commentary by Kathryn R. Gray

Source: SB 564, HB 8

Effective Date: September 1, 2017

Applicability: Applies to certain meetings and deliberations of a governing body relating to information technology security practices on or after the effective date.

Summary of Changes: Under the Open Meetings Act (the Act), generally every "meeting" of a governmental body must be public. The evolution of technology and the corresponding advancement in threats to sensitive data stored online make cybersecurity an increasingly critical issue for governmental agencies to address. Accordingly, Senate Bill 564 and House Bill 8, The Texas Cybersecurity Act, amend Section 551.089 to specify that governmental bodies are not required to conduct open meetings to deliberate certain items related to security devices or security audits. Previously this protection was authorized only for the Department of Information Resources. Senate Bill 564 brings all governmental bodies up to the same level of protection when deliberating on security assessment or deployments relating to information resources technology, certain network security information, or the deployment or certain implementations of security personnel, critical infrastructure, or security devices.

Government Code Sec. 551.127. VIDEOCONFERENCE CALL. (a) Except as otherwise provided by this section, this chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call.

(a-1) A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference call if the video and audio feed of the member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions of this section.

(a-2) A member of a governmental body who participates in a meeting as provided by Subsection (a-1) shall be counted as present at the meeting for all purposes.

(a-3) A member of a governmental body who participates in a meeting by videoconference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The governmental body may continue the meeting only if a quorum of the body remains present at the meeting location or, if applicable, continues to participate in a meeting conducted under Subsection (c).

(b) A meeting may be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting, except as provided by Subsection (c).

(c) A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

(d) A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements prescribed by this section.

(e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) must specify as a location of the meeting the location where the member of the governmental body presiding over the meeting will be physically present and specify the intent to have the member of the governmental body presiding over the meeting present at that location. The location where the member of the governmental body presiding over the meeting is physically present shall be open to the public during the open portions of the meeting.

(f) Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified under Subsection (e). If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the

problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(g) The governmental body shall make at least an audio recording of the meeting. The recording shall be made available to the public.

(h) The location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the physical location described by Subsection (e) and at any other location of the meeting that is open to the public.

(i) The Department of Information Resources by rule shall specify minimum standards for audio and video signals at a meeting held by videoconference call. The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed those standards.

(j) The audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(k) Without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call.

Commentary by Kathryn R. Gray

Source: HB 3047

Effective Date: September 1, 2017

Applicability: Applies to a meeting by a governmental body held by videoconference call on or after the effective date.

Summary of Changes: Under the Open Meetings Act (the Act), a governmental body may hold an open or closed meeting by videoconference call according to Section 551.127 of the Government Code if the video and audio feed of any person participating by videoconference is broadcast live during the meeting and the call otherwise complies with the section. A participant is not considered absent when he or she participates by videoconference call. However, it was previously unclear what the impact should be of lost or intermittent video and audio feed. Accordingly, House Bill 3047 clarifies Section 551.127 so that a participant shall be considered absent during any part of the call in which the video or audio feed is lost or disconnected. In the case that any video or audio feed is lost, the meeting may only continue if a quorum of participants remains.

Government Code Sec. 551.128 INTERNET BROADCAST OF OPEN MEETING. (b-1) A transit authority or department subject to Chapter 451, 452, 453, or 460, Transportation Code, an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, or a county commissioners court for a county that has a population of 125,000 or more shall:

(1) make a video and audio recording of reasonable quality of each:

(A) regularly scheduled open meeting that is not a work session or a special called meeting; and

(B) open meeting that is a work session or special called meeting if:

(i) the governmental body is an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more; and

(ii) at the work session or special called meeting, the board of trustees votes on any matter or allows public comment or testimony; and(

2) make available an archived copy of the video and audio recording of each meeting described by Subdivision (1) on the Internet.

Commentary by Kathryn R. Gray

Source: HB 523

Effective Date: September 1, 2017

Applicability: Applies to an open meeting held on or after the effective date.

Summary of Changes: The changes in House Bill 523 are of importance to school districts with student enrollment of at least 10,000. The Open Meetings Act generally provides for public access to meetings held by governmental bodies. According to Section 551.128, Government Code, certain governmental bodies, including school boards of school districts with at least 10,000 enrolled students, are required to make available online audio and video recordings of regularly scheduled open meetings that are not work sessions or special called meetings. This creates a loophole that may be exploited by those school districts to avoid publicizing unpopular meetings and work sessions. House Bill 523 closes that loophole and provides that school boards or school districts with student enrollment of at least 10,000 must make available online audio and video recordings of work sessions and special called meetings where the board votes on any matter or allows any public comment.

Government Code Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

(a) Information is excepted from the requirements of Sec-

tion 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175;

(5) a commissioned security officer as defined by Section 1702.002, Occupations Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175;

(7) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(8) a current or former employee of the Texas Juvenile Justice Department or of the predecessors in function of the department, regardless of whether the current or former employee complies with Section 552.024 or 552.1175;

(9) a current or former juvenile probation or supervision officer certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code, regardless of whether the current or former officer complies with Section 552.024 or 552.1175;

(10) a current or former employee of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code, regardless of whether the current or former employee complies with Section 552.024 or 552.1175; [øf]

(11) a current or former member of the Texas military forces, as that term is defined by Section 437.001;

(12) a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former attorney complies with Section 552.024 or 552.1175; or

(13) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters, regardless of whether the current or former employee complies with Section 552.024 or 552.1175.

Commentary by Kathryn R. Gray

Source: HB 1278

Effective Date: June 15, 2017

Applicability: Applies to a request for information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: Section 552.117 of the Government Code provides that the home address, home telephone number, emergency contact information, social security number, and family member information of certain governmental officials and employees is exempted from the disclosure requirements of the Public Information Act. The amendments in House Bill 1278 extend those protections so that they also cover a current or former district attorney, a criminal district attorney, or a county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters. The confidentiality provided by this section covers this information belonging to these employees or officials regardless of whether they sign a form requesting confidentiality under Section 552.024 or 552.1175 of the Government Code.

Government Code Section 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(12) a current or former federal judge or state judge, as those terms are defined by Section 13.0021(a), Election Code, or a spouse of a current or former federal judge or state judge; or

(13) a current or former district attorney, criminal district attorney, or county attorney whose jurisdiction includes any criminal law or child protective services matter.

SECTION 18. Section 572.002, Government Code, is amended by adding Subdivision (11-a) to read as follows:

(11-a) "State judge" means:

(A) a judge, former judge, or retired judge of an appellate court, a district court, a constitutional county court, a county court at law, or a statutory probate court of this state;

(B) an associate judge appointed under Chapter 201, Family Code, or a retired associate judge or former associate judge appointed under that chapter;

(C) a magistrate or associate judge appointed under Chapter 54 or 54A;

(D) a justice of the peace; or

(E) a municipal court judge.

Commentary by Kathryn R. Gray

Source: SB 42

Effective Date: September 1, 2017.

Applicability: Applies to the security of the courts and judges of the state on or after the effective date.

Summary of Changes: Senate Bill 42 is titled the Judge Julie Kocurek Judicial and Courthouse Security Act of 2017. In November 2015, there was an assassination attempt on the life of Judge Julie Kocurek of Travis County outside her home. As a result, the Texas Office of Court Administration initiated a survey of judges in the state; the results of that survey indicated a lack of knowledge of courthouse security practices. The Texas Judicial Council then created a Court Security Committee whose review revealed the need for some changes in Texas law and practices to better protect judges and court officials. The changes promulgated by Senate Bill 42 are the result of the Court Security Committee's work.

The amendments in Senate Bill 42 in part extend protections under the Texas Public Information Act (the Act). Section 552.117 of the Government Code provides that the home address, home telephone number, emergency contact information, social security number, and family member information of certain governmental officials and employees is exempted from the public information disclosure requirements of the Act. Senate Bill 42 extends the protections provided by Section 552.117 so they also cover a current or former federal judge or state judge or their spouses and a current or former district attorney, criminal district attorney, or county attorney whose jurisdiction includes any criminal law or child protective services matter. The protection provided by these changes only applies if the judge or official makes an election under Section 552.024 of the Government Code.

Government Code Sec. 552.139. EXCEPTION: CONFIDENTIALITY OF GOVERNMENT INFORMATION RELATED TO SECURITY OR INFRA-

STRUCTURE ISSUES FOR COMPUTERS. (b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use; ~~and~~

(3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body; and

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

(b-1) Subsection (b)(4) does not affect the notification requirements related to a breach of system security as defined by Section 521.053, Business & Commerce Code.

(d) A state agency shall redact from a contract posted on the agency's Internet website under Section 2261.253 information that is made confidential by, or excepted from required public disclosure under, this section. The redaction of information under this subsection does not exempt the information from the requirements of Section 552.021 or 552.221.

Commentary by Kathryn R. Gray

Source: HB 1861/HB 8/SB 532

Effective Date: June 15, 2017

Applicability: Applies to a request for public information received on or after the effective date.

Summary of Changes: Section 552.139 of the Government Code specifies that certain information related to security or infrastructure issues for computers is confidential under the Public Information Act (the Act) and, therefore, not subject to disclosure. Documents related to a government's computer security systems can be voluminous and often contain much confidential information or information that is otherwise excepted from disclosure under the Act. Accordingly, responding to a request for this kind of information can create a burden for both the governmental body and the Office of the Attorney General in completing redactions required to comply with the Act. House Bill 1861 amends Section 552.139, Government Code, to decrease that burden by bringing more information under the confidentiality protection of that section. The changes under House Bill 1861 provide that information directly arising from a governmental body's

routine efforts to prevent, detect, investigate, or mitigate computer security incidents are confidential for the purposes of the Act but are still releasable when needed to comply with Section 521.0533 of the Texas Business and Commerce Code (notification of security breach under the Identity Theft Enforcement and Protection Act). Senate Bill 532 makes this same change.

In the interest of transparency, state procurement statutes require the posting of certain contracts on publicly accessible websites under Section 2261.253 of the Government Code. House Bill 1861 provides that information made confidential under Section 552.139 must be redacted from such online postings of a governmental body's contracts but such redaction does not exempt the information from an open records request under the Act. House Bill 8, the Texas Cybersecurity Act, makes this same change.

Government Code Sec. 552.158. EXCEPTION: CONFIDENTIALITY OF PERSONAL INFORMATION REGARDING APPLICANT FOR APPOINTMENT BY GOVERNOR. The following information obtained by the governor or senate in connection with an applicant for an appointment by the governor is excepted from the requirements of Section 552.021:

- (1) the applicant's home address;
- (2) the applicant's home telephone number; and
- (3) the applicant's social security number.

Commentary by Kathryn R. Gray

Source: SB 705

Effective Date: May 29, 2017

Applicability: Applies to a request for public information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: Under the Public Information Act (the Act), certain personal information of employees and officials of a governmental body is excepted from disclosure under Section 552.117 of the Government Code. Accordingly, when the governor appoints a person to a position at a governmental body, certain personal information belonging to that person is protected under the Act. However, there has been no such protection for applicants who submit their personal information to the governor or senate but are not ultimately appointed to a position. To protect the personal information of such applicants, Senate Bill 705 creates a new provision in the Act, Section 552.158, which provides that the home address, home telephone number, and social security number of an applicant for an appointment by the governor are excepted from required disclosure in response to a request for public information under the Act.

Government Code, Sec. 552.221. APPLICATION FOR PUBLIC INFORMATION; PRODUCTION OF PUBLIC INFORMATION. (e) A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the offices of the governmental body on or before the 60th day after the date the information is made available or fails to pay the postage and any other applicable charges accrued under Subchapter F on or before the 60th day after the date the requestor is informed of the charges.

Commentary by Kathryn R. Gray

Source: HB 3107

Effective Date: September 1, 2017

Applicability: Applies to a request for public information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: The Public Information Act provides generally for public access to information held by a governmental body. Some requests encompass a large amount of information or documents. Responding to these kinds of requests can create a burden for the governmental body and thus present an opportunity for misuse. House Bill 3107 seeks to provide some protection to governmental bodies in such situations by, in part, amending the Act to add Subsection (e) to Section 552.221. Section 552.221(e) states that a request is automatically withdrawn if the requestor does not retrieve the information before the 60th day after the date the information is made available.

Government Code, Sec. 552.221. APPLICATION FOR PUBLIC INFORMATION; PRODUCTION OF PUBLIC INFORMATION. (b-1) In addition to the methods of production described by Subsection (b), an officer for public information for a governmental body [~~political subdivision of this state~~] complies with Subsection (a) by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body [~~political subdivision~~] and accessible to the public if the requested information is identifiable and readily available on that website. If the person requesting the information prefers a manner other than access through the URL, the governmental body [~~political subdivision~~] must supply the information in the manner required by Subsection (b).

(b-2) If an officer for public information for a governmental body [~~political subdivision~~] provides by e-mail an Internet location or uniform resource locator (URL) address as permitted by Subsection (b-1), the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail, as provided by Subsection (b).

Commentary by Kathryn R. Gray

Source: SB 79

Effective Date: September 1, 2017

Applicability: Applies to a request for public information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: Currently under the Public Information Act, political subdivisions like cities and counties have the ability to refer requestors to a website in response to a request for information if the requested information is readily available on a publicly available website maintained by that political subdivision. However, state agencies in the same situation are still required to produce that information, even if it is already easily accessible online. Accordingly, Senate Bill 79 amends Section 552.221 of the Government Code to give all governmental bodies the option of referring a requestor to a publicly available website maintained by that governmental body when the requested information is already readily accessible there.

Government Code, Sec. 552.261. CHARGE FOR PROVIDING COPIES OF PUBLIC INFORMATION. (e) Except as otherwise provided by this subsection, all requests received in one calendar day from an individual may be treated as a single request for purposes of calculating costs under this chapter. A governmental body may not combine multiple requests under this subsection from separate individuals who submit requests on behalf of an organization.

Commentary by Kathryn R. Gray

Source: HB 3107

Effective Date: September 1, 2017

Applicability: Applies to a request for public information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: The Public Information Act provides generally for public access to information held by a governmental body. Some requests encompass a large amount of information or documents. Responding to these kinds of requests can create a burden for the governmental body and thus present an opportunity for misuse. Section 552.261 contains certain restrictions on when and how much a governmental body may charge a requestor, including that the cost of materials, labor, and overhead may only be charged when the request exceeds 50 pages. A requestor could potentially avoid these charges by breaking his or her request into numerous smaller requests. Accordingly, House Bill 3107 seeks to provide some protection to governmental bodies in such situations by, in part, amending Section 552.261 to add subsection (e). Section 552.261(e) provides that a governmental body may treat all the requests that are received in a single day from the same requestor as one single request when calculating the costs the governmental body may charge the requestor for making the information available. However, Subsection 552.261(e) states that a governmental body

may not combine multiple requests from separate requestors on behalf of the same organization under this section.

Government Code Sec. 552.275. REQUESTS THAT REQUIRE LARGE AMOUNTS OF EMPLOYEE OR PERSONNEL TIME. (a) A governmental body may establish ~~[a]~~ reasonable monthly and yearly limits ~~[limit]~~ on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time.

(a-1) For purposes of this section, all county officials who have designated the same officer for public information may calculate the amount of time that personnel are required to spend collectively for purposes of the monthly or yearly limit.

(b) A yearly time limit established under Subsection (a) may not be less than 36 hours for a requestor during the 12-month period that corresponds to the fiscal year of the governmental body. A monthly time limit established under Subsection (a) may not be less than 15 hours for a requestor for a one-month period.

(d) If a governmental body establishes a time limit under Subsection (a), each time the governmental body complies with a request for public information, the governmental body shall provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount of time spent complying with requests for public information from that requestor during the applicable monthly or yearly ~~[12-month]~~ period. The amount of time spent preparing the written statement may not be included in the amount of time included in the statement provided to the requestor under this subsection.

