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City of Denton

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**TMCEC LEGISLATIVE UPDATE 2011**

*Magistrate Issues and  
Changes in Procedural Law*

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**ROADMAP**

Magistrate Duties

1. Magistrate Bills
2. Domestic Violence
3. Changes to Substantive Criminal Law

Changes in Procedural Law

1. Animal Hearings
2. Code of Criminal Procedure
3. S.B. 480




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**MAGISTRATE ISSUES**

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H.B. 79 – Special Session (P. 67)

- Confusion Over Term “Magistrate” Results in Revision of Chapter 54 Government Code
- New term “Associate Judges”



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Law and Technology!

- H.B. 976 – Requesting Warrant or Summons by EBS (P. 68)
- H.B. 1891 – Retrieval of Electronic Data Post Execution of Search Warrants (P. 70)
- H.B. 1829 – Application for Emergency Mental Detention by E-Mail (P. 69)



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S.B. 1787 - Information Provided by Police Prior to Requesting Specimen to Determine Intoxication (P. 72)



Internet Photo Posted by Opponent of Blood Warrants Being Used by Local Law Enforcement

- Is it Coercion? No, It's the Law! (Sec. 724.015, Trans. Code)
- Peace Officer Must Warn of Ability to Get Blood Draw Warrant if Suspect Refuses to Give Specimen
- Warning Must be Made Orally and in Writing

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**S.B. 1681 - Probation Revocation Procedures (P. 71)**

- Amends Art. 42.12, CCP
- Requires Magistrates to Give Right to Counsel Warnings (Art. 15.17, CCP)
- Does NOT Authorize Magistrate to Set Bail

**REVOCAATION:  
IT HAPPENS!**



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**S.B. 877 – Verifying Incarceration Before Discharging Surety’s Liability on a Bail Bond (P. 71)**



- Bail Bondsmen: “What’s the Hold Up?”
- Amends Art. 17.16, CCP to Provide Law Enforcement a Mechanism to either Place a Hold or Get a Warrant

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**H.B. 1173 – Release on Bond in Misdemeanors in Harris County (P. 73)**

- Art. 17.033(a-1), CCP allows for 36 Hours rather than 24 Hours in Making PC Determination.
- 36 Hours Triggers \$5,000 Surety or PR Bond
- Permissible Double Standard?



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### Jailers Authorities Expanded



- H.B. 1070 – Authorizes Jailers to Take Bail (P. 77)
  - Creates Art. 17.025, CCP
- S.B. 604 – Authorizes Jailers to Serve Criminal Process in Jail (P. 82)
  - Creates Art. 2.31, CCP
  - Requires Special Training (Chapter 1701 Occupation Code)

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## LEGISLATION RELATING TO DOMESTIC VIOLENCE

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### An Important Year in Domestic Violence Related Legislation but **NOT FOR MOEPs**

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| <ul style="list-style-type: none"> <li>• H.B. 1721 – POs for Stalking Victim (P. 68)</li> <li>• S.B. 116 – POs for “Triangle Violence” (P. 70)</li> <li>• S.B. 279 – POs for Pets (P. 70)</li> <li>• H.B. 649 – POs for Sex Assault (P. 72)</li> </ul> | <ul style="list-style-type: none"> <li>• H.B. 2624 - Military Domestic Violence Reporting (P. 74)</li> <li>• S.B. 250 – Allow for PO for Stalking with out Arrest or Relationships (P. 75)</li> <li>• S.B. 819 - Enforcement of POs by Non-Issuing Courts (P. 76)</li> </ul> |
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**A MAGISTRATE’S PREVIEW OF  
COMING ATTRACTIONS:**

**NEW CRIMES COMING TO A  
JAIL NEAR YOU!**

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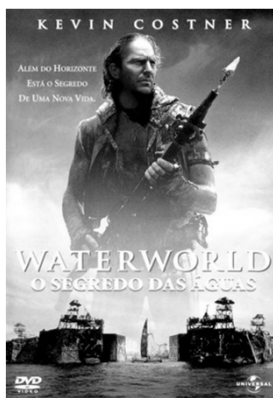
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**“Just When You  
Thought it was Safe  
to Go Back in the  
Water”**

**\* H.B. 25 – Guns on  
Water Crafts (P. 39)  
Amends Chapter 46,  
P.C.**

**\* S.B. 496 – Evading  
Detention on  
Watercraft (P. 48)  
Amends Section 38.04, P.C.**



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**Bank Crimes: Thumbs  
Up, Better than Cars 2!**

**S.B. 887 – Theft of an ATM  
(P. 48)  
Sec. 31.03, Penal Code  
2<sup>nd</sup> Degree Felony**

**H.B. 1215 – Unauthorized  
Acquisition of Financial  
Data (P. 41)  
Section 31.17, Penal Code  
Class A & B Misdemeanor**



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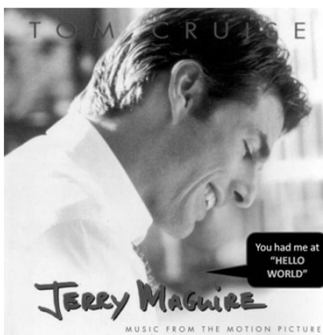
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**Show Me the Money  
(and Three Hots and  
a Cot)!**

- H.B. 1123 - Regulation of Sports Agents (P. 41)
- Amends Sec. 20151.151, Occupation Code
- Class A Misdemeanor becomes a 3<sup>rd</sup> Degree Felony



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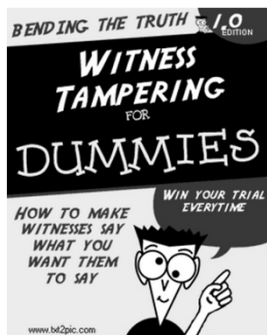
The Sleeper Hit of the Session: Critics will Cry, Criminals will Laugh!

