2017 LEGISLATIVE UPDATE

TCDLA LEGISLATIVE TEAM

THE HONORABLE ALLEN D. PLACE, JR.
Place Law Office
109 S. 7th St.
Gatesville, Texas 76528
(254) 865-8475
allenplacejr@aol.com

DAVID GONZALEZ
Sumpter & Gonzalez, L.L.P.
206 E. 9th Street, Ste. 1511
Austin, Texas 78701
(512) 381-9955
david@sg-llp.com

SHEA PLACE
Place Law Office
1122 Colorado St., Ste. 1910
Austin, Texas 78701
(512) 477-6424
sheaplace@gmail.com
To protect and ensure by rule of law those individual rights guaranteed by the Texas and Federal Constitutions in criminal cases.
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The 85th LEGISLATIVE SESSION

AN INTRODUCTION

In total, there were 6,631 bills filed between the House and the Senate in the 85th Session of the Texas Legislature and 1,139 of them passed. Unlike the 84th Legislative Session, in which criminal justice issues were at the forefront, this session was focused on four main issues: the bathroom bill, property tax issues, abortion, and immigration. Given the controversial nature of some of those issues, tensions between the House and Senate grew over the course of the Session, making it increasingly difficult to get attention dedicated to issues like criminal justice.

As always, TCDLA tracked and followed every bill that could impact the practice of criminal defense in Texas. That included changes proposed to the Penal Code, the Code of Criminal Procedure, and various other sections of Code, such as the Government Code, Transportation Code and Health and Safety Code.

This document is intended to help TCDLA members as you incorporate the statutory changes into your practice beginning September 1, 2017 – for most bills. For most of the bills, we have included the relevant text of the statute so that you can assess the bill without having to pull it up on the complicated Texas Legislative page. We do include the bill numbers, however, should you want to see more detail or analysis about the bill. Because we include the relevant text in most cases, this is a long paper. We hope that you will find it manageable by searching through the topics using the table of contents. In a few cases, with particularly long text or bills relating to non-substantive changes, we did not include the text herein.

Also, most bills create multiple changes to different parts of the Texas Code of Criminal Procedure and the Texas Penal Code. This paper is not designed to replace O’Connor’s or similar annotated code publications, but rather be a tool to help you focus on the pertinent changes to the areas of the law that you are likely to use on a daily basis.

Finally, this paper is merely a summary, and often directly quotes the bill analysis published to the Legislature. The best way to fully comprehend all of the changes in one place is to review the enrolled version of the bill. You can also review the legislative history, the bill analysis, the list of witnesses who spoke for or against the bill, and in most cases, watch the committee hearing and debate about the bill. To learn more, visit the Texas Legislature Online at http://www.capitol.state.tx.us.
ON THE CUTTING ROOM FLOOR

Despite the focus on other issues, numerous bills related to criminal justice were filed and passed. Those comprise the bulk of this report. However, a number of bills that failed deserve special mention here as they are likely to be filed again in sessions in the future and/or they received significant attention resulting in momentum.

- **Pretrial Release/Preventative Detention**: The Texas Judicial Council supported a bill that would have resulted in the use of a risk assessment tool to help judges determine the appropriate bond in a case. Early versions of the bill included provisions that would have allowed courts to hold people without bond if it were determined that person was a risk of danger to the community or of flight. After the defense and prosecution both opposed the provisions of preventative detention, they were removed from the bill. There is momentum surrounding this issue and it is likely to be filed again in the 86th Legislative Session.

- **Asset Forfeiture**: All bills related to asset forfeiture failed – including those that would have shifted the burden to the state or required more transparency.

- **Grand Jury Reform**: There were a number of bills filed this session related to grand jury reform. Some supported by prosecutors would have given the state the ability to *voir dire* individual jurors, as opposed to leaving that to the court, as is the current practice. TCDLA opposed these bills as we felt they would give the state an unfair advantage in the selection process. In turn, prosecutors opposed a bill that would have allowed witnesses to have an attorney present in the courtroom.

- **Driver’s Responsibility Program/Surcharges**: A bill that would have completely eliminated the driver’s responsibility program by shifting the responsibility for collecting new and larger fines/fees to the courts failed to pass, but had momentum.

- **Death Penalty**: All bills related to capital punishment in Texas failed. These included efforts to abolish the death penalty, to revise the language in the sentencing scheme that misleads jurors into believing that 10 jurors are required before answering the mitigation question in the affirmative, and efforts to eliminate the unfair law of parties.

- **Juvenile Justice**: Efforts to raise the age of adult criminal responsibility in Texas from 17 to 18 years old, placing 17-year-olds accused of crimes in the juvenile rather than the adult justice system failed.

- **DWI**: All bills related to deferred adjudications in DWI cases failed to pass.
● **Continuing Violence in Child and Elderly Cases:** This bill would have raised penalties for certain family violence situations and would have applied the “continuous injury concept” to the injury to a child or disabled/elderly person statute.

● **Child Advocacy Center Videos:** TCDLA opposed a bill that would have allowed the state to introduce a child advocacy center video at trial if the complainant were “available to testify.” This would have meant that if the state decided not to call the complainant, the child advocacy center video would be admissible and not considered hearsay. In this case, the video is testimonial in nature and confrontation issues arise.
CRIMINAL RECORDS:
EXPUNCEPTION, NON-DISCLOSURE, SEALING

PETITION FOR NONDISCLOSURE FOR DWI CONVICTIONS

- Full Legislative History: HB 3016
- Statute: TEX. GOV’T. CODE § 411.0731, 411.0736
- Summary:

Clients who successfully completed DWI Probation [§411.0731]

After a 2 year waiting period, a person with a DWI conviction who has successfully completed probation if:

- No previous conviction or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only;
- No conviction under 49.04(d) [BAC over 0.15 enhancement];
- After notice and an opportunity for a hearing, a determination is made that the order of nondisclosure is in the best interest of justice;
- No accident involving personal injury to another person;
- Successfully completed 6 months of IID as part of their bond or community supervision; and
- Is not convicted, placed on probation, or placed on deferred adjudication during the waiting period for any offense other than a traffic offense.

If the client did not have an IID installed, the waiting period is 5 years.

Clients who received a jail sentence or did not successfully complete probation [§411.0736]

If the person was not placed on probation – or their probation was revoked or unsuccessfully discharged – they are still eligible for nondisclosure if they complete requirements listed above and wait 3 years.

If the client did not have an IID installed, the waiting period is 5 years.

Over 0.15 BAC is not a prohibition – only a conviction under 49.04(d)

HB 3016 is applicable "following a conviction of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section."

Subsection (d) is the 0.15 enhancement provision. As we know, just because the State can file an enhancement doesn’t mean 1) that they have to, 2) they can prove it, or 3) that clients have to plead to it. So what happens when an offense could be punishable under Subsection (d) - but the State elects to proceed on a Class B conviction as part of the plea bargain process? Does the mere allegation of a .15 BAC in a charging
instrument trump whether the parties agreed to abandon that .15 at the time of the plea? What if a jury rejected a Class A conviction and imposed a Class B conviction for loss of normal use? What if the breath or blood result was proven to be unreliable but the evidence of loss of normal use is overwhelming?

If DPS or the State objects to a nondisclosure for a person alleged to have a BAC over .15 but who received a conviction for a Class B misdemeanor, expect to hear the argument that the legislature was trying to avoid these debates by using the word “punishable” and not “convicted.” But this is a misreading of how enhancement provisions are written. The reason legislative counsel wrote “punishable” is because a person cannot be convicted under 49.04(c) or (d). The offense is 49.04(a). The nondisclosure exclusion is only for clients who were actually enhanced under 49.04(d). The clear text of 49.04(d) uses the operative language “on the trial of the offense.” Because the evidence of an alcohol concentration level of 0.15 or more has to be proven at the plea or trial, if the State proceeds on a lesser offense, it could not possible be punishable under 49.04(d).

Thus, clients whose Class A DWIs are reduced to Class B DWI are eligible for nondisclosure.

The nondisclosure provisions are retroactive; it applies to offenses that are committed “before, on, or after September 1, 2017.”

The law takes effect September 1, 2017.

**Relevant Text:**

Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED CONVICTIONS.

(a) This section applies only to a person placed on community supervision under Chapter 42A, Code of Criminal Procedure:

(1) following a conviction of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section; and

(2) under a provision of Chapter 42A, Code of Criminal Procedure, other than Subchapter C, including:

(A) a provision that requires the person to serve a term of confinement as a condition of community supervision; or

(B) another provision that authorizes placing a person on community supervision after the person has served part of a term of confinement imposed for the offense.

(b) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) whose community supervision is not revoked and who completes the period of community supervision, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, may petition the court that placed the person on community supervision for an
order of nondisclosure of criminal history record information under this section if the person:

(1) satisfies the requirements of this section and Section 411.074; and

(2) has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a traffic offense that is punishable by fine only.

(c) A petition for an order of nondisclosure of criminal history record information filed under this section must include evidence that the person is entitled to file the petition.

(d) Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an order of nondisclosure of criminal history record information is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision.

(e) A court may not issue an order of nondisclosure of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the order of nondisclosure.

(f) A person may petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only on or after:

(1) the second anniversary of the date of completion of the community supervision, if the person successfully complied with a condition of community supervision that, for a period of not less than six months, restricted the person's operation of a motor vehicle to a motor vehicle equipped with an ignition interlock device; or

(2) the fifth anniversary of the date of completion of the community supervision, if the court that placed the person on community supervision did not order the person to comply with a condition of community supervision described by Subdivision (1) for the period described by that subdivision.

Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING WHILE INTOXICATED CONVICTIONS.

(a) This section applies only to a person who:

(1) is convicted of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section; and
(2) **is not eligible for an order of nondisclosure of criminal history record information under Section 411.0731**.

(b) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who completes the person's sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, may petition the court that imposed the sentence for an order of nondisclosure of criminal history record information under this section if the person:

(1) satisfies the requirements of this section and Section 411.074; and

(2) has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a traffic offense that is punishable by fine only.

(c) A petition for an order of nondisclosure of criminal history record information filed under this section must include evidence that the person is entitled to file the petition.

(d) Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an order of nondisclosure of criminal history record information is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which the person was convicted.

(e) A court may not issue an order of nondisclosure of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the order of nondisclosure.

(f) A person may petition the court that imposed the sentence for an order of nondisclosure of criminal history record information under this section on or after:

(1) the **third anniversary** of the date of completion of the person's sentence, if the person successfully complied with a condition of the sentence that, for a period of not less than six months, restricted the person's operation of a motor vehicle to a motor vehicle equipped with an ignition interlock device; or

(2) the **fifth anniversary** of the date of completion of the person's sentence, if the court that imposed the sentence did not order the person to comply with a condition described by Subdivision (1) for the period described by that subdivision.

**Retroactivity**
The sections relating to DWI are retroactive, Government Code Section 411.0716(a).

MISTAKEN IDENTITY / CLERICAL ERROR EXPUNCTIONS

- Full Legislative History: HB 3147
- Statute: TEX. CODE CRIM. PRO. Art. 55.01(d)
- Summary:

Amends expunction statute to allow for person who was arrested on bad information due to clerical errors or incorrect identifying information.

Relevant Text:

Article 55.01(d), Code of Criminal Procedure, is amended to read as follows:

(d) A person is entitled to obtain the expunction of [have] any information that identifies the person, including the person's name, address, date of birth, driver's license number, and social security number, contained in records and files relating to the person's arrest or the arrest of another person [expunged] if:

(1) the expunction of identifying information is sought with respect to the arrest of the person asserting the entitlement and the person was arrested solely as a result of identifying information that was inaccurate due to a clerical error; or

(2) the expunction of identifying information is sought with respect to the arrest of a person other than the person asserting the entitlement and ...

FINE ONLY EXPUNCTIONS

- Full Legislative History: HB 557
- Statute: TEX. CODE CRIM. PRO. ART. 55.01, 55.02
- Summary:

Clarifies that expunctions for fine only offenses can be filed in JP and Municipal courts with a reduced filing fee.

Relevant Text:

Article 55.01, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:
(b-1) A justice court or a municipal court of record may only expunge records and files under Subsection (b) that relate to the arrest of a person for an offense punishable by fine only.

**CLASS C EXPUNCTIONS FOR ALCOHOLIC BEVERAGE CODE OFFENSES**

- **Full Legislative History:** HB 2059
- **Statute:** ALCOHOLIC BEV. CODE § 106.12
- **Summary:**

The current statutory expunction available under the Alcoholic Beverage Code for minors is less costly ($30) and time-consuming than the procedures available under the Code of Criminal Procedure. As written, however, the Alcoholic Beverage Code expunction is arguably easier to obtain by individuals who were convicted of an offense than those who were arrested or charged without being convicted. As a result, those who were never convicted of a crime must spend more time and money filing under the Code of Criminal Procedure than those who were convicted and eligible to use the Alcoholic Beverage Code provision. HB 2059 resolves this discrepancy.

*Relevant Text:*

Section 106.12, Alcoholic Beverage Code, is amended by amending Subsections (c) and (d) and adding Subsections (e) and (f) to read as follows:

(e) Any person placed under a custodial or noncustodial 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.

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

**EXPUNCTION FOR VETERANS COURT PRETRIAL DIVERSION**

- **Full Legislative History:** HB 322
- **Statute:** TEX. CODE CRIM. PRO. ART. 55.02
- **Summary:**

Establishes an easier and cost free process for the expunction of arrest records for defendants who have completed a veterans treatment court program.
Relevant Text:

Section 1a, Article 55.02, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) A trial court dismissing a case following a person's successful completion of a veterans treatment court program created under Chapter 124, Government Code, or former law, if the trial court is a district court, or a district court in the county in which the trial court is located may, with the consent of the attorney representing the state, enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. Notwithstanding any other law, a court that enters an order for expunction under this subsection may not charge any fee or assess any cost for the expunction.

NONDISCLOSURE FOR VETERANS TREATMENT COURT PROGRAM

- Full Legislative History: HB 3069
- Statute: TEX. GOV'T. CODE § 411.0727
- Summary: Provides a framework for veterans completing a veterans treatment court program to obtain an order of non-disclosure.

Relevant Text:

Sec. 411.0727. PROCEDURE FOLLOWING SUCCESSFUL COMPLETION OF VETERANS TREATMENT COURT PROGRAM.

(a) This section applies only to a person who successfully completes a veterans treatment court program under Chapter 124 or former law.

(b) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) is entitled to file with the court that placed the person in the veterans treatment court program a petition for an order of nondisclosure of criminal history record information under this section if the person: (1) satisfies the requirements of this section and Section 411.074; (2) has never been previously convicted of an offense listed in Article 42A.054(a), Code of Criminal Procedure, or a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure; and (3) is not convicted of any felony offense between the date on which the person successfully completed the program and the second anniversary of that date.
NONDISCLOSURE FOR TRAFFICKING VICTIMS

- Full Legislative History: HB 322
- Statute: TEX. GOV’T. CODE § 411.0728

Expands the lists of offenses eligible for nondisclosure after conviction if the defendant was a victim of human trafficking. However, there are several hurdles to obtaining this nondisclosure: this can only happen after the conviction has already been set aside under Article 42A.701, you prove that the offense was a result of being a victim of human trafficking, and the nondisclosure is in the interest of justice.

Relevant Text:

Section 411.0728, Government Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (b-1) to read as follows:

(a) This section applies only to a person:

(1) who is placed on community supervision under Chapter 42A [Article 42A], Code of Criminal Procedure, after conviction for an offense under:

(A) Section 481.120, Health and Safety Code, if the offense is punishable under Subsection (b)(1) [Class B Delivery of Marijuana];

(B) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) [Class B Delivery of Marijuana];

(C) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(1) or (2) [Class B or Class C Theft];

(D) Section 43.02, Penal Code [Prostitution]; or

(E) Section 43.03(a)(2), Penal Code, if the offense is punishable as a Class A misdemeanor;[Promotion of Prostitution] and

(2) with respect to whom the conviction is subsequently set aside by the court under Article 42A.701, Code of Criminal Procedure [Section 20(a) of that Article].

(b-1) A petition under Subsection (b) must assert that the person seeking an order of nondisclosure under this section has not previously received an order of nondisclosure under this section.

(c) After notice to the state, an opportunity for a hearing, a determination by the court that the person has not previously received an order of nondisclosure under this section, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the
offense for which the defendant was placed on community supervision as described by Subsection (a) [under Section 43.02, Penal Code, giving rise to the community supervision].

REMOVAL OF NAMES FROM CHILD ABUSE REGISTRY

- Full Legislative History: HB 2849
- Statute: TEX. FAMILY CODE § 261.002(b)

Relevant Text:

Section 261.002(b), Family Code, is amended to read as follows:

(b) The executive commissioner shall adopt rules necessary to carry out this section. The rules shall:

(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).
STUDENT/TEACHER RELATIONSHIPS

NEW OFFENSE, RELATIONSHIPS BETWEEN EDUCATORS AND STUDENTS; REDEFINING CURRENT LAW

- **Full Legislative History:** SB 7
- **Statute:** TEX. PENAL CODE § 21.12(a); TEX. CODE CRIM. PRO. ART. 42.01, 42.018(a), 42.0192; TEX. EDUCATION CODE § 21.006, 21.0061, 21.009

**Summary:**

The goal of SB 7 was to reduce the risks faced by school districts and students by closing loopholes and providing penalties for conduct relating to an inappropriate relationship between an educator and a student. SB 7 amends and broadens current law relating to improper relationships between educators and students. A new criminal offense is created in certain situations where school personnel fail to report inappropriate educator misconduct.

**Relevant Text:**

SECTION 1. Section 21.12(a), Penal Code, is amended to read as follows:

(a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works;

(2) holds a position described by Section 21.003(a) or (b), Education Code, regardless of whether the employee holds the appropriate certificate, permit, license, or credential for the position, [a certificate or permit issued as provided by Subchapter B, Chapter 21, Education Code, or is a person who is required to be licensed by a state agency as provided by Section 21.003(b), Education Code.] and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:

(A) enrolled in a public or private primary or secondary school, other than a school described by Subdivision (1) [in the same school district as the school at which the employee works]; or

(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if[

(4) students enrolled in a public or private primary or secondary school are the primary participants in the activity; [and]
[(ii) the employee provides education services to those participants;] or

(3) engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.

SECTION 2. Article 42.01, Code of Criminal Procedure, is amended by adding Section 12 to read as follows:

Sec. 12. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0192.

SECTION 3. Article 42.018(a), Code of Criminal Procedure, is amended to read as follows:

(a) This Article applies only to:

(1) [to] 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 under 18 years of age at the time the offense was committed.

SECTION 4. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0192 to read as follows:

Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE.

(a) In the trial of an offense described by Section 824.009, Government 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(1), Government Code, as applicable.
SECTION 5. Section 21.006, Education Code, is amended by amending Subsections (b), (b-1), (c), (e), and (f) and adding Subsections (b-2), (c-1), (i), and (j) to read as follows:

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if:

(1) an educator employed by or seeking employment by the school district, district of innovation, charter school, service center, or shared services arrangement has a criminal record and the school district, district of innovation, charter school, service center, or shared services arrangement obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code;

(2) an educator’s employment at the school district, district of innovation, charter school, service center, or shared services arrangement was terminated and there is evidence that the educator:
   (A) abused or otherwise committed an unlawful act with a student or minor;
   (A-1) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;
   (B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
   (C) illegally transferred, appropriated, or expended funds or other property of the school district, district of innovation, charter school, service center, or shared services arrangement;
   (D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or
   (E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;

(3) the educator resigned and there is evidence that the educator engaged in misconduct described by Subdivision (2); or

(4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.