(e) Subject to Subsection (e-1), if ~~[if]~~ in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the limit established by the governmental body under Subsection (a), the governmental body shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses, necessary to comply with the request. The written estimate must be provided to the requestor on or before the 10th day after the date on which the public information was requested. The amount of this charge relating to the cost of locating, compiling, and producing the public information shall be established by rules prescribed by the attorney general under Sections 552.262(a) and (b).

(e-1) This subsection applies only to a request made by a requestor who has made a previous request to a governmental body that has not been withdrawn, for which the governmental body has located and compiled documents in response, and for which the governmental body has issued a statement under Subsection (e) that remains unpaid on the date the requestor submits the new

request. A governmental body is not required to locate, compile, produce, or provide copies of documents or prepare a statement under Subsection (e) in response to a new request described by this subsection until the date the requestor pays each unpaid statement issued under Subsection (e) in connection with a previous request or withdraws the previous request to which the statement applies.

(g) If a governmental body provides a requestor with the written statement under Subsection (e) and the time limits prescribed by Subsection (a) regarding the requestor have been exceeded, the governmental body is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the governmental body provided the written statement under that subsection, the requestor submits payment of ~~[a statement in writing to the governmental body in which the requestor commits to pay the lesser of:~~

~~[(1) the actual costs incurred in complying with the requestor's request, including the cost of materials and personnel time and overhead; or~~

~~[(2) the amount stated in the written statement provided under Subsection (e).~~

(h) If the requestor fails or refuses to submit payment ~~[the written statement]~~ under Subsection (g), the requestor is considered to have withdrawn the requestor's pending request for public information.

(j) This section does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

(1) dissemination by a news medium or communication service provider, including:

(A) an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or

(B) an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or

(2) creation or maintenance of an abstract plant as described by Section 2501.004, Insurance Code ~~[a radio or television broadcast station that holds a broadcast license for an assigned frequency issued by the Federal Communications Commission;~~

~~[(2) a newspaper that is qualified under Section 2051.044 to publish legal notices or is a free newspaper of general circulation and that is published at least once a week and available and of interest to the general public in connection with the dissemination of news;~~

~~[(3) a newspaper of general circulation that is published on the Internet by a news medium engaged in the business of disseminating news or information to the general public; or~~

~~[(4) a magazine that is published at least once a week or on the Internet by a news medium engaged in the business of disseminating news or information to the general public].~~

(m) In this section:

(1) "Communication service provider" has the meaning assigned by Section 22.021, Civil Practice and Remedies Code.

(2) "News medium" means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

(A) print;

(B) television;

(C) radio;

(D) photographic;

(E) mechanical;

(F) electronic; and

(G) other means, known or unknown, that are accessible to the public.

Commentary by Kathryn R. Gray

Source: HB 3107

Effective Date: September 1, 2017

Applicability: Applies to a request for public information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: The Public Information Act provides generally for public access to information held by a governmental body. Some requests encompass a large amount of information or documents. Responding to these kinds of requests can create a burden for the governmental body and thus present an opportunity for misuse. House Bill 3107 seeks to provide some protection to governmental bodies in such situations by, in part, by amending Section 552.275 of the Government Code, which applies to requests that require substantial amounts of employee or personnel time. Generally, Section 552.275 provides that governmental bodies may establish their own limits, if they are reasonable, on the amount of time their personnel are required to spend responding to requests for information under the Act without charging for the costs of the personnel's time. House Bill 3107 provides that, when numerous county officials use the same public information officer, they may collectively calculate the amount of time personnel are required to spend in responding to requests under the Act for purposes of this section. The bill also amends Section 552.275 to add the option of monthly or yearly limits, but states the limits may not be less than 15 hours per month or 36 hours per

year, respectively. House Bill 3107 adds Subsection 552.275(e-1), which states that the governmental body does not need to initiate production of documents in response to a new request by a requestor who has an outstanding unpaid statement issued under Section 552.275(e) unless the requestor withdraws the original request. The amendments in House Bill 3107 further add that a governmental body is not required to produce information when the limits have been exceeded, the requestor has been notified of charges, and the requestor has not submitted payment. If the requestor does not submit payment in 10 days, then the request is considered withdrawn. Previously, Section 552.275 only required that the requestor commit in writing to making payment. Section 552.275 does not apply to requests for information made by the media.

Government Code Sec. 552.3215. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF. (i) If the district or county attorney determines not to bring an action under this section, the complainant is entitled to file the complaint with the attorney general before the 31st day after the date the complaint is returned to the complainant. A complainant is entitled to file a complaint with the attorney general on or after the 90th day after the date the complainant files the complaint with a district or county attorney if the district or county attorney has not brought an action under this section. On receipt of the written complaint, the attorney general shall comply with each requirement in Subsections (g) and (h) in the time required by those subsections. If the attorney general decides to bring an action under this section against a governmental body located only in one county in response to the complaint, the attorney general must comply with Subsection (c).

Commentary by Kathryn R. Gray

Source: HB 3107

Effective Date: September 1, 2017

Applicability: Applies to a request for public information that is received by a governmental body or an officer for public information on or after the effective date.

Summary of Changes: The Public Information Act (the Act) provides generally for public access to information held by a governmental body. Some requests encompass a large amount of information or documents. Responding to these kinds of requests can create a burden for the governmental body and thus present an opportunity for misuse. Under Section 552.3215, a requestor can file a complaint alleging a violation of the Act with the district or county attorney where the governmental body resides. The district or county attorney then has 31 days to notify the complainant if an action for injunctive or declaratory relief will be brought against the governmental body under the Act. House Bill 3107 amends Subsection 552.3215(i) to provide that a complainant may file an additional complaint with the attorney general if 90 days

passes without the district or county attorney bringing an action under Section 552.3215 in response to the requestor's original complaint. However, Section 552.3215(i) already stated (and still does) that a complainant may file a complaint with the attorney general in the 30 days following the return of their complaint by the district or

county attorney declining to bring an action. The interplay of these two provisions is unclear and will likely be resolved by subsequent legislation or guidance from Office of the Attorney General.

7. Legislation Affecting Sex Offenders, Human Trafficking and Victims

Code of Criminal Procedure

Code of Criminal Procedure, SUBCHAPTER C, Chapter 56, ADDRESS CONFIDENTIALITY PROGRAM FOR VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, [~~OR~~] STALKING, OR TRAFFICKING OF PERSONS. (Heading Change)

Commentary by Jill Mata

Source: SB 256

Effective Date: May 19, 2017

Applicability: Applies to public victim information on or after the effective date.

Summary of Changes: Generally, SB 256 amended current law relating to the confidentiality of home address information of certain victims of family violence, sexual assault or abuse, stalking, or trafficking of persons. Prior to passage of the bill, when victims obtained protective orders, those orders did not require the redaction of their home addresses from public records. Specifically, both the property tax appraisal records maintained by county appraisal districts and the voter registration rolls maintained by county voter registrars were not required to have victims' addresses classified as confidential. This created a loophole where, even though an offender was barred from interacting with a victim pursuant to a protective order, the offender could still search public records for the victim's home address once the order had expired. Furthermore, even if a victim did not seek a protective order, the victim's address could be discovered by the offender within public tax appraisal and voter registration records. This bill fixed these loopholes by specifying that the home address of any person eligible for a protective order for family violence, sexual assault, trafficking, or stalking be classified as confidential within tax appraisal and voter registration records.

SB 256 also modified the Address Confidentiality Program (ACP), administered by the Texas Office of the Attorney General, by broadening eligibility for victims' participation in the program and clarifying that a person participating in the ACP is eligible to have his or her address kept confidential within these records. The heading of Subchapter C was expanded to include victims of abuse and trafficking.

Code of Criminal Procedure Art. 56.81, DEFINITIONS. (3-a) "Household" has the meaning assigned by Section 71.005, Family Code.

(6-a) "Sexual abuse" means any conduct that constitutes an offense under Section 21.02, 21.11, or 25.02, Penal Code.

(6-b) "Sexual assault" means any conduct that constitutes an offense under Section 22.011 or 22.021, Penal Code.

(6-c) "Stalking" means any conduct that constitutes an offense under Section 42.072, Penal Code.

(7) "Trafficking of persons" means any conduct that constitutes an offense [~~that may be prosecuted~~] under Section 20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26, Penal Code, and that results in a person:

(A) engaging in forced labor or services; or

(B) otherwise becoming a victim of the offense.

Commentary by Jill Mata

Source: SB 256

Effective Date: May 19, 2017

Applicability: Applies to the amended terms on or after the effective date.

Summary of Changes: See above for full bill overview. This section of the bill amended Article 56.81, Code of Criminal Procedure, by adding definitions of "household," "sexual abuse," "sexual assault," and "stalking" and redefining "trafficking of persons."

Code of Criminal Procedure Art. 56.82. ADDRESS CONFIDENTIALITY PROGRAM. (a) The attorney general shall establish an address confidentiality program, as provided by this subchapter, to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons [~~, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code,~~] in maintaining a confidential address.

Commentary by Jill Mata

Source: SB 256

Effective Date: May 19, 2017

Applicability: Applies to the program requirements established by the Office of the Attorney General on or after the effective date.

Summary of Changes: Article 56.82(a), Code of Criminal Procedure, was amended to require the Texas Attorney General to establish an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address. This change expands the ap-

plicable categories of persons eligible for relief. See above for full bill overview.

Code of Criminal Procedure Art. 56.83, ELIGIBILITY TO PARTICIPATE IN PROGRAM. (a) To be eligible to participate in the program, an applicant must:

(1) either:

(A) meet with a victim's assistance counselor from a state or local agency or other entity, whether for-profit or nonprofit, that is identified by the attorney general as an entity that provides ~~[counseling and]~~ shelter or civil legal services or counseling to victims of family violence, sexual assault or abuse, stalking, or trafficking of persons~~[-, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code];~~

(B) be protected under, or be filing an application on behalf of a victim who is the applicant's child or another person in the applicant's household and who is protected under:

(i) a temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(ii) a temporary ex parte order issued under Chapter 83, Family Code;

(iii) an order issued under Chapter 7A or Article 6.09 of this code or Chapter 85, Family Code; or

(iv) a magistrate's order for emergency protection issued under Article 17.292; or

(C) possess documentation of family violence, as identified by the rules adopted under this section, or of sexual assault or abuse or stalking, as described by Section 92.0161, Property Code;

(2) file an application for participation with the attorney general or a state or local agency or other entity identified by the attorney general under Subdivision (1);

(3) file an affirmation that the applicant has discussed safety planning with a victim's assistance counselor described by Subdivision (1)(A);

(4) designate the attorney general as agent to receive service of process and mail on behalf of the applicant; and

(5) ~~[(4)]~~ live at a residential address, or relocate to a residential address, that is unknown to the person who committed or is alleged to have committed the family violence, sexual assault or abuse, stalking, or trafficking of persons~~[-, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code].~~

(b) An application under Subsection (a)(2) must contain:

(1) a signed, sworn statement by the applicant stating that the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of a threat of immediate or future harm caused by the person who committed

or is alleged to have committed the family violence, sexual assault or abuse, stalking, or ~~[the]~~ trafficking of persons~~[-, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code];~~

(2) the applicant's true residential address and, if applicable, the applicant's business and school addresses; and

(3) a statement by the applicant of whether there is an existing court order or a pending court case for child support or child custody or visitation that involves the applicant, the applicant's child, or another person in the applicant's household and, if so, the name and address of:

(A) the legal counsel of record; and

(B) each parent involved in the court order or pending case.

(e) The attorney general by rule may establish additional eligibility requirements for participation in the program that are consistent with the purpose of the program as stated in Article 56.82(a).

(e-1) The attorney general may establish procedures for requiring an applicant, in appropriate circumstances, to submit with the application under Subsection (a)(2) independent documentary evidence of family violence, sexual assault or abuse, stalking, or trafficking of persons~~[-, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code,]~~ in the form of:

(1) an active or recently issued ~~[protective]~~ order described by Subsection (a)(1)(B);

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement of a physician or other health care provider regarding the ~~[applicant's]~~ medical condition of the applicant, applicant's child, or other person in the applicant's household as a result of the family violence, sexual assault or abuse, stalking, or trafficking of persons~~[-, or offense]; [or]~~

(4) a statement of a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant, applicant's child, or other person in the applicant's household in addressing the effects of the family violence, sexual assault or abuse, stalking, or trafficking of persons; or

(5) any other independent documentary evidence necessary to show the applicant's eligibility to participate in the program[-, or offense].

Commentary by Jill Mata

Source: SB 256

Effective Date: May 19, 2017

Applicability: Applies to the address confidentiality program created on or after the effective date.

Summary of Changes: This section expands the eligibility of victims and qualifying circumstances permitting

participation in the address confidentiality program. Eligibility now more broadly includes victims of family violence, sexual assault or abuse, stalking, or trafficking of persons. Eligible circumstances include victims protected under temporary injunctions, temporary ex parte orders, or orders issued pursuant to custody or divorce proceedings or victims possessing documentation of family violence, sexual assault, or abuse or stalking. See above for full bill overview.

Code of Criminal Procedure Art. 56.90. EXCEPTIONS. (a) The attorney general:

(1) shall disclose a participant's true residential, business, or school address if:

(A) requested by:

(i) a law enforcement agency for the purpose of conducting an investigation;

(ii) the Department of Family and Protective Services for the purpose of conducting a child protective services investigation under Chapter 261, Family Code; or

(iii) the Department of State Health Services or a local health authority for the purpose of making a notification described by Article 21.31 of this code, Section 54.033, Family Code, or Section 81.051, Health and Safety Code; or

(B) required by court order;

and

(2) may disclose a participant's true residential, business, or school address if:

(A) the participant consents to the disclosure; and

(B) the disclosure is necessary to administer the program.

Commentary by Jill Mata

Source: SB 256

Effective Date: May 19, 2017

Applicability: Applies to the address confidentiality program created on or after the effective date.

Summary of Changes: This section requires the attorney general to disclose a participant's true residential, business, or school address if requested by a law enforcement agency for the specific purpose of conducting an investigation. See above for full bill overview.

Code of Criminal Procedure Art. 62.001.DEFINITIONS. (5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or chil-

dren), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection ~~(c-1)(3)~~ ~~[(e)(3)]~~ of that section;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), ~~[(F)]~~ (K), or (L);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), ~~[(F)]~~ (K), or (L), but not if the violation results in a deferred adjudication;

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; ~~[(K)]~~

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code; or

(L) a violation of Section 20A.03 (Continuous trafficking of persons), Penal Code, if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

Commentary by Jill Mata

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to a person required to register as a result of an offense committed on or after the effective date.

Summary of Changes: The Texas Human Trafficking Task Force was established in 2009 through H.B. 4009 and is coordinated through the Office of the Attorney General. It is a collaborative effort between state agencies, local law enforcement entities, district attorneys, and non-governmental organizations to address human trafficking from multiple perspectives. H.B. 29 codifies the 11 unanimous recommendations of Texas' human trafficking task force members. These include recommendations to improve Texas' response to human trafficking, including enhanced penalties for traffickers, providing prosecutors with additional tools for prosecution, improving victim protections, and addressing training needs.

This legislation amends current law relating to prostitution and the trafficking of persons; civil racketeering related to trafficking; the prevention, investigation, and prosecution of and punishment for certain sexual offenses and offenses involving or related to trafficking; reimbursement of certain costs for criminal victims who are children; and the release and reporting of certain information relating to a child. It also increases criminal penalties and creates criminal offenses.

Specifically, this section expands the definition of a reportable conviction to include the offense of continuous trafficking of persons if the offense is based partly or wholly on conduct that constitutes prostitution, sexual conduct, or sexual conduct involving a child.

Code of Criminal Procedure Art. 62.001, DEFINITIONS. (5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual perfor-

mance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c)(3) of that section;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), or (K);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), or (K), but not if the violation results in a deferred adjudication;

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; or

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code.