H.B. 1856 (P. 42)

Amends Sec. 36.05, Penal Code.

The Deterrence Theory Gone Awry?

Sliding Scale Punishment, Really?



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These Are Not Your Grandma's Bath Salts! (P. 44)

• H.B. 2118

• Amends Section 481.103, HSC

• A New Felony



IT IS NOT FUNNY! IT'S IN PENALTY GROUP 2!!!

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**Doctor Shopping  
(It's Like Dr. Doolittle  
2, But Entirely  
Different!)**

S.B. 158 (P. 47)

Amends Chapter 481,  
H.S.C.

Patients = Class A  
Misdemeanor

Professionals = State Jail  
Felony



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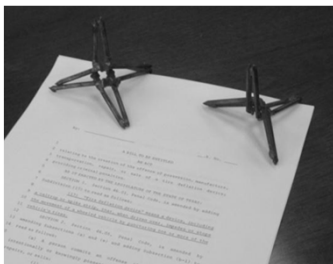
**Caltrops: Will Leave  
Audiences Wanting  
More (Tires)!**

S.B. 1416 (P. 49)

Amends Section 46.05, Penal  
Code to Make a Tire Deflation  
Device an Illegal Weapon

3<sup>rd</sup> Degree Felony if Used to Evade  
Law Enforcement

2<sup>nd</sup> Degree Felony if Use Results  
in Death or Serious Bodily Injury



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**It's Not the Kind of Traffic You are Thinking Of**

**HUMAN TRAFFICKING**

- H.B. 260 (P. 39) Unlawful Transport of Persons (Sec.20.05, P.C) State Jail Felony
- H.B. 2014 (P.43) Continuous Trafficking (Sec. 20A.03, P.C.) 1<sup>st</sup> Degree Felony
- H.B. 3000 (P.44) Prohibits PR Bonds for Offenders and Requires Hearings for Bond Reductions
- S.B. 24 (P. 46) Suit for Public Nuisance

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**CHANGES IN  
PROCEDURAL  
LAW**

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**Ch. 821, HSC - Costs and Appeals of Civil Hearings; Cruelly Treated Animals H.B. 963 (P. 76)**

- Costs
- Hearings are Not Trials?
- Juries Only on Appeal to County?



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**CODE OF CRIMINAL PROCEDURE**

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### The Problems with Line Ups

**H.B. 215 (P. 82) Adds Article 38.20,  
Code of Criminal Procedure**



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### Video Conferencing

**H.B. 2847 (p. 83) Does Not Authorize  
Jail House Pleas to be taken per Art.  
27.18, CCP in Class C Cases but Does  
Expand Use of Municipal Court  
Security Fund**



**S.B. 1522 (P. 84) Amends 27.19, CCP  
to Allow People in Prison to Plea by  
Video or Mail. Clarifies that it  
applies to Cases Involving  
Indictments and Informations.**

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### Motion for New Trial

- **S.B. 519 (P. 82) Amending Art. 45.037, CCP**
- **Time Period Changed from 1 to 5 Days**
- **Creates Uniformity with Civil Procedure for Justice Courts**
- **Does Not Create Uniformity Among Municipal Courts**
- **Municipal Courts or Records are Unaffected (Still 30 Days)**

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**H.B. 27 (P. 76) - A Tate v. Short Inspired Bill**

- Amends Art. 45.041 (Judgment)
- Once Judge Makes Determination that Defendant *Cannot Immediately Pay* the Defendant is Guaranteed Payment Plan Option
- Does Not Preclude Community Service Option
- Does Not Apply Where Defendant is Capable of Paying and Court Orders Payment in Future
- DOES PRECLUDE "Freezer to Frying Pan" "Pay or Lay" Orders




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**LAST BUT NOT LEAST!**

**S.B. 480/HB 3475  
(The Swiss Army Knife of  
Municipal Court  
Legislation)**




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**S.B. 480 Jurisdiction of the Court of Appeals in Cases Originating in a Municipal Court of Record (P. 78)**

Section 1 and 4: Amending 4.03, CCP and Sec. 30.00027, Govt. Code

Legislative Response to Alexander v. State (Austin 2007)

Austin 3<sup>rd</sup> Court of Appeals Held it was without Jurisdiction to Hear Appeal from Municipal Court of Record when Fine is Less than \$100 even if Constitutionality is the Sole Issue (Now they Do have Jurisdiction!

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**SECTION 2: Recusal & Disqualification P. 78**

- Section 29.012, Govt. Code is Repealed!!!
- TOTALLY NEW Subchapter 29A, Govt. Code
- 10 Totally New Procedural Rules Governing Recusal and DQ in ALL Municipal Courts
- Important to Distinguish between "Presiding Judge" and "Reg. PJ"
- Adapted from TRCP 18A
- Contains "Recuse or Refer"
- Pecking Order Contemplates 1 or More Municipal Judges
- Efforts to Maximize Resources (Teleconference)
- Hearing on Motion Will Not be by a Municipal Judge
- Judge Assigned to Case Will be a Municipal Judge
- Provisions for Compensation Provided

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**SECTION 3: MANDATORY REPORTS P. 81**

- Duty on City Secretary or Other Proper Employee
- Notice to Texas Judicial Council within 30 Days of Election Appointment or Vacancy of Mayor, Judges, Clerks
- Replaces Sec. 22.073(c), Govt. Code with Sec. 29.013, Govt. Code.




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**RECAP ON S.B. 480**

1. Judges and Clerks, you must read this bill! (Eff. 6/17/11)!
2. There Will be a Clinic!
3. There Will be a Webinar!
5. There Will be OCA Forms!
6. There is a Flow Chart!




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