(b-1) A superintendent or director of a school district, district of innovation, [or] open-enrollment charter school, regional education service center, or shared services arrangement shall complete an investigation of an educator that involves [is based on]
evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator’s resignation from [district or school] employment before completion of the investigation.

(b-2) The principal of a school district, district of innovation, or open-enrollment charter school campus must notify the superintendent or director of the school district, district of innovation, or charter school not later than the seventh business day after the date:

(1) of an educator’s termination of employment or resignation following an alleged incident of misconduct described by Subsection (b); or

(2) the principal knew about an educator’s criminal record under Subsection (b)(1).

(c) The superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (b-2) or knew about an educator’s criminal record under Subsection (b)(1) or a termination of employment or resignation following an alleged incident of misconduct described by Subsection (b) or an employee’s criminal record under Subsection (b)(1).

(c-1) The report under Subsection (c) must be:

(1) in writing; and

(2) in a form prescribed by the board.

(e) A superintendent, or director, or principal of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section or communicates with another superintendent, director, or principal concerning an educator’s criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed.

(f) The State Board for Educator Certification shall determine whether to impose sanctions, including an administrative penalty under Subsection (i), against a principal who fails to provide notification to a superintendent or director in violation of Subsection (b-2) or against a superintendent or director who fails to file a report in violation of Subsection (c).

(i) If an educator serving as a superintendent or director is required to file a report under Subsection (c) and fails to file the report by the date required by that subsection, or if an educator serving as a principal is required to notify a superintendent or director about an educator’s criminal record or alleged incident of misconduct under Subsection (b-2) and fails to provide the notice by the date required by that subsection, the State Board for Educator Certification may impose on the educator an administrative penalty of not less than $500 and not more than $10,000. The State
Board for Educator Certification may not renew the certification of an educator against whom an administrative penalty is imposed under this subsection until the penalty is paid.

(j) A superintendent or director required to file a report under Subsection (c) commits an offense if the superintendent or director fails to file the report by the date required by that subsection with intent to conceal an educator's criminal record or alleged incident of misconduct. A principal required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) commits an offense if the principal fails to provide the notice by the date required by that subsection with intent to conceal an educator's criminal record or alleged incident of misconduct. An offense under this subsection is a state jail felony.

SECTION 6. Subchapter A, Chapter 21, Education Code, is amended by adding Section 21.0061 to read as follows:

Sec. 21.0061. NOTICE TO PARENT OR GUARDIAN ABOUT EDUCATOR MISCONDUCT.

(a) The board of trustees or governing body of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement shall adopt a policy under which notice is provided to the parent or guardian of a student with whom an educator is alleged to have engaged in misconduct described by Section 21.006(b)(2)(A) or (A-1) informing the parent or guardian:

(1) that the alleged misconduct occurred;

(2) whether the educator was terminated following an investigation of the alleged misconduct or resigned before completion of the investigation; and

(3) whether a report was submitted to the State Board for Educator Certification concerning the alleged misconduct.

(b) The policy required by this section must require that information specified by Subsection (a)(1) be provided as soon as feasible after the employing entity becomes aware that alleged misconduct may have occurred.

SECTION 7. Subchapter A, Chapter 21, Education Code, is amended by adding Section 21.009 to read as follows:

Sec. 21.009. PRE-EMPLOYMENT AFFIDAVIT.

(a) An applicant for a position described by Section 21.003(a) or (b) with a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement must submit, using a form adopted by the agency, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.
(b) An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

(c) An applicant is not precluded from being employed based on a disclosed charge if the employing entity determines based on the information disclosed in the affidavit that the charge was false.

(d) A determination that an employee failed to disclose information required to be disclosed by an applicant under this section is grounds for termination of employment.

(e) The State Board for Educator Certification may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Section 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.
IMMIGRATION/SANCTUARY CITIES

NEW OFFENSE: CLASS A MISDEMEANOR FOR LOCAL OFFICIALS WHO FAIL TO HONOR DETAINERS, REMOVAL, AND WARRANTS.

- Full Legislative History: SB 4, HB 611, HB 754, HB 889
- Statute: Tex. CODE CRIM. PRO. § 2.01, 2.251
- Summary: HRO Bill Analysis

SB 4 would prohibit local government entities and campus police from adopting certain types of policies, patterns, or practices that prohibit the enforcement of state or federal immigration law. It would establish a process for handling complaints about violations of these provisions and require law enforcement agencies to comply with federal detainer requests. It also would authorize community outreach policies related to the bill, establish a grant program for local entities, and amend procedures relating to bail bonds in certain cases where lawful presence in the country is an issue. Local entities would include the governing bodies of cities, counties, and special district authorities and divisions, departments, or other bodies that were part of these entities and certain officers and employees of them.

**Local policies.** SB 4 would prohibit local entities and campus police departments from adopting or enforcing policies that prohibited the enforcement of state or federal immigration laws and from demonstrating by their patterns or practices that they prohibited the enforcement of immigration laws. Entities and departments could not have a pattern or practice of prohibiting their employees from:

- inquiring into the immigration status of those who were arrested;
- sending certain information about those arrested to, or requesting it from, federal officials,
- maintaining the information or exchanging it with other local entities or campus police departments or federal or state government entities;
- assisting or cooperating with federal immigration officers, if requested and if reasonable and necessary; and
- allowing federal immigration officers to enter and conduct enforcement activities at jails.

Local entities, campus police departments, and their employees could not consider race, color, religion, language, or national origin when enforcing immigration laws, except as allowed by the state or federal constitutions. These prohibitions on policies would not apply to:

- local hospital or hospital districts created under the Health and Safety Code, hospitals owned or operated by institutions of higher education, and hospitals districts created under Article 9 of the Texas Constitution to the extent that the hospital was providing medical or health care services as required under certain state or federal laws;
● peace officers working for one of the above hospitals or hospital districts or commissioned by a hospital or hospital district;
● local public health departments;
● school districts or open-enrollment charter schools;
● peace officers employed or contracted by a religious organization while employed by the organization; and
● the release of information in the records of an educational agency or institution, except in conformity with federal law governing the privacy of student education records.

When investigating an offense, peace officers could ask about witnesses' or victims' immigration status or nationality only if necessary to investigate the offense or to provide the victim or witness with information about federal visas designed to protect individuals who assisted law enforcement. Peace officers would not be prohibited from conducting separate investigations of other alleged offenses. Officers also would not be prohibited from making such inquiries if there was probable cause to believe the victim or witness committed a separate crime.

**Violations, complaints.** Complaints that local entities or campus police departments had violated SB 4's provisions about policies on immigration enforcement could be filed with the attorney general by citizens living in a local entity's jurisdiction or citizens enrolled in or employed by a higher education institution. The complaints would have to include facts supporting an allegation that the entity or campus had violated SB 4 and a sworn statement from the citizens that to the best of their knowledge, the assertions were true and correct.

Upon determining that a complaint was valid, the attorney general could sue entities or departments in a district court in Travis County or a county where the government entity's office was located to compel compliance with SB 4. An appeal of one of these suits would be governed by procedures for accelerated appeals in civil cases.

Local entities or campus police departments that intentionally violated the bill would be subject to civil penalties of $1,000 to $1,500 for the first violation and $25,000 to $25,500 for subsequent violations. Each day of a continuing violation would count as a separate violation, and courts hearing the cases would determine the penalty. Penalties would go into the crime victims' compensation fund.

**Federal detainer requests.** The bill would require law enforcement agencies to take certain actions when they had custody of someone subject to a federal request to detain the person. The agencies would have to comply with the federal requests and would have to tell people that they were being held due to a federal immigration detainer request. Agencies would not have to hold people who provided proof that they were U.S. citizens.

SB 4 would require the attorney general, if requested, to defend local entities in lawsuits related to the entities good-faith compliance with federal immigration detainer requests. In these cases, the state would be liable for any expenses and settlements.
The bill would create a new crime for certain law enforcement authorities who knowingly failed to comply with immigration detainers. **It would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for sheriffs, police chiefs, constables, or others with primary authority for administering a jail to knowingly fail to comply with a federal immigration detainer request. It would be an exception to this requirement if the person subject to the detainer request had provided proof of U.S. citizenship. A conviction of this offense would be grounds for the immediate removal from office of the official.**

**SB 4 would require that judges take certain actions when a criminal defendant who was subject to a federal immigration detainer request was sentenced to a correctional facility. Judges would have to order the facility to require the defendant to serve up to the last seven days of a sentence in federal custody, following the facility’s determination that the change would facilitate the seamless transfer of the defendant into federal custody. Federal officials would have to consent to the transfer.**

**Community outreach policies.** SB 4 would allow law enforcement agencies to adopt a written policy requiring the agency to do community outreach to educate the public that peace officers could not inquire into the immigration status of crime victims or witnesses unless certain conditions were met. The officer could make such an inquiry if the officer determined it was needed to investigate the offense or to provide the victim or witness with information about federal visas designed to protect individuals who assisted law enforcement. Policies would have to include outreach to victims of family violence and sexual assault.

**Bonds.** *The bill would create a new circumstance under which bail bond sureties would not be relieved of their responsibility. The surety’s responsibility would not be relieved if the accused were in federal custody to determine the person’s lawful presence in the United States.*
FAMILY VIOLENCE

RECORDING AND CONFIDENTIALITY OF INTERVIEW NOTES BY FAMILY VIOLENCE CENTERS

- Full Legislative History: **HB 3649**
- Statute: **TEX. FAMILY CODE § 93.002, 93.003, 93.004**
- Summary:

This is an important bill. Presently, counselors at family violence centers do not take notes of their meetings because they fear they may be discoverable. Originally, this bill created that privilege – even if the notes contained exculpatory material because many family violence centers were not State agencies.

The definition of “confidential communications” – and how that confidentiality is lost when the materials turn into litigation preparation or use by the prosecution, may become a critical issue in a case. The bill was amended to allow discovery of such communications in a court proceeding.

Relevant Text:

Sec. 93.002. CONFIDENTIAL COMMUNICATIONS. A written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be disclosed.

Sec. 93.003. PRIVILEGED COMMUNICATIONS.

(a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002.

(b) The privilege may be claimed by:

(1) a victim or a victim's attorney on a victim's behalf;

(2) a parent, guardian, or conservator of a victim under 18 years of age; or

(3) an advocate or a family violence center on a victim's behalf.

Sec. 93.004. EXCEPTIONS.

(a) A communication that is confidential under this chapter may be disclosed only:

(1) to another individual employed by or volunteering for a family violence center for the purpose of furthering the advocacy process;

(2) for the purpose of seeking evidence that is admissible under Article 38.49, Code of Criminal Procedure, following an in camera review and a determination that the communication is admissible under that Article;
(3) to other persons in the context of a support group or group counseling in which a victim is a participant; or

(4) for the purposes of making a report under Chapter 261 of this code or Section 48.051, Human Resources Code.

(b) Notwithstanding Subsection (a), the Texas Rules of Evidence govern the disclosure of a communication that is confidential under this chapter in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication to form the basis of the expert's opinion.

(c) If the family violence center, at the request of the victim, discloses a communication privileged under this chapter for the purpose of a criminal or civil proceeding, the family violence center shall disclose the communication to all parties to that criminal or civil proceeding.

EXPANSION OF CONFIDENTIALITY OF HOME ADDRESS INFORMATION IN FAMILY VIOLENCE, SEXUAL ASSAULT, STALKING, AND TRAFFICKING CASES

- Full Legislative History: SB 256
- Statute: TEX. CODE CRIM. PRO. ART. 56.83
- Summary: Bill providing privacy of home address information for victims of family violence/sexual assault/stalking/trafficking and broadens eligibility in the confidentiality program

Relevant Text:

Article 56.83, Code of Criminal Procedure, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e-1) to read as follows:

(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].

CHILD CUSTODY CONSEQUENCES OF FAMILY VIOLENCE AND PROTECTIVE ORDER FINDINGS

○ Full Legislative History: SB 495

○ Statute: TEX. FAMILY CODE § 153.004

Relevant Text:

Section 153.004, Family Code, is amended by amending Subsections (e) and (f) and adding Subsection (g) to read as follows:

(e) It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or [physical or sexual] abuse or family violence by:

(1) that parent; or

(2) any person who resides in that parent’s household or who is permitted by that parent to have unsupervised access to the child during that parent's periods of
possession of or access to the child [directed against the other parent, a spouse, or a child].

(f) In determining under this section whether there is credible evidence of a history or pattern of past or present child neglect or [physical or sexual] abuse or family violence by a parent or other person, as applicable [directed against the other parent, a spouse, or a child], the court shall consider whether a protective order was rendered under Chapter 85, Title 4, against the parent or other person during the two-year period preceding the filing of the suit or during the pendency of the suit.
INJURY TO A CHILD, ELDERLY, DISABLED INDIVIDUAL

EXPANDS DEFINITION OF “DISABLED INDIVIDUAL” TO INCLUDE “PERSON WITH MENTAL ILLNESS”

- **Full Legislative History:** HB 3019
- **Statute:** TEX. PENAL CODE § 22.04
- **Summary:** Amends Penal Code definition of disabled individual

Relevant Text:

Section 22.04(c)(3), Penal Code, is amended to read as follows:

(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; [or]

(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.

Note: Section 571.003 defines “mental illness” as:

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.
EXPANDS “CONTEXT EVIDENCE” IN INJURY TO A CHILD CASES

- **Full Legislative History:** SB 1250
- **Statute:** TEX. CODE CRIM. PRO. ART. 38.371
- **Summary:** Adds § 22.04 Penal Code to CCP 38.371 (a)(1)

**Relevant Text:**

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 or 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.

(b) In the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, each party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed the offense described by Subsection (a), including testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.

(c) This Article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

EXPANSION OF OFFENSE TO INCLUDING BOARDING HOMES

- **Full Legislative History:** HB 3019
- **Statute:** TEX. PENAL CODE § 22.04
- **Summary:** Expands institutional care facilities to include boarding home facility or an intermediate care facility with persons with an intellectual or developmental disability

**Relevant Text:**

Sections 22.04(a-1) and (i), Penal Code, are amended to read as follows:

(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.

EXTENSION OF STATUTE OF LIMITATIONS FOR EXPLOITATION OF A CHILD, ELDERLY, OR DISABLE INDIVIDUAL TO 7 YEARS

- Full Legislative History: SB 998
- Statute: TEX. CODE CRIM. PRO. Art. 12.01
- Summary: Amends CCP 12.01 by setting 7 years as the applicable statute of limitations for exploitation of a child, elderly individual or disabled individual

FEMALE GENITAL MUTILATION

- Full Legislative History: SB 323
- Statute: HEALTH AND SAFETY CODE § 167.001
- Summary: BILL ANALYSIS

SB 323 amends Section 167.001, Health and Safety Code, to add to the list of individuals committing an offense any person knowingly transporting or permitting the transport of a person for the purpose of performing such acts; and, clarifies that labeling FGM acts as a custom, ritual, or religious practice or obtaining consent from the victim or her parent, legal guardian, or caretaker cannot be used as a defense for prosecution.

Relevant Text:

SECTION 1. Section 167.001, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(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.
CRIME VICTIM COMPENSATION APPLICATIONS

- **Full Legislative History:** SB 843
- **Statute:** TEX. CODE CRIM. PRO. Art. 56.65
- **Summary:**

Currently the office of Attorney General receives thousands of requests for copies of crime victim compensation applications. Less than a dozen are from criminal defense lawyers. The applications for compensation could contain *Brady, Giglio,* and *Bagley* information. SB 843 creates the procedure for keeping the applications confidential – yet allowing access through a court order. Defense attorneys may make a request for the initial application (instead of subpoenaing the records as is current practice) and if further information is needed, a hearing can be held.

*Relevant Text:*

**Art. 56.65. DISCLOSURE AND USE OF INFORMATION.**

(a) This Article does not apply to information made confidential by law.

(b) An application for compensation under this subchapter and any information, document, summary, or other record provided to or received, maintained, or created by the attorney general under this subchapter is:

1. except as provided by Section 552.132(c), Government Code, not subject to disclosure under Chapter 552 of that code; and

2. except as provided by Subsection (c), not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release.

(c) The attorney general may not release or disclose an application for compensation under this subchapter, or any information, document, summary, or other record provided to or received, maintained, or created by the attorney general under this subchapter, except:

1. by court order for good cause shown, if the order includes a finding that the information is not available from any other source;

2. with the consent of:

   (A) the claimant or victim; or

   (B) the person that provided the information to the attorney general;

3. to an employee or other person under the direction of the attorney general;
(4) to another crime victims’ compensation program that meets the requirements of 42 U.S.C. Section 10602(b);

(5) to a person authorized by the attorney general to receive the information in order to:

(A) conduct an audit as required by state or federal law;

(B) provide a review or examination under Article 56.38, 56.385, or 56.39 or under another provision of this subchapter for the purpose of determining the appropriateness of an award under this subchapter;

(C) prevent, deter, or punish fraud related to this subchapter; or

(D) assert subrogation or restitution rights;

(6) as the attorney general determines necessary to enforce this chapter, including presenting the application, information, document, summary, or record in court; or

(7) in response to a subpoena that is issued in a criminal proceeding and that requests an application for compensation under this subchapter, subject to Subsection (d).

(d) If responding to a subpoena described by Subsection (c)(7), the attorney general shall release only the victim’s completed application form as described by Article 56.36(a) after redacting any confidential information described by Section 552.132(b), Government Code. The release of a victim’s completed application form under this subsection does not affect the authority of the court to order the release or disclosure of additional information under this Article.
CYBERCRIME

NEW OFFENSE: CYBERBULLYING – “David’s Law”

- **Full Legislative History:** SB 179/HB 306
- **Statute:** Tex. Penal Code § 42.07(c), Education Code § 37.0832, 37.0052
- **Summary:**

SB 179 requires that school districts in their district policies on bullying invest in counseling and rehabilitation centers. The bill also requires schools to place more focus on bullying/cyberbullying, but addressing such to not only the victims but also the aggressors. It also creates a Class A misdemeanor offense if the offense was committed against a child under the age of 18 with the intent that the child commit suicide or engage in conduct causing serious bodily injury to the child OR if the actor has previously violate a temporary restraining order or injunction.

Relevant Text:

**SECTION 14.** Section 42.07(c), Penal Code, is amended to read as follows:

(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:
   1. the offense was committed against a child under 18 years of age with the intent that the child:
      1. commit suicide; or
      2. engage in conduct causing serious bodily injury to the child; or
   2. the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.
NEW OFFENSES: ELECTRONIC ACCESS INTERFERENCE/ELECTRONIC DATA TAMPERING/UNLAWFUL DECRYPTION

- Full Legislative History: HB 9
- Statute: Tex. Penal Code § 33.01, 33.022, 33.023, 33.024
- Summary: HRO BILL ANALYSIS

HB 9 would create new offenses under Penal Code, Ch. 33 for electronic access interference, electronic data tampering, and unlawful decryption.

**Electronic Access Interference**: HB 9 would make it a crime for a person to intentionally interrupt or suspend access to a computer system or network without the effective consent of the owner, unless the person was a network provider acting for a legitimate purpose. An offense would be a third-degree felony.

In certain cases, conduct could be considered as one offense and the value of the benefits obtained or losses incurred could be aggregated in determining the grade of the offense. The aggregate amount would include the value of money, service, or property appropriated or any expenditure required by the victim to determine whether data or property was affected or to restore, recover, or replace any data affected.