Commentary by Jill Mata

Source: SB 1232

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This bill amended current law relating to inappropriate conduct between a person and an animal. Previously, the sexual crimes against animals could be prosecuted as public lewdness if the act occurred in public. Acts that occurred in private were not prosecutable unless the conduct resulted in harm to the animal that met the definition of animal cruelty or the actor was reckless about whether a person was present who would be offended by the act. This bill created a separate criminal offense in the Penal Code for the crime of "bestiality." Bestiality is generally defined as an act that involves the touching of the mouth or genital region of a person to the mouth or genital region of an animal. A person also commits an offense if they cause that activity, promote that activity, allow the activity to occur on their premises, or buy/sell an animal for the purpose of that activity. An offense of this nature is a state jail felony. If the animal is seriously harmed or killed in the commission of the offense, the offense is a second degree felony. If community supervision is ordered, a judge may cause a defendant to surrender all animals in his or her possession, prohibit a defendant from owning/possessing an animal, or require counseling or other treatment.

A conviction of this offense is also prima facie evidence of a "cruelly treated" animal under the Health and Safety Code. This bill also expands the definition of reportable convictions that result in registration as a sex offender in the Code of Criminal Procedure to include the new offense of bestiality.

Code of Criminal Procedure Art. 62.005. CENTRAL DATABASE; PUBLIC INFORMATION. (b) The information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of any information:

- (1) regarding the person's social security number or driver's license number, or any home, work, or cellular telephone number of the person;
- (2) that is described by Article 62.051(c)(7) or required by the department under Article 62.051(c)(9) [~~62.051(e)(8)~~], including any information regarding an employer's name, address, or telephone number; or
- (3) that would identify the victim of the offense for which the person is subject to registration.

Commentary by Jill Mata

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: See above for a description of what this bill generally does. This is a non-substantive, conforming change related to the addition of a new provision in 62.051. The former Article 62.051(c)(8) is now 62.051(c)(9). The new subsection (c)(8) is explained herein.

Code of Criminal Procedure Art. 62.007. RISK ASSESSMENT REVIEW COMMITTEE; SEX OFFENDER SCREENING TOOL (e) Records [~~Notwithstanding Chapter 58, Family Code, records~~] and files, including records that have been sealed under Chapter 58, Family Code [~~Section 58.003 of that code~~], relating to a person for whom a court, the Texas Department of Criminal Justice, or the Texas Juvenile Justice Department is required under this article to determine a level of risk shall be released to the court, the Texas Department of Criminal Justice, or the Texas Juvenile Justice Department, as appropriate, for the purpose of determining the person's risk level.

Commentary by Jill Mata

Source: SB 1304

Effective Date: September 1, 2017

Applicability: Applies to records created before, on, or after the effective date.

Summary of Changes: Interested parties have expressed concern that, despite the confidentiality protections afforded under state law for juvenile records, technological advancements and the expanded number of persons and entities with access to juvenile records have diminished the assurance of confidentiality of those records and increased the long-term consequences of a juvenile offender's delinquency history. The 84th Legislature created the Juvenile Records Advisory Committee (JRAC), comprised of juvenile justice system practitioners. JRAC members recommended numerous changes to Chapter 58, Texas Family Code, in order to better protect the confidential records of our juveniles and to make processes more efficient. The above section is a conforming change related to the changes made in that chapter.

Code of Criminal Procedure Art. REGISTRATION: GENERAL. (c) The registration form shall require:

(1) the person's full name, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, and shoe size;

(1-a) the address at which the person resides or intends to reside or, if the person does not reside or intend to reside at a physical address, a detailed

description of each geographical location at which the person resides or intends to reside;

(1-b) each alias used by the person and any home, work, or cellular telephone number of the person;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.005(g), that is held or sought by the person;

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution;

(7) the identification of any online identifier established or used by the person;

(8) the vehicle registration information, including the make, model, vehicle identification number, color, and license plate number, of any vehicle owned by the person, if the person has a reportable conviction or adjudication for an offense under:

(A) Section 20A.02(a)(3), (4), (7), or (8), Penal Code; or

(B) Section 20A.03, Penal Code, if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code; and

(9) [(8)] any other information required by the department.

Commentary by Jill Mata

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The amendments in this section add vehicle registration information to what is included in the public sex offender database if a person is convicted of the specified human trafficking offenses. Other aspects of this bill are discussed herein.

Code of Criminal Procedure Art. 62.053. PRE-RELEASE NOTIFICATION. (a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Juvenile Justice Department shall determine the person's level of risk to the community using the sex offender screening tool

developed or selected under Article 62.007 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;

(B) not later than the seventh day after the date on which the person is released or the date on which the person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the applicable entity or entities as required by Article 62.051(h) or (j) or 62.055(e);

(C) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person;

(F) the person must notify appropriate entities of any change in status as described by Article 62.057; ~~and~~

(G) certain types of employment are prohibited under Article 62.063 for a person with a reportable conviction or adjudication for a sexually violent offense involving a victim younger than 14 years of age and occurring on or after September 1, 2013; and

(H) certain locations of residence are prohibited under Article 62.064 for a person with a reportable conviction or adjudication for an of-

fense occurring on or after September 1, 2017, except as otherwise provided by that article;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address or, if applicable, a detailed description of each geographical location where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

Commentary by Jill Mata

Source: HB 355

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change generally prohibits registered sex offenders from living in on-campus dormitories or other housing facilities but also enables institutions of higher education to decide if a registered sex offender who is rated at the lowest likelihood of reoffending can live in on-campus housing. Specifically regarding the above section, an official of a penal institution, including TJJD, before releasing a person who will be subject to registration under this chapter, is required to inform the person, among certain other matters, that certain locations of residence are prohibited.

Code of Criminal Procedure Art. 62.053. PRE-RELEASE NOTIFICATION. (a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Juvenile Justice Department shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.007 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;

(B) not later than the seventh day after the date on which the person is released or the

date on which the person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the applicable entity or entities as required by Article 62.051(h) or (j) or 62.055(e);

(C) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person;

(F) the person must notify appropriate entities of any change in status as described by Article 62.057; ~~and~~

(G) certain types of employment are prohibited under Article 62.063 for a person with a reportable conviction or adjudication for a sexually violent offense involving a victim younger than 14 years of age occurring on or after September 1, 2013; and

(H) if the person enters the premises of a school as described by Article 62.064 and is subject to the requirements of that article, the person must immediately notify the administrative office of the school of the person's presence and the person's registration status under this chapter;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address or, if applicable, a detailed description of each geographical location where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

Commentary by Jill Mata

Source: SB 1553

Effective Date: September 1, 2017

Applicability: Applies to a person required to register as a sex offender for an offense committed before, on, or after the effective date.

Summary of Changes: The primary purpose of this bill as filed was to correct the practices of some school districts that discouraged parents from participating in meetings held as part of the special education of their children by issuing the parents criminal trespass warnings that often cannot be appealed under district policy. The bill sought to address this issue by revising the law relating to the refusal of entry to or ejection from school district property and providing for an appeal process. This change is part of a larger amendment that was added late in the session. As discussed below, the amendments that were added provide that if a person required to register as a sex offender enters school property during regular operating hours, the person must immediately report his or her presence and registration status to the school office. Related to that new requirement, this specific change requires an official of a penal institution, including TJJD, before releasing a person who will be subject to registration under this chapter, to inform the person, among certain other matters, of this new requirement.

Code of Criminal Procedure Art. 62.058. LAW ENFORCEMENT VERIFICATION OF REGISTRATION INFORMATION. (g) A local law enforcement authority that provides to a person a registration form for verification as required by this chapter shall include with the form a statement describing the prohibition under Article 62.064.

Commentary by Jill Mata

Source: HB 355

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after September 1, 2017

Summary of Changes: This amendment generally prohibits registered sex offenders from living in on-campus dormitories or other housing facilities but also enables institutions of higher education to decide if a registered sex offender who is rated at the lowest likelihood of reoffending can live in on-campus housing. Specifically regarding the above referenced section, the bill added the requirement that a local law enforcement authority that is providing the registration form must also include an accompanying statement describing this housing prohibition.

Code of Criminal Procedure Art. 62.058. LAW ENFORCEMENT VERIFICATION OF REGISTRATION INFORMATION. (g) A local law enforcement authority who provides a person with a registration form

for verification as required by this chapter shall include with the form a statement and, if applicable, a description of the person's duty to provide notice under Article 62.064.

Commentary by Jill Mata

Source: SB 1553

Effective Date: September 1, 2017

Applicability: Applies to offenses committed before, on, or after the effective date.

Summary of Changes: This change accompanies the requirement that a person required to register as a sex offender report to the school office upon entry to school property. The local law enforcement authority providing the registration verification form must include a statement and description of a person's duties under new Article 62.064 regarding notification to the school.

Code of Criminal Procedure Art. 62.064. PROHIBITED LOCATION OF RESIDENCE. A person subject to registration under this chapter may not reside on the campus of a public or private institution of higher education unless:

(1) the person is assigned a numeric risk level of one based on an assessment conducted using the sex offender screening tool developed or selected under Article 62.007; and

(2) the institution approves the person to reside on the institution's campus.

Commentary by Jill Mata

Source: HB 355

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: This change generally prohibits registered sex offenders from living in on-campus dormitories or other housing facilities but also enables institutions of higher education to allow a person required to register as sex offender who is rated at the lowest likelihood of reoffending to live in on-campus housing.

Code of Criminal Procedure Art. 62.064. ENTRY ONTO SCHOOL PREMISES; NOTICE REQUIRED. (a) In this article:

(1) "Premises" means a building or portion of a building and the grounds on which the building is located, including any public or private driveway, street, sidewalk or walkway, parking lot, or parking garage on the grounds.

(2) "School" has the meaning assigned by Section 481.134, Health and Safety Code.

(b) A person subject to registration under this chapter who enters the premises of any school in this state during the standard operating hours of the school shall immediately notify the administrative office of the

school of the person's presence on the premises of the school and the person's registration status under this chapter. The office may provide a chaperon to accompany the person while the person is on the premises of the school.

(c) The requirements of this article:

(1) are in addition to any requirement associated with the imposition of a child safety zone on the person under Section 508.187, Government Code, or Article 42A.453 of this code; and

(2) do not apply to:

(A) a student enrolled at the school;

(B) a student from another school participating at an event at the school; or

(C) a person who has entered into a written agreement with the school that exempts the person from those requirements.

Commentary by Jill Mata

Source: SB 1553

Effective Date: September 1, 2017

Applicability: Applies to offenses committed before, on, or after the effective date.

Summary of Changes: This provision was added late in the session to a bill dealing primarily with correcting the practices of some school districts that discouraged parents from participating in meetings held as part of the special education of their children by issuing the parents criminal trespass warnings that often cannot be appealed under district policy. The bill as filed sought to address this issue by revising the law relating to the refusal of entry to or ejection from school district property and providing for an appeal process. It was amended to address the presence on school property of an individual required to register as a sex offender. Under this new provision, unrelated to special education, a person required to register as a sex offender who enters school property during regular operating hours must notify the school office of the person's presence and registration status. The office may provide a chaperon to accompany the person on school premises. Notably, this does not apply to a student enrolled at the school or a student from another school who is at the school for the purpose of participating in an event at the school. Additionally, it does not apply if the person has entered into a written agreement with the school exempting the person from the notification requirement.

Code of Criminal Procedure Art. 62.101. EXPIRATION OF DUTY TO REGISTER. (a) Except as provided by Subsection (b) and Subchapter I, the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) an offense under Section 20A.02(a)(3), (4), (7), or (8), 25.02, 43.05(a)(2), or 43.26, Penal Code;

(3) an offense under Section 20A.03, Penal Code, if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code;

(4) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter;

(5) ~~(4)~~ an offense under Section 20.02, 20.03, or 20.04, Penal Code, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015 or, for a deferred adjudication, the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(6) ~~(5)~~ an offense under Section 43.23, Penal Code, that is punishable under Subsection (h) of that section.

Commentary by Jill Mata

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to offenses committed on or after the effective date.

Summary of Changes: The purpose of this bill has been previously described. This section adds the offense of continuous human sex trafficking that is based wholly or part on conduct that constituted prostitution or a sexual offense involving a child to the crimes that require registration as a sex offender. Other than for an adjudication of delinquent conduct, lifetime registration is required.

Code of Criminal Procedure Art. 62.202. VERIFICATION OF INDIVIDUALS SUBJECT TO COMMITMENT. (a) Notwithstanding Article 62.058, if an individual subject to registration under this chapter is civilly committed as a sexually violent predator, the person shall report to the local law enforcement authority designated as the person's primary registration authority by the department to verify the information in the registration form maintained by the authority for that person as follows:

(1) if the person resides at a civil commitment center, not less than once each year; or

(2) if the person does not reside at a civil commitment center, not less than once in each 30-day period following:

(A) the date the person first registered under this chapter; or

(B) if applicable, the date the person moved from the center [to verify the information in the registration form maintained by the authority for that person].

(a-1) For purposes of Subsection (a)(2) [this subsection], a person complies with a requirement that the person register within a 30-day period following a date if the person registers at any time on or after the 27th day following that date but before the 33rd day after that date.

Commentary by Jill Mata

Source SB 1576

Effective Date: September 1, 2017

Applicability: Applies to a person who, on or after the effective date, is required to register as a sex offender, regardless of whether the offense or conduct occurred before, on, or after the effective date.

Summary of Changes: This bill worked to enhance security at the Texas Civil Commitment Center (TCCC), formerly known as the Office of Violent Sex Offender Management (OVSOM), by prohibiting the introduction of drugs, alcohol, or weapons into the facility, authorizing the usage of mechanical or chemical restraints in extreme circumstances, and enhancing penalties for assaults on TCCC staff by sexually violent predators (SVPs). Additionally, the bill cleaned up some language regarding sex offender registration and identification cards for SVPs in TCCC and made changes to TCCC's administrative attachment to HHSC. This statute was amended to require an individual subject to sex offender registration who is civilly committed as an SVP to report to the local law enforcement authority designated as the person's primary registration authority by the Texas Department of Public Safety (DPS) to verify certain information in the registration form. If the person resides in a TCCC, the person must verify his or her information not less than once a year; if residing somewhere other than a TCCC, the person must verify not less than once in each 30-day period following registration.

Code of Criminal Procedure Art. 62.2021. REQUIREMENTS RELATING TO DRIVER'S LICENSE OR PERSONAL IDENTIFICATION CERTIFICATE: INDIVIDUALS RESIDING AT CIVIL COMMITMENT CENTER. (a) Notwithstanding Article 62.060(b), a person subject to registration who is civilly committed as a sexually violent predator and resides at a civil commitment center shall renew the person's department-issued driver's license or personal identification

certificate as prescribed by Section 521.103, 521.272, or 522.033, Transportation Code, as applicable.

(b) On the date that a person described by Subsection (a) no longer resides at a civil commitment center, the person is required to renew a driver's license or personal identification certificate only as provided by Article 62.060(b).

Commentary by Jill Mata

Source: SB 1576

Effective Date: September 1, 2017

Applicability: Applies to a person who, on or after the effective date, is required to register as a sex offender, regardless of whether the offense or conduct occurred before, on, or after the effective date.

Summary of Changes: As described earlier, this bill worked to enhance security at the Texas Civil Commitment Center (TCCC), formerly known as the Office of Violent Sex Offender Management (OVSOM). This provision requires a person subject to registration who is civilly committed as an SVP and resides at a TCCC to annually renew in person his or her driver's license or personal identification certificate.

Education Code

Education Code Sec. 28.017. INSTRUCTION ON PREVENTION OF SEXUAL ABUSE AND SEX TRAFFICKING. (a) The commissioner, in cooperation with the human trafficking prevention task force created under Section 402.035, Government Code, and any other persons the commissioner considers appropriate, shall develop one or more sexual abuse and sex trafficking instructional modules that a school district may use in the district's health curriculum. The modules may include:

(1) information on the different forms of sexual abuse and assault, sex trafficking, and risk factors for sex trafficking;

(2) the procedures for reporting sexual abuse and sex trafficking or suspected sexual abuse or sex trafficking;

(3) strategies for sexual abuse and assault prevention and overcoming peer pressure;

(4) information on establishing healthy boundaries for relationships, recognizing potentially abusive or harmful relationships, and avoiding high-risk activities;

(5) the recruiting tactics of sex traffickers and peer recruiters, including recruitment through the Internet;

(6) the legal aspects of sexual abuse and sex trafficking under state and federal law; and

(7) the influence of culture and mass media on perceptions of sexual abuse and sex trafficking, including stereotypes and myths about victims and abusers, victim blaming, and the role of language.

(b) The module or modules developed under Subsection (a) must emphasize compassion for victims of sexual abuse or sex trafficking and the creation of a positive reentry experience for survivors of sexual abuse or sex trafficking into schools.

(c) Before the beginning of each school year, a school district that elects to use a module developed under Subsection (a) in the district's health curriculum shall provide written notice to the parent of each student enrolled in the district that includes the following:

(1) a statement that the district will provide instruction relating to sexual abuse and sex trafficking awareness to students enrolled in the district;

(2) a description of the material that will be used in providing instruction to students; and

(3) a statement that the parent has the right to review the material and remove the parent's student from the instruction.

(d) If a school district does not comply with the requirements of Subsection (c), a parent of a student enrolled in the district may file a complaint in accordance with the district's grievance procedure developed under Section 26.011.

Commentary by Jill Mata

Source: SB 2039

Effective Date: June 12, 2017, but only if a specific appropriation is made

Applicability: Applies to prevention and early intervention services beginning in the 2017-2018 school year, but only if a specific appropriation is made.

Summary of Changes: This bill addressed human sex trafficking, specifically age-appropriate prevention and early intervention services, by amending the Education Code to require schools to develop instructional modules regarding human trafficking prevention. This statute requires the commissioner of education, in cooperation with the human trafficking prevention task force and any other persons the commissioner considers appropriate, to develop one or more sexual abuse and sex trafficking instructional modules that a public school district may use in the district's health curriculum. The new statute sets out what topics the modules may include and that the modules must emphasize compassion for victims of sexual abuse or sex trafficking and the creation of a positive reentry experience for survivors of sexual abuse or sex trafficking into schools. Before the beginning of each school year, a school district that elects to use a module in the district's health curriculum shall provide written notice to the parent of each student enrolled in the district.

Education Code Sec. 38.0041. POLICIES ADDRESSING SEXUAL ABUSE AND OTHER MALTREATMENT OF CHILD. (a) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

(a-1) A school district may collaborate with local law enforcement and outside consultants with expertise in the prevention of sexual abuse and sex trafficking to create the policy required under Subsection (a), and to create a referral protocol for high-risk students.

(b) A policy required by this section must address:

(1) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, sex trafficking, or other maltreatment, using resources developed by the agency under Section 38.004 or by the commissioner under Section 28.017;

(2) actions that a child who is a victim of sexual abuse, sex trafficking, or other maltreatment should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse, sex trafficking, or other maltreatment.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children must include training, as provided by this subsection, concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children. The training:

(1) must be provided, as part of a new employee orientation, to all new school district and open-enrollment charter school employees and to existing district and open-enrollment charter school employees on a schedule adopted by the agency by rule until all district and open-enrollment charter school employees have taken the training; and

(2) must include training concerning:

(A) factors indicating a child is at risk for sexual abuse, sex trafficking, or other maltreatment;

(B) likely warning signs indicating a child may be a victim of sexual abuse, sex trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, sex trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk of sexual abuse, sex trafficking, or other maltreatment; and

(E) community organizations that have relevant existing research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff members, students, and parents.

Commentary by Jill Mata

Source: SB 2039

Effective Date: June 12, 2017, but only if a specific appropriation is made

Applicability: Applies to prevention and early intervention services and policies beginning in the 2017-2018 school year, but only if a specific appropriation is made.

Summary of Changes: This bill addressed human sex trafficking, specifically age-appropriate prevention and early intervention services, by amending the Education Code to require schools to develop instructional modules regarding human trafficking prevention. This statute adds sex trafficking in the policy addressing sexual abuse and other maltreatment of children required to be adopted and implemented by each district and open-enrollment charter school. The bill authorizes a district to collaborate with local law enforcement and outside consultants with expertise in the prevention of sexual abuse and sex trafficking to create the policy and to create a referral protocol for high-risk students.

Education Code Sec. 51.9363. [~~CAMPUS~~] SEXUAL ASSAULT POLICY. (a) In this section, "postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined~~[" has the meaning assigned]~~ by Section 61.003.

(b) Each postsecondary educational institution [~~of higher education~~] shall adopt a policy on sexual assault applicable to each student enrolled at and each employee of the institution. The policy must:

(1) include:

(A) definitions of prohibited behavior;

(B) sanctions for violations;

and

(C) the protocol for reporting and responding to reports of sexual assault; and

(2) be approved by the institution's governing board before final adoption by the institution.

(c) Each postsecondary educational institution [~~of higher education~~] shall make the institution's sexual assault policy available to students, faculty, and staff members by:

(1) including the policy in the institution's student handbook and personnel handbook; and

(2) creating and maintaining a web page on the institution's Internet website dedicated solely to the policy.

(d) Each postsecondary educational institution [~~of higher education~~] shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual assault policy before or during the first semester or term in which the student is enrolled at the institution. The institution shall establish the format and content of the orientation.

(e) Each postsecondary educational institution shall develop and implement a public awareness campaign to inform students enrolled at and employees of the institution of the institution's sexual assault policy. As part of the campaign, the institution shall provide to students information regarding the protocol for reporting incidents of sexual assault adopted under Subsection (b), including the name, office location, and contact information of the institution's Title IX coordinator, by:

(1) e-mailing the information to each student at the beginning of each semester or other academic term; and

(2) including the information in the orientation required under Subsection (d).

(f) As part of the protocol for responding to reports of sexual assault adopted under Subsection (b), each postsecondary educational institution shall:

(1) to the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of sexual assault and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and

(2) notwithstanding any other law, allow an alleged victim or alleged perpetrator of an incident of sexual assault to drop a course in which both parties are enrolled without any academic penalty.

(g) Each biennium, each postsecondary educational institution [~~of higher education~~] shall review the institution's sexual assault policy and, with approval of the institution's governing board, revise the policy as necessary.

Commentary by Jill Mata

Source: SB 968

Effective Date: June 12, 2017

Applicability: Applies to policy requirements beginning in the 2017-2018 school year.

Summary of Changes: In 2015, the 84th Legislature required higher education institutions to adopt a policy on the handling of campus sexual assault and provided certain requirements for the policies. This bill amended the statute by adding additional requirements to the policy, including that each postsecondary educational institution shall develop and implement a public awareness campaign to inform students and employees of the sexu-

al assault policy. As part of the campaign, the institution shall provide to students information regarding the protocol for reporting incidents of sexual assault. The bill also added the requirement that, as part of the protocol for responding to reports of sexual assault, each postsecondary educational institution shall ensure that each alleged victim or alleged perpetrator of an incident of sexual assault, and any other person who reports such an incident, is offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident. The school must also allow an alleged victim or alleged perpetrator of an incident of sexual assault to drop a course in which both parties are enrolled without any academic penalty.

Education Code Sec. 51.9365. ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES.

(a) In this section:

(1) "Dating violence" means abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.

(2) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.

(3) "Sexual assault" means sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse.

(4) "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:

(A) in the employment context, unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment; or

(B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.

(5) "Stalking" means a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress.

(b) Each postsecondary educational institution shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred.

(c) The electronic reporting option provided under Subsection (b) must:

(1) enable a student or employee to report the alleged offense anonymously; and

(2) be easily accessible through a clearly identifiable link on the postsecondary educational institution's Internet website home page.

(d) A protocol for reporting sexual assault adopted under Section 51.9363 must comply with this section.

(e) The Texas Higher Education Coordinating Board may adopt rules as necessary to administer this section.

(f) The commissioner of higher education shall establish an advisory committee to recommend to the Texas Higher Education Coordinating Board rules for adoption under Subsection (e). The advisory committee consists of nine members appointed by the commissioner. Each member must be a chief executive officer of a postsecondary educational institution or a representative designated by that officer. Not later than December 1, 2017, the advisory committee shall submit the committee's recommendations to the coordinating board. This subsection expires September 1, 2018.

Commentary by Jill Mata

Source: SB 968

Effective Date: June 12, 2017

Applicability: Applies to the implementation of online reporting beginning in the 2017-2018 school year.

Summary of Changes: In 2015, the 84th Legislature required higher education institutions to adopt a policy on the handling of campus sexual assault and provided certain requirements for the policies. This bill amended the statute by requiring each institution of higher education, including a private or independent institution, to provide an option for an enrolled student or employee to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by a student or employee, regardless of where the alleged offense occurred. The online reporting option will be easier and provide for greater anonymity for the reporter. Each institution is required to provide this on line reporting option by January 1, 2018. The Texas Higher Education Coordinating Board may adopt rules to administer the law, and the Commission of Higher Education is required to establish an advisory committee to make recommendations regarding those rules.

Education Code Sec. 51.9366. AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS. (a) In this section:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Dating violence" means abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.

(3) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.

(4) "Sexual assault" means sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse.

(5) "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:

(A) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

(B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

(6) "Stalking" means a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress.

(b) A postsecondary educational institution may not take any disciplinary action against a student enrolled at the institution who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

(c) A postsecondary educational institution may investigate to determine whether a report of an incident of sexual harassment, sexual assault, dating violence, or stalking was made in good faith.

(d) A determination that a student is entitled to amnesty under Subsection (b) is final and may not be revoked.

(e) Subsection (b) does not apply to a student who reports the student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.

(f) This section may not be construed to limit a postsecondary educational institution's ability to provide amnesty from application of the institution's policies in circumstances not described by Subsection (b).

(g) The coordinating board may adopt rules as necessary to implement and enforce this section.

(h) The commissioner of higher education shall establish an advisory committee to recommend to the coordinating board rules for adoption under Subsection (g). The advisory committee consists of nine members appointed by the commissioner. Each member must be a chief executive officer of a postsecondary educational

institution or a representative designated by that officer. Not later than December 1, 2017, the advisory committee shall submit the committee's recommendations to the coordinating board. This subsection expires September 1, 2018.

Commentary by Jill Mata

Source: SB 969

Effective Date: June 12, 2017

Applicability: Applies to reports beginning in the 2017-2018 school year.

Summary of Changes: In 2015, the 84th Legislature required higher education institutions to adopt a policy with certain criteria on campus sexual assault. This bill provides amnesty to students of higher education institutions, including private and independent institutions, if they report incidents of sexual assault. The institution is prohibited from taking any disciplinary action against an enrolled student for a violation of its policies on student conduct if the student in good faith reported being a victim of, or a witness to, the sexual assault and the violation was in relation to the incident, regardless of where the incident occurred.

Family Code

Family Code Sec. 261.004. TRACKING OF RECURRENCE OF CHILD ABUSE OR NEGLECT REPORTS. (a) The department shall collect and monitor data regarding repeated reports of abuse or neglect:

(1) involving the same child, including reports of abuse or neglect of the child made while the child resided in other households and reports of abuse or neglect of the child by different alleged perpetrators made while the child resided in the same household; or

(2) by the same alleged perpetrator.

(b) In monitoring reports of abuse or neglect under Subsection (a), the department shall group together separate reports involving different children residing in the same household.

(c) The department shall consider any report collected under Subsection (a) involving any child or adult who is a part of a child's household when making case priority determinations or when conducting service or safety planning for the child or the child's family.

Commentary by Jill Mata

Source: SB 11

Effective Date: September 1, 2017

Applicability: DFPS will transfer services to an SSCC before June 1, 2017. By December 31, 2019, DFPS will identify catchment areas and create implementation plans for transfer of case management to SSCCs.

Summary of Changes: In 2011, the 82nd Legislature implemented foster care redesign at the Department of Family Protective Services (DFPS) by directing the agency to adopt stakeholder recommendations included in a DFPS report. This bill changes the name of foster care redesign to community-based foster care and transfers certain case management services for DFPS to a qualified single source continuum contractor (SSCC) that will provide community based foster care within a contracted area. While DFPS will maintain temporary or permanent custody of a child, an SSCC will oversee the case management services of a child in a certain geographical area. Regarding the above statutory change, these additions to the Family Code require DFPS to collect and monitor data on recurring reports of abuse or neglect by the same alleged perpetrator or involving the same child, including reports of abuse or neglect of the child made while the child resided in other households and reports of abuse or neglect while the child resided in the same household. When DFPS determines case priority or conducts service or safety planning for the child or family, they will be required to consider any reports of abuse and neglect.

Government Code

Government Code Sec. 420.034. STATEWIDE ELECTRONIC TRACKING SYSTEM. (a) For purposes of this section, "evidence" means evidence collected during the investigation of an alleged sexual assault or other sex offense, including:

(1) evidence from an evidence collection kit used to collect and preserve evidence of a sexual assault or other sex offense; and

(2) other biological evidence of a sexual assault or other sex offense.

(b) The department shall develop and implement a statewide electronic tracking system for evidence collected in relation to a sexual assault or other sex offense.

(c) The tracking system must:

(1) track the location and status of each item of evidence through the criminal justice process, including the initial collection of the item of evidence in a forensic medical examination, receipt and storage of the item of evidence at a law enforcement agency, receipt and analysis of the item of evidence at an accredited crime laboratory, and storage and destruction of the item of evidence after the item is analyzed;

(2) allow a facility or entity performing a forensic medical examination of a survivor, law enforcement agency, accredited crime laboratory, prosecutor, or other entity providing a chain of custody for an item of evidence to update and track the status and location of the item; and

(3) allow a survivor to anonymously track or receive updates regarding the status and location of each item of evidence collected in relation to the offense.

(d) The department shall require participation in the tracking system by any facility or entity that collects evidence of a sexual assault or other sex offense or investigates or prosecutes a sexual assault or other sex offense for which evidence has been collected.

(e) Records entered into the tracking system are confidential and are not subject to disclosure under Chapter 552. Records relating to evidence tracked under the system may be accessed only by:

(1) the survivor from whom the evidence was collected; or

(2) an employee of a facility or entity described by Subsection (d), for purposes of updating or tracking the status or location of an item of evidence.

(f) An employee of the department or a facility or entity described by Subsection (d) may not disclose to a parent or legal guardian of a survivor information that would aid the parent or legal guardian in accessing records relating to evidence tracked under the system if the employee knows or has reason to believe that the parent or legal guardian is a suspect or a suspected accomplice in the commission of the offense with respect to which evidence was collected.

(g) To assist in establishing and maintaining the statewide electronic tracking system under this section, the department may accept gifts, grants, or donations from any person or entity.

Commentary by Jill Mata

Source: HB 281

Effective Date: September 1, 2017

Applicability: Applies to evidence collected on or after the date on which a facility or entity is first required to participate in the statewide electronic tracking system.

Summary of Changes: The Code of Criminal Procedure establishes the rights of crime victims, including special rights for victims of sexual assault or abuse. One of these includes the right to disclosure of information about evidence collected during an investigation of the offense unless the disclosure would interfere with the investigation or prosecution of the crime. This bill amended the Government Code to require the Department of Public Safety to develop and implement a statewide electronic tracking system for evidence collected in sexual assault or abuse cases. The requirements of the tracking system include status and location of each item of evidence as the evidence moves through various states of the criminal justice process. Responsible entities will update and track the status of evidence and the victim will be able to anonymously track or receive updates. These records will be confidential and not subject to disclosure under public information requests. DPS must require all facili-

ties and entities described in subsection (d) to participate in the system no later than September 1, 2019.