The bill would provide an exception to the offense of altering data as it transmitted between two computers if the act was committed in the course of employment for certain service providers and was consistent with accepted industry technical specifications. This exception would apply to those working for an internet service provider, a computer service provider, an information service provider, an interactive computer service, an electronic communications service, or a cable or video service provider.

For the crime of altering data, it would be an affirmative defense to prosecution that the actor was working for a communications common carrier or electric utility and the act was committed in the course of employment and was necessary to render service or to protect the rights or property of the carrier or utility.

**Unlawful Decryption.** The bill would make it a crime to decrypt encrypted private information without the owner's consent. An offense would be a class A misdemeanor unless the person acted with the intent to defraud or harm another or to alter, appropriate, damage, or delete property.

**Relevant Text:**

SECTION 3. Chapter 33, Penal Code, is amended by adding Sections 33.022, 33.023, and 33.024 to read as follows:

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.

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.
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 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.

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.
SEARCH & SEIZURE

PUBLIC DISCLOSURE OF SEARCH WARRANT AFFIDAVITS

- **Full Legislative History:** HB 3237
- **Statute:** TEX. CODE CRIM. PRO. Art. 18.01
- **Summary:**

HB 3237 clarifies the time in which an affidavit for a search warrant becomes public information and requires the officer to return the search warrant within three (3) days. This statute is effective immediately.

EXPANDING DEFINITION OF ONLINE SERVICE PROVIDERS

- **Full Legislative History:** SB 1203
- **Statute:** TEX. CODE CRIM. PRO. Art. 24A.001
- **Summary:**

SB 1203 widens the net and expands the definition of online service provider for a search warrant, court order or subpoena for internet service providers for certain sexual and trafficking offenses.

CHAMBERS COUNTY MAGISTRATES

- **Full Legislative History:** HB 1727
- **Statute:** TEX. CODE CRIM. PRO. Art. 18.01
- **Summary:**

HB 1727 is a local bill applying to Chambers County only and allows certain magistrates to sign search warrants.
DRUGS

EXPANDING TEXAS CONTROLLED SUBSTANCES ACTS TO ADD OTHER SUBSTANCES

- **Full Legislative History:** HB 2671
- **Statute:** TEX. HEALTH AND SAFETY CODE § 481.102, 481.103
- **Summary:** HRO BILL ANALYSIS

HB 2671 would expand penalty group 1 of the Texas Controlled Substances Act to include Phenazepam, U-47700, and AH-7921. The bill would add to penalty group 3 three substances: Carisoprodol, Etizolam, and Tramadol.

CONTROLLED SUBSTANCES ACT CLARIFICATIONS

- **Full Legislative History:** SB 227
- **Statute:** TEX. HEALTH AND SAFETY CODE § 481.103(d)
- **Summary:** HRO BILL ANALYSIS

Texas state law classifies dangerous synthetic drugs under the Texas Controlled Substances Act. Specifically, SB 172, 84th Legislature, Regular Session, 2015, provided a comprehensive approach to classifying synthetic hallucinogens, also known as “25-I” or “N-Bomb.”

The enrolled version of SB 172, signed by the governor, included a provision codified as Section 481.103(d), Health and Safety Code. This provision prohibited a conviction for manufacture, delivery, or possession for a substance in Penalty Group 2 of the Texas Controlled Substances Act, as long as that substance was approved by the federal Food and Drug Administration. While this provision was well-intentioned to provide an extra layer of statutory security to consumers who use a legally prescribed substance, the practical effect was not so clear. There had been reports that, because of this language, some Texas prosecutors were unable to convict individuals who possessed or delivered federally approved drugs that were not prescribed to those individuals.

The language in Section 481.103(d), Health and Safety Code, is unique in statute, and does not need to remain in statute in order to protect patients who have been legally prescribed a substance that appears in Penalty Group 2 of the Texas Controlled Substances Act.
Relevant Text:

SECTION 1. Section 481.103(d), Health and Safety Code, is repealed.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

DETERMINING CONTROLLED SUBSTANCES

- **Full Legislative History:** HB 2804
- **Statute:** TEX. HEALTH AND SAFETY CODE § 481.0355
- **Summary:**

Health and Safety Code, sec. 481.0355 allows the Department of Health Services commissioner to emergency schedule a substance as a controlled substance if the commissioner determines it is necessary to avoid an imminent hazard to the public safety. In making a determination about whether a substance poses an imminent hazard to the public safety, the DSHS commissioner must consider twelve factors, including eight that are used in determining whether a substance should be scheduled under nonemergency circumstances.

In 2015, the 84th Legislature passed HB 1212 by Price, which allowed the DSHS commissioner to emergency schedule certain synthetic drugs in coordination with the Department of Public Safety. Certain synthetic drugs include dangerous chemicals and can cause death or violent behavior for people who use them. Some observers note that DSHS has not been able to emergency schedule these substances as quickly as was intended by HB 1212, and clarification is needed.

Under HB 2804, the commissioner of the Department of State Health Services would consider **four, rather than twelve**, factors in determining whether a substance posed an imminent hazard to the public safety and should be emergency scheduled as a controlled substance. These factors would include:

- the scope, duration, symptoms, or significance of abuse;
- the degree of detriment that abuse of the substance may cause;
- whether the substance had been temporarily scheduled under federal law; and
- whether the substance had been temporarily or permanently scheduled under the law of another state.
The change to the determining factors would apply only to a controlled substance emergency scheduled on or after the bill's effective date. The DSHS commissioner could extend the emergency scheduling of a substance only once, for up to one year, by publishing the extension in the Texas Register. If the DSHS commissioner made an extension, it would take effect immediately, and the commissioner would post notice about each extension on the DSHS website. The changes made to emergency scheduling extensions by HB 2804 would apply to an extension that occurred on or after the bill's effective date, regardless of whether the controlled substance was emergency scheduled before, on, or after that date.

The bill would remove the existing requirement for the DSHS commissioner to consult with the Department of Public Safety regarding the chemical structure of compounds contained in an emergency scheduled substance.
INNOCENCE

OMNIBUS INNOCENCE BILL/TIM COLE COMMISSION RECOMMENDATIONS

- **Full Legislative History:** SB 1253, HB 3134, HB 34
- **Statute:** Tex. Code Crim. Pro. Art. 2.32
- **Summary:** HRO BILL ANALYSIS

SB 1253 would require every custodial interrogation in which a person being interrogated was suspected of committing or charged with certain felonies to be electronically recorded, unless good cause existed that made electronic recording infeasible. The bill would require audiovisual recording, or an audio recording if audiovisual recording were unavailable. The felonies would include:

- murder;
- capital murder;
- kidnapping;
- aggravated kidnapping;
- trafficking of persons;
- continuous trafficking of persons;
- continuous sexual abuse of a young child or children;
- indecency with a child;
- improper relationship between educator and student;
- sexual assault;
- aggravated sexual assault; or
- sexual performance of a child

No statement produced from a custodial interrogation would be admissible in a criminal trial unless the interrogation was electronically recorded or the prosecuting attorney could show that good cause existed that made an electronic recording infeasible.

HB 34 also contains the exact language regarding electronic recordings, which is contained in SB 1253. In addition, this bill makes evidentiary changes relative to impeachment of testifying witnesses who receive a benefit from such testimony. Furthermore, the Texas Forensic Commission is to conduct a study regarding the use of drug field test kits and crime scene investigations in this state and the Texas Commission on Law Enforcement shall establish a comprehensive education and training program on eyewitness identification.
WEAPONS

NEW OFFENSE: PROHIBITED EXPLOSIVE DEVICES

- Full Legislative History: HB 913
- Statutes: TEX. PENAL CODE § 46.01, 46.05
- Summary: HRO BILL ANALYSIS

HB 913 would make intentionally or knowingly possessing, manufacturing, transporting, repairing, or selling an improvised explosive device a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

The bill would define an improvised explosive device as a completed and operational bomb designed to cause serious bodily injury death or substantial property damage that is fabricated with non-military components.

Relevant Text:

SECTION 1. Section 46.01, Penal Code, is amended by adding Subdivision (18) to read as follows:

(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.

SECTION 2. Sections 46.05(a) and (e), Penal Code, are amended to read as follows:

(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)(2) is a Class A misdemeanor.

LEGALIZING SILENCERS

- Full Legislative History: HB 1819
- Statutes: TEX. PENAL CODE § 46.05
- Summary: HRO BILL ANALYSIS

HB 1819 would allow firearm silencers to be possessed, manufactured, transported, repaired, or sold if they were classified as a curio or relic by the U.S. Department of Justice or if possessed, manufactured, transported, repaired, or sold in compliance with federal law.

ALLOWING THE CARRYING OF CERTAIN KNIVES; NEW OFFENSE RELATING TO THE CARRYING OF CERTAIN KNIVES

- Full Legislative History: HB 1935
- Statutes: TEX. PENAL CODE § 46.01, 46.02, 46.03
- Summary: HRO BILL ANALYSIS

HB 1935 would remove the term "illegal knife" from the list of weapons, which it is a crime to intentionally, knowingly, or recklessly carry onto certain premises. It introduces the term “location-restricted knife,” defined as a knife with a blade over 5 ½ inches, in place of “illegal knife.” The bill lowers the punishment to a Class C misdemeanor in some situations but also provides for a 3rd degree felony in specific instances.

A school district could expel a student in possession of the following types of knives
on school property or at school-related activities:

A knife with a blade over five and a half inches long
A throwing knife
A dagger, including a dirk, stiletto, and poniard
A bowie knife
A sword, or
A spear.

Relevant Text:

SECTION 4. Section 46.02, Penal Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-4) and (d) to read as follows:

(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) is not:

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

(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.

(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.

SECTION 5. Section 46.03, Penal Code, is amended by amending Subsections (a) and (g) and adding Subsections (a-1) and (g-1) to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted 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 offense under this section is a felony of the third degree.

(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).

CANNOT PROHIBIT LAW ENFORCEMENT FROM CARRYING WEAPON IN AN “ESTABLISHMENT SERVING THE PUBLIC”

- Full Legislative History: HB 873
- Statute: TEX. CODE CRIM. PRO. ART. 2.1305
- Summary:

HB 873 would require an establishment serving the public to not prohibit or otherwise restrict a peace officer or special investigator from carrying on its premises a weapon that the officer or investigator was otherwise authorized to carry, regardless of whether the officer or investigator was on duty. An establishment serving the public would be defined as:

- a hotel, motel, or other place of lodging; • a restaurant or other place where food was sold to the public; • a commercial establishment or office building open to the public; • a sports venue, including an arena or stadium used for amateur or
professional events that charges an admission fee; and • any other place of public accommodation, amusement, convenience, or resort to which the general public is normally invited.

DEFENSE FOR UNLAWFUL CARRYING WEAPON: VOLUNTEER EMERGENCY SERVICES PERSONNEL

- Full Legislative History: HB 435
- Statute: TEX. PENAL CODE § 30.06, 30.07
- Summary:

The bill would add volunteer emergency services personnel that were licensed to carry a handgun and engaged in providing emergency services to the list of individuals to which the offenses of unlawful carrying of weapons and carrying weapons on certain prohibited premises did not apply.
SEX ASSAULT & RELATED OFFENSES

NEW OFFENSE: POSSESSION OR PROMOTION OF LEWD MATERIAL DEPICTING A CHILD

- Full Legislative History: HB 1810
- Statute: TEX. PENAL CODE § 43.262
- Summary:

While this offense is meant to criminalize that conduct that would not be considered child pornography, it creates a much needed non-registerable lesser included offense of possession of child pornography. However, given the prevalence of teen sexting, this bill provides another felony offense that causes confusion over which statute should govern consensual exchange of photographs between consenting high school students. The “need” for this bill, based on testimony, was to address the situation where the material did not include the face/head area of the individual.

Relevant Text:

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.

REWRITTEN DEFINITION OF PROSTITUTION

- Full Legislative History: HB 29
- Statute: TEX. PENAL CODE § 43.01, 43.02
- Summary:

Penal Code 43.01 was amended to provide a definition of “fee” and 43.02 was amended to focus on “offers” or “agrees” to receive a fee from another to engage in sexual conduct.

Relevant Text:

Section 43.01, Penal Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Fee" means the payment or offer of payment in the form of money, goods, services, or other benefit.

Sections 43.02(a) and (b), Penal Code, are amended to read as follows:

(a) A person commits an offense if the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct.

(b) A person commits an offense if 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.

REITERATING THAT MISTAKE OF AGE IS NOT A DEFENSE IN CHILD ABUSE CASES

- Full Legislative History: HB 29
- Statute: TEX. PENAL CODE § 21.02(b) [Continuous sexual child]; 21.11(a) [Indecency with a child]; 22.011(a) [Sexual assault]; 22.021(a) [Aggravated sexual assault]; 43.02 [Prostitution]
- Summary:

The legislature wanted clarity regarding mistake of age in conjunction with prostitution and human trafficking. Thus, the above-cited statutes now have language in the offense explicitly stating that lack of knowledge of age is not a defense.

Relevant Text:
Each of the above statutes now includes the language: “.....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.”

OMNIBUS HUMAN TRAFFICKING PROSECUTION & CIVIL RECOVERY; ENHANCED PENALTIES AND SEX OFFENDER REGISTRATION

- Full Legislative History: HB 29
- Statute: TEX. CIVIL PRACTICE & REMEDIES CODE § 140A
- Summary:

This is a 66-page bill. While most of the changes to the law involve civil discovery, there are several changes to prosecutions involving children that create specific language in each statute that mistake of age is not a defense (see other summaries above).

Enhanced penalties for promotion of prostitution. HB 29 would raise the penalty for promotion of prostitution from a class A misdemeanor to a state-jail felony and bumps up aggravated promotion to a 2nd degree felony.

Sex offender registration. HB 29 would add continuous human sex trafficking that was based wholly or partly on conduct that constituted prostitution or a sexual offense involving a child to the crimes that require registration as a sex offender.

Civil investigative demand. HB 29 would allow the Office of the Attorney General to pursue a civil investigative demand before beginning a proceeding for civil racketeering related to human trafficking.

Training. The bill would direct the Texas Higher Education Coordinating Board to adopt rules requiring public junior colleges offering a commercial driver's license training program to include in the program education on recognition and prevention of human trafficking.

Prioritized hearings. Offenses involving child sex trafficking would be added to the list of pending matters that the state's trial courts would have to prioritize for hearings and trials.

EDUCATIONAL INSTRUCTION FOR PREVENTION OF SEXUAL ABUSE AND SEX TRAFFICKING

- Full Legislative History: SB 2039
- Statute: TEX. EDUCATION CODE § 28.017
- Summary:
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.

**RESTRICTIONS ON REGISTERED SEX OFFENDERS LIVING ON UNIVERSITY CAMPUS**

- **Full Legislative History:** HB 355
- **Statute:** TEX. CODE CRIM. PRO. Art. 62.064
- **Summary:**

  Relevant text:

  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.

**LIMITATIONS ON MEDIATED SETTLEMENT AGREEMENTS IN CHILD CUSTODY CASES INVOLVING REGISTERED SEX OFFENDERS**

- **Full Legislative History:** SB 495
- **Statute:** TEX. FAMILY CODE 153.0071(e-1)
- **Summary:**

  Relevant text:

  Section 153.0071 (e-1), Family Code, is amended to read as follows:

  (e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds:

  (1) that

  (A) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; or

  (B) the agreement would permit a person who is subject to registration under Chapter 62, Code of Criminal Procedure, on the basis of an offense committed by the person...
when the person was 17 years of age or older or who otherwise has a history or pattern of past or present physical or sexual abuse directed against any person to:

(i) reside in the same household as the child; or

(ii) otherwise have unsupervised access to the child; and

(2) that the agreement is not in the child's best interest.

GRANT FUND TO TEST EVIDENCE OF SEXUAL OFFENSES

- Full Legislative History: HB 1729
- Statute: TEX. TRANSPORTATION CODE § 521.012; TEX. GOV'T. CODE § 772.00715
- Summary:

Establishes a voluntary contribution program when a person applies for or renews a driver's license.

Relevant text:

Sec. 772.00715. EVIDENCE TESTING GRANT PROGRAM.

(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.
COLLEGE & UNIVERSITY SEXUAL ASSAULT REPORTING

- **Full Legislative History:** SB 968
- **Statute:** TEX. EDUCATION CODE § 51.9363, 51.9365
- **Summary:**

SB 968 would require 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 the student or employee, regardless of where the alleged offense occurred.

AMNESTY FROM DISCIPLINARY ACTION FOR COLLEGE & UNIVERSITY SEXUAL ASSAULT REPORTING

- **Full Legislative History:** SB 969
- **Statute:** TEX. EDUCATION CODE § 51.9366
- **Summary:**

SB 969 would prohibit an institution of higher education, including a private or independent institution, from taking any disciplinary action against a student enrolled at the institution for a violation of its policies on student conduct if the student in good faith reported being the victim of, or a witness to, an incident of sexual assault and the violation of the institution’s policies was in relation to the incident.

SB 969 would provide amnesty to students who reported sexual assault incidents in good faith, allowing victims or witnesses to report such occurrences without fear of being punished for violations such as underage drinking or illegal drug use. Sexual assault on college and university campuses has increased at an alarming rate, yet many offenses go unreported because the witnesses or victims fear repercussions for violating school policies. Campuses that have adopted amnesty policies have seen a rise in reporting, which has improved campus safety and the process of investigating alleged offenses.

TERMINATION OF PARENTAL RIGHTS BASED ON SEXUAL ASSAULT OF CHILD’S OTHER PARENT

- **Full Legislative History:** SB 77
- **Statute:** TEX. FAMILY CODE § 161.001(b)

Relevant text:

Section 161.001 (b), Family Code, is amended to read as follows:

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:
(1) that the parent has:
(T) been convicted of:

(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; and

(2) that termination is in the best interest of the child.

EXPANDS INAPPROPRIATE SEXUAL RELATIONSHIP TO INCLUDE PROBATION OFFICER

- **Full Legislative History:** SB 343
- **Statute:** TEX. PENAL CODE § 39.04
- **Summary:**

Currently, state law prohibits a number of inappropriate relationships. SB 343 prohibits an employee of the Texas Department of Criminal Justice (TDCJ), the Texas Juvenile Justice Department (TJJD), or a juvenile facility to engage in sexual relations with an individual who the employee knows is under the supervision of TDCJ, TJJD, or a local juvenile probation department.

Although current law lists juvenile probation and a person under the probation department, current law does not prohibit inappropriate sexual relationships between an employee of a community supervision and corrections department with an individual the employee knows is under the supervision of the community supervision and corrections department.

OMNIBUS BILL ON SEXUALLY VIOLENT PREDATOR CIVIL COMMITMENT FACILITIES

- **Full Legislative History:** SB 1576
- **Statute:** TEX. CODE CRIM PRO. ART. 62.202, 62.2021; TEX. GOV’T CODE § 552.1175, 552.117(a), CH. 420A; TEX. HEALTH AND SAFETY CODE CH. 841; TEX. PENAL CODE CH. 22, 38
- **Summary:**
This is a detailed bill that goes through many of the minute details regarding the civil commitment process. Of worth noting is a provision to require a peace officer, on a request made by the Texas Civil Commitment Office, to execute an emergency detention order. The law prohibits a magistrate from releasing on personal bond a defendant who at the time of the commission of the charged offense is civilly committed as a sexually violent predator. The law revises the requirement for an individual subject to registration under the sex offender registration program who is civilly committed as a sexually violent predator. SB 1576 requires a court, on motion by the attorney representing the state, to require a civilly committed person to appear via closed-circuit video teleconferencing at a hearing on the modification of civil commitment requirements or a hearing relating to a commitment review or petition for release and requires a recording of the hearing to be made and preserved with the court’s record of the hearing. SB 1576 amends the Penal Code to add to the code a definition for “civil commitment facility” and to enhance the penalty for assault in which the actor intentionally, knowingly, or recklessly causes bodily injury to another from a Class A misdemeanor to a third degree felony if the offense is committed while the actor is committed to a civil commitment facility and the offense is committed against the following: an officer or employee of the Texas Civil Commitment Office while the officer or employee is lawfully discharging an official duty at a civil commitment facility or in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employer.