Government Code Sec. 508.187. CHILD SAFETY ZONE. (b-1) Notwithstanding Subsection (b)(1)(B), a requirement that a releasee not go in, on, or within a distance specified by a parole panel of certain premises does not apply to a releasee while the releasee is in or going immediately to or from:

(1) a parole office;
(2) premises at which the releasee is participating in a program or activity required as a condition of release;

(3) a residential facility in which the releasee is required to reside as a condition of release;

(4) a private residence in which the releasee is required to reside as a condition of release; or

(5) any other premises, facility, or location that is:

(A) designed to rehabilitate or reform the releasee; or

(B) authorized by the division as a premises, facility, or location where it is reasonable and necessary for the releasee to be present and at which the releasee has legitimate business, including a church, synagogue, or other established place of religious worship, a workplace, a health care facility, or a location of a funeral.

Commentary by Jill Mata

Source: HB 1111

Effective Date: September 1, 2017

Applicability: Applies to parole-related travel and activities on or after the effective date.

Summary of Changes: This bill addressed the concern that prohibitions against persons who are registered sex offenders released on parole or to mandatory supervision from going on roadways near premises where children commonly gather are too restrictive. It was reported that the restrictions do not allow the individuals to lawfully travel to necessary places. The above section, which applies to parolees and was added to the statute governing the Child Safety Zone, provides exceptions to allow parolees to travel immediately to and from parole offices, to legally required programs and activities, and to approved or designated residential facilities or private residences. The person on parole is also permitted to travel to and from any other premises, facilities, or locations that are pre-approved as designated to rehabilitate or reform or are authorized as premises, facilities, or locations designated as reasonable and necessary with a legitimate business or rehabilitative interest.

Government Code Sec. 508.225. CHILD SAFETY ZONE. (a-1) Notwithstanding Subsection (a)(2), a requirement that an inmate not go in, on, or within a distance specified by a parole panel of certain

premises does not apply to an inmate while the inmate is in or going immediately to or from:

(1) a parole office;

(2) premises at which the inmate is participating in a program or activity required as a condition of release;

(3) a residential facility in which the inmate is required to reside as a condition of release;

(4) a private residence in which the inmate is required to reside as a condition of release; or

(5) any other premises, facility, or location that is:

(A) designed to rehabilitate or reform the inmate; or

(B) authorized by the division as a premises, facility, or location where it is reasonable and necessary for the inmate to be present and at which the inmate has legitimate business, including a church, synagogue, or other established place of religious worship, a workplace, a health care facility, or a location of a funeral.

Commentary by Jill Mata

Source: HB 1111

Effective Date: September 1, 2017

Applicability: Applies to inmate-related travel and activities on or after the effective date.

Summary of Changes: This section applies to inmates (as compared to parolees) who are placed on mandatory supervision and was added to the statute governing the Child Safety Zone in order to provide exceptions for persons to travel immediately to and from parole offices, to legally required programs and activities, and to approved or designated residential facilities or private residences. The inmate is also permitted to travel to and from any other premises, facility, or location that is pre-approved as one designated to rehabilitate or reform, or is authorized as a premises, facility, or location designated as reasonable and necessary with a legitimate business or rehabilitative interest.

Government Code Sec. 772.00715. EVIDENCE TESTING GRANT PROGRAM. (a) In this section:

(1) "Accredited crime laboratory" has the meaning assigned by Section 420.003.

(2) "Criminal justice division" means the criminal justice division established under Section 772.006.

(3) "Grant program" means the evidence testing grant program established under this section.

(4) "Law enforcement agency" means:
(A) the police department of a municipality;

(B) the sheriff's office of a county; or

(C) a constable's office of a county.

(b) The criminal justice division shall establish and administer a grant program and shall disburse funds to assist law enforcement agencies or counties in testing evidence collected in relation to a sexual assault or other sex offense.

(c) Grant funds may be used only for the testing by an accredited crime laboratory of evidence that was collected in relation to a sexual assault or other sex offense.

(d) The criminal justice division:

(1) may establish additional eligibility criteria for grant applicants; and

(2) shall establish:

(A) grant application procedures;

(B) guidelines relating to grant amounts; and

(C) criteria for evaluating grant applications.

(e) The criminal justice division shall include in the biennial report required by Section 772.006(a)(9) detailed reporting of the results and performance of the grant program.

Government Code Sec. 772.00716. EVIDENCE TESTING ACCOUNT. (a) The evidence testing account is created as a dedicated account in the general revenue fund of the state treasury.

(b) Money in the account may be appropriated only to the criminal justice division established under Section 772.006 for purposes of the evidence testing grant program established under Section 772.00715.

(c) Funds distributed under Section 772.00715 are subject to audit by the comptroller.

Commentary by Jill Mata

Source: HB 4102/HB 1729

Effective Date: September 1, 2019

Applicability: Applies to grant program funding on or after the effective date.

Summary of Changes: These bills establish and authorize certain funding for a grant program used to test evidence collected in relation to sexual assaults or other sex offenses. Specifically, the criminal justice division of the Governor's Office is required to establish and administer a grant program and to disburse funds to assist law enforcement agencies or counties in testing evidence collected in relation to a sexual assault or other sex offense. Grant funds may be used only for the testing by an accredited crime laboratory of evidence that was collected in relation to a sexual assault or other sex offense. The bill also provides for funding the grant through a crowdsourcing model found in newly created Sections 502.414, 521.012, and 522.0295, Transportation Code,

which require DPS to provide an opportunity for people to contribute to the grant fund when getting or renewing a driver's license or commercial driver's license or when registering or renewing registration of a motor vehicle.

Local Government Code

Local Government Code, Sec. 341.906. LIMITATIONS ON REGISTERED SEX OFFENDERS IN GENERAL-LAW MUNICIPALITIES. (a) In this section:

(1) "Child safety zone" means premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The term does not include a church, as defined by Section 544.251, Insurance Code.

(2) "Playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(3) "Registered sex offender" means an individual who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) To provide for the public safety, the governing body of a general-law municipality by ordinance may restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality.

(c) It is an affirmative defense to prosecution of an offense under the ordinance that the registered sex offender was in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

(d) The ordinance may establish a distance requirement described by Subsection (b) at any distance of not more than 1,000 feet.

(e) The ordinance shall establish procedures for a registered sex offender to apply for an exemption from the ordinance.

(f) The ordinance must exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted. The exemption must apply only to:

(1) areas necessary for the registered sex offender to have access to and to live in the residence; and

(2) the period the registered sex offender maintains residency in the residence.

Commentary by Jill Mata

Source: HB 1111

Effective Date: September 1, 2017

Applicability: Applies to general-law municipality ordinances regulating registered sex offenders on or after the effective date.

Summary of Changes: This provision was added as a floor amendment to HB 1111, which had the purpose of giving TDCJ flexibility with regard to allowing registered sex offenders on parole to go near certain off-limits places for certain reasons. This provision is not related to that. Instead, this provision gives general-law municipalities the authority to make laws prohibiting registered sex offenders from going in, on, or within a specified distance (no more than 1000 feet) of child safety zones in the municipality. It creates an affirmative defense if the person is there for a legitimate purpose. Any ordinance must include procedures to apply for an exemption and must exempt a registered sex offender who established residency prior to the date the ordinance is adopted.

Penal Code

Penal Code Sec. 20.02. UNLAWFUL RESTRAINT. (c) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the person restrained was a child younger than 17 years of age; ~~or~~

(2) a felony of the third degree if:

(A) the actor recklessly exposes the victim to a substantial risk of serious bodily injury;

(B) the actor restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or

(C) the actor while in custody restrains any other person; or

(3) notwithstanding Subdivision (2)(B), a felony of the second degree if the actor restrains an individual the actor knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

Commentary by Jill Mata

Source: HB 2908

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This bill increased the punishment for certain offenses. Specifically the punishment

for the offense of unlawful restraint will be enhanced from a misdemeanor to a second degree felony if the person restrained was a public servant discharging an official duty or if the restraint was done in retaliation or on account of an official duty.

Penal Code Sec. 20A.02. TRAFFICKING OF PERSONS. (a-1) For purposes of Subsection (a)(3), "coercion" as defined by Section 1.07 includes destroying, concealing, confiscating, or withholding from the trafficked person, or threatening to destroy, conceal, confiscate, or withhold from the trafficked person, the trafficked person's actual or purported:

(1) government records; or

(2) identifying information or documents.

Commentary by Jill Mata

Source: HB 2529

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This bill defines coercion for the purposes of human trafficking offenses to include destroying, concealing, confiscating, or withholding, or threatening to destroy, conceal, confiscate, or withhold from the trafficked person, the trafficked person's actual or purported government records, identifying information, or documents.

Penal Code Sec. 20A.02 TRAFFICKING OF PERSONS. (b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of [the actor commits] the offense; or

(2) the commission of the offense results in the death of the person who is trafficked.

Commentary by Jill Mata

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to offenses occurring on or after the effective date.

Summary of Changes: HB 29 revised laws on human trafficking, prostitution, and related crimes. The Texas human trafficking task force was established in 2009 through H.B. 4009 and is coordinated through the Office of the Attorney General. It is a collaborative effort between state agencies, local law enforcement entities, district attorneys, and non-governmental organizations to address human trafficking from multiple perspectives.

Every two years, the task force submits a report with recommendations; this bill addresses some of those recommendations, modifies the composition of the task force, and extends the existence of the task force beyond its September 1, 2017 expiration date. This bill establishes that a person may be held criminally accountable for certain sex offenses against a child regardless of whether the actor knows the age of the child at the time of the offense. This change applies to the offense of human trafficking.

Penal Code Sec. 20A.02. TRAFFICKING OF PERSONS. (b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

- (1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time the actor commits the offense; ~~or~~
- (2) the commission of the offense results in the death of the person who is trafficked; or
- (3) the commission of the offense results in the death of an unborn child of the person who is trafficked.

Commentary by Jill Mata

Source: HB 2552

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This bill establishes consequences for activities related to prostitution and human trafficking and the operation of businesses that may be used to promote these activities, such as massage parlors. This particular provision adds that if conduct prohibited under Section 20A.02, Penal Code, results in the death of an unborn person who is trafficked, the offense is a first degree felony.

Penal Code Sec. 21.02 CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN.

(b) A person commits an offense if:

- (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and
- (2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense.

Commentary by Kaci Singer

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was reported that some people have used ignorance of the person's age as a defense in certain sex-related crimes. The offense of continuous sexual abuse of young child or children is modified to make it clear that whether or not the actor knows the age of the victim at the time of the offense is not relevant.

Penal Code Sec. 21.07. PUBLIC LEWDNESS.

(a) A person commits an offense if the person ~~he~~ knowingly engages in any of the following acts in a public place or, if not in a public place, the person ~~he~~ is reckless about whether another is present who will be offended or alarmed by the person's ~~his~~:

- (1) act of sexual intercourse;
- (2) act of deviate sexual intercourse;

or

- (3) act of sexual contact~~;~~ ~~or~~ ~~[(4) act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl].~~

Commentary by Jill Mata

Source: SB 1232

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effect date.

Summary of Changes: Senate Bill 1232 created the offense of bestiality in Texas. Prior to this bill, this provision of public lewdness allowed prosecution for a sexual act with an animal or bird only if it occurred in public or, if not in public, if the person was reckless about whether another person was present who would be offended or alarmed by the conduct. Because the bestiality offense covers this conduct whether or not it is in public, this provision was removed.

Penal Code Sec. 21.09. BESTIALITY. (a) A person commits an offense if the person knowingly:

(1) engages in an act involving contact between:

(A) the person's mouth, anus, or genitals and the anus or genitals of an animal; or

(B) the person's anus or genitals and the mouth of the animal;

(2) fondles or touches the anus or genitals of an animal in a manner that is not a generally accepted and otherwise lawful animal husbandry or veterinary practice, including touching through clothing;

(3) causes an animal to contact the seminal fluid of the person;

(4) inserts any part of a person's body or any object into the anus or genitals of an animal in a

manner that is not a generally accepted and otherwise lawful animal husbandry or veterinary practice;

(5) possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that the animal be used for conduct described by Subdivision (1), (2), (3), or (4);

(6) organizes, promotes, conducts, or participates as an observer of conduct described by Subdivision (1), (2), (3), or (4);

(7) causes a person to engage or aids a person in engaging in conduct described by Subdivision (1), (2), (3), or (4);

(8) permits conduct described by Subdivision (1), (2), (3), or (4) to occur on any premises under the person's control;

(9) engages in conduct described by Subdivision (1), (2), (3), or (4) in the presence of a child younger than 18 years of age; or

(10) advertises, offers, or accepts the offer of an animal with the intent that the animal be used in this state for conduct described by Subdivision (1), (2), (3), or (4).

(b) An offense under this section is a state jail felony, unless the offense is committed under Subsection (a)(9) or results in serious bodily injury or death of the animal, in which event the offense is a felony of the second degree.

(c) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or veterinary practice.

Commentary by Kaci Singer

Source: SB 1232

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: Prior to the passage of this bill, Texas was one of only a handful of states without laws prohibiting bestiality. This provision creates the new offense of bestiality, which provides that it is an offense for a person to engage in sexual acts with an animal, with certain exceptions related to lawful animal husbandry or veterinary practices. It is also an offense to possess, sell, transfer, purchase, or obtain an animal with the intent that the animal be used in a prohibited manner; to organize, promote, conduct, or observe such conduct; to cause or aid a person to engage in such conduct; to allow the conduct to occur on premises under the person's control; or to advertise, offer, or accept the animal with the intent that the animal be used for such conduct. An offense is a state jail felony except that it is a second degree felony if engaged in in the presence of a person under the age of 18 or if the conduct results in serious bodily injury to or death of the animal.

Penal Code Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

Commentary by Kaci Singer

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was reported that some people have used ignorance of the person's age as a defense in certain sex-related crimes. The offense of indecency with a child is modified to make it clear that whether or not the actor knows the age of the victim at the time of the offense is not relevant.

Penal Code Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (g) An offense under this section is a state jail felony [~~Class A misdemeanor~~].

Commentary by Kaci Singer

Source: HB 2552

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: The offense of unlawful disclosure or promotion of intimate visual material is colloquially known as "revenge porn" and was created by the 84th Legislature in 2015 as a Class A misdemeanor. The offense is now a state jail felony.

Penal Code Sec. 21.18. SEXUAL COERCION.
(a) In this section:

(1) "Intimate visual material" means the visual material described by Section 21.16(b)(1) or (c).

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(b) A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 43 or Section 20A.02(a)(3), (4), (7), or (8), 21.02, 21.08, 21.11, 21.12, 21.15, 21.16, 21.17, 22.011, or 22.021 to obtain, in re-

turn for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:

(1) intimate visual material;

(2) an act involving sexual conduct causing arousal or gratification; or

(3) a monetary benefit or other benefit of value.

(c) A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 19 or 20 or Section 20A.02(a)(1), (2), (5), or (6) to obtain, in return for not committing the threatened offense or in connection with the threatened offense, either of the following benefits:

(1) intimate visual material; or

(2) an act involving sexual conduct causing arousal or gratification.

(d) This section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(e) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

Commentary by Kaci Singer

Source: HB 2552

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This creates a new offense entitled Sexual Coercion. It is an offense to threaten, including by coercion or extortion, to commit certain offenses in order to get certain things in return for not committing the offense or in connection with the offense. If the threatened offense is a public indecency offense, such as prostitution, or is a sex trafficking offense or any number of sexual-related offenses, the benefit sought must be: intimate visual material; an act involving sexual conduct causing arousal or gratification, or a monetary benefit or other benefit of value. If the threatened offense is murder, kidnapping, unlawful restraint, smuggling, or labor-based trafficking, the benefit sought must be: intimate visual material or an act involving sexual conduct causing arousal or gratification. The threat may be communicated in any manner. An offense is a state jail felony; subsequent offenses are a third degree felony.