ALLOWS INPATIENT MENTAL HEALTH SERVICES FOR SEXUALLY VIOLENT PREDATORS AS PART OF CIVIL COMMITMENT PROCESS

- **Full Legislative History:** SB 613
- **Statute:** TEX. HEALTH & SAFETY CODE § 841.0835
- **Summary:**

SB 613 requires the Health and Human Services Commission (HHSC) to provide inpatient mental health services for a civilly committed sexually violent predator (SVP) whom the Texas Civil Commitment Office (TCCO) determined was unable to effectively participate in its sex offender treatment program because of the person's mental illness.
FORENSICS

STATEWIDE COLLECTION, PRESERVATION, AND TRACKING OF EVIDENCE OF SEX OFFENSE

- Full Legislative History: HB 281
- Statute: Tex. Gov’t. Code Chapter 420
- Summary: HRO BILL ANALYSIS

HB 281 would require the Texas Department of Public Safety (DPS) to develop and implement a statewide electronic tracking system for evidence collected in cases involving sexual assault or other sex offenses. The tracking system would include evidence from kits used to collect evidence from a sexual assault or other sex offense and other biological evidence of a sexual assault or other sex offense.

The bill would establish requirements for the tracking system, which would have to track the status and location of each item of evidence through various stages of the criminal justice process, allow entities involved in handling the evidence to update and track the status and location of evidence, and allow survivors anonymously to track or receive updates on the status of evidence.

DPS would require participation in the tracking system by any entity that collected evidence of sexual assaults or other sex offenses or that investigated or prosecuted such offenses. Records entered into the tracking system would be confidential and not subject to disclosure under the state's public information laws. Records of the evidence being tracked could be accessed only by the survivor from whom the evidence was collected or an employee of an entity collecting the evidence or investigating or prosecuting the case.

Employees of DPS or an entity collecting the evidence or investigating or prosecuting the case could not disclose information to a parent of legal guardian of a survivor that would help in accessing the evidence records if the employee knew or had reason to believe that the parent or guardian was a suspect or suspected accomplice in the offense.

HB 281 seems to disallow the disclosure of the information/access to the database by the defense/defendant and perhaps even the prosecutors as the only purported, express disclosure applies to the “survivor.”

Relevant Text:

SECTION 1. The heading to Subchapter B, Chapter 420, Government Code, is amended to read as follows:

SUBCHAPTER B. COLLECTION, [AND] PRESERVATION, AND TRACKING OF EVIDENCE OF SEX OFFENSE
SECTION 2. Subchapter B, Chapter 420, Government Code, is amended by adding Section 420.034 to read as follows:

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.
PROPERTY CRIMES

INCREASING THE PUNISHMENT FOR BURGLARY OR THEFT OF A CONTROLLED SUBSTANCE

- Full Legislative History: HB 1178
- Statute: Tex. PENAL CODE § 30.01, 30.02, 30.04
- Summary: HRO BILL ANALYSIS

HB 1178 would enhance the penalty for burglary of a building that generally stores controlled substances, including a pharmacy, clinic, hospital, or nursing facility, from a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if the person entered or remained concealed with intent to commit theft of a controlled substance. The bill also would make the theft of a controlled substance a third-degree felony if the value of the controlled substance is $150,000 or less and taken from a commercial building which normally holds controlled substances or a vehicle belonging to a wholesale distributor. Finally, burglary of a vehicle owned by a wholesale distributor of controlled substances is a third degree felony.

Relevant Text:

SECTION 1. Section 30.01, Penal Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(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.

SECTION 2. Section 30.02, Penal Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(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.

SECTION 3. Section 30.04(d), Penal Code, is amended to read as follows:

(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.

CRIMINAL MISCHIEF INVOLVING PROPERTY USED FOR FLOOD CONTROL PURPOSES OR A DAM

- Full Legislative History: HB 1257
- Statute: TEX. PENAL CODE § 28.03(b)
- Summary: HRO BILL ANALYSIS

HB 1257 would add to the list of criminal mischief acts that are state-jail felonies those acts that impair or interrupt property used for flood control purposes or a dam and result in the financial loss of less than $30,000.

Relevant Text:

SECTION 1. Section 28.03(b), Penal Code, is amended to read as follows:

(b)(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:

(i) causes wholly or partly impairment or interruption of property used for flood control purposes or a dam or of public communications, public transportation, public gas or power supply, or other public service.

PREVENTION AND INVESTIGATION OF CATTLE THEFT/INCREASED PUNISHMENT

- Full Legislative History: HB 2817
- Statute: TEX. PENAL CODE § 28.03; AGRIC. CODE CH. 153
- Summary: BILL ANALYSIS

The bill would amend the Penal Code as it relates to the punishment for the offense of criminal mischief involving the death of one or more head of cattle, bison, or horses by the discharge of a firearm or other weapon. Certain criminal penalties would not be applicable if certain animals were killed by certain individuals while in the discharge of certain official or regular duties. Under the provisions of the bill, criminal mischief involving the death of one or more head of cattle, bison, or horses would be punishable by a third degree felony.

Relevant Text:

SECTION 1. Subtitle B, Title 6, Agriculture Code, is amended by adding Chapter 153 to read as follows:

CHAPTER 153. PREVENTION AND INVESTIGATION OF CATTLE THEFT

Sec. 153.001. DEFINITIONS. In this chapter:

(1) "Association" means the Texas and Southwestern Cattle Raisers Association.

(2) "Program" means the inspection program established by department rule under Section 153.002.
Sec. 153.002. ESTABLISHMENT OF PROGRAM.

(a) The department by rule shall establish a cattle inspection program to discourage and investigate property crimes involving cattle in this state:

(1) on request by the association; and

(2) if a similar program authorized by federal law is canceled, suspended, repealed, or otherwise scheduled for discontinuation.

(b) The program must utilize existing cattle industry infrastructure to the extent possible.

(c) The department shall establish an advisory committee to advise the department on program rules. At least once every two years, the advisory committee shall review the program rules and submit findings and recommendations to the department.

Sec. 153.003. INSPECTIONS. Program rules must authorize the special rangers appointed under Article 2.125, Code of Criminal Procedure, and other association employees designated by the special rangers, to inspect and record brands and other identifying characteristics of cattle at livestock auction markets.

Sec. 153.004. ASSESSMENT.

(a) Program rules must establish a per-head regulatory assessment in an amount necessary to reimburse the association for direct costs incurred under this chapter.

(b) In determining the amount of the assessment, the department shall consider:

(1) the amount of similar assessments or charges authorized by the laws of other states or the United States;

(2) the direct operating costs of the program; and

(3) the expertise required to operate the program.

(c) On request by the association, the department shall review the amount of the assessment and consider any necessary revision.

(d) Each livestock auction market shall collect the assessment and remit the amount collected to the association.

(e) Assessments collected under this section are not state funds and are not required to be deposited in the state treasury.

(f) A person who has possession, custody, or control of an assessment collected under this section and not remitted to the association before the 31st day after the date collected is subject to an administrative penalty in an amount provided by department rule.

Sec. 153.005. STATE OVERSIGHT.
(a) The department must approve the association's budget for the program each year.

(b) The department shall review and act on the association's budget for the program each year not later than the 45th day after the date the association submits the budget to the department.

(c) The department or the state auditor may inspect the association's financial records related to the program at any time.

SECTION 2. Section 28.03, Penal Code, is amended by amending Subsection (b) and adding Subsection (k) to read as follows:

(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.

SECTION 3. Section 28.03, Penal Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2017.

NEW OFFENSE: THEFT OF PETROLEUM PRODUCTS

- **Full Legislative History:** SB 1871
- **Statute:** TEX. PENAL CODE § 31.19
- **Summary:** BILL ANALYSIS

SB 1871 would create a new offense in Chapter 31, Penal Code: theft of petroleum products or oil and gas equipment. A person would commit such an offense if the person unlawfully appropriates petroleum products with the intent to deprive the owner of the
property by possessing, removing, delivering, receiving, purchasing, selling, moving, concealing, or transporting the petroleum product; or 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. A person also would commit an offense if the person unlawfully appropriates oil and gas equipment with the intent to deprive the owner of the oil and gas equipment. For purposes of this offense, appropriation is unlawful if it is without the owner's effective consent. An offense would be classified as a felony, with the degree based upon the total value of the stolen petroleum products or oil and gas equipment.

Relevant Text:

SECTION 1. Chapter 31, Penal Code, is amended by adding Section 31.19 to read as follows:

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.

SECTION 2. This Act takes effect September 1, 2017.
INCREASING THE PUNISHMENT FOR REPEATED CRIMINAL TRESPASSING AT CERTAIN CAMPUSES

- Full Legislative History: SB 1649
- Statute: TEX. PENAL CODE § 30.05
- Summary: HRO BILL ANALYSIS

HB 1649 would increase a criminal trespass offense to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000), if the person trespassed at a public institution of higher education and previously had been convicted of or received deferred adjudication for trespassing at an institution of higher education.

Relevant Text:

SECTION 1. Section 30.05(b), Penal Code, is amended by adding Subdivision (12) to read as follows:

(12) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

SECTION 2. Section 30.05, Penal Code, is amended by amending Subsection (d) and adding Subsections (d-1) and (d-2) to read as follows:

(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; [ed]
(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.
MENTAL HEALTH

IDENTIFICATION/SCREENING/DIVERSION OF ARRESTEES, JAIL
STANDARDS/TRAINING & RACIAL PROFILING/TRAFFIC STOP POLICIES

- **Full Legislative History:** SB 1849 – The Sandra Bland Act
- **Statute:**
  - TEX. CODE CRIM. PRO. CH. 2, 16;
  - TEX. GOV'T. CODE CH. 511, 539;
  - TEX. OCCUPATIONS CODE CH. 1701
- **Summary:**

SB 1849 would revise laws on the identification and screening of an arrestee who might be a person with a mental illness or an intellectual disability and on diversion to treatment by law enforcement agencies of a person suffering a mental health crisis or suffering from the effects of substance abuse. It also would revise laws on grants to community collaboratives. The bill would require the Commission on Jail Standards to adopt rules and procedures addressing jail safety, establish requirements for reporting serious incidents in jails, revise training requirements for certain law enforcement authorities, and expand reporting of certain types of information about law enforcement activities.

**Identification, screening of arrestees.** The bill would shorten the time frame for sheriffs to provide notice to magistrates about having credible information that may cause them to believe that someone in their custody had a mental illness or was a person with an intellectual disability. The notice would have to be given within 12 hours, rather than 72 hours, after receiving the information.

**Diversion to treatment.** Law enforcement agencies would be required to make a good faith effort to divert those suffering a mental health crisis or suffering from the effects of substance abuse to a treatment center in the agency's jurisdiction if:

- there was an available and appropriate treatment center in the agency's jurisdiction;
- it was reasonable to divert the person;
- the person was accused of a non-violent misdemeanor; and
- the mental health crisis or substance abuse issue was suspected to be the reason the person committed the alleged offense.

This diversion requirement would not apply to those accused of driving while intoxicated, driving while intoxicated with a child, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, intoxication assault, and intoxication manslaughter.

**Jail standards on prisoner safety.** The Commission on Jail Standards would be required to adopt rules and procedures to ensure the safety of prisoners, including ones requiring county jails to:
● give prisoners the ability to access a mental health professional 24 hours a day at the jail through telemental health services;
● give prisoners the ability to access a health professional 24 hours a day at the jail or through telehealth services or provide transportation to a health professional; and
● if funding was available, install automated sensors or cameras to ensure accurate and timely in-person checks of cells with at-risk individuals.

The Commission on Jail Standards would have to adopt the rules by September 1, 2018. On or after September 1, 2020, county jails would have to comply with the rules and procedures.

**Serious incidents report, investigation.** SB 1849 would require sheriffs to report monthly to the Commission on Jail Standards on the occurrence of several types of incidents involving jail prisoners in the preceding month. The sheriff would have to report on suicides, attempted suicides, deaths, serious bodily injury, assaults, escapes, sexual assaults, and uses of force resulting in bodily injury. The reported information would be public information but could not include the name or identifying information of a county jailer or jail employee. If a prisoner died in a county jail, the commission would be required to appoint a law enforcement agency, other than the one that operated the jail, to investigate the death.

**Officer, jailer training.** The bill would set at 40 hours in length the currently required statewide education and training program for law enforcement officers on de-escalation and crisis intervention techniques for interactions with persons with mental impairments. The Texas Commission on Law Enforcement would be required, as part of the minimum curriculum training, to mandate that peace officers complete a statewide education and training program on de-escalation techniques to facilitate interaction with the public, including techniques for limiting the use of force that results in bodily injury.

**Racial profiling policies.** The bill would amend the requirements for the currently mandated racial profiling policy that is required of law enforcement agencies. The current requirement to collect information about motor vehicle stops in which citations were issued or arrests made would be expanded to include information on tickets and warnings. The bill would require the collection of information from motor vehicle stops about whether a peace officer used physical force that resulted in bodily injury, the location of the stop, and the reason for the stop. Agencies would be required to review the data collected about these stops to identify improvements the agency could make in its practices and policies.

**Reports required for motor vehicle stops.** The bill would add to the information that would have to be reported by peace officers who stop motor vehicles for alleged law violations. The current requirement to report on whether a written warning or citation was issued would be expanded to require reporting on tickets and on verbal warnings. The bill would establish a new requirement to report whether the officer used physical force that resulted in bodily injury. A current partial exemption from reporting for certain agencies using video and audio equipment would be repealed.
Relevant Text:

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE.

(a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency’s jurisdiction if:

(1) there is an available and appropriate treatment center in the agency’s jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES.

(a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].
(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; and

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES.

(a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

...and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:
(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND.

(a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and

(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT.

(a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide:
(2) an attempted suicide;
(3) a death;
(4) a serious bodily injury, as that term is defined by Section 1.07, Penal Code;
(5) an assault;
(6) an escape;
(7) a sexual assault; and
(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL.

(a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection (a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

...and

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED.

(a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.
(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows:

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:
(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this Article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this Article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this Article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this Article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this Article, not later than August 31, 2021.
ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this Article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;

(E) the location of the stop; and

(F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Texas Commission on Law Enforcement; and
(B) the governing body of each county or municipality served by
the agency, if the agency is an agency of a county, municipality, or other political
subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall
examine the feasibility of installing video camera and transmitter-activated equipment
in each agency law enforcement motor vehicle regularly used to make motor vehicle
stops and transmitter-activated equipment in each agency law enforcement motorcycle
regularly used to make motor vehicle stops. The agency also shall examine the
feasibility of equipping each peace officer who regularly detains or stops motor vehicles
with a body worn camera, as that term is defined by Section 1701.651, Occupations
Code. If a law enforcement agency installs video or audio equipment or equips peace
officers with body worn cameras as provided by this subsection, the policy adopted by
the agency under Subsection (b) must include standards for reviewing video and audio
documentation.

(h) A law enforcement agency shall review the data collected under Subsection
(b)(6) to identify any improvements the agency could make in its practices and policies
regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by
amending Subsection (b)(9) and adding Subsection (c) to read as follows:

(9) whether the officer used physical force that resulted in bodily injury,
as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether
the administrator is elected, employed, or appointed, is responsible for auditing reports
under Subsection (b) to ensure that the race or ethnicity of the person operating the
motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read
as follows:

(c) A report required under Subsection (b) must be submitted by the chief
administrator of the law enforcement agency, regardless of whether the administrator is
elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133
to:

(A) evaluate and compare the number of motor vehicle stops,
within the applicable jurisdiction, of persons who are recognized as racial or ethnic
minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers
employed by the agency, categorized according to the race or ethnicity of the affected
persons, as appropriate, including any searches resulting from stops within the
applicable jurisdiction; and
(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn...
cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].
CODE OF CRIMINAL PROCEDURE

RELATED TO BOND WHILE DEFENDANT IS AWAITING A REQUEST FOR NEW TRIAL OR APPEAL

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HB 1442 would entitle a criminal defendant awaiting a decision on a request for a new trial or an appeal from a misdemeanor conviction to be released after completing the sentence of confinement. Courts could require such defendants to give personal bonds, but could not require any condition on a personal bond, another type of bail bond, or a surety or other security.

Relevant Text:

SECTION 1. Article 44.04, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding any other law, pending the determination of a defendant's motion for new trial or the defendant's appeal from a misdemeanor conviction, the defendant is entitled to be released after completion of a sentence of confinement imposed for the conviction. The trial court may require the defendant to give a personal bond but may not, either instead of or in addition to the personal bond, require:

(1) any condition of the personal bond;
(2) another type of bail bond; or
(3) a surety or other security.

ALLOWING FORENSIC TESTING ON CERTAIN EVIDENCE/HABEAS CORPUS/LAB CLOSED AFTER AUDIT

<table>
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<tr>
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HB 3872 would allow courts to grant relief on an application for a writ of habeas corpus that contained specific facts indicating that:

1. the convicted person previously filed a motion for forensic DNA testing of biological evidence that was denied; and
2. had the evidence not been presented at the trial, on the preponderance of the evidence the person would not have been convicted.

If a convicted person was not granted relief based on an application for a writ of habeas corpus, the person could submit a subsequent application if the Texas Forensic Science Commission determined that the evidence considered in the initial application was subject to faulty DNA testing practices.

The bill would allow a convicted person to file a motion for forensic DNA testing of previously tested evidence if it was tested at a laboratory that ceased conducting DNA testing after an audit.

Relevant Text:

SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.0731 to read as follows:

Art. 11.0731. PROCEDURES RELATED TO CERTAIN PREVIOUSLY TESTED EVIDENCE.

(a) This Article applies to relevant evidence consisting of biological material described by Article 64.01(a) that was:

(1) presented by the state at the convicted person’s trial; and

(2) subjected to testing:

(A) at a laboratory that ceased conducting DNA testing after an audit by the Texas Forensic Science Commission revealed the laboratory engaged in faulty testing practices; and

(B) during the period identified in the audit as involving faulty testing practices.

(b) A court may grant a convicted person relief on an application for a writ of habeas corpus if the convicted person files an application, in the manner provided by Article 11.07, 11.071, or 11.072, containing specific facts indicating that:

(1) the person previously filed a motion under Chapter 64 for forensic DNA testing of evidence described by Subsection (a) that was denied because of a negative finding under Article 64.03(a)(1)(A) or (B); and
(2) had the evidence not been presented at the person’s trial, on the preponderance of the evidence the person would not have been convicted.

(c) For purposes of Section 4(a)(1), Article 11.07, Section 5(a)(1), Article 11.071, and Section 9(a), Article 11.072, a claim or issue could not have been presented previously in an original application or in a previously considered application if the claim or issue is based on evidence that has been determined by the Texas Forensic Science Commission to have been subjected to faulty DNA testing practices.