Penal Code Sec. 22.011. SEXUAL ASSAULT.

(a) A person commits an offense if ~~the person~~:

(1) the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

Commentary by Kaci Singer

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was reported that some people have used ignorance of the person's age as a defense in certain sex-related crimes. The offense of sexual assault is modified to make it clear that whether or not the actor knows the age of the victim at the time of the offense is not relevant.

Penal Code Sec. 22.021. AGGRAVATED SEXUAL ASSAULT. (a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or

(C) the victim is an elderly individual or a disabled individual.

Commentary by Kaci Singer

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was reported that some people have used ignorance of the person's age as a defense in certain sex-related crimes. The offense of aggravated sexual assault is modified to make it clear that whether or not the actor knows the age of the victim at the time of the offense is not relevant.

Penal Code Sec. 43.01. DEFINITIONS. (1-a) "Fee" means the payment or offer of payment in the form of money, goods, services, or other benefit.

Commentary by Jill Mata

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: A definition for fee has been added in the Penal Code Chapter where public indecency offenses, such as prostitution, are located.

Penal Code Sec. 43.02. PROSTITUTION. (a) A person commits an offense if [~~in return for receipt of a fee,~~] the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct[-

~~(1) offers to engage, agrees to engage, or engages in sexual conduct; or~~

~~(2) solicits another in a public place to engage with the actor in sexual conduct for hire].~~

(b) A person commits an offense if [~~based on the payment of a fee by the actor or another person on behalf of the actor,~~] the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another[-

~~(1) offers to engage, agrees to engage, or engages in sexual conduct; or~~

~~(2) solicits another in a public place to engage with the actor in sexual conduct for hire].~~

Commentary by Kaci Singer

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: These changes modify the offense of prostitution to provide clarity in the language. An offense under subsection (a) is now clearly applicable to the person receiving or agreeing to receive a fee to engage in sexual conduct and subsection (b) is now clearly applicable to the person paying or agreeing to pay a fee to engage in sexual conduct with the person being paid or with another person.

Penal Code. Sec. 43.02. PROSTITUTION. (c) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (a); or

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (a).

(c-1) An offense under Subsection (b) is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (b);

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (b); or

(3) a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct [~~solicited~~] is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person [~~solicited~~] at the time of [~~the actor commits~~] the offense;

(B) represented to the actor as being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

Commentary by Kaci Singer

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: During the 84th Legislature in 2015, two different bills created two different subsections (c) in Chapter 43.02, Penal Code. This change consolidates those versions and adds clarifying language regarding an offense involving a person under the age of 18.

Penal Code Sec. 43.03. PROMOTION OF PROSTITUTION. (b) An offense under this section is a state jail felony [~~Class A misdemeanor~~], except that the offense is:

(1) a felony of the third degree [~~state jail felony~~] if the actor has been previously convicted of an offense under this section; or

(2) a felony of the second degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of [~~the actor commits~~] the offense.

Commentary by Kaci Singer

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: The offense of promotion of prostitution is increased to a state jail felony for the first conviction and a third degree felony for subsequent convictions.

Penal Code Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION.(b) An offense under this section is a felony of the second [~~third~~] degree, except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of [~~the actor commits~~] the offense.

Commentary by Kaci Singer

Source: HB 29

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: The offense of aggravated promotion of prostitution is increased to a second degree felony for the first conviction; subsequent convictions were and remain a first degree felony.

Penal Code. Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if the person knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of [~~the actor commits~~] the offense.

Commentary by Kaci Singer

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: This is a clarifying language change.

Penal Code Sec. 43.25, SEXUAL PERFORMANCE BY A CHILD. (c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of

whether the actor knows the age of the victim at the time of the offense.

(h) Conduct under this section constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

Commentary by Kaci Singer

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was reported that some people have used ignorance of the person's age as a defense in certain sex-related crimes. The offense of sexual performance by a child is modified to make it clear that whether or not the actor knows the age of the victim at the time of the offense is not relevant.

Penal Code Sec. 43.251 EMPLOYMENT HARMFUL TO CHILDREN. (c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the child at the time of the offense.

(d) Conduct under this section constitutes an offense regardless of whether the actor knows the age of the child at the time of the offense.

Commentary by Kaci Singer

Source: HB 29/HB 1808

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was reported that some people have used ignorance of the person's age as a defense in certain sex-related crimes. The offense of employment harmful to children is modified to make it clear that whether or not the actor knows the age of the victim at the time of the offense is not relevant.

Penal Code Sec. 43.262. POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING CHILD. (a) In this section:

(1) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.

(2) "Visual material" has the meaning assigned by Section 43.26.

(b) A person commits an offense if the person knowingly possesses, accesses with intent to view, or promotes visual material that:

(1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;

(2) appeals to the prurient interest in sex; and

(3) has no serious literary, artistic, political, or scientific value.

(c) An offense under this section is a state jail felony, except that the offense is:

(1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under this section or Section 43.26; and

(2) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under this section or Section 43.26.

(d) It is not a defense to prosecution under this section that the depicted child consented to the creation of the visual material.

Commentary by Kaci Singer

Source: HB 1810

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It was contended that the law does not prohibit individuals from possessing or promoting images portraying children in a sexually suggestive manner, referred to as "child erotica images." This statute is designed to criminalize such images by making it an offense to possess, access with intent to view, or promote visual material that depicts the lewd exhibition of genitals or pubic area of unclothed, partially clothed, or clothed children younger than 18 if the image appeals to the prurient interest in sex and has no serious literary, artistic, political, or scientific value. Lewd is not defined in the statute. An offense is a state jail felony. The second conviction is a third degree felony. Third and subsequent convictions are a second degree felony.

8. Legislation Affecting Texas Juvenile Justice Department and Juvenile Facilities

Review of Occupational Licensing Eligibility Requirements

AN ACT relating to a review of occupational licensing requirements and an applicant's criminal history.

SECTION 1. REVIEW OF OCCUPATIONAL LICENSING ELIGIBILITY REQUIREMENTS RELATED TO CRIMINAL HISTORY; REPORT. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) an individual must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, or other agency of the state that issues a license.

(b) Each licensing authority shall, for each license issued by the authority that has an eligibility requirement related to an applicant's criminal history, review the requirement and make a recommendation regarding whether the requirement should be retained, modified, or repealed.

(c) Not later than December 1, 2018, each licensing authority shall submit a report on the results of the authority's review to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature and include the authority's recommendations.

(d) This section expires January 1, 2019.

Commentary by Kaci Singer

Source: HB 91

Effective Date: June 12, 2017

Applicability: Applies to the licensing duties of a state agency on or after the effective date.

Summary of Changes: Each state agency that is a licensing entity with an eligibility requirement related to a person's criminal history must review the requirement and make a recommendation regarding whether the requirement should be retained, modified, or repealed. A report of the results, including the recommendations, must be submitted to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature by December 1, 2018.

Code of Criminal Procedure Art. 18A.303. TEXAS JUVENILE JUSTICE DEPARTMENT AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE. (a) The Texas Juvenile Justice Department may own an interception device for a use or purpose authorized by Section 242.103, Human Resources Code.

(b) The inspector general of the Texas Juvenile Justice Department, a commissioned officer of that office, or a person acting in the presence and under the direction of the commissioned officer may possess, install, operate, or monitor the interception device as provided by Section 242.103, Human Resources Code. (Code Crim. Proc., Art. 18.20, Sec. 5(d).)

Commentary by Kaci Singer

Source: HB 2931

Effective Date: January 1, 2019

Summary of Changes: This non-substantive change is part of the on-going revision of statutes. The provisions in Subsection (d), Section 5, Article 18.20, Code of Criminal Procedure, have been moved to this new article in the Code of Criminal Procedure.

Health and Safety Code

Health and Safety Code Sec. 464.003. EXEMPTIONS. This subchapter does not apply to:

(1) a facility maintained or operated by the federal government;

(2) a facility directly operated by the state;

(3) a facility licensed by the department under Chapter 241, 243, 248, 466, or 577;

(4) an educational program for intoxicated drivers;

(5) the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office;

(6) an individual who personally provides counseling or support services to a person with a chemical dependency but does not offer or purport to offer a chemical dependency treatment program; [∅]

(7) a 12-step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity; or
(8) a juvenile justice facility or juvenile justice program, as defined by Section 261.405, Family Code.

Commentary by Kaci Singer

Source: SB 1314

Effective Date: September 1, 2017

Applicability: Applies to all substance abuse programs at a juvenile justice facility or program on or after the effective date.

Summary of Changes: This change in law provides that the Department of State Health Services' requirement to license programs offering substance abuse treatment no longer applies to a juvenile justice facility or juvenile justice program.

Human Resources Code

Human Resources Code Sec. 152.00145. DIVERSION AND DETENTION POLICY FOR CERTAIN JUVENILES. A juvenile board shall establish policies that prioritize:

(1) the diversion of children younger than 12 years of age from referral to a prosecuting attorney under Chapter 53, Family Code; and

(2) the limitation of detention of children younger than 12 years of age to circumstances of last resort.

Commentary by Kaci Singer

Source: HB 1204

Effective Date: September 1, 2017

Applicability: Applies to the policymaking duties of a juvenile board on or after the effective date.

Summary of Changes: Each juvenile board is required to adopt a policy to prioritize the diversion of 10 and 11 year olds from referral to the prosecutor and the limitation of detention of 10 and 11 year olds to circumstances of last resort. Given that current law favors release over detention and allows detention only when certain criteria exist, the second portion of this new law does not seem substantively different than current law. Juvenile boards may need to include additional criteria to be considered before a 10 or 11 year old may be detained.

Human Resources Code Sec. 203.019 [~~58.112~~]. REPORT TO LEGISLATURE. Not later than August 15 of each year, the Texas Juvenile Justice Department shall submit to the lieutenant governor, the speaker of the house of representatives, and the governor a report that contains the following statistical information relating to

children referred to a juvenile court during the preceding year:

(1) the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings; and

(2) the ages, races, and counties of residence of the children committed to the Texas Juvenile Justice Department, placed on probation, or discharged without any disposition.

Commentary by Kaci Singer

Source: SB 1304

Effective Date: September 1, 2017

Applicability: This amendment makes no changes to existing law.

Summary of Changes: Section 58.112 requires TJJD to make a report to the legislature concerning the ages, races, and counties of residence of children certified as adults, committed to TJJD, placed on probation, or discharged without any disposition. It was moved from Chapter 58, Family Code, to Chapter 203, Human Resources Code, which includes other reports TJJD is required to make to the legislature.

Human Resources Code Sec. 221.002. GENERAL RULES GOVERNING JUVENILE BOARDS, PROBATION DEPARTMENTS, PROBATION OFFICERS, PROGRAMS, AND FACILITIES. (a) The board shall adopt reasonable rules that provide:

(1) minimum standards for personnel, staffing, caseloads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services;

(2) a code of ethics for probation and detention officers and for the enforcement of that code;

(3) appropriate educational, preservice and in-service training, and certification standards for probation and detention officers or court-supervised community-based program personnel;

(4) subject to Subsection (d), minimum standards for public and private juvenile pre-adjudication secure detention facilities, public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board or governmental unit, private juvenile post-adjudication secure correctional facilities operated under a contract with a governmental unit, except those facilities exempt from certification by Section 42.052(g), and nonsecure correctional facilities operated by or under contract with a governmental unit; [~~and~~]

(5) minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee; and

(6) minimum standards for the operation of substance abuse facilities or programs that are juvenile justice facilities or juvenile justice programs, as defined by Section 261.405, Family Code.

(f) A substance abuse facility or program operating under the standards adopted under this section is not required to be licensed or otherwise approved by any other state or local agency.

Commentary by Kaci Singer

Source: SB 1314

Effective Date: September 1, 2017

Applicability: Applies to all juvenile justice facilities and programs that offer substance abuse treatment on or after the effective date.

Summary of Changes: Under current law, juvenile justice facilities that offer substance abuse treatment are required to be licensed by the Department of State Health Services. One such facility raised concerns that the standards DSHS intends to enact in September 2017 conflict with TJJD's standards. As a result, this legislation was passed to require TJJD to adopt standards for these programs.

Human Resources Code Sec. 221.0071. CHARTER SCHOOL. (a) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education may grant a charter on the application of a detention, correctional, or residential facility established only for juvenile offenders under Section 51.12, 51.125, or 51.126, Family Code, or an eligible entity that has entered into a contract with a facility described by this subsection.

(b) If a local detention, correctional, or residential facility described by Subsection (a) or an eligible entity that has entered into a contract with a facility described by Subsection (a) applies for a charter, the facility or the eligible entity must provide all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code.

(c) The commissioner of education shall adopt a form and procedure to allow a detention, correctional, or residential facility described by Subsection (a) or an eligible entity that has entered into a contract with a facility described by Subsection (a) to apply for a charter. The application form and procedure must be comparable to the applicable requirements of Section 12.110, Education Code, and must include any requirements provided under Subchapter D, Chapter 12, Education Code.

(d) A charter school operating under a charter granted under this section is entitled to receive open-

enrollment charter school funding under Chapter 42, Education Code, in the same manner as an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(e) The commissioner of education shall adopt rules necessary to implement this section, including rules that modify the requirements for charter schools provided under Chapter 12, Education Code, as necessary to allow a charter school to operate in a detention, correctional, or residential facility described by Subsection (a).

(f) In this section, "eligible entity" has the meaning assigned by Section 12.101(a), Education Code.

Commentary by Kaci Singer

Source: SB 1177

Effective Date: September 1, 2017

Applicability: Applies to the grant of an open enrollment charter on or after the effective date.

Summary of Changes: Under current law, a juvenile detention, correctional, or residential facility may be granted a charter by the Texas Education Agency (TEA). This law is now expanded so that a charter may be granted to an entity that is contracting with a juvenile detention, correctional, or residential facility.

Human Resources Code Sec. 242.103. DETECTION AND MONITORING OF CELLULAR PHONES. (a) The department may own and the office of the inspector general may possess, install, operate, or monitor an interception ~~[electronic, mechanical, or other]~~ device, as defined by Article 18A.001 ~~[48.20]~~, Code of Criminal Procedure.

(b) The inspector general shall designate in writing the commissioned officers of the office of inspector general who are authorized to possess, install, operate, and monitor interception ~~[electronic, mechanical, or other]~~ devices for the department.

Commentary by Kaci Singer

Source: HB 2931

Effective Date: January 1, 2019

Summary of Changes: This non-substantive change is part of the on-going revision of statutes.

Human Resources Code Sec. 243.008. INFORMATION CONCERNING FOSTER CARE HISTORY. (a) In this section, "foster care" means the placement of a child in the conservatorship of a state agency responsible for providing child protective services.

(b) The department, during the admission process, shall determine whether a child committed to the department has at any time been in foster care. The department shall record the following on the child's intake form:

(1) whether the child is currently in foster care; and

(2) if applicable, the number of times the child has previously been placed in foster care.

(c) The Department of Family and Protective Services shall, not later than the 14th day after receiving a request from a local juvenile probation department, provide the following information regarding a child in the custody of the probation department:

(1) whether the child is currently or has been in foster care; and

(2) if applicable, the number of times the child has previously been placed in foster care.

(d) The department, the Department of Family and Protective Services, and local juvenile probation departments shall collaborate to create a method or methods by which probation departments statewide may access information from the Department of Family and Protective Services relating to a child's placement in foster care. Not later than March 1, 2018, the department shall submit a report containing the method or methods created under this subsection to each member of the legislature and each standing committee of the legislature having primary jurisdiction over the department. This subsection expires April 1, 2018.

(e) Not later than January 31 of each even-numbered year, the department shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee having primary jurisdiction over the department. The report must summarize statistical information concerning the total number and percentage of children in the custody of the department during the preceding two years who have at any time been in foster care.

Commentary by Kaci Singer

Source: HB 932

Effective Date: September 1, 2017

Applicability: Applies to youth admitted to TJJD on or after the effective date.

Summary of Changes: These changes are part of an effort to get better data regarding children who have been served in both the juvenile and foster care systems. To that end, TJJD is required to determine whether each youth committed to TJJD has ever been in foster care and must record on the child's intake form whether or not the child is currently in foster care and the number of times the child was previously placed in foster care and to provide a biannual report to the legislature containing statistical information concerning the total number and percentage of committed youth who were in foster care. Additionally, within 14 days of receiving a request from a juvenile probation department, DFPS must provide information to the probation department regarding whether a child in the probation department's custody is or has been in foster care and the number of times placed in foster care. TJJD, DFPS, and juvenile probation departments

are to collaborate to create a method for probation departments statewide to access information from DFPS relating to a child's placement in foster care. TJJD must submit a report of the method no later than March 1, 2018.

Human Resources Code Sec. 244.003 YOUTH DEVELOPMENT COUNCIL FUND. (b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 244.051 of this code, and Chapter 67 [64], Code of Criminal Procedure.

Commentary by Kaci Singer

Source: HB 2931

Effective Date: January 1, 2019

Summary of Changes: This non-substantive change is part of the on-going revision of statutes.

Government Code

Government Code Sec. 2001.0045. REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS. (a) In this section, "state agency" means a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government. This term does not include an agency under the authority of an elected officer of this state.

(b) A state agency rule proposal that contains more than one rule in a single rulemaking action is considered one rule for purposes of this section. Except as provided by Subsection (c), a state agency may not adopt a proposed rule for which the fiscal note for the notice required by Section 2001.024 states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date of the proposed rule the state agency:

(1) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or

(2) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule.

(c) This section does not apply to a rule that:

(1) relates to state agency procurement;

(2) is amended to:

(A) reduce the burden or responsibilities imposed on regulated persons by the rule; or

(B) decrease the persons' cost for compliance with the rule;

(3) is adopted in response to a natural disaster;

(4) is necessary to receive a source of federal funds or to comply with federal law;

(5) is necessary to protect water resources of this state as authorized by the Water Code;

(6) is necessary to protect the health, safety, and welfare of the residents of this state;

(7) is adopted by the Department of Family and Protective Services, Department of Motor Vehicles, Public Utility Commission, Texas Commission on Environmental Quality, or Texas Racing Commission;

(8) is adopted by a self-directed semi-independent agency; or

(9) is necessary to implement legislation, unless the legislature specifically states this section applies to the rule.

(d) Each state agency that adopts a rule subject to this section shall comply with the requirements imposed by Subchapter B and Chapter 2002 for publication in the Texas Register.

Commentary by Kaci Singer

Source: HB 1290

Effective Date: September 1, 2017

Applicability: Applies to administrative rules proposed for adoption on or after the effective date.

Summary of Changes: Under this change in the law, if a state agency proposes a rule that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency must repeal a rule that imposes a cost equal to or greater than the cost imposed in the new rule or must amend a rule to decrease the cost imposed by that rule by an amount equal or greater than that in the proposed rule. There are certain exceptions, including if the rule is necessary to protect the health, safety, and welfare of the residents of this state.

Government Code Sec. 2001.0221. GOVERNMENT GROWTH IMPACT STATEMENTS. (a) A state agency shall prepare a government growth impact statement for a proposed rule.

(b) A state agency shall reasonably describe in the government growth impact statement whether, during the first five years that the rule would be in effect:

(1) the proposed rule creates or eliminates a government program;

(2) implementation of the proposed rule requires the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule requires an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule requires an increase or decrease in fees paid to the agency;

(5) the proposed rule creates a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

(8) the proposed rule positively or adversely affects this state's economy.

(c) The comptroller shall adopt rules to implement this section. The rules must require that the government growth impact statement be in plain language. The comptroller may prescribe a chart that a state agency may use to disclose the items required under Subsection (b).

(d) Each state agency shall incorporate the impact statement into the notice required by Section 2001.024.

Commentary by Kaci Singer

Source: HB 1290

Effective Date: September 1, 2017

Applicability: Applies to administrative rules proposed for adoption on or after the effective date.

Summary of Changes: Each state agency proposing an administrative rule must prepare a government growth impact statement describing whether, during the first five years, the proposed rule: creates or eliminates a government program; requires the creation or elimination of employee positions; requires an increase or decrease in future legislative appropriations to the agency; requires an increase or decrease in fees paid to the agency; creates a new regulation; expands, limits, or repeals an existing regulation; increases or decreases the number of individuals subject to the rule's applicability; and positively or adversely affects the state's economy. The comptroller must adopt rules to implement this section. Each agency must incorporate the impact statement into the notice required when proposing rules for adoption.

Penal Code

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION. (e) (2-a). "Juvenile facility" means:

(A) a facility operated by the Texas Juvenile Justice Department or a private vendor under a contract with the Texas Juvenile Justice Department; or

(B) a facility for the detention or placement of juveniles under juvenile court jurisdiction and that is operated wholly or partly by [the Texas Juve-

nile Justice Department,] a juvenile board[;] or another governmental unit or by a private vendor under a contract with the [~~Texas Juvenile Justice Department,~~] juvenile board[;] or governmental unit.

Commentary by Kaci Singer

Source: SB 343

Effective Date: September 1, 2017

Summary of Changes: This is a non-substantive change meant to make the definition of juvenile facility more clear.

Penal Code Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION. (f) An employee of the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, a juvenile facility, ~~[or] a local juvenile probation department, or a community supervision and corrections department established under Chapter 76, Government Code, a person other than an employee who works for compensation at a juvenile facility or local juvenile probation department, or a volunteer at a juvenile facility or local juvenile probation department~~ commits an offense if the actor ~~[employee]~~ engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who the actor ~~[employee]~~ knows is under the supervision of the Texas Department of Criminal Justice, Texas Juvenile Justice Department, ~~[or] probation department, or community supervision and corrections department~~ but not in the custody of the Texas Department of Criminal Justice, Texas Juvenile Justice Department, ~~[or] probation department, or community supervision and corrections department~~.

Commentary by Kaci Singer

Source: SB 343

Effective Date: September 1, 2017

Applicability: Applies to an offense committed on or after the effective date.

Summary of Changes: It is a state jail felony for an official, employee, contract employee, or volunteer of a correctional facility to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with a person in custody. Prior to 2015, that was enhanced to a second degree felony if the person was in the custody of TJJD or was a juvenile offender detained in or committed to a correctional facility if the operation of that facility was financed primarily with state funds. In 2015, the law was amended to eliminate that distinction, making it a second degree felony for an official, employee, contract employee, or volunteer of a juvenile facility to engage in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in the juvenile facility.

Additionally, prior to 2015, it was an offense for an employee of TJJD or a juvenile probation department to engage in sexual activity with a person under the supervision of TJJD or the probation department but not in custody. In 2015, that was amended to also include an employee of a juvenile facility, since not all juvenile facilities are operated by probation departments. This change closes the loop so that it is now also a violation for a contract employee or volunteer of a juvenile facility or juvenile probation department to engage in sexual activity with a person under supervision but not in custody. Additionally, though not juvenile justice related, it is now also an offense for an employee of an adult probation department to engage in sexual activity with a person not in custody but under the supervision of the adult probation department. The offense under subsection (f) is a state jail felony. It is an affirmative defense if the actor was the spouse of the individual at the time of the offense.

Special Commitment Findings Update Statutory Compliance and Senate Bill 1630 (84th R.S.)

Family Code Sec. 54.04. DISPOSITION HEARING. (d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable foster home;

(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by the Texas Juvenile Justice Department; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Juvenile Justice Department;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony, the court or jury made a special commitment finding under Section 54.04013, and ~~[if]~~ the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Juvenile Justice Department under Section 54.04013, or a post-adjudication secure correc-

tional facility under Section 54.04011(c)(1), as applicable, without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Juvenile Justice Department or a post-adjudication secure correctional facility under Section 54.04011(c)(2) with a possible transfer to the Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

- (i) a capital felony;
- (ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003;

(5) the court may place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standards for the facility as provided by Section 51.126; or

(6) if applicable, the court or jury may make a disposition under Subsection (m) or Section 54.04011(c)(2)(A).

Commentary by Kaci Singer

Source: SB 1630

Effective Date: September 1, 2017

Applicability: Applies to conduct that occurs on or after September 1, 2017.

Summary of Changes: In 2015, the law changed to require a special commitment finding in order to commit a child with an indeterminate sentence to TJJD. This change in law applies to an offense committed on or after September 1, 2017.

Family Code Sec. 54.04013. SPECIAL COMMITMENT TO TEXAS JUVENILE JUSTICE DEPARTMENT. Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The

court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

Commentary by Kaci Singer

Source: SB 1630

Effective Date: September 1, 2015

Applicability: Applies to conduct that occurs on or after September 1, 2017.

Summary of Changes: In 2015, the legislature created this new provision, requiring a special commitment finding in order to commit a child to TJJD with an indeterminate sentence. Though adopted and effective September 1, 2015, this law did not apply then. It applies to offenses committed on or after September 1, 2017. Once applicable, in order for a court to commit a juvenile with an indeterminate sentence, the juvenile must have committed a felony and the court must make a “special commitment finding,” which is essentially an affirmative finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. In making its determination, the court should, but is not required to, consider the findings of a validated risk and needs assessment and any other professional assessments available to the court. The “special commitment finding” is not required to be made for a determinate sentence commitment. It bears noting that this provision only requires the “special commitment finding” to be made in a disposition hearing under Section 54.04, Family Code; it was not extended to a modification hearing under Section 54.05, Family Code. This is possibly a drafting oversight. To avoid any potential error, courts may wish to make this finding for every indeterminate commitment, whether it is a direct commitment or a commitment as a result of a modification hearing.

9. State and Local Government Bills of Interest

HB 8 *Relating to cybersecurity for state agency information resources. Effective 9-1-2017.*

This bill is known as the Texas Cybersecurity Act. It should be read in its entirety. Highlights of the changes are as follows.

Amends Section 325.011, Government Code, to require the Sunset Commission to conduct an assessment of each agency's cybersecurity practices during its review of the agency.

Amends Section 551.089, Government Code, to provide that no governmental entity, as opposed to just DIR, is required to discuss cybersecurity-related information in an open meeting.

Amends Section 552.139, Government Code, to require state agencies to redact from contracts posted online any information that is confidential under Section 552.139 or excepted from public disclosure under Section 552.139.

Adds Section 2054.0594, Government Code, to require DIR to establish an information sharing and analysis center to provide a forum for state agencies to share information regarding cybersecurity threats, best practices, and remediation strategies.

Amends Section 2054.076, Government Code, to require DIR to provide mandatory guidelines for state agencies regarding continuing education requirements for information resources agencies.

Amends Section 2054.077, Government Code, to require each state agency to prepare a biannual report assessing its vulnerability to unauthorized access or harm.

Amends Section 2054.512, Government Code, to create a cybersecurity council that is responsible for analyzing and establishing priorities related to cybersecurity and for providing recommendations to the legislature regarding cybersecurity best practices and remediation strategies.

Amends Section 2054.133, Government Code to require each state agency with a website or mobile application that processes any sensitive personally identifiable or confidential information to submit a data security plan to DIR every two years.

Adds Section 2054.515, Government Code, to require each state agency to conduct an information security assessment of the agency's information resources system, network system, digital data storage systems, digital data security measures, and information resources vulnerabilities and to submit a report on the assessment. The agency may by rule establish the requirements for the information security assessment and report.

Adds Section 2054.516, Government Code, requiring each state agency that implements a website or mobile application that processes any sensitive personal

information or confidential information to submit a biannual data security plan to establish planned beta testing and subject the website or application to a vulnerability and penetration test and address any identified vulnerabilities.

Adds Section 2054.518, Government Code, requiring DIR to develop a plan to address cybersecurity risks and incidents in the state and allowing DIR to enter into an agreement with a national organization to support the efforts in implementing parts of the plan that the agency lacks resources to address internally.

Amends Section 2054.575, Government Code, to set out information to be including in each state agency's plan to prioritize the remediation and mitigation of its identified information security issues.

Amends Section 2059.055, Government Code, to make network security information related to passwords, personal identification numbers, access codes, encryption, or other components of a security system of a governmental entity confidential, as opposed to just those of a state agency.

Adds Section 276.011, Election Code, to require the secretary of state to conduct a study regarding cyberattacks on election infrastructure and prepare a public summary report and a confidential specific-findings report.

Requires the establishment of a Senate Select Committee on Cybersecurity and a House Select Committee on Cybersecurity to jointly or separately study cybersecurity in the state, the information security plans of each state agency, and the risks and vulnerabilities of state agency cyber security.

Requires DIR and TSLAC to conduct a study on digital data storage practices of state agencies and prepare a report no later than December 1, 2018.

HB 53 *Relating to certain limitations on settlement agreements with a governmental unit. Effective 9-1-2017.*

Adds Chapter 116, Civil Practice and Remedies Code, to prohibit a governmental unit from entering into a settlement against the governmental entity that is equal to or greater than \$30,000 if a condition of the settlement requires the party seeking relief to agree not to disclose any fact, allegation, evidence, or other matter to any person, including a journalist or member of the media, and the money to be used to pay the settlement: is derived from taxes collected by the governmental unit; is received from the state; or comes from insurance proceeds if the policy premium was paid with tax receipts or state funds. A settlement agreement that violates this provision is void and unenforceable. The law does not

affect information that is privileged or confidential under other law.

HB 88 *Relating to an unlawful employment practice by an employer whose leave policy does not permit an employee to use leave to care for the employee's foster child. Effective 9-1-2017.*

Adds Section 21.0595, Government Code, which provides that it is an unlawful employment practice if an employer's leave policy entitling an employee to use leave to care for or otherwise assist the employee's sick child does not treat foster children in the same manner as the employee's biological or adopted minor child.

HB 89 *Relating to state contracts with and investments in companies that boycott Israel. Effective 9-1-2017.*

Adds Chapter 2270, Government Code, which prohibits governmental entities from contracting with a company for goods and services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. It also includes requirements related to divestiture of investments in companies that boycott Israel.

HB 451 *Relating to waiver of immunity in certain employment discrimination actions in connection with a workers' compensation claim. Effective 9-1-2017.*

Adds Section 451.0025, Labor Code, to allow a first responder to sue a state or local governmental entity for workers' compensation discrimination. First responder is defined as a public safety employee or volunteer whose duties include rapidly responding to an emergency. The liability of a political subdivision is limited to \$100,000 per person and \$300,000 for each single occurrence.

HB 1116 *Relating to the repeal of certain state procurement advisory and approval procedures. Effective 9-1-2017.*

Repeals Sections 2155.086 and 2155.087, Government Code, which serves to eliminate certain procurement procedures related to the comptroller and to eliminate the Statewide Procurement Advisory Council.

HB 1290 *Relating to the required repeal of a state agency rule and a government growth impact statement before adoption of a new state agency rule. Effective 9-1-2017.*

Adds Sections 2001.0045 and 2001.0221, Government Code, to prohibit a state agency from adopting a rule that has a fiscal note stating the rule imposes a cost

on regulated persons, including another state agency, special district, or local government, unless the state agency repeals one or more rules that impose a total cost equal to or greater than the cost imposed by the proposed rule. This does not apply to a rule that: relates to state agency procurement; is amended to reduce the burden or responsibilities imposed on regulated persons or to decrease costs for compliance; is adopted in response to a natural disaster; is necessary to receive a source of federal funds or to comply with federal law; is necessary to protect the health, safety, and welfare of the residents of this state; is adopted by DFPS, DMV, PUC, TCEQ, or Texas Racing Commission; is adopted by a self-directed semi-independent agency; or is necessary to implement legislation, unless the legislature specifically states this law applies. Additionally, each state agency must prepare a government growth impact statement for a proposed rule. The statement must reasonably describe whether, during the first five years, the rule would: create or eliminate a government program; require new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; and positively or adversely affect the state's economy. The comptroller is required to adopt rules to implement the section related to the growth impact statement.