SECTION 2. Article 64.01(b), Code of Criminal Procedure, is amended to read as follows:

(b) The motion may request forensic DNA testing only of evidence described by Subsection (a-1) that was secured in relation to the offense that is the basis of the challenged conviction and was in the possession of the state during the trial of the offense, but:

(1) was not previously subjected to DNA testing; or

(2) although previously subjected to DNA testing:

(A) [.] can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test; or

(B) was tested:

(i) at a laboratory that ceased conducting DNA testing after an audit by the Texas Forensic Science Commission revealed the laboratory engaged in faulty testing practices; and

(ii) during the period identified in the audit as involving faulty testing practices.

SECTION 3. Article 64.03, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding Subsection (c), a convicting court shall order that the requested DNA testing be done with respect to evidence described by Article 64.01(b)(2)(B) if the court finds in the affirmative the issues listed in Subsection (a)(1), regardless of whether the convicted person meets the requirements of Subsection (a)(2). The court may order the test to be conducted by any laboratory that the court may order to conduct a test under Subsection (c).

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.
RIGHT TO CONTINUANCE/INSUFFICIENT NOTICE OF HEARING/TRIAL

- Full Legislative History: HB 1266
- Statute: TEX. CODE CRIM. PRO. ART. 29.035
- Summary: HRO BILL ANALYSIS

HB 1266 would give both the prosecution and the defense the right to a continuance in a criminal case if the court set a hearing or trial without providing either side at least three business days' notice before the date of the hearing or trial. This provision would not apply between the date a trial began and the date a judgment was entered.

The bill would take effect September 1, 2017, and would apply to cases pending before a trial court on or after that date.

**Relevant Text:**

> SECTION 1. Chapter 29, Code of Criminal Procedure, is amended by adding Article 29.035 to read as follows:

> Art. 29.035. FOR INSUFFICIENT NOTICE OF HEARING OR TRIAL.

> (a) Notwithstanding Article 28.01 or any other provision of this chapter, and except as otherwise provided by this Article, a trial court shall grant a continuance of a criminal action on oral or written motion of the state or the defendant if the trial court sets a hearing or trial without providing to the attorney for the state and the defendant, or the defendant's attorney, notice of the hearing or trial at least three business days before the date of the hearing or trial.

> (b) This Article does not apply during the period between:

> (1) the date the trial begins; and

> (2) the date the judgment is entered.

> SECTION 2. Article 29.035, Code of Criminal Procedure, as added by this Act, applies to a criminal action pending before a trial court on or after the effective date of this Act, regardless of whether the offense that is the subject of the action was committed before, on, or after the effective date of this Act.

> SECTION 3. This Act takes effect September 1, 2017.
PROCEDURE FOR WRIT OF ATTACHMENT

- Full Legislative History: SB 291
- Statute: TEX. CODE CRIM. PRO. ART. 2.212, CH. 24; TEX. GOV’T. CODE § 71.034(e)
- Summary: HRO BILL ANALYSIS

SB 291 would revise the procedure for requesting and issuing writs of attachment for witnesses in criminal proceedings and would require reporting on the writs that were issued.

Process to request writ. When a witness in the county in which a criminal case was being prosecuted had been served a subpoena to testify and had failed to appear, the prosecutor or defendant could request a writ of attachment, instead of being "entitled" to have one issued as provided under current law. The request would be filed with the court clerk and would have to include an affidavit from the defendant or prosecutor stating that there was good reason to believe that the witness was a material witness. The same requirement for an affidavit would apply to a request for a writ of attachment for a defendant from outside the county of prosecution who had refused to obey a subpoena.

When the defendant or the prosecutor believed that a witness was about to move from the county of a prosecution, either party could request a writ of attachment through the procedure established by the bill. In these cases, the affidavit also would have to state that the requestor had good reason to believe and did believe that the witness was about to move out of the county. If the defendant or prosecutor requested a writ of attachment of a child witness, the request would have to include the affidavit described by the bill.

Required hearings. The bill would require hearings before the issuance of writs of attachment in these cases. A writ of attachment only could be issued in these situations by the judge of the court in which the witness was to testify if the judge determined, after a hearing, that issuing a writ was in the best interest of justice. The court would be required to appoint an attorney to represent a witness at the hearing, including a hearing conducted outside the presence of the witness. A witness who had been confined for five or more days under a writ of attachment could request a hearing to consider whether the continued confinement was necessary.

Relevant Text:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.212 to read as follows:

Art. 2.212. WRIT OF ATTACHMENT REPORTING. Not later than the 30th day after the date a writ of attachment is issued in a district court, statutory county court, or county court, the clerk of the court shall report to the Texas Judicial Council:

(1) the date the attachment was issued:
(2) whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding;

(3) the names of the person requesting and the judge issuing the attachment; and

(4) the statutory authority under which the attachment was issued.

SECTION 2. Article 24.011, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) If the defendant or the attorney representing the state requests the issuance of an attachment under this Article, other than an attachment for a witness described by Subsection (e), the request must include the applicable affidavit described by Article 24.12.

SECTION 3. Chapter 24, Code of Criminal Procedure, is amended by adding Article 24.111 to read as follows:

Art. 24.111. HEARING REQUIRED BEFORE ISSUANCE OF CERTAIN WRITS OF ATTACHMENT.

(a) This Article applies only to an attachment that is requested to be issued under:

(1) Article 24.011, if an affidavit is required under Article 24.011(b-1); or

(2) Article 24.12, 24.14, or 24.22.

(b) Notwithstanding any other law, a writ of attachment to which this Article applies may only be issued by the judge of the court in which the witness is to testify if the judge determines, after a hearing, that the issuance of the attachment is in the best interest of justice.

(c) In making a determination under Subsection (b), the judge shall consider the affidavit of the attorney representing the state or the defendant, as applicable, that was submitted with the request for the issuance of the attachment.

(d) The court shall appoint an attorney to represent the witness at the hearing under Subsection (b), including a hearing conducted outside the presence of the witness.

SECTION 4. Article 24.12, Code of Criminal Procedure, is amended to read as follows:

Art. 24.12. WHEN ATTACHMENT MAY ISSUE. When a witness who resides in the county of the prosecution has been duly served with a subpoena to appear and testify in any criminal action or proceeding fails to so appear, the attorney representing the state or the defendant may request that the court issue an attachment for the witness. The request must be filed with the clerk of the court and must include an affidavit of the attorney
representing the state or the defendant, as applicable, stating that the affiant has good reason to believe, and does believe, that the witness is a material witness.

SECTION 5. Article 24.14, Code of Criminal Procedure, is amended to read as follows:

Art. 24.14. ATTACHMENT FOR RESIDENT WITNESS.

(a) Regardless of whether the witness has disobeyed a subpoena, if [When] a witness who resides in the county of the prosecution may be about to move out of the county, [whether he has disobeyed a subpoena or not, either in term-time or vacation, upon the filing of an affidavit with the clerk by] the defendant or the attorney representing the state may request that the court issue an attachment for the witness. The request must be filed with the clerk of the court and must include the applicable affidavit described by Article 24.12, except that the affidavit must additionally state [State's counsel,] that the affiant [he] has good reason to believe, and does believe, that the [such] witness [is a material witness, and] is about to move out of the county.

(b) If an attachment is issued under this Article in a[-], the clerk shall forthwith issue an attachment for such witness; provided, that in [misdemeanor case [cases]], when the witness makes oath that the witness [he] cannot give surety, the officer executing the attachment shall take the witness’s [his] personal bond.

SECTION 6. Article 24.22, Code of Criminal Procedure, is amended to read as follows:

Art. 24.22. WITNESS FINED AND ATTACHED.

(a) If a witness summoned from outside [without] the county refuses to obey a subpoena, the witness [he] shall be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of the [said] court, in the discretion of the magistrate issuing the subpoena [judge], to answer for the [such] default.

(b) At the time a fine is imposed under Subsection (a), on request of the defendant or the attorney representing the state, the [The] court may cause to be issued [at the same time] an attachment for the [said] witness, directed to the proper county, commanding the officer to whom the attachment [said writ] is directed to take the [said] witness into custody and have the witness [him] before the [said] court at the time specified [named] in the attachment [said writ]; in which case the [such] witness shall receive no fees, unless it appears to the court that the [such] disobedience is excusable, when the witness may receive the same pay as if the witness [he] had not been attached.

(c) A request for the issuance of an attachment under Subsection (b) must include the applicable affidavit described by Article 24.12.

(d) The [Said] fine when made final and all related costs [thereon] shall be collected in the same manner as in other criminal cases. The [Said] fine and judgment
may be set aside in vacation or at the time or any subsequent term of the court for good
cause shown, after the witness testifies or has been discharged.

(e) The following words shall be written or printed on the face of a [such]
subpoena for an out-of-county witness [out-county witnesses]: “A disobedience of this
subpoena is punishable by fine not exceeding five hundred dollars, to be collected as
fines and costs in other criminal cases.”

SECTION 7. Chapter 24, Code of Criminal Procedure, is amended by adding
Articles 24.221 and 24.222 to read as follows:

Art. 24.221. AFFIDAVIT REGARDING CONFINEMENT. As soon as practicable
after the sheriff takes custody of a witness pursuant to an attachment issued as provided
by Article 24.111, the sheriff shall submit an affidavit to the issuing court stating that the
sheriff has taken custody of the witness.

Art. 24.222. HEARING DURING CONFINEMENT OF WITNESS.

(a) A witness who has been confined for at least 24 hours pursuant to an
attachment issued as provided by Article 24.111 may request a hearing in the issuing
court regarding whether the continued confinement of the witness is necessary. The
court shall grant the request and hold the hearing as soon as practicable.

(b) Any subsequent request for a hearing may be granted only if the court
determines that holding the hearing is in the best interest of justice.

(c) The attorney appointed for the witness under Article 24.111 shall represent
the witness at a hearing under this Article.

SECTION 8. Section 71.034(e), Government Code, is amended to read as follows:

(e) In addition to the information described by Subsection (a), the council shall
include in the report a summary of information provided to the council during the
preceding year under Articles [Article] 2.211 and 2.212, Code of Criminal Procedure.

SECTION 9. The change in law made by this Act applies only to a writ of
attachment issued on or after the effective date of this Act. A writ of attachment issued
before the effective date of this Act is governed by the law in effect on the date the writ
was issued, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2017.

LIMITING DEFENSE MOTIONS TO REVIEW/MODIFY PROTECTIVE
ORDERS

- Full Legislative History: SB 257
- Statute: TEX. FAMILY CODE §85.025, TEX. CODE CRIM. PRO ART. 7A.079(c)
- Summary:
Senate Bill 257 amends the Code of Criminal Procedure and Family Code to exempt a protective order issued to a victim of sexual assault or abuse, stalking, or trafficking from provisions authorizing a person who is the subject of such a protective order to seek judicial review of the order. The bill limits the ability of a person subject to a family violence protective order to challenge an order that is effective for longer than two years to two instances. The first of two motions may not be filed earlier than one year after the original order was rendered. If the duration of the protective order exceeds two years, a second motion may not be filed earlier than one year after the conclusion of the first motion.

AUTOMATIC CONFIDENTIALITY OF FINE-ONLY OFFENSES AFTER 5 YEARS

- **Full Legislative History:** HB 681
- **Statute:** TEX. CODE CRIM. PRO. ART. 44.2812
- **Summary:**

HB 681 makes confidential, on the fifth anniversary of a final conviction or dismissal of a fine-only misdemeanor offense, all records, files, and information related to that offense from which a record or file could be generated, that were stored by or for a municipal or justice court.

These records could be opened only by: judges or court staff; a criminal justice agency for a criminal justice purpose; the Department of Public Safety; the attorney representing the state; the defendant or the defendant’s counsel; or an insurance company or surety company authorized to write motor vehicle liability insurance in Texas, if the offense was a traffic offense. On the fifth anniversary of a final conviction or dismissal of a fine-only misdemeanor, all records, files, and information related to that offense from which a record or file could be generated, that were stored by or for an appellate court, would become confidential and could not be disclosed to the public. Opinions issued by an appellate court would not become confidential.

NOTIFYING VICTIMS OF SUBSEQUENT INDICTMENTS

- **Full Legislative History:** HB 104
- **Statute:** TEX. CODE CRIM. PRO. ART. 2.023
- **Summary:**

HB 104 would require prosecuting attorneys to give notice to the Texas Department of Criminal Justice (TDCJ) within 10 days of a subsequent indictment of an individual who had been released from imprisonment for an offense where judge-ordered community supervision was unavailable. TDCJ would have to make a reasonable effort to notify any
victims, guardians of victims, or close relatives of deceased victims who had requested such notice of the offense charged in the indictment. The only indictments requiring notice would be offenses to which judge-ordered community supervision did not apply.

The bill would take effect September 1, 2017, and would apply only to a criminal case in which the indictment was presented to the court on or after December 1, 2017.

FAILURE TO REPORT OFFICER-INVOLVED INJURY OR DEATH

- **Full Legislative History:** HB 245
- **Statute:** TEX. CODE CRIM. PRO. ART. 2.13951
- **Summary:**

House Bill 245 amends the Code of Criminal Procedure to require the office of the attorney general to conduct an investigation after receiving a report asserting that a law enforcement agency failed to submit a required report for officer-involved injury or death or for injuries or deaths of peace officers and, if appropriate, to notify the agency of the failure to report. The bill makes an agency that fails to submit such a report liable for a civil penalty of $10,000 and requires collected penalties to be deposited to the crime victims compensation fund.

VENUE IN OBSTRUCTION OR RETALIATION CASES

- **Full Legislative History:** HB 268
- **Statute:** TEX. CODE CRIM. PRO. ART. 13.37
- **Summary:**

HB 268 would create statutory venue options in obstruction or retaliation cases. Under the bill, obstruction or retaliation could be prosecuted in the county where the harm occurred or in the county where the threat of harm originated or was received. The bill would take effect September 1, 2017, and would apply only to venue for the trial of an offense committed on or after that date.
EXPLAINING JUDICIAL PARDON PROCESS TO DEFENDANTS AT PLEA

- **Full Legislative History:** HB 1507
- **Statute:** TEX. CODE CRIM. PRO. ART. 42A.701
- **Summary:**

Code of Criminal Procedure, art. 42A.701(f) authorizes a court to release a defendant from all penalties and disabilities resulting from the underlying offense after the defendant successfully completes a term of community supervision. Most individuals remain unaware that judges have this authority.

CSHB 1507 would require courts to inform defendants that the judge is authorized to release individuals from all penalties and disabilities from an offense if a defendant successfully completed a term of community supervision. This notice would be required before a court could accept a plea from a defendant, as well as when a defendant was placed on supervision. The Office of Court Administration would prescribe a form for courts to use to provide this information to defendants being placed on community supervision.

The bill also would require the Office of Court Administration to adopt a standardized form for courts to use in discharging a defendant from community supervision that would either provide for the judge to:

- discharge the defendant; or
- discharge the defendant, set aside the verdict or permit the defendant to withdraw a plea, and dismiss the accusation, complaint, information, or indictment against the defendant.

The form would state that a defendant whose accusations were dismissed was released from the penalties and disabilities resulting from the offense.

RESTRICTIONS ON CLASS C FAILURE TO APPEAR WARRANTS; RESTRICTIONS ON CASH BOND REQUIREMENTS

- **Full Legislative History:** HB 351
- **Statute:** TEX. CODE CRIM. PRO. ART. 45.014, 45.016
- **Relevant Text:**

Article 45.014, Code of Criminal Procedure, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) A justice or judge may not issue an arrest warrant for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b), unless:
(1) the justice or judge provides by telephone or regular mail to the defendant notice that includes:

(A) a date and time when the defendant must appear before the justice or judge;
(B) the name and address of the court with jurisdiction in the case;
(C) information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount; and
(D) an explanation of the consequences if the defendant fails to appear before the justice or judge as required by this article; and

(2) the defendant fails to appear before the justice or judge as required by this article.

(f) A defendant who receives notice under Subsection (e) may request an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice.

(g) A justice or judge shall recall an arrest warrant for the defendant’s failure to appear if, before the arrest warrant is executed:

(1) the defendant voluntarily appears to resolve the arrest warrant; and

(2) the arrest warrant is resolved in any manner authorized by this code.

Article 45.016, Code of Criminal Procedure, is amended to read as follows:

Art. 45.016. PERSONAL BOND; BAIL BOND.

(a) The justice or judge may require the defendant to give a personal bond [bail] to secure the defendant’s appearance in accordance with this code.

(b) The justice or judge may not, either instead of or in addition to the personal bond, require a defendant to give a bail bond unless:

(1) the defendant fails to appear in accordance with this code with respect to the applicable offense; and

(2) the justice or judge determines that:

(A) the defendant has sufficient resources or income to give a bail bond; and

(B) a bail bond is necessary to secure the defendant’s appearance in accordance with this code.

(c) If a defendant required to give a bail bond under Subsection (b) remains in custody, without giving the bond, for more than 48 hours after the issuance of the applicable order, the justice or judge shall reconsider the requirement for the defendant to give the bond.

(d) If the defendant refuses to give a personal bond or, except as provided by Subsection (c), refuses or otherwise fails to give a bail bond, the defendant may be held in custody.
CRIMES INVOLVING ANIMALS

NEW OFFENSE: BEASTIALITY

- **Full Legislative History:** SB 1232
  - Statute: [TEX. PENAL CODE § 21.07, 21.09, 42.092; Tex. CODE CRIM. PRO. ART. 42A.511, 62.001; HEALTH AND SAFETY CODE § 821.021, 821.023]
  - Summary: HRO BILL ANALYSIS

SB 1232 would make bestiality a separate crime in the Penal Code and would eliminate references under the crime of public lewdness to certain acts committed by a person with the anus or genitals of an animal or fowl.

The bill describes 10 categories of actions that would define the offense of bestiality, including engaging in an act involving contact between the person’s mouth, anus, or genitals and the anus or genitals of an animal or the person’s anus or genitals and the mouth of the animal.

Categories within the crime would include possessing, selling, transferring, purchasing, or otherwise obtaining animals with the intent that they be used for the acts described by the bill and organizing, promoting, conducting, or participating as an observer of conduct described by the bill. Causing someone to engage in or aiding a person in the conduct described by the bill would be an offense, as would permitting certain conduct on premises under a person's control, engaging in conduct described by the bill in the presence of a child, and advertising or accepting an offer for an animal with intent that it be used for such conduct.

An offense would be a state-jail felony, except that engaging in certain conduct in the presence of a child or in conduct that resulted in serious bodily injury or death of the animal would be a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

It would be an exception to the application of the section if the conduct engaged in was a generally accepted and otherwise lawful animal husbandry or veterinary practice. A judge granting community supervision (probation) to a person convicted of bestiality would be authorized to require the defendant to relinquish custody of any animals, prohibit the defendant from possessing or having control over any animals or from residing in a household where animals were present, and require the defendant to participate in counseling or other appropriate treatment.

The bill would add bestiality to the offenses that require registration in the state's sex offender registry. The bill would add animals subjected to bestiality to the Health and Safety Code definition of cruelly treated animals, which could allow officials to apply to a court for a warrant to seize the animals. In a hearing to consider issuing such a warrant,
a guilty finding for the offense of bestiality would be prima facie evidence that any animal in the person's possession had been cruelly treated, regardless of whether the animal was subjected to the illegal conduct.

Relevant Text:

SECTION 1. Section 21.07(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly engages in any of the following acts in a public place or, if not in a public place, the person is reckless about whether another is present who will be offended or alarmed by the person's:

(1) act of sexual intercourse;
(2) act of deviate sexual intercourse; or
(3) act of sexual contact;

(4) act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

SECTION 2. Chapter 21, Penal Code, is amended by adding Section 21.09 to read as follows:

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.

SECTION 3. Section 42.092, Penal Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(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 under this section or under Section 42.09.

SECTION 4. Article 42A.511, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.511. COMMUNITY SUPERVISION FOR CERTAIN OFFENSES INVOLVING ANIMALS.

(a) If a judge grants community supervision to a defendant convicted of an offense under Section 42.09, 42.091, 42.092, or 42.10, Penal Code, the judge may
require the defendant to attend a responsible pet owner course sponsored by a municipal animal shelter, as defined by Section 823.001, Health and Safety Code, that:

(1) receives federal, state, county, or municipal funds; and

(2) serves the county in which the court is located.

(b) If a judge grants community supervision to a defendant convicted of an offense under Section 21.09, Penal Code, the judge may:

(1) require the defendant to relinquish custody of any animals in the defendant's possession;

(2) prohibit the defendant from possessing or exercising control over any animals or residing in a household where animals are present; or

(3) require the defendant to participate in a psychological counseling or other appropriate treatment program for a period to be determined by the court.

SECTION 5. Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

(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 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)(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.

SECTION 6. Section 821.021(1), Health and Safety Code, is amended to read as follows:

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

SECTION 7. Section 821.023, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(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.

SECTION 8. Section 821.023(b), Health and Safety Code, is repealed.
SECTION 9. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

CRUELTY TO ANIMALS: INCREASING THE PENALTY

- Full Legislative History: SB 762
- Statute: TEX. PENAL CODE § 42.092
- Summary: BILL ANALYSIS

SB 762 alters the current penalty for violent animal cruelty offenses, going to a 3rd degree felony in certain detailed situations and up to a 2nd degree felony for repeat offenders.

Relevant Text:

SECTION 1. Section 42.092, Penal Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(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.

ONLINE RESPONSIBLE PET OWNERS CLASS

- Full Legislative History: HB 162
- Statute: TEX. CODE CRIM. PRO. ART. 42A.511
- Summary: Relating to conditions of community supervision for defendants convicted of certain criminal offenses involving animals; authorizing fees.
PROBATION & PAROLE

RELATING TO THE TERMS OF PROBATION:

- **Full Legislative History:** SB 1584
- **Statute:** TEX. CODE CRIM. PRO. ART. 42A.301
- **Summary:** BILL ANALYSIS

SB 1584 creates an obligation on courts and counties to implement a validated risk assessment tool for the purpose of assisting the risks and needs of a defendant when setting terms of probation. It mandates that a judge must consider the results of a validated risk and needs assessment when setting the terms of supervision. These terms must be considered in light of the defendant’s ability to satisfy them given their work, education, community service and financial obligations.

Services for successful diversion include mental health and/or substance abuse treatment, education assistance, job training and placement, housing assistance, and other life skills training. This bill enables judges to create a comprehensive strategy to give the defendant the best opportunity for success.

**Relevant Text:**

SECTION 1. Article 42A.301, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.301. BASIC DISCRETIONARY CONDITIONS.

(a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision after considering the results of a risk and needs assessment conducted with respect to the defendant. The assessment must be conducted using an instrument that is validated for the purpose of assessing the risks and needs of a defendant placed on community supervision. The judge may impose any reasonable condition that is not duplicative of another condition and that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. In determining the conditions, the judge shall consider the extent to which the conditions impact the defendant’s:

(1) work, education, and community service schedule or obligations; and

(2) ability to meet financial obligations.

...and

(c) Before the judge may require as a condition of community supervision that the defendant receive treatment in a state-funded substance abuse treatment program, including an inpatient or outpatient program, a substance abuse felony program under Article 42A.303, or a program provided to the defendant while confined in a community...
A correction facility as defined by Article 42A.601, the judge must consider the results of an evaluation conducted to determine the appropriate type and level of treatment necessary to address the defendant's alcohol or drug dependency.

**RELATING TO PERMISSIBLE TRAVEL ZONES FOR PAROLEES & SEX OFFENDERS**

- **Full Legislative History:** HB 1111
- **Statute:** TEX. GOV'T. CODE § 508.187, 508.225, 341.906
- **Summary:** HRO BILL ANALYSIS

The original text of this bill was to solve a very common problem faced by individuals under sex offender supervision relating to travel zones. The intent was to offer a common sense solution for these individuals under supervision to be able to travel in these zones under specific circumstances. An amendment was placed on the bill regarding new limitations on registered sex offenders in general law municipalities. The bill applies to a person on parole or mandatory supervision on or after the effective date of this act (Sept. 1, 2017), regardless of whether the person was released on parole or to mandatory supervision before, on, or after that date.

*Relevant Text:*

**SECTION 1.** Section 508.187, Government Code, is amended by adding Subsection (b-1) to read as follows: (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.

**SECTION 2.** Section 508.225, Government Code, is amended by adding Subsection (a-1) to read as follows: (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 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.

SECTION 3. Subchapter Z, Chapter 341, Local Government Code, is amended by adding Section 341.906 to read as follows:

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.

NON-SUBSTANTIVE REWRITE OF VARIOUS CODES

- Full Legislative History: SB 1488
- Statute: MULTIPLE CODES
- Summary:


NON-SUBSTANTIVE REWRITE OF TEXAS CODE OF CRIMINAL PROCEDURE

- Full Legislative History: HB 2931
- Statute: TEX. CODE CRIM. PRO.
- Summary:

The 83rd Legislature’s Select Committee on Criminal Procedure recommended that parts of the Code of Criminal Procedure undergo nonsubstantive revisions each legislative session. The Texas Legislative Council performs this function, authorized under Government Code, sec. 323.007, revising Texas statutes periodically to make them more accessible, understandable, and usable without altering their sense, meaning, or effect. As part of this process, the Legislative Council reclassifies and rearranges statutes in a more logical order; employs a numbering system and format that will accommodate future expansion of the law; and eliminates repealed, invalid, and duplicative provisions.

Relevant Text:

For the relevant text, please follow this link.

http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=85R&Bill=HB2931#
POLICE PROTECTION ACT: ADDS LAW ENFORCEMENT TO THE HATE CRIMES SECTIONS OF THE CODE

o Full Legislative History: HB 2908
o Statute: TEX. PENAL CODE §§ 20.02, 22.01, 22.07, 49.09; TEX. CODE CRIM. PRO. ART. 42.014
o Summary: HRO BILL ANALYSIS

HB 2908 would add peace officers to the Texas hate crime statute which would make certain crimes committed because of bias or prejudice against someone's status as a peace officer qualify for enhanced penalties. This would apply to crimes of arson, criminal mischief, graffiti and the offenses against people listed in Penal Code Title 5. The bill also would raise penalties for four individual crimes when the crimes were committed against peace officers.

The bill would raise the penalty for unlawful restraint of a peace officer to a second-degree felony, from the third-degree felony currently applied to offenses against public servants. The offense would qualify for the second-degree felony if the person restrained an individual that the person knew was a peace officer while the officer was lawfully discharging official duties or in retaliation or on account of the officer’s official duties.

The penalty for assault would be raised to a second-degree felony from the third-degree felony currently applied to offenses against public servants. The offense would qualify for the second-degree felony if the person assaulted someone that the person knew was a peace officer while the officer was lawfully discharging official duties or in retaliation or on account of the duties. The bill would raise the penalty for making terroristic threats against peace officers from a class A misdemeanor applied to offenses against public servants to a state-jail felony. The bill would raise the penalty for intoxication assault against a peace officer from a second-degree felony to a first-degree felony if serious bodily injury was caused to a peace officer in the discharge of official duties.

Code of Criminal Procedure, Art. 42.014 requires courts in certain circumstances to make a finding of bias or prejudice during the guilt and innocence phase of a trial. Judges are required to make an affirmative finding if at a trial's guilt or innocence phase, the court determined beyond a reasonable doubt that the defendant intentionally chose the victim or the property 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. As part of a punishment, judges can require attendance at an educational program to further tolerance and acceptance of others.

Relevant Text:

SECTION A2. Section 20.02(c), Penal Code, is amended to read as follows:
(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.

SECTION A3. Section 22.01, Penal Code, is amended by adding Subsection (b-2) to read as follows: (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.

SECTION A4. Section 22.07, Penal Code, is amended by adding Subsection (c-1) to read as follows: (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.

SECTION A5. Section 49.09(b-1), Penal Code, is amended to read as follows: (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.
EXPANDED OFFENSE: USE OF LAW ENFORCEMENT IDENTIFICATION, INSIGNIA, OR VEHICLES/FALSE IDENTIFICATION AS A PEACE OFFICER AND MISREPRESENTATION OF PROPERTY

- **Full Legislative History:** HB 683
- **Statute:** TEX. PENAL CODE § 37.12
- **Summary:** HRO BILL ANALYSIS

HB 683 would extend the offense for the false possession or use of law enforcement identification items or vehicle to all municipalities in Texas by removing the population limitation. The bill would modify the conduct that constitutes the offense of false identification as a peace officer to include making, providing, or possessing a vehicle bearing an insignia of a law enforcement agency.

An item bearing an insignia of a law enforcement agency could include one containing the word "police," "sheriff," "constable," "trooper," "ranger," "agent," or any other designation commonly used by law enforcement agencies. To the conduct that constitutes the offense of misrepresentation of property, the bill would add misrepresenting a vehicle as property belonging to a law enforcement agency.

**Relevant Text:**

SECTION 3. Section 37.12, Penal Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (b-1) and (c-1) to read as follows:

(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...
[(c)] 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."

(c) 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.
INDIGENT DEFENSE & FEES/FINES

SUCCESSION PLAN FOR REGIONAL PUBLIC DEFENDER OFFICES:

- **Full Legislative History:** SB 1214
- **Statute:** TEX. GOV’T. CODE § 79.042
- **Summary:** HRO BILL ANALYSIS

The bill would authorize the Texas Indigent Defense Commission (TIDC) to develop a succession plan for RPDO if the administering county chooses to no longer serve in that role. A succession plan developed under the bill could authorize TIDC to designate a governmental entity to administer the RPDO program, which could be another county, group of counties, or an entity created under the Interlocal Cooperation Act. The plan could also require the designated administering entity to establish an oversight board for RPDO and require RPDO to comply with any rules developed by TIDC for the administration of the program.

**Relevant Text:**

SECTION 1. Subchapter C, Chapter 79, Government Code, is amended by adding Section 79.042 to read as follows:

Sec. 79.042. SUCCESSION PLAN FOR CERTAIN PUBLIC DEFENDERS' OFFICES.

(a) In this section, "governmental entity" has the meaning assigned by Article 26.044, Code of Criminal Procedure.

(b) As a condition of a grant awarded by the commission to a regional public defender's office that primarily handles capital cases, the commission may establish for the public defender's office a succession plan to take effect only if the commissioners court of the county in which the central administrative office of the public defender's office is located ceases for any reason to be a party to the agreement creating or designating the public defender's office.

(c) A succession plan established under Subsection (b) may:

(1) authorize the commission to designate a governmental entity to administer the regional public defender's office;

(2) require the governmental entity designated under Subdivision (1) to establish an oversight board for the regional public defender's office under Article 26.045, Code of Criminal Procedure; and

(3) require the regional public defender's office to comply with any rules adopted by the commission for the administration of the public defender's office.
FINES/FEES/BOND

- **Full Legislative History:** SB 1913
- **Statute:** TEX. CODE CRIM. PRO. ART. 14.06, 17.42, CH. 27, 42, 43, 45; TEX. TRANSPORTATION CODE § 502.010

- **Summary:**

This is a 30-page bill promoted by the Texas Judicial Council. The intent of this bill was to remedy the situation of low-income individuals throughout Texas being unable to afford traffic tickets and other low-level, fine-only offenses. This bill seeks to provide more opportunities for these individuals to have fines and fees waived or discharged through community service.

**Relevant Text:**

SECTION 1. Article 14.06(b), Code of Criminal Procedure, is amended to read as follows:

(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

...and

SECTION 2. Section 4(a), Article 17.42, Code of Criminal Procedure, is amended to read as follows:

(a) Except as otherwise provided by this subsection, if [.] a court releases an accused on personal bond on the recommendation of a personal bond office, the court shall assess a personal bond fee of $20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown. A court that requires a defendant to give a personal bond under Article 45.016 may not assess a personal bond fee under this subsection.
...and

SECTION 4. Article 42.15, Code of Criminal Procedure, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(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).

...and

SECTION 5. Article 43.05, Code of Criminal Procedure, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) A 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-2) 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 code.

...and

SECTION 7. Article 43.091, Code of Criminal Procedure, is amended to read as follows:
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.

SECTION 8. Article 45.014, Code of Criminal Procedure, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) A justice or judge may not issue an arrest warrant for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b), unless:

(1) the justice or judge provides by telephone or regular mail to the defendant notice that includes:

(A) a date and time, occurring within the 30-day period following the date that notice is provided, when the defendant must appear before the justice or judge;

(B) the name and address of the court with jurisdiction in the case;

(C) information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount; and

(D) an explanation of the consequences if the defendant fails to appear before the justice or judge as required by this Article; and

(2) the defendant fails to appear before the justice or judge as required by this Article.

(f) A defendant who receives notice under Subsection (e) may request an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice.

(g) A justice or judge shall recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

SECTION 9. Article 45.016, Code of Criminal Procedure, is amended to read as follows:

Art. 45.016. PERSONAL BOND; BAIL BOND.
(a) The justice or judge may require the defendant to give a personal bond [bail] to secure the defendant’s appearance in accordance with this code.

(b) The justice or judge may not, either instead of or in addition to the personal bond, require a defendant to give a bail bond unless:

1. the defendant fails to appear in accordance with this code with respect to the applicable offense; and

2. the justice or judge determines that:

   A. the defendant has sufficient resources or income to give a bail bond; and

   B. a bail bond is necessary to secure the defendant’s appearance in accordance with this code.

(c) If before the expiration of a 48-hour period following the issuance of the applicable order a defendant described by Subsections (b)(1) and (2) does not give a required bail bond, the justice or judge:

1. shall reconsider the requirement for the defendant to give the bail bond and presume that the defendant does not have sufficient resources or income to give the bond; and

2. may require the defendant to give a personal bond.

(d) If the defendant refuses to give a personal bond or, except as provided by Subsection (c), refuses or otherwise fails to give a bail bond, the defendant may be held in custody.

SECTION 10. Article 45.041, Code of Criminal Procedure, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(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 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).

...and

SECTION 12. Article 45.045, Code of Criminal Procedure, is amended by adding Subsections (a-2) and (a-3) to read as follows:

(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.

...and

SECTION 14. Article 45.048, Code of Criminal Procedure, is amended to read as follows:

Art. 45.048. DISCHARGED FROM JAIL.

(a) A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant:

(1) is too poor to pay the fine and costs; or

(2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than $100 [$50] for each period [of time] served, as specified by the convicting court in the judgment in the case.

(b) A convicting court may specify a period [of time] that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fine [fines] and costs in the case must remain in jail to satisfy $100 [$50] of the fine and costs.

SECTION 15. Article 45.049, Code of Criminal Procedure, is amended by amending Subsections (b), (c), (d), (e), (f), and (g) and adding Subsection (c-1) to read as follows:

(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 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.

(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 [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].

SECTION 16. Article 45.0491, Code of Criminal Procedure, is amended to read as follows:

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.

(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.

SECTION 17. The heading to Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Art. 45.0492. COMMUNITY SERVICE [OR TUTORING] IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS.
SECTION 18. Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (b), (c), (d), (f), (g), and (h) and adding Subsection (d-1) to read as follows:

(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 community service [or attend 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 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.

(d-1) An 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.

SECTION 19. Article 45.0492, Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (c), (d), (e), and (f) and adding Subsections (d-1) and (h) to read as follows:

(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 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.
(d-1) An [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 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.

(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.

SECTION 20. Article 45.051(a), Code of Criminal Procedure, is amended to read as follows:

(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 appearance] bond given for the charge.

SECTION 21. Article 45.0511(t), Code of Criminal Procedure, is amended to read as follows:

(t) An order of deferral under Subsection (c) terminates any liability under a [bail bond or appearance] bond given for the charge.
SECTION 22. Article 103.0031(j), Code of Criminal Procedure, is amended to read as follows:

(j) A communication to the accused person regarding the amount of payment that is acceptable to the court under the court’s standard policy for resolution of a case must include:

(1) a notice of the person’s right to enter a plea or go to trial on any offense charged; and

(2) a statement that, if the person is unable to pay the full amount of payment that is acceptable to the court, the person should contact the court regarding the alternatives to full payment that are available to resolve the case.

SECTION 23. Section 502.010, Transportation Code, is amended by amending Subsections (a) and (c) and adding Subsections (b-1), (i), and (j) to read as follows:

(a) Except as otherwise provided by this section, a county assessor-collector or the department may refuse to register a motor vehicle if the assessor-collector or the department receives information that the owner of the vehicle:

(1) owes the county money for a fine, fee, or tax that is past due; or

(2) failed to appear in connection with a complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner.

(b-1) Information that is provided to make a determination under Subsection (a)(1) and that concerns the past due status of a fine or fee imposed for a criminal offense and owed to the county expires on the second anniversary of the date the information was provided and may not be used to refuse registration after that date. Once information about a past due fine or fee is provided under Subsection (b), subsequent information about other fines or fees that are imposed for a criminal offense and that become past due before the second anniversary of the date the initial information was provided may not be used, either before or after the second anniversary of that date, to refuse registration under this section unless the motor vehicle is no longer subject to refusal of registration because of notice received under Subsection (c).

(c) A county that has a contract under Subsection (b) shall notify the department regarding a person for whom the county assessor-collector or the department has refused to register a motor vehicle on:

(1) the person's payment or other means of discharge, including a waiver, of the past due fine, fee, or tax; or

(2) perfection of an appeal of the case contesting payment of the fine, fee, or tax.

(i) A municipal court judge or justice of the peace who has jurisdiction over the underlying offense may waive an additional fee imposed under Subsection (f) if the
judge or justice makes a finding that the defendant is economically unable to pay the fee or that good cause exists for the waiver.

(i) If a county assessor-collector is notified that the court having jurisdiction over the underlying offense has waived the past due fine or fee due to the defendant's indigency, the county may not impose an additional fee on the defendant under Subsection (f).

SECTION 24. Section 502.010(f), Transportation Code, as amended by Chapters 1094 (S.B. 1386) and 1296 (H.B. 2357), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

(f) Except as otherwise provided by this section, a county that has a contract under Subsection (b) may impose an additional fee of $20 to:

(1) a person who fails to pay a fine, fee, or tax to the county by the date on which the fine, fee, or tax is due; or

(2) a person who fails to appear in connection with a complaint, citation, information, or indictment in a court in which a criminal proceeding is pending against the owner. The additional fee may be used only to reimburse the department or the county for its expenses for providing services under the contract.

REIMBURSEMENT OF ATTORNEY FEES/INDIGENT DEFENSE

- Full Legislative History: SB 527
- Statute: TEX. CODE CRIM. PRO. Art. 26.05
- Summary: HRO BILL ANALYSIS

SB 527 enables a court, in particular circumstances, to order a defendant to pay all or part of the cost of legal services at any time during the defendant's confinement, placement on community supervision, or period of deferred adjudication. SB 527 allows local governments to recover the cost of legal services provided if a defendant acquires sufficient financial resources subsequent to sentencing.

Relevant Text:

SECTION 1. Article 26.05, Code of Criminal Procedure, is amended by adding Subsection (g-1) to read as follows:

(g-1)(1) This subsection applies only to a defendant who at the time of sentencing to confinement or placement on community supervision, including deferred adjudication community supervision, did not have the financial resources to pay the maximum amount described by Subsection (g)(1) or (2), as applicable, for legal services provided to the defendant.
(2) At any time during a defendant's sentence of confinement or period of community supervision, the judge, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, may order a defendant to whom this subsection applies to pay any unpaid portion of the amount described by Subsection (g)(1) or (2), as applicable, if the judge determines that the defendant has the financial resources to pay the additional portion.

(3) The judge may amend an order entered under Subdivision (2) if, subsequent to the judge's determination under that subdivision, the judge determines that the defendant is indigent or demonstrates an inability to pay the amount ordered.

(4) In making a determination under this subsection, the judge may only consider the information a court or courts' designee is authorized to consider in making an indigency determination under Article 26.04(m).

(5) Notwithstanding any other law, the judge may not revoke or extend the defendant's period of community supervision solely to collect the amount the defendant has been ordered to pay under this subsection.

COMMUNITY SERVICE IN LIEU OF FINES, REGARDLESS OF DEFAULT

- Full Legislative History: HB 351
- Statute: TEX. CODE CRIM. PRO. ART. 43.09
- Summary:

Code of Criminal Procedure, art. 43.09(f) provides that a judge may assign community service to a criminal defendant who is unable to pay the court fines or costs. For a defendant who defaults on fines or costs, art. 43.091 allows a judge to waive all or part of the fines or costs assessed if the defendant is indigent or under the age of 17 and alternative methods would yield undue hardship to the defendant. HB 351 would allow judges to assess community service in lieu of fines or court costs at initial sentencing or any subsequent time regardless of whether the defendant had defaulted on assessed fees or costs. A judge could waive all or part of the fines or costs assessed without first waiting for the defendant to default.
JUVENILE LAW

PROCEDURES FOR SEALING JUVENILE RECORDS

- Full Legislative History: SB 1304
- Statute: TEX. FAMILY CODE § 58.251
- Summary: This is a detailed bill that creates entirely new provisions for the process of sealing juvenile records at 19 – both automatically and with an application. However, this is existing law. The bill attempts to clean up the current provisions through a lengthy, detailed procedure to avoid the current problems with the adult expunction statute.

JUVENILE COURT REFEREES CAN NOW HEAR DETERMINATE SENTENCE PLEAS

- Full Legislative History: HB 678
- Statute: TEX. FAMILY CODE § 54.10
- Summary: HB 678 would allow associate judges or referees to hear juvenile pleas and stipulations of evidence in cases in which the child is subject to a determinate sentence. The associate judge or referee then would report written findings and recommendations on the matter to the juvenile court judge, who could accept or reject the plea or stipulation.

DIVERSION OF CHILDREN UNDER 12 FROM JUVENILE COURT

- Full Legislative History: HB 1204
- Statute: TEX. FAMILY CODE § 53.01
- Summary: Family Code, sec. 53.01 governs the preliminary investigation of juvenile justice cases. A probation officer, intake officer, or other authorized person must conduct a preliminary investigation to determine whether the person should be released or the case should be referred to a prosecuting attorney. CSHB 1204 would require a person conducting a preliminary investigation under Family Code, sec. 53.01 to refer children younger than age 12 to a community resource coordination group, local-level interagency staffing group, or community juvenile service provider in certain cases.
MISCELLANEOUS

ALLOWING A JUDGE FROM ANOTHER COUNTY TO CONDUCT AN INQUEST:

- **Full Legislative History:** HB 799
- **Statute:** TEX. GOV'T. CODE § 27.0545; TEX. CODE CRIM. PRO. ART. 49.07
- **Summary:** HRO ANALYSIS

HB 799 would amend Code of Criminal Procedure, Art. 49.07 to allow a death inquest in a county without a medical examiner to be conducted by a justice of the peace from a county other than the one where the death occurred, under certain circumstances. Under the bill, in the event that a justice of the peace or county judge who had been notified of a death was unavailable to conduct an inquest, the physician or person reporting the death could ask the justice of the peace or county judge to request that a justice of the peace of another county without a medical examiner conduct the inquest.

HB 799 would require the out-of-county justice of the peace to transfer all inquest-related information back to the county of origin within five days for final disposition on the matter. The visiting justice of the peace would be entitled to no compensation, other than mileage, from the receiving county.

*Relevant Text:*

**SUBCHAPTER C. CONDUCTING COURT AND INQUESTS SECTION**

A2.Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.0545 to read as follows:

Sec. 27.0545. EXCHANGE OF BENCHES: INQUESTS.

(a) If a justice of the peace or the county judge of a county to which Subchapter A, Chapter 49, Code of Criminal Procedure, applies is not available to conduct an inquest into a person’s death occurring in the county, the justice of the peace of the precinct in which the death occurred or the county judge may request a justice of the peace of another county to which that subchapter applies to conduct the inquest.

(b) A justice of the peace who on request conducts an inquest under this section shall, not later than the fifth day after the date the inquest is initiated, transfer all information related to the inquest to the justice of the peace of the precinct in which the death occurred for final disposition of the matter.
(c) A justice of the peace who conducts an inquest under this section is not entitled to receive from the commissioner’s court of the county in which the death occurred any compensation, other than mileage, for conducting the inquest.

SECTION 3. Article 49.07(c), Code of Criminal Procedure, is amended by adding Subdivision (3) to read as follows:

(3) If a justice of the peace or the county judge serving the county in which the body or body part was found is not available to conduct an inquest, a person required to give notice under this Article may ask the justice of the peace of the precinct in which the body or body part was found or the county judge to request a justice of the peace of another county to which this subchapter applies to conduct the inquest. The justice of the peace that conducts the inquest shall, not later than the fifth day after the date the inquest is initiated, transfer all information related to the inquest to the justice of the peace of the precinct in which the body or body part was found for final disposition of the matter. All expenses related to the inquest must be paid as provided by this chapter.

ABUSE OF A CORPSE: INCREASED PENALTY

- Full Legislative History: SB 524
- Statute: TEX. CODE CRIM. PRO. Art. 42.08(b)

Relevant Text:

SECTION 1. Section 42.08(b), Penal Code, is amended to read as follows:

(b) An offense under this section is a state jail felony, except that an offense under Subsection (a)(5) is a Class A misdemeanor.

STATE BAR/BOARD OF LAW EXAMINERS SUNSET PROVISIONS

- Full Legislative History: SB 302, 303
- Statute: TEX. GOV’T CODE CH. 81, 82

- Summary:

SB 302 and 303 would continue the State Bar of Texas and the Board of Law Examiners until September 1, 2029, and amend several processes related to the functions of the State Bar.

Relevant Text:

Given the length of the bill, the full statute can be found at

http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=85R&Bill=SB302#
COURTHOUSE SECURITY

- **Full Legislative History:** SB 42
- **Statute:** TEX. GOV’T. CODE; TEX. CODE CRIM. PRO.
- **Summary:**

SB 42 was cited as the Judge Julie Kocurek and Courthouse Security Act of 2017. This bill is a comprehensive effort to provide improved and updated security to our elected officials working in state, county and municipal government. The bill provides the following:

- Sets up a court security committee to establish appropriate security measures for courts
- Court Security personnel must hold a court security certification
- Texas Commission on Law Enforcement will develop a court security training program in conjunction with the Office of Court Administration. OCA will also create a Judicial Security Division
- Provides privacy in public records for elected officials

TEXTING WHILE DRIVING

- **Full Legislative History:** HB 62
- **Statute:** TEX. TRANSPORTATION CODE
- **Summary:**

Under the new section, it is an offense if a person uses a wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped (not defined). To be prosecuted, this must be done in the presence of or within the view of a peace officer or established by other evidence (no explanation on “other evidence”).

It is an affirmative defense to use a wireless device 1) in conjunction with a hands-free device 2) to navigate using a GPS system 3) to report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions 4) to read an electronic message that the person reasonably believed concerned an emergency 5) to relay information in the course of the operator’s occupational duties between the operator at a dispatcher or digital network or software application service or 6) to activate a function that plays music.

Hands-free device means speakerphone capability, telephone attachment, or another function that allows the use of the wireless communication device without use of either
of the operator’s hands except to activate or deactivate a function of the wireless communication devise or hands-free devise.

A person under the age of 18 may not operate a motor vehicle while using a wireless communication device except in case of emergency. A person under 17 who holds a restricted motorcycle license or moped license may not operate a motorcycle or moped while using a wireless communication device except in case of emergency.

An offense under this section is a misdemeanor punishable by a fine of at least $25 and not more than $99. If the defendant has previously been convicted at least one time of an offense under this section, it is punishable by a fine of at least $100 and not more than $200. If it is shown that the defendant caused the death or serious bodily injury of another person, it is a Class A misdemeanor punishable by a fine not to exceed $4,000 and jail time not to exceed one year.

The statute does not refer to talking on the phone while holding the device in your hand. Thus, the bill does not prevent you from talking on the phone with a handheld device or hands free. This act takes effect September 1, 2017.

Relevant Text:

SECTION 2. Sections 521.161(b) and (c), Transportation Code, are amended to read as follows:

(b) The examination must include:

(1) a test of the applicant's:

(A) vision;

(B) ability to identify and understand highway signs in English that regulate, warn, or direct traffic;

(C) knowledge of the traffic laws of this state; [and]

(D) knowledge of motorists' rights and responsibilities in relation to bicyclists; and

(E) knowledge of the effect of using a wireless communication device, or engaging in other actions that may distract a driver, on the safe or effective operation of a motor vehicle;

(2) a demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to operate; and

(3) any additional examination the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely.

(c) The department shall give each applicant the option of taking the parts of the examination under Subsections (b)(1)(B), (C), [and] (D), and (E) in writing in addition
to or instead of through a mechanical, electronic, or other testing method. If the applicant takes that part of the examination in writing in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version of the examination. The department shall inform each person taking the examination of the person’s rights under this subsection.

SECTION 3. Section 543.004(a), Transportation Code, is amended to read as follows:

(a) An officer shall issue a written notice to appear if:

(1) the offense charged is:

   (A) speeding;

   (B) the use of a wireless communication device under Section 545.4251; or

   (C) a violation of the open container law, Section 49.031,

   Penal Code; and

(2) the person makes a written promise to appear in court as provided by Section 543.005.

SECTION 4. Section 545.424, Transportation Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (g) to read as follows:

(a) A person under 18 years of age may not operate a motor vehicle while using a wireless communication device, except in case of emergency. This subsection does not apply to a person licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(b) A person under 17 years of age who holds a restricted motorcycle license or moped license may not operate a motorcycle or moped while using a wireless communication device, except in case of emergency. This subsection does not apply to a person licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(c) Subsection (a-1) [This section] does not apply to:

   [(4)] a person operating a motor vehicle while accompanied in the manner required by Section 521.222(d)(2) for the holder of an instruction permit;

   [(2)] a person licensed by the Federal Communications Commission to operate a wireless communication device or a radio frequency device.

(g) An offense under Subsection (a) or (b) is a misdemeanor punishable by a fine of at least $25 and not more than $99 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under either
subsection, in which event the offense is punishable by a fine of at least $100 and not more than $200.

SECTION 5. The heading to Section 545.425, Transportation Code, is amended to read as follows:

Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE IN A SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR PASSENGER; POLITICAL SUBDIVISION SIGN REQUIREMENTS; OFFENSE.

SECTION 6. Section 545.425(a)(1), Transportation Code, is amended to read as follows:

(1) "Hands-free device" means speakerphone capability, [or] a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, except to activate or deactivate a function of the wireless communication device or hands-free device. The term includes voice-operated technology and a push-to-talk function.

SECTION 7. Section 545.425(b-2), Transportation Code, is amended to read as follows:

(b-2) A municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle, including a prohibition that contains an exception for the use of a wireless communication device with a hands-free device, throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) and shall [if the political subdivision]:

(1) post [posts] signs that are located at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision and that state:

(A) that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision, and whether use of a wireless communication device with a hands-free device is allowed in the political subdivision; and

(B) that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision; and

(2) subject to all applicable United States Department of Transportation Federal Highway Administration rules, post [posts] a message that complies with Subdivision (1) on any dynamic message sign operated by the political subdivision located on a state highway, U.S. highway, or interstate highway in the political subdivision.
SECTION 8. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4251 to read as follows:

Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION DEVICE FOR ELECTRONIC MESSAGING; OFFENSE.

(a) In this section:

(1) "Electronic message" means data that is read from or entered into a wireless communication device for the purpose of communicating with another person.

(2) "Wireless communication device" has the meaning assigned by Section 545.425.

(b) An operator commits an offense if the operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. To be prosecuted, the behavior must be committed in the presence of or within the view of a peace officer or established by other evidence.

(c) It is an affirmative defense to prosecution of an offense under this section that the operator used a portable wireless communication device:

(1) in conjunction with a hands-free device, as defined by Section 545.425;

(2) to navigate using a global positioning system or navigation system;

(3) to report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions to users of the application;

(4) to read an electronic message that the person reasonably believed concerned an emergency;

(5) that was permanently or temporarily affixed to the vehicle to relay information in the course of the operator's occupational duties between the operator and:

(A) a dispatcher; or

(B) a digital network or software application service; or

(6) to activate a function that plays music.

(d) Subsection (b) does not apply to:

(1) an operator of an authorized emergency or law enforcement vehicle using a portable wireless communication device while acting in an official capacity; or

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a portable wireless communication device.
(e) An offense under this section is a misdemeanor punishable by a fine of at least $25 and not more than $99 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under this section, in which event the offense is punishable by a fine of at least $100 and not more than $200.

(f) Notwithstanding Subsection (e), an offense under this section is a Class A misdemeanor punishable by a fine not to exceed $4,000 and confinement in jail for a term not to exceed one year if it is shown on the trial of the offense that the defendant caused the death or serious bodily injury of another person.

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

(h) The Texas Department of Transportation shall post a sign at each point at which an interstate highway or United States highway enters this state that informs an operator that:

(1) the use of a portable wireless communication device for electronic messaging while operating a motor vehicle is prohibited in this state; and

(2) the operator is subject to a fine if the operator uses a portable wireless communication device for electronic messaging while operating a motor vehicle in this state.

(i) A peace officer who stops a motor vehicle for an alleged violation of this section may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless authorized by the Code of Criminal Procedure, the Penal Code, or other law.

(j) This section preempts all local ordinances, rules, or other regulations adopted by a political subdivision relating to the use of a portable wireless communication device by the operator of a motor vehicle to read, write, or send an electronic message.

SECTION 9. Section 708.052, Transportation Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding Subsection (b), the department may not assign points to a person's license if the offense of which the person was convicted is the offense of using a portable wireless communication device for electronic messaging as described by Section 545.4251.

SECTION 10. The changes in law made by this Act to Section 543.004 and Chapter 545, Transportation Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.
SEXUAL ASSAULT SAFE HARBOR FOR MIC/MIP ALCOHOL OFFENSES

- Full Legislative History: SB 966
- Statute: Alcoholic Bev. Code § 106.04
- Summary:

SB 966 would establish that the offenses of consumption or possession of alcohol by a minor did not apply to a minor under certain circumstances involving the reporting of sexual assault. The defense could be raised by a minor who reported that the minor or another person was sexually assaulted or by a minor who was the victim of a sexual assault reported by another person if the report was made to:

- a health care provider treating the victim;
- a law enforcement employee, including an employee of a campus police department at a higher education institution; or
- a Title IX coordinator or other employee responsible for responding to sexual assault at a higher education institution.

A minor would be entitled to raise the defense only if the minor was consuming or in possession of alcohol at the time the reported sexual assault took place.

VOTER ID FRAUD

- Full Legislative History: SB 5
- Statute: Tex. Election Code § 63.0013
- Summary:

SB 5 would allow a voter to present an acceptable form of photo identification if it had been expired for no more than two years. The bill also would establish that a person could vote after presenting an alternate form of identification accompanied by a signed reasonable impediment declaration. Intentionally making a false statement or providing false information on the declaration would be a state jail felony.

VIDEO RECORDING OF SUPREME COURT AND CCA ORAL ARGUMENTS

- Full Legislative History: HB 214
- Statute: Tex. Gov’t. Code § 22.303
- Relevant Text:

Sec. 22.303. RECORDING OF CERTAIN COURT PROCEEDINGS. If appropriated funds or donations are available in the amount necessary to cover the cost, the supreme
court and the court of criminal appeals shall make a video recording or other electronic visual and audio recording of each oral argument and public meeting of the court and post the recording on the court's Internet website.

### PRO BONO WORK WHILE ON INACTIVE STATUS

- **Full Legislative History:** HB 1020
- **Statute:** TEX. GOV'T. CODE § 81.053(a)
- **Summary:**

Government Code, sec. 81.052(b) allows an active member of the State Bar of Texas to request inactive status. Sec. 81.053(a) prohibits an inactive member from practicing law in this state. HB 1020 would allow the Texas Supreme Court to issue rules permitting inactive members of the State Bar of Texas to perform volunteer legal work.

### DRONE PROBITION: JAILS, LARGE SPORTS VENUES, CONCENTRATED ANIMAL FEEDING OPERATIONS

- **Full Legislative History:** HB 1424, HB 1643
- **Statute:** TEX. GOV'T. CODE § 423.0045
- **Summary:**

HB 1424 would add correctional and detention facilities to areas over which certain operations of unmanned aircraft are a criminal offense under Government Code, sec. 423.0045. The bill also would create an offense for operating an unmanned aircraft less than 400 feet above ground level over certain sports venues with a seating capacity of at least 30,000. CSHB 1643 would add concentrated animal feeding operations to areas over which certain operations of unmanned aircraft are a criminal offense under Government Code, sec. 423.0045.

### NEW OFFENSE: UNREGULATED CUSTODY TRANSFER OF ADOPTED CHILD

- **Full Legislative History:** HB 834
- **Statute:** TEX. FAMILY CODE CH. 162
- **Summary:**

CSHB 834 would create an offense under Family Code, ch. 162, subch. A for the unregulated custody transfer of an adopted child. "Unregulated custody transfer" would be defined as a transfer of permanent physical custody of an adopted child to someone other than a relative, stepparent, or other adult with whom the child had a significant
and long-standing relationship without first obtaining court approval. The offense also would apply to an individual who facilitated or participated in an unregulated transfer. The offense would be a third-degree felony.
ANCILLARY BILLS
(WITHOUT DETAILED SUMMARIES)

HB 239  Author:  Hernandez | White
Sponsor:  Whitmire
Last Action: 05/29/2017 E Effective on 9/1/17
Caption:  Relating to a report regarding the confinement of pregnant inmates by the Texas Department of Criminal Justice.

HB 249  Author:  Hernandez | Frank | Faircloth | Blanco
Sponsor:  Taylor, Van
Last Action: 06/15/2017 E Effective on 9/1/17
Caption:  Relating to investigations of child abuse, neglect, or exploitation and to child protective services functions of the Department of Family and Protective Services.

HB 280  Author:  Howard | Klick | Coleman | King, Ken
Sponsor:  Buckingham
Last Action: 06/01/2017 E Effective on 9/1/17
Caption:  Relating to a grant program for reducing workplace violence against nurses.

HB 478  Author:  Israel | Laubenberg | Rinaldi | Gutierrez | Neave
Sponsor:  Uresti
Last Action: 06/12/2017 E Effective on 9/1/17
Caption:  Relating to immunity for removing vulnerable individuals from a motor vehicle.

HB 553  Author:  White | Rose | Johnson, Jarvis | Biedermann
Sponsor:  Miles
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the creation of a task force to identify opportunities for academic credit and industry recognition for inmates of the Texas Department of Criminal Justice.

**HB 865**  
Author: Blanco | Minjarez  
Sponsor: Rodríguez  
Last Action: 06/15/2017 E Effective on 9/1/17

Caption: Relating to establishing a veterans services coordinator for the Texas Department of Criminal Justice and a veterans reentry dorm program for certain state jail defendants confined by the department.

**HB 920**  
Author: Kacal  
Sponsor: Creighton  
Last Action: 05/26/2017 E Effective on 9/1/17

Caption: Relating to the operation of all-terrain vehicles and recreational off-highway vehicles.

**HB 932**  
Author: Johnson, Jarvis | Wu | Giddings  
Sponsor: West  
Last Action: 05/29/2017 E Effective on 9/1/17

Caption: Relating to the collection of information concerning the number of juvenile offenders committed to the Texas Juvenile Justice Department who have been in foster care.

**HB 1099**  
Author: Canales | Turner | Faircloth | Longoria | Metcalf  
Sponsor: Lucio  
Last Action: 06/01/2017 E Effective on 9/1/17

Caption: Relating to a residential tenant's right to summon police or other emergency assistance.

**HB 1249**  
Author: Goldman  
Sponsor: Hinojosa
Last Action: 05/29/2017 E Effective on 9/1/17

Caption: Creates a Class C misdemeanor for affixing markings or features that resembles an emergency medical services vehicles.

HB 1264 Author: Burkett | Button
Sponsor: Huffines

Last Action: 06/15/2017 E Effective on 9/1/17

Caption: Relating to the concurrent jurisdiction of certain municipal courts in certain criminal cases punishable by fine only.

HB 1501 Author: Thompson, Senfronia
Sponsor: Rodríguez

Last Action: 05/29/2017 E Effective on 9/1/17

Caption: Relating to child custody evaluations; creating an offense for recklessly disclosing confidential record information (Class A).

HB 1503 Author: Frullo | Thompson, Senfronia | Wray
Sponsor: Huffman

Last Action: 06/15/2017 E Effective on 9/1/17

Caption: Relating to the reporting of attempted child abductions.

HB 1508 Author: Giddings
Sponsor: West

Last Action: 06/15/2017 E Effective on 9/1/17

Caption: Relating to notice to applicants to and enrollees in certain educational programs regarding the consequences of a criminal conviction on eligibility for an occupational license.

HB 1510 Author: Isaac
Sponsor: Zaffirini

Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the transfer of certain functions related to emergency services districts from the Department of Agriculture to the Texas Division of Emergency Management.

**HB 1526**  
Author: King, Phil | Geren | Romero, Jr. | Davis, Sarah | Meyer  
Sponsor: Huffman  
Last Action: 06/01/2017 E Effective on 9/1/17

Caption: Relating to the provision of certain state benefits to certain peace officers and certain active and retired employees of community supervision and corrections departments.

**HB 1612**  
Author: Romero, Jr.  
Sponsor: Hancock  
Last Action: 05/22/2017 E Effective on 9/1/17

Caption: Relating to the authority of the Texas Alcoholic Beverage Commission to offer a civil penalty in lieu of suspending a permit or license.

**HB 1619**  
Author: Shine  
Sponsor: Buckingham  
Last Action: 05/26/2017 E Effective on 9/1/17

Caption: Relating to the prosecution and punishment of certain outdoor burning violations.

**HB 1655**  
Author: King, Phil  
Sponsor: Huffines  
Last Action: 05/26/2017 E Effective on 9/1/17

Caption: Relating to the reporting of certain offenses committed by members of the Texas military forces; court clerks must sent notice of convictions and deferred adjudication involving family violence or a crime against a person to staff judge advocate general and not the staff judge advocate at Joint Force Headquarters.

**HB 1735**  
Author: Faircloth | Raney
Sponsor: Huffman

Last Action: 06/15/2017 E Effective on 9/1/17

Caption: Relating to election officers and practices; increasing a criminal penalty; creating a criminal offense. CSHB 1735 would give the county clerk authority to remove, replace, or reassign an election judge or an election clerk who caused a disruption in a polling place or wilfully disobeyed the provisions of the Election Code.

HB 1761 Author: Smithee
Sponsor: Hughes

Last Action: 05/26/2017 E Effective on 9/1/17

Caption: Relating to jurisdiction of the Texas Supreme Court.

HB 1771 Author: Price | Martinez, "Mando"
Sponsor: Seliger

Last Action: 05/29/2017 E Effective on 9/1/17

Caption: Relating to the use of certain weapons in or on the beds or banks of the Canadian River in Potter County.

HB 1787 Author: Wray
Sponsor: Rodríguez

Last Action: 06/01/2017 E Effective on 9/1/17

Caption: Relating to the execution of a declaration for mental health treatment.

HB 1860 Author: Cyrier
Sponsor: Menéndez

Last Action: 05/26/2017 E Effective on 9/1/17

Caption: Relating to access to criminal history record information by the adjutant general.

HB 1866 Author: Geren
Sponsor: Campbell
Last Action: 06/01/2017 E Effective on 9/1/17
Caption: Relating to compensation and restitution to crime victims and the disposition of unclaimed restitution payments; providing for an administrative penalty; authorizing a fee.

HB 1884 Author: Anderson, Charles "Doc"
Sponsor: Kolkhorst
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the penalties for certain littering offenses.

HB 1904 Author: Capriglione
Sponsor: Burton
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the powers and compensation of criminal law magistrates in Tarrant County.

HB 2529 Author: Meyer | Thompson, Senfronia | Parker | Burkett
Sponsor: Huffman
Last Action: 06/09/2017 E Effective on 9/1/17
Caption: Relating to the definition of coercion for purposes of the offense of trafficking of persons (threatening to or actually destroying, concealing, confiscating, or withholding the trafficked person's actual or purported government record or identifying documents; receiving any form of support, financial or otherwise, from proceeds of an activity; controlling proceeds of illegal activity).

HB 2552 Author: Thompson, Senfronia | Dukes
Sponsor: Huffman
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to measures to address and deter certain criminal or other unlawful activity, including trafficking of persons, sexual offenses, prostitution, and activity that may constitute a public nuisance; increasing criminal penalties; creating a criminal
offense.

HB 2580  Author:  Holland | Longoria  
Sponsor:  Estes  
Last Action: 05/26/2017 E Effective on 9/1/17  
Caption:  Relating to criminal history record information obtained by the savings and mortgage lending commissioner.

HB 2880  Author:  Dutton  
Sponsor:  Menéndez  
Last Action: 06/15/2017 E Effective on 9/1/17  
Caption:  Relating to the criminal punishment for the threatened exhibition or use of a firearm in or on school property or on a school bus. Some have suggested a lesser charge should be applied when a student makes a threat but is not in possession of a firearm because of the severe consequences of having a felony charge on a student's record. Threatening to exhibit or use a firearm in a school setting would remain a third-degree felony if the actor was in possession of or had immediate access to the firearm. Threatening to exhibit or use a firearm in the same setting without possession of or access to a firearm would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

HB 2888  Author:  Romero, Jr. | Johnson, Jarvis | Dutton | Thierry | White  
Sponsor:  Whitmire  
Last Action: 06/09/2017 E Effective on 9/1/17  
Caption:  Relating to an inmate's completion of classes or programs before being released on parole.

HB 3051  Author:  King, Phil  
Sponsor:  Hinojosa  
Last Action: 05/26/2017 E Effective on 9/1/17  
Caption:  Relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.
HB 3052  Author: Herrero
Sponsor: Watson
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to certain protective orders and agreements involving families.

HB 3130  Author: Parker | White | Rose | Zerwas | Bonnen, Dennis
Sponsor: Huffman
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the establishment of an educational and vocational training pilot program for certain state jail felony defendants.

HB 3165  Author: Moody
Sponsor: Rodríguez
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to certain pretrial release office’s reporting requirements in criminal cases.

HB 3270  Author: Bohac | Cain
Sponsor: Taylor, Larry
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to criminal background checks for persons employed by certain public school contractors.

HB 3272  Author: Wray
Sponsor: Rodríguez
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the suspension, revocation, or cancellation of a driver's license or personal identification certificate and to certain conduct constituting contempt of court that may result in the suspension or denial of a driver's license. [Note: the text of the bill seems to have little to do with this caption.]
HB 3321  Author: Frank
Sponsor: Perry
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to jurisdiction of the county courts in certain counties.

HB 3376  Author: Holland
Sponsor: Perry
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to forms of notice that may be provided by the Department of Public Safety during certain enforcement proceedings and actions.

HB 3391  Author: Geren
Sponsor: Birdwell
Last Action: 06/01/2017 E Effective on 9/1/17
Caption: 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.

HB 3564  Author: Klick
Sponsor: Perry
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to the office of the state long-term care ombudsman; affecting the prosecution of a criminal offense.

HB 3705  Author: White
Sponsor: Whitmire
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to local juvenile justice information systems.

HB 3784  Author: Holland | King, Phil | Price | Wray
Sponsor: Taylor, Van
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to certain applications to obtain a license to carry a handgun and to the associated handgun proficiency course.

HB 4102 Author: Neave | González, Mary | Villalba | Minjarez | Blanco
Sponsor: Garcia
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to establishing and funding a grant program for testing evidence collected in relation to sexual assaults or other sex offenses; authorizing voluntary contributions.

HB 4147 Author: Kacal
Sponsor: Birdwell
Last Action: 06/01/2017 E Effective on 9/1/17
Caption: Relating to a defendant's right to appeal from a judgment or conviction in a municipal court of record: clarifies that a county court has jurisdiction of any appeal from a judgment in a municipal court of record.

SB 8 Author: Schwertner | Campbell | Kolkhorst | Nelson | Perry
Sponsor: Burkett | Cook | Laubenberg | Raney | Bailes
Last Action: 06/06/2017 E Effective on 9/1/17
Caption: Relating to certain prohibited abortions and the treatment and disposition of a human fetus, human fetal tissue, and embryonic and fetal tissue remains; creating a civil cause of action; imposing a civil penalty; creating criminal offenses.

SB 30 Author: West | Whitmire
Sponsor: Thompson, Senfronia | Coleman
Last Action: 06/09/2017 E Effective on 9/1/17
Caption: Relating to inclusion of instruction regarding interaction with peace officers in the required curriculum for certain public school students and in driver education courses and to civilian
interaction training for peace officers.

**SB 46**  
**Author:** Zaffirini  
**Sponsor:** Davis, Yvonne  
**Last Action:** 05/29/2017 E Effective on 9/1/17  
**Caption:** Relating to allowing judges to use juror identification numbers when polling the jury (to protect jurors’ identity in controversial, public, or violent cases).

**SB 47**  
**Author:** Zaffirini  
**Sponsor:** Wu  
**Last Action:** 06/15/2017 E Effective on 9/1/17  
**Caption:** Relating to a study on the availability of information regarding convictions and deferred dispositions for certain misdemeanors punishable by fine only. Each county adopts its own records policy, and this is an attempt to guide future legislative actions regarding Class C records.

**SB 259**  
**Author:** Huffines  
**Sponsor:** Neave  
**Last Action:** 05/18/2017 E Effective on 9/1/17  
**Caption:** Relating to jury summons questionnaires – can be completed on the court’s website.

**SB 292**  
**Author:** Huffman | Nelson | Schwertner  
**Sponsor:** Price | Coleman  
**Last Action:** 06/09/2017 E Effective on 9/1/17  
**Caption:** Relating to the creation of grant programs to reduce recidivism, arrest, and incarceration of individuals with mental illness.

**SB 297**  
**Author:** Hinojosa  
**Sponsor:** Miller  
**Last Action:** 05/29/2017 E Effective on 9/1/17
Caption: Relating to the compensatory time and overtime pay for commissioned officers of the Department of Public Safety.

**SB 298**

Author: Hinojosa  
Sponsor: Geren  
Last Action: 06/15/2017 E Effective on 9/1/17  
Caption: Relating to the creation and funding of the Texas Forensic Science Commission operating account.

**SB 341**

Author: Perry  
Sponsor: Goldman  
Last Action: 06/09/2017 E Effective on 9/1/17  
Caption: Relating to the consequences of the possession of illegal synthetic cannabinoids on a holder of or applicant for certain alcoholic beverage licenses and liability of a person who provides, sells, or serves a synthetic cannabinoid to another person.

**SB 631**

Author: Buckingham  
Sponsor: Wilson  
Last Action: 06/09/2017 E Effective on 9/1/17  
Caption: Relating to venue for the disposition of stolen property: can be held in the county where property is being held or where believed to be stolen.

**SB 712**

Author: Hinojosa  
Sponsor: Hunter | Herrero  
Last Action: 05/22/2017 E Effective on 9/1/17  
Caption: Amends the Family Code to trigger a court's authority to render a protective order that is effective for more than two years if the court finds that the subject of the protective order engaged in felony conduct involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense.
SB 840  Author: Zaffirini  
Sponsor: Martinez, "Mando" | Guillen | Blanco  
Last Action: 06/09/2017 E Effective on 9/1/17  
Caption: Relating to certain images captured by an unmanned aircraft. Government Code, sec. 423.003 criminalizes the use of an unmanned aircraft to capture an image of an individual or privately owned property with the intent to conduct surveillance. This offense is punishable by a class C misdemeanor.

SB 1063  Author: Perry  
Sponsor: Klick  
Last Action: 06/01/2017 E Effective on 9/1/17  
Caption: Relating to the investigation of an anonymous report of suspected abuse or neglect of a child.

SB 1124  Author: Hinojosa  
Sponsor: Geren  
Last Action: 05/28/2017 E Effective on 9/1/17  
Caption: Relating to the administrative attachment of the Texas Forensic Science Commission to the Office of Court Administration of the Texas Judicial System.

SB 1242  Author: Rodríguez  
Sponsor: Burkett  
Last Action: 06/01/2017 E Effective on 9/1/17  
Caption: Relating to the confidentiality of certain personal information of an applicant for or a person protected by a protective order: mailing address can be stricken from application.

SB 1264  Author: Huffman  
Sponsor: Alvarado  
Last Action: 06/15/2017 E Effective on 9/1/17
Caption: Relating to psychological counseling for certain grand jurors. SB 1264 would allow counties to extend to grand jurors the same psychological counseling services available to trial jurors who witness graphic evidence or testimony.

**SB 1290**  
**Author:** Creighton  
**Sponsor:** Metcalf  
**Last Action:** 05/29/2017 E Effective on 9/1/17  
**Caption:** Relating to access to criminal history record information by an emergency communication district.

**SB 1298**  
**Author:** Huffman  
**Sponsor:** Thompson, Ed  
**Last Action:** 06/12/2017 E Effective on 9/1/17  
**Caption:** Relating to the selection and summons of prospective grand jurors: allows judge to summon how many “the judge considers necessary to ensure an adequate number or jurors.”

**SB 1326**  
**Author:** Zaffirini  
**Sponsor:** Price | Murr | Moody | Coleman | White  
**Last Action:** 06/12/2017 E Effective on 9/1/17  
**Caption:** Relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness.

**SB 1343**  
**Author:** Hughes  
**Sponsor:** Parker  
**Last Action:** 06/15/2017 E Effective on 9/1/17  
**Caption:** Prosecution for improper digital labeling / piracy / unauthorized music and video recordings.

**SB 1548**  
**Author:** Menéndez  
**Sponsor:** Minjarez
Last Action: 06/01/2017 E Effective on 9/1/17

Caption: Allows voluntary post-discharge services offered by a juvenile board or juvenile probation department to a child after the child's probation period ends.

**SB 1571**  Author: Huffman  
Sponsor: Frullo  
Last Action: 06/15/2017 E Effective on 9/1/17  
Caption: Relating to the release of a child taken into possession (for situations like child trafficking or child abuse) by a law enforcement officer.

**SB 1806**  Author: Huffman  
Sponsor: Miller  
Last Action: 06/15/2017 E Effective on 9/1/17  
Caption: Relating to requiring the use of multidisciplinary teams appointed by children's advocacy centers in certain child abuse investigations.

**SB 2283**  Author: Perry  
Sponsor: Springer  
Last Action: 06/15/2017 E Effective on 9/1/17  
Caption: Relating to the regulation of dangerous dogs and dogs that attack persons in certain municipalities.

**HB 3254**  Author: Phillips  
Sponsor: Nichols  
Last Action: 06/12/2017 E Effective on 1/1/18  
Caption: Relating to the regulation of a motor carrier and the enforcement of motor carrier regulations; authorizing the imposition of a fee; creating a criminal offense.

**HB 91**  Author: White
Sponsor: Huffman
Last Action: 06/12/2017 E Effective immediately
Caption: Relating to a review of occupational licensing requirements and an applicant's criminal history.

HB 1103 Author: Hernandez
Sponsor: West
Last Action: 05/29/2017 E Effective immediately
Caption: Relating to excluding a person on the suspense list from jury duty. CSHB 1103 would make voter registration mailing addresses the default address when the secretary of state prepares the jury wheel. Texas has a historic problem with low response rates to jury summons, and during the interim, the House Committee on Judiciary and Civil Jurisprudence identified incorrect addresses on the jury pool list as a significant contributor to low participation.

HB 1278 Author: Dutton
Sponsor: Miles
Last Action: 06/15/2017 E Effective immediately
Caption: Relating to availability of personal information of certain current and former prosecutors. House Bill 1278 amends the Government Code and Tax Code to provide for the nondisclosure and confidentiality under state public information law of certain personal information of 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 and current or former employees of such attorneys and for the confidentiality of personal information of such attorneys in appraisal records.

HB 3167 Author: Paddie | Ashby | Clardy
Sponsor: Hughes
Last Action: 06/01/2017 E Effective immediately
Caption: House Bill 3167 amends the Code of Criminal Procedure to raise from 50,000 to 100,000 the minimum population threshold of a county for purposes of mandatory participation in a program for
improvement of the collection of court costs, fees, and fines imposed in criminal cases.

**SB 190**  
Author: Uresti  
Sponsor: Wu  
Last Action: 06/09/2017 E Effective immediately  
Caption: Relating to the administrative closure of certain reported cases of child abuse or neglect made to the Department of Family and Protective Services.

**SB 344**  
Author: West  
Sponsor: Sheffield  
Last Action: 06/09/2017 E Effective immediately  
Caption: Relating to the authority of emergency medical services personnel of certain emergency medical services providers to transport a person for emergency detention.

**SB 416**  
Author: Watson  
Sponsor: Smithee  
Last Action: 06/15/2017 E Effective immediately  
Caption: Relating to the composition of the board of directors of the State Bar of Texas.

**SB 500**  
Author: Taylor, Van  
Sponsor: Geren | Davis, Sarah | Howard | King, Phil | Johnson, Eric  
Last Action: 06/06/2017 E Effective immediately  
Caption: Relating to the effect of certain felony convictions of public elected officers. Senate Bill 500 amends the Code of Criminal Procedure and Government Code to make certain elected officials or persons appointed to such offices who are members of a public retirement system ineligible to receive a service retirement annuity if the official is convicted of a qualifying felony related to performance of public service committed while in office.

**SB 2053**  
Author: West
Sponsor: Murr

Last Action: 06/15/2017 E Effective immediately

Caption: Relating to the distribution of the consolidated court cost. SB 2053 would eliminate the allocation of the court costs collected upon criminal convictions that currently goes to the abused children's counseling fund and the comprehensive rehabilitation fund. The bill would increase the amount of court costs going to the fair defense fund by the amounts that would have previously gone to the abused children's counseling fund and the comprehensive rehabilitation fund. This reallocation would increase the amount going to the fair defense account from 8.0143 percent of court costs to 17.8448 percent.