HB 2121 *Relating to damages in certain contract claims against the state. Effective 6-15-2017.*

Amends Section 2260.003, Government Code, to allow for an award of attorney's fees in a case against the state that involves breach of contract for engineering, architectural, or construction services or materials related to those services and the amount in controversy is less than \$250,000.

HB 2486 *Relating to restoration of the position of public employees when relieved of duty from the Texas military forces or a similar unit. Effective 6-15-2017.*

Amends Section 437.202, Government Code, to expand the current law that provides that a state employee who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team who is ordered to duty must be, once relieved from duty, restored to the position the employee held when ordered to duty so that it also applies to an employee of a municipality, county, or other subdivision of the state with at least five full-time employees.

HB 3083 *Relating to repayment of certain mental health professional education loans. Effective 9-1-2017.*

Amends Chapter 61, Education Code, by adding licensed chemical dependency counselors to the list of mental health professionals eligible for loan repayment assistance if they commit to working with Medicaid or CHIP patients or incarcerated individuals with mental health needs and work in medically underserved areas.

HB 3391 *Relating to the creation of a specialty court for certain public safety employees who commit a criminal offense; imposing fees for participation and testing, counseling, and treatment. Effective 9-1-2017.*

Adds Chapter 129, Government Code, to allow a county commissioners court to establish a public safety employees treatment court for persons arrested for or charged with any misdemeanor or felony. "Public safety employee" is defined to include peace officer, firefighter, detention officer, county jailer, or EMS employee. The program must include certain essential characteristics, as set out in the statute. Public safety employees are eligible only if the court finds: 1) the employee suffers from a brain injury, mental illness, or mental disorder that occurred during or resulted from the defendant's duties as a public safety employee and affected the defendant's criminal conduct at issue in the case or 2) considering the circumstances of the employee's conduct, background, and criminal history, his/her participation is likely to achieve the objective of ensuring public safety through rehabilitation of the employee. Successful completion of the program results in a hearing to determine if dismissal of the case is in the best interest of justice. Two or more counties are permitted to create a regional program.

SB 73 *Relating to leave policy and procedures for state employees. Effective 9-1-2017.*

Amends Chapter 661, Government Code to make several changes related to leave for state agency employees. Each state agency must adopt a policy governing leave for employees under Chapter 661, and the policy must be posted on the agency's website in a location easily accessible to employees and the public. Emergency leave may only be granted if the administrative head believes in good faith that the employee intends to return when the leave expires. Additionally, each state agency must report the name and position of each employee granted more than 32 hours of emergency leave during the previous state fiscal year, the reason for the leave, and the total number of hours granted to the person. The purpose of this change is to address some agencies' reported practices of using emergency leave as a sort of "severance package." Additionally, two new types of paid leave were created. The first is for employees who are the subject of an agency investigation or who are the victim of or witness to an act that is

the subject of an investigation. If the subject of the investigation is placed on leave, this new leave is what must be used for that person; other leave such as emergency or administrative leave may not be used. Additionally, the agency must report to the state auditor and the LBB if any employee is granted 168 hours or more of leave under the investigation-related leave section. The second is medical and mental health care leave for veterans eligible for health benefits under a VA program to obtain medical or mental health care, including physical rehabilitation, from a VA program. The leave cannot exceed 15 days per fiscal year unless the administrative head of agency determines more is appropriate for the employee.

SB 132 *Relating to the savings incentive program for state agencies. Effective 9-1-2017.*

Amends Section 2108.103, Government Code, to give state agencies greater incentive to save budgeted money by allowing the agencies to keep one half of the money saved and to distribute it in the form of employee bonuses, subject to any agency bond repayments due. The state agency must adopt rules to implement this law.

SB 252 *Relating to prohibiting governmental contracts with a company doing business with Iran, Sudan, or a foreign terrorist organization. Effective 9-1-2017.*

Adds Chapter 2252, Government Code, which prohibits a governmental entity from entering into a contract with Iran, the Sudan, or any foreign terrorist organization.

SB 255 *Relating to contracts with and training for governmental entities and vendors, including purchasing and contract management training; authorizing fees. Effective 9-1-2017.*

Amends Chapter 656, Government Code, to require any state agency that spends \$5000 or more in a fiscal year for training or education for any individual administrator or employee to submit a report to the LBB that includes all such employees, the amount spent, and the certification earned. The comptroller must develop training programs to meet the needs of state agency staff needing purchasing or contract management training; each state agency may develop agency-specific purchasing and contract management training programs.

SB 262 *Relating to certain purchasing by state agencies and local governments. Effective 9-1-2017.*

Amends Sections 2157.068 and 2155.504, Government Code, to require DIR, in cooperation with state agencies, periodically to assess the risk to this state in the purchase of certain information technology commod-

ity items and, based on that risk assessment, to monitor and verify the accuracy of reports of monthly sales submitted by vendors. Additionally, each state agency or local government that contracts for the purchase of an automated information system under a contract listed on a schedule developed under Section 2155, Government Code, must comply with Section 2157.068(e-1), which allows direct contracting if the value is \$50,000 or less but requires submitting a request for pricing to at least 3 vendors if the value is more than \$50,000 up to \$150,000 and submitting a request for pricing to at least 6 vendors if the value is more than \$150,000 up to \$1 million. A state agency is prohibited from entering into a contract to purchase a commodity item if the value is more than \$1 million. But see SB 533, below.

SB 500 *Relating to the effect of certain felony convictions of public elected officers. Effective 9-1-2017.*

Adds Section 810.002, Government Code, to provide that members of the elected class of ERS or individuals eligible for membership in a public retirement system due to their election or appointment to elected office are not eligible to receive their service retirement annuity if convicted of a qualifying felony committed while in office or arising directly from the official duties of the elected office. Qualifying felonies are: bribery; embezzlement, extortion, or theft of public money; perjury; coercion of public servant or voter; tampering with governmental record; misuse of official information; conspiracy to commit any of the foregoing; or abuse of official capacity.

SB 533 *Relating to governmental entity contracting and procurement. Effective 9-1-2017.*

Amends several laws related to governmental contracting and procurement and should be read in its entirety. Some changes are highlighted herein.

Amends Section 572.069, Government Code, which currently prohibits a former state officer or employee who participated in a procurement or contract negotiation from accepting employment with the contracting entity for two years after the employee leaves employment so that it now applies only for two years after the date the contract is signed or the procurement is terminated or withdrawn.

Amends Section 2054.1181, Government Code, to provide that, at the direction of the governor, lieutenant governor, or speaker of the house, DIR shall provide additional oversight of state agency major information resources projects and may contract with a vendor to provide the oversight.

Amends Section 2054.158, Government Code, to require the DIR quality assurances team to create an automated project review system and to provide annual training for state agency procurement and contract man-

agement staff on best practices and methodologies for information technology contracts.

Amends Sections 2054.303 and 2054.304, Government Code, to provide that each state agency, as part of the material it must prepare for each proposed major information resources project or major contract, must include a technical architectural assessment of the project or contract. In each major information resources project, the state agency must consider incorporating the best practices recommended in the quality assurance team's annual report; the contract must comply with requirements in the comptroller's contract management guide.

Adds Sections 2155.090 and 2155.091, Government Code, to require the comptroller to update its contract management guide to include policies on interaction and communication between employees of the state agency and a vendor that contracts with or seeks to contract with the state agency and to require the comptroller to employ a chief procurement officer for the state.

Adds Section 2155.205, Government Code, to allow the comptroller to enter into agreements to authorize state agencies and political subdivisions of other states to purchase goods or services through comptroller contracts.

Amends Section 2157.068(e-1) and (e-2), Government Code, to change the value thresholds related to the number of vendors entities must seek pricing from before entering into a commodity contract; at least three if the value is more than \$50,000 to \$1 million (was \$150,000) and at least 6 if the value is more than \$1 million to \$5 million (was more than \$150,000 to \$1 million). State agencies are prohibited from entering into a contract to purchase a commodity item that exceeds \$5 million (was \$1 million). See SB 262, above.

Amends Section 2261.252, Government Code, to require a state agency employee or official to disclose any potential conflict of interest known by the employee or official at any time during the procurement process or term of a contract with a private vendor. The provision applies to a contract for goods or services solicited through a purchase order if the purchase order exceeds \$25,000.

Amends Section 2261.253, Government Code, to require a state agency to redact from any contract posted on its website the following: information confidential by law, information excepted from public disclosure under Chapter 552, Government Code, and social security numbers.

Amends Section 2262.101, Government Code, to provide that the Contract Advisory Team is to review and make recommendations on solicitation documents and contract documents for state agency contracts with a value of at least \$5 million (was \$10 million).

Amends Section 2262.102, Government Code, to allow the chief procurement officer to add members to the Contract Advisory Team from state agencies that

agree to participate and to allow state agencies to decline to participate by submitting a written statement declining the request.

Amends Section 2269.056, Government Code, to require state agencies to include in a Request for Proposal (RFP) for contracts for construction projects a detailed methodology for scoring each criterion.

Amends Section 2269.361, Government Code, to provide that the date by which an RFP must be submitted is the earlier of the date requested by the governmental entity or 180 days rather than simply 180 days, thereby allowing the bidding process to be completed more quickly.

The bill provides that each state agency must adopt the vendor-employee communication policy required by Section 2155.090, Government Code, no later than January 1, 2018. However, Section 2155.090 does not include such a requirement on state agencies. An earlier version of the bill did; it appears this section of the bill was not modified when Section 2155.090 was.

SB 1289 *Relating to the purchase of iron and steel products made in the United States for certain governmental entity projects. Effective 9-1-2017.*

Adds Chapter 2252, Government Code, to provide that only iron and steel products produced in the U.S. may be used in projects of agencies in the executive branch of government that involve construction, remodeling, or altering of a building or infrastructure. Each agency subject to this law must adopt rules to promote compliance with the law. There are exemptions if the governmental body determines that iron or steel products produced in US are not produced in sufficient quantities, are not reasonably available, or are not of satisfactory quality for the project. There is also an exemption if the use of the US iron or steel products will increase the project cost by more than 20 percent or if compliance is inconsistent with the public interest.

SB 1446 *Relating to contested cases under the Administrative Procedure Act. Effective 9-1-2017.*

Amends Chapter 2001, Government Code, with regard to contested cases involving a state agency. This Chapter was amended in 2015 and these are clarifying changes recommended by practitioners. Highlights of the changes are as follows.

Amends Section 2001.052 to allow a state agency to provide notice through either a short, plain statement of the factual matters asserted (existing law) or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.

Amends Section 2001.054(e) to provide that an agency's failure to give notice by personal service or by registered or certified mail or failure to give the license

holder the opportunity to show compliance with all requirements of the law for retention of the license does not constitute prejudice to the substantial rights of the office holder if the license holder waived the opportunity to show compliance with all requirements of law for the retention of the license. Currently the court must find that the failure did not unfairly surprise or prejudice the license holder.

Amends Section 2001.142(a) to add to the acceptable methods of giving notice of any decision or order of a state agency in a contested case the following: "service by a method required under the state agency's rules or orders for a party to serve copies of pleadings in a contested case," meaning that the orders and decisions may be provided to the individual in the same manner as service of the pleadings is provided to the individual, as per agency rule.

Amends Section 2001.142(c) to provide that the period for a motion for rehearing may not begin later than the 45th day after the decision or order was signed, as opposed to the 90th.

Amends Section 2001.142(d) to modify what an adversely affected party must prove in order to establish a revised period for the motion for rehearing. This includes: that the date the party or attorney received notice or acquired actual knowledge of the signing of the decision or order was more than 14 days after it was signed; the adversely affected party exercised due diligence in keeping the state agency and all other parties apprised of the current mailing address and electronic contact information; and the adversely affected party and attorney did not take any action that impeded or prevented receipt of the notice.

Amends Section 2001.142(g) to provide that a timely filing of a sworn motion for rehearing extends the period for agency action to the 100th day after the date the decision or order subject to the motion for rehearing is signed.

SB 1831 *Relating to an annual report on state programs not funded by appropriations. Effective 9-1-2017.*

Adds Section 403.0147, Government Code, to require the comptroller to submit an annual report to the legislature for each state agency identifying each program the state agency is statutorily required to implement for which no appropriation was made for the preceding fiscal year and the amount and source of money spent by the agency to implement any portion of the programs. The state agency must provide information to the comptroller by September 30.

SB 1910 *Relating to state agency information security plans, information technology employees, and online and mobile applications. Effective 9-1-2017.*

Amends several laws related to state agency information technology and should be read in its entirety. Some changes are highlighted herein.

Adds Sections 2054.0591 and 2054.0592, Government Code, to require DIR to submit a biannual report identifying preventive and recovery efforts the state can take to improve cybersecurity and to allow DIR to request the governor or the LBB to propose how to provide emergency funding if necessary due to a cybersecurity event.

Adds Section 2054.1184, Government Code, to require each state agency proposing to spend appropriated funds for a major information resources project to first conduct an execution capability assessment to determine the agency's capability for implementing the project, to reduce the agency's financial risk in implementing the project, and to increase the probability of the agency's successful implementation of the project. The state agency must submit to DIR, the quality assurance team, and the LBB a detailed report that identifies the agency's organizational strengths and any weaknesses that will be addressed before the agency initially spends appropriated funds for a major information resources project.

Amends Section 2054.133, Government Code, to require each state agency to submit a copy of its information security plan to DIR by October 15 of each even-numbered year; subject to funding availability, DIR may select a portion of the plans for assessment; DIR is to implement rules.

Adds Section 2054.136, Government Code, to require each state agency to designate an information security officer who reports to the agency's executive-level management, has authority over information security for the agency, possesses the training and experience required to perform the duties required by DIR rules, and, to the extent feasible, has information security duties as the officer's primary duties.

Adds Sections 2054.516, Government Code, to require each state agency with a website or mobile application that processes any sensitive personally identifiable or confidential information to submit a data security plan to DIR by October 15 of each even-numbered year in order to establish planned beta testing for websites or applications and must subject the website or application to a vulnerability and penetration test and address any vulnerability identified by the test.

SJR 6 *Proposing a constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.*

Federal law has long provided that the U.S. Attorney General must be given notice in a case challenging the constitutionality of a federal statute. In 2011,

Texas passed a law requiring the Texas Attorney General be given the same type of notice in a case challenging the constitutionality of a state statute. The purpose of such notice was to give the state, through the Attorney General, the opportunity to make arguments regarding the constitutionality of the statute in issue. In 2014, the Texas Court of Criminal Appeals found the notice statute and waiting period it prescribed to be unconstitutional. This proposed amendment will modify the constitution with the intent to make such notice constitutional.

SJR 34 *Proposing a constitutional amendment limiting the service of certain officeholders after the expiration of the person's term of office.*

The Texas Constitution's "holdover provision" provides that all officers in the state continue to perform the duties of their office until their successors are duly qualified. The intent of this provision is to safeguard against vacancies in order to ensure the continuation of governmental functions. As noted by those supporting this resolution, however, this provision has been used to allow for undue extensions of terms in office. This proposed constitutional amendment will modify the holdover provision so that if an applicable position's term expires while the legislature is not in session, the person may holdover in the position no later than the last day of the first regular session of the Legislature that begins after the expiration of the term. Applicable positions are those offices that do not receive a salary that are filled by appointment of the Governor with the advice and consent of the Senate (typically state agency boards and commissions).